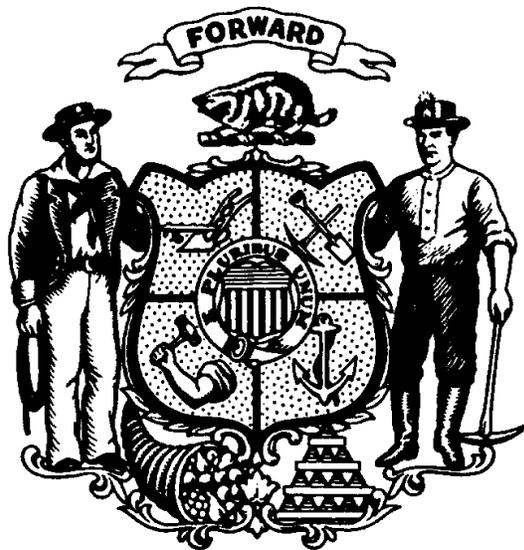


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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Agriculture, Trade & Consumer Protection

1. Rules were adopted amending s. ATCP 60.19 (3) and (4), relating to drug residues in raw milk.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

Publication Date: April 30, 1999
Effective Date: April 30, 1999
Expiration Date: September 27, 1999
Hearing Date: June 18, 1999
Extension Through: November 25, 1999

2. Rules adopted revising s. ATCP 100.45, relating to security of dairy plant payments to milk producers.

Finding of Emergency

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2. and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules under ch. ATCP 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch. ATCP 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATCP 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATCP 100, Subch. V.

(3) Under s. ATCP 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the preceding license year. Milk prices hit all time record highs in 1998, dramatically increasing

monthly dairy plant payrolls. Security requirements for the 1999 license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes.

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12% to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators are required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action against the dairy plant's license. This could result in the forced closing of some unsecured dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments will relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, will reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rule is needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rule is less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats., and s. ATCP 100.20(3). The department may demand additional security at that time.

Publication Date: April 20, 1999
Effective Date: May 1, 1999
Expiration Date: September 28, 1999
Extension Through: November 26, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Financial Resources for Communities, Chs. Comm 105 to 128)

Rules adopted creating **ch. Comm 111**, relating to certified capital companies.

Finding of Emergency

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

Analysis of Rules

Statutory Authority: ss. 560.31, 560.34 (1m) (b), and 227.24

Statutes Interpreted: ss. 560.31, 560.34 (1m) (b), and 227.24

On June 17, 1999, the Department of Commerce (Commerce) held a public hearing on proposed rules in response to 1997 Wis. Act 215. That act provides tax credits to persons that make certain investments in certified capital companies that are certified by Commerce. Legislators and persons interested in the rules testified at the hearing and requested that Commerce adopt an emergency rule that would (1) allow persons to apply for certification to become certified as capital companies, (2) allow persons to apply to make a certified capital investment in a certified capital company, and (3) set forth the operational and reporting requirements of certified capital companies required under the law. Since then, articles in the newspaper as well as business journals have pointed out the lack of venture capital in the state hinders high-tech growth and making that capital available will benefit Wisconsin as it has done in other states. This emergency rule is necessary to begin implementation of the law and to place Wisconsin in a better position to make capital available to draw high-tech industries, create new businesses, and expand existing businesses that will ultimately create new jobs and benefit all its citizens.

Publication Date: July 23, 1999
Effective Date: July 23, 1999
Expiration Date: December 19, 1999
Hearing Date: August 17, 1999

EMERGENCY RULES NOW IN EFFECT

Crime Victims Rights Board

Rules adopted creating **ch. CVRB 1**, relating to the rights of crime victims.

Finding of Emergency

The Crime Victims Rights Board 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 is:

The Crime Victims Rights Board was created by 1997 Wis. Act 181, effective December 1, 1998, to enforce victims' rights established by Wis. Const. Art. I, s. 9m, adopted in 1993. The Wisconsin Constitution states that the Legislature shall provide remedies for the violation of victims' constitutional rights. The Board's process represents the only means of enforcing the remedies available to victims of crime who are not provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. The Board can issue reprimands to correct violations of victims' rights, seek forfeitures in egregious cases, and

seek equitable relief to enforce victims' rights. The Board can also work to prevent future violations of victims' rights by issuing reports and recommendations on crime victims' rights and services.

Complaints must be presented to the Department of Justice before they can be presented to the Board. The Department estimates that it receives 200 complaints annually involving the treatment of crime victims. The Department has no authority to enforce victims' rights; the Department can only seek to mediate disputes. Of those complaints, approximately 25 per year cannot be resolved to the parties' satisfaction, and are therefore ripe for the Board's consideration. There are presently 5 complaints that could be referred to the Board if the Board were able to receive and act on complaints.

Until the Board establishes its complaint process by administrative rule, it is unable to provide the remedies constitutionally guaranteed to crime victims.

Publication Date: September 17, 1999
Effective Date: September 17, 1999
Expiration Date: February 14, 1999
Hearing Date: November 9, 1999

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Employment Relations Commission

Rules adopted revising **ch. ERC 33, Appendix C**, relating to the calculation of a minimum qualified economic offer in collective bargaining with professional school district employes.

Finding of Emergency

We find that it is necessary to promulgate the amendment to ch. ERC 33, Appendix C as an emergency rule to preserve the public peace, health, safety and welfare. Without the amendment, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

Publication Date: June 12, 1999
Effective Date: June 12, 1999
Expiration Date: November 9, 1999

EMERGENCY RULES NOW IN EFFECT

Professional Geologists, Hydrologists and Soil Scientists

Rules adopted creating **chs. GHSS 1 to 5**, relating to the registration and regulation of professional geologists, hydrologists and soil scientists.

Exemption From Finding of Emergency

The Examining Board of Geologists, Hydrologists and Soil Scientists finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, safety or welfare. A statement of the facts constituting the emergency is:

Section 64 of 1997 Wis. Act 300 states that the board is not required to make a finding of emergency. However, the board offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of professional geologists, hydrologists and soil scientists was created in 1997 Wis. Act 300.

The Act was published on June 30, 1998; however the Act created an effective date for the new regulation as being the first day of the 6th month beginning after the effective date of this subsection.

Publication Date: May 15, 1999
Effective Date: May 15, 1999
Expiration Date: October 12, 1999
Hearing Date: June 23, 1999
Extension Through: December 10, 1999

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Management, Technology, etc., Chs. HFS 1–)

A rule was adopted revising **chapter HFS 12, Appendix A**, relating to caregiver background checks.

Finding of Emergency

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

Since October 1, 1998, the Department has been implementing statutes that became effective on that date that require use of uniform procedures to check the backgrounds of persons who apply to the Department, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child–placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non–client at the entity. The statutes, ss. 48.685 and 50.065, Stats., direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction, finding or charge, who have in their backgrounds a specified conviction, finding or charge substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or otherwise having contact with the clients of a service provider.

The new statutes, commonly referred to as the Caregiver Law, were effective on October 1, 1998, for applicants on or after that date for licensure, certification or other agency approval, and for persons applying to be hired by or to enter into a contract with a regulated entity on or after that date to provide services to clients or to take up residence as a non–client at a regulated entity.

For regulated agencies approved before October 1, 1998, and for persons employed by, under contract to or residing as non–clients at regulated entities before October 1, 1998, the Caregiver Law's required uniform procedures and "bars" are to apply beginning on October 1, 1999. That is to say, by October 1, 1999, background checks, using the uniform procedures, are to be completed for all service providers who were approved before October 1, 1998, and for all employees, contractors and non–client residents employed by, under contract to or living at a regulated entity before October 1, 1998, and action taken to withdraw approval, terminate employment or end a contract, as appropriate.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. Chapter HFS 12 included an appendix which consisted of a list of crimes. The original list specified 159 crimes for conviction of any one of which a person would be barred permanently (45 crimes), all programs, or would be barred temporarily, all programs, pending demonstration of rehabilitation, from being approved to be a service provider or from providing care or treatment to clients or otherwise having access to

clients. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. The Crimes List in the current permanent rules specifies 117 crimes with 9 being permanent bar crimes for all programs.

This order again modifies ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes is reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being permanent bar crimes for all programs. The change to the ch. HFS 12 Crimes List is being made at this time because the 1999-2001 Budget Bill, now before the Legislature but not likely to take effect before October 1, 1999, is expected to provide for a more modest Crimes List than the one now appended to ch. HFS 12. This means that the Legislature intends that some persons who under the current rules would lose their jobs effective October 1, 1999, will be able to keep their jobs. The Department has the authority to further modify the Crimes List so that it corresponds to how the Legislature, after having heard arguments since October 1998 about how the Caregiver Law should be amended and implemented, wants it to work. This is what the Department is doing through this order.

Publication Date: September 16, 1999
Effective Date: September 16, 1999
Expiration Date: February 13, 2000
Hearing Date: October 28, 1999
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services

(Medical Assistance, Chs. HFS 101-108)

1. Rules were adopted revising **chs. HFS 101 to 103, and 108**, relating to operation of BadgerCare health insurance program.

Finding of Emergency

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

This order creates rules that specify how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. The order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the MA program.

BadgerCare is projected to cover over 40,000 currently uninsured Wisconsin residents, including more than 23,000 children, by the end of 1999.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by Medical Assistance. The existing Wisconsin Medicaid HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

Department rules for the operation of BadgerCare must be in effect before BadgerCare may begin. The program statute, s. 49.665, Stats., was effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement BadgerCare not later than July 1, 1998, or the effective date of the waiver, whichever date was later. The federal waiver letter approving BadgerCare was received on January 22, 1999. It

specified that BadgerCare was not to be implemented prior to July 1, 1999. Once the letter was received, the Department began developing the rules. They are now ready. The Department is publishing the rules by emergency order so that they will go into effect on July 1, 1999, rather than at least 9 months later, which is about how long the process of making permanent rules takes, and thereby provide already authorized health care coverage as quickly as possible to families currently not covered by health insurance and unable to pay for needed health care.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; exempt a BadgerCare group with monthly income at or below 150% of the federal poverty level from being obliged to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing Medical Assistance coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

Publication Date: July 1, 1999
Effective Date: July 1, 1999
Expiration Date: November 28, 1999
Hearing Dates: August 26, 27, 30 & 31, 1999

2. Rule adopted amending **s. HFS 105.39 (4) (b) 3.**, relating to certification of specialized medical vehicle providers.

Finding of Emergency

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

The Department's rules for certification of specialized motor vehicle (SMV) providers under the Medical Assistance (MA) program include requirements for SMV drivers. Among current requirements is that each driver must receive training in first aid and cardiopulmonary resuscitation (CPR) before driving a vehicle or serving as an attendant and must receive refresher training in first aid every 2 years and refresher training in CPR annually. The specific requirements for refresher training date from December 1, 1994. When revising its rules for SMV providers earlier in 1994 the Department proposed to require refresher training every 2 years for both first aid and CPR, but at the public hearings on the proposed rules 5 SMV providers said the CPR refresher training should take place annually and the Department agreed and made that its requirement.

Although the American Red Cross CPR training and certification that the person is trained continue to be annual, the equivalent American Heart Association CPR training and certification (the American Heart Association prefers "recognition" to "certification") is now every 2 years. This means that to comply with the Department's current MA rule for SMV drivers, s. HFS 105.39 (4) (b) 3., drivers who receive their training from the American Heart Association must repeat the training each year. That is unnecessary for maintenance of American Heart Association certification (recognition) and the time and expense involved is a burden on SMV providers and drivers. The Department is modifying the rule through this order to simply require that drivers maintain CPR certification.

The Department through this order is also changing the requirement for refresher training in first aid from every 2 years to at least every 3 years. That is because the American Red Cross certification in first aid is now for 3 years. A requirement for more

frequent refresher training in first aid is a burden in time and expense involved for SMV providers and drivers.

Publication Date: July 3, 1999
Effective Date: July 3, 1999
Expiration Date: November 30, 1999
Hearing Date: September 1, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services

(Health, Chs. HSS/HFS 110—)

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

Exemption From Finding of Emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats. by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on April 30, 1999 on the proposed rules, as required by s. 149.20, Stats.

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. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,291 HIRSP policies in effect on March 31, 1999 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 2., Stats. The Department is required to set premium rates by rule. These rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

There are separate sets of tables in ch. HFS 119 that show unsubsidized and subsidized Plan 2 premium rates. Both sets of tables are amended by this order to increase the premium rates because Plan 2 costs, which historically have been running about 50% less than Plan 1 costs, began to increase several years ago and now are running at about 67% of Plan 1 costs. The Plan 2 premium rates need to be increased to cover increased costs of treatment for individuals enrolled under Plan 2. The order increases these premium rates by about 18%.

In January 1999, the Department published an emergency rule order to increase HIRSP unsubsidized Plan 2 premium rates by about 10%, with the intention of increasing those rates again in July 1999 to the level provided for in this order. However, in May 1999 the Legislature's Joint Committee for the Review of Administrative Rules (JCRAR) refused to extend the effective period of that part of the January 1999 emergency rule order relating to premium rate increases, with the result that effective May 31, 1999, the rates reverted back to the rates in effect before January 1, 1999. Consequently, to increase rates effective July 1, 1999, the Department through this rulemaking order has based the increased rates on the rates in effect prior to January 1, 1999.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 1998. The Board of Governors approved a reconciliation methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula. By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 1999.

The result of this reconciliation process for calendar year 1998 indicated that insurance assessments collected were greater than the 20% of costs (net of the GPR contribution from appropriation s. 20.435(5)(af), Stats.), required of insurers. Also, the calendar year 1998 reconciliation process showed that an insufficient amount was collected from health care providers. As a result of this reconciliation, the insurer assessments for the time periods July 1, 1999 through December 31, 1999 and January 1, 2000 through June 30, 2000, are reduced to offset the overpayment in 1998. The total adjustments to the provider payment rates for the same time periods are sharply increased in order to recoup the provider contribution that was not collected in calendar year 1998. The budget for the plan year ending June 30, 2000 and the calendar year 1998 reconciliation process were approved by the HIRSP Board of Governors in April 1999.

Publication Date: June 30, 1999
Effective Date: July 1, 1999
Expiration Date: November 28, 1999
Hearing Date: September 9, 1999

2. Rules adopted creating **s. HSS 122.10**, relating to distribution of 3 closed nursing home beds to a nursing home that serves only veterans.

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:

These rules are for the one–time distribution of 3 closed nursing home beds to a nursing home or nursing homes that serve only veterans. Following distribution of the 3 beds, the rules will be allowed to lapse.

Section 150.31, Stats., establishes a statewide bed limit for nursing homes as one means of controlling nursing home costs and Medical Assistance program expenditures. Within that bed limit a facility may close or its bed capacity may be reduced, in which case beds are freed up and may be redistributed by the Department under s. HSS 122.05(1)(c).

The Wisconsin Veterans Home at King has 4 separately licensed nursing home buildings on its grounds, and a total licensed capacity of 718 beds. It is operating at 99.9 percent of capacity with a long waiting list for admission. Managers of the Wisconsin Veterans Home have decided to close their underutilized 3 bed hospital operation at King. The 3 hospital beds are currently located in Stordock Hall. The 3 nursing home beds will replace the hospital beds. Because of the burgeoning population of older veterans, whose active service was during World War II, the Korean War, and the Vietnam War, and the immediate pressure on admissions to the facility, and the desirability of having flexibility when moving residents, Wisconsin Veterans Home managers have asked that the space previously used for hospital beds be converted to nursing home space and that 3 closed nursing home beds be transferred to the Veterans Home. These beds could be put on line immediately and provide some relief to those awaiting admission.

This rulemaking order establishes a process for considering applications for 3 closed nursing home beds to be made available to a nursing home or nursing homes that serve only veterans, that ask

for no more than 3 beds and that do not require space to be added to the building in which the beds will be located to accommodate those beds.

Publication Date: August 3, 1999
Effective Date: August 3, 1999
Expiration Date: December 31, 1999

EMERGENCY RULES NOW IN EFFECT

Higher Educational Aids Board

Rules adopted amending s. HEA 11.03 (3) and creating s. HEA 11.03 (5), relating to the Minority Teacher Loan Program.

Finding of Emergency

The 1989 Wis. Act 31 created s. 39.40, Stats., which provides for loans to minority students enrolled in programs of study leading to licensure as a teacher. The Wisconsin Higher Educational Aids Board (HEAB) administers this loan program under s. 39.40 and under ch. HEA 11. Current rules require that a student be enrolled full time and show financial need to be considered for participation in the Minority Teacher Loan Program. Students who did not enroll full time and did not show financial need were allowed to participate in the program in the past when part of the program was administered by another administrative body. These students are enrolled in teacher education programs that train teachers specifically for the school districts named in the statutes that outline the intent of the Minority Teacher Loan Program. Unless the Board changes its rules, many participating students will lose their eligibility in the program. This will cause a hardship to those students who relied on the interpretation of the prior system administration. Revising the rules would allow students who participated in the program in the past to continue to participate. The proposed revision will not affect expenditures of State funds for the Minority Teacher Loan Program.

Publication Date: August 6, 1999
Effective Date: August 6, 1999
Expiration Date: January 3, 2000
Hearing Date: October 28, 1999

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

Rules adopted revising ch. NR 10, relating to the 1999 migratory game bird season.

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. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulation in the establishment of migratory bird hunting seasons and conditions. General regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations into conformity with federal regulations. Normal rule-making

procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 10, 1999
Effective Date: September 10, 1999
Expiration Date: February 7, 2000
Hearing Date: October 14, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

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

1. Rules adopted creating ch. NR 303, relating to department determinations of navigability for farm drainage ditches.

Exemption From Finding of Emergency

The Department was directed by the JCRAR under s. 227.26 (2) (b), Stats., to promulgate emergency rules regarding navigability

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 227.26 (2)(b)

Statute interpreted: s. 30.10 (4)(c)

This order codifies present department program guidance for staff making navigability determinations for farm drainage ditches, identifying various methods and information to be relied on when making such determinations.

Publication Date: May 1, 1999
Effective Date: May 1, 1999
Expiration Date: September 28, 1999
Hearing Dates: June 16 and 17, 1999
Extension Through: November 26, 1999

2. Rules adopted creating ch. NR 328, relating to regulation of water ski platforms and water ski jumps.

Analysis by the Department of Natural Resources

Statutory authority: ss. 30.135, 227.11 (2) (a) and 227.24

Statutes interpreted: ss. 30.66, 30.69 and 30.135

Chapter NR 328 describes the conditions where a water ski jump or platform will require a permit. It explains what constitutes a substantive written objection to a water ski jump or platform and provides a list of reasons that support a substantive written objection. It specifies the contents of a public notice and the process for making a substantive written objection. It details how the department will respond to complaints about an existing water ski jump or platform.

These rules were promulgated as emergency rules at the direction of the joint committee for review of administrative rules.

Publication Date: July 9, 1999
Effective Date: July 9, 1999*
Expiration Date: December 6, 1999

*Rule suspended by Joint Committee for Review of Administrative Rules on July 5, 1999.

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

(Anhydrous Ammonia, Ch. Comm 43)

Subject:

Ch. Comm 43 – Relating to anhydrous ammonia.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to update ch. Comm 43 to current national standards.

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:

Chapter Comm 43 establishes minimum technical standards for the safe design, construction, installation, operation and maintenance of anhydrous ammonia systems. The chapter closely follows a national standard issued by the American National Standards Institute (ANSI). This rule project will update the chapter and it will evaluate adopting by reference the ANSI standard for anhydrous ammonia rather than reprinting the provisions in the Administrative Code.

The alternative of not revising the chapter would result in the Administrative Code not being up-to-date with current national standards.

Statutory authority for the rule:

The statutory authority is contained in ss. 101.02 (15) (h) to (j), 101.17 and 101.19 (1) (b), Stats.

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

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Elections Board

Subject:

S. E1Bd 1.655 – Scope of regulated activity; identification of the source of communications paid for with money raised for political purposes and the source of other communications subject to s. 11.30, Stats.

Description of policy issues:

Description of objective(s):

To amend the Elections Board's existing rule; to add a provision that provides for identifying the source of communications that are subject to s. 11.30 (5), Stats., i.e. communications concerning support for or opposition to a candidate, political party or referendum for which source identification is requested by the person polled.

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

Under the existing rule, communications that are not paid for by a registrant and that do not expressly advocate the election or defeat of a clearly-identified candidate may appear to be exempt from source identification, notwithstanding the provisions of s. 11.30 (5), Stats. The rule clarifies the point that the source of communications for which source identification is required by s. 11.30 (5), Stats., is

still required to be provided notwithstanding any other provision of s. E1Bd 1.655.

Statutory authority for the rule:

SS. 5.05 (1) (f) and 227.11 (2) (a), Stats.

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

4 hours of staff time.

Natural Resources

Subject:

NR Code – Relating to the addition of a deer hunting season in Council Grounds State Park.

Description of policy issues:

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

The proposed rule concerns Council Grounds State Park, a 502-acre state park located in and adjacent to the City of Merrill. Conservative estimates of deer density in this area are well above the established over-winter goal of 21 deer/square mile. Recently, Department wildlife management and park staff have met with local government representatives to discuss the high deer densities. In light of these meetings, the Department is proposing a deer hunting season within Council Grounds State Park. The public hearing would allow all interested parties to discuss the proposed rule.

This rule/Board action does not represent a change from past policy.

Statutory authority:

Section 29.014, Stats.

Anticipated time commitment:

The anticipated time commitment is 184 hours. The public hearing will be held in December, 1999 at Merrill, Wisconsin.

Public Service Commission

Subject:

Ch. PSC 163 – Relating to telecommunications utility price regulation (Docket 1–AC–189).

Description of policy issues:

Objective of the rule:

The objective of the proposed rule revision is to make those changes to ch. PSC 163 deemed necessary as a result of the Commission's review of price regulation pursuant to s. 196.196 (1) (g), Stats., and the annual reviews of price regulation for each price-regulated telecommunications utility. In addition, the objective of the proposed rule revisions is to update the citations and clarify language, where necessary.

Existing policies relevant to rule, new policies proposed, and analysis of alternatives:

In Docket 05–TI–174, the Commission completed its initial review of price regulation pursuant to s. 196.196 (1) (g), Stats. As a result of that review, the Commission determined that it is reasonable to revise ch. PSC 163. These changes may include such things as:

a. The 30-day deadline in s. PSC 163.04 (8) (a) should be replaced with a 60-day deadline, and the provision to allow an additional 30 days if a hearing is held should be changed to allow an additional 60 days.

b. The penalty and incentive mechanism values shown in s. PSC 163.04 (2) (g) Table 1 should be revised to reflect different weightings for quality of service, infrastructure investment, and the Wisconsin Advanced Telecommunications Foundation.

c. Section PSC 163.04 (2) (d) should be revised to continue infrastructure incentives and penalties on an optional basis and s. PSC 163.04 (1) should be revised to provide for an optional filing of proposed retail–related and wholesale–related infrastructure objectives. Ch. PSC 163 should be revised, where applicable, to refer to not only annual infrastructure commitments but also to the annual infrastructure objectives which may be filed.

d. Section PSC 163.04 (2) (c) should be modified to incorporate the findings from the Commission’s Second Final Order in Docket 05–TI–157, and to add two new components, trunk blockage and answer speed for business office calls.

e. The language in s. PSC 163.04 (2) (a) should be clarified to reflect the use of the most recent quarterly chain–weighted GDPPI and the prior year’s corresponding quarterly index, using the same revision series.

f. The current discretionary penalty and incentive mechanism should be clarified and be revised to consider customer education in addition to the other discretionary factors.

Statutory authority:

SS. 196.02 (3), 196.196 (1) (c) , and 227.11 (2), Stats.

Time estimates for rule development:

Completing the rulemaking proceeding is estimated to take at least 150 staff hours.

Other resources necessary to develop rule:

No additional staff or other agency resources are anticipated for this rulemaking.

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

Subject:

SFC Code – Relating to types of programs to obtain continuing education hours.

Description of policy issues:

Objective of the rule:

To clarify types of programs acceptable for continuing education hours.

Policy analysis:

Continuing education requirements for social workers were implemented on June 1, 1999 [Chapter SFC 8]. This rule will clarify what types of programs will be acceptable for meeting those requirements.

Statutory authority:

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

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

50 hours.

***Workforce Development
(Economic Support, Chs. DWD 11–59)***

Subject:

Ch. DWD 12.16 (4) (c)—Relating to: Criteria for extension of participation in W–2 transitions.

Description of policy issues:

Objective of the rule:

Codify the criteria for deciding on the extension of participation in W–2 Transitions beyond 24 months under s. 49.147 (5) (b) 2., Stats.

Existing policies and new policies included in the proposed rule and an analysis of policy alternatives:

The provisions in the statutes on the extension of CSJs and trial jobs (s. 49.147 (3) (c), (4) (b) 2. and (c) 4., Stats.) state that an extension beyond 24 months of participation in the employment position may be granted if the participant has made all appropriate efforts to find unsubsidized employment and has been unsuccessful because local labor market conditions preclude a reasonable job opportunity for the participant (and, in the case of CSJs, that no trial job opportunities are available). However, for W–2 Transitions the statute states only that the 24 month period “may be extended on a case–by–case basis by the department or by the W–2 agency with the approval of the department.” The department is considering a rule that would specifically adopt the general criteria that are in use for deciding on the extension of participation in W–2 Transitions, including whether the participant is making all appropriate efforts to find employment by participating in all assigned activities and whether significant barriers prevent advancement to a higher W–2 employment position.

Statutory authority for the proposed rule:

Section 103.005 (1), Stats.

Estimate of the amount of time employes will spend developing the proposed rule and of other resources needed to develop the rule:

40 hours.

***Workforce Development
(Unemployment Compensation,
Chs. DWD 100–150)***

Ch. DWD 133 – Relating to: Continuing employment relationship; temporary help industry.

Description of policy issues:

Objective of the rule:

The objective of the proposed rule is to recognize, in limited and defined circumstances, a continuing employment relationship between employees and a temporary help agency, during the waiting period between assignments.

Existing policies and new policies included in the proposed rule and an analysis of policy alternatives:

The Department’s current policy provides that:

“[T]he [D]epartment considers the employment relationship to continue when, at the later of either the end of an assignment or the date on which the agency learns of the end of an assignment, the employe is notified that the temporary help agency will have an assignment for the employe within seven days. The temporary help agency need not specifically identify the assignment but merely indicate that one will be available to begin within seven days of the end (or agency notice of the end) of the most recent assignment. Additionally, the relationship continues when, during that seven day period, the employer finds that it cannot provide the assignment within those seven days but assures the employe that another assignment will be provided, to begin within another seven days. If, for any reason, this second assignment does not materialize, the employment relationship will be considered to have been terminated at that time due to lack of work.” See UCD 95–06 (December 27, 1994).

The proposed rule seeks to implement this policy or a version thereof.

Statutory authority for the proposed rule:

Sections 108.14 and 227.11, Stats.

Estimate of the amount of time employes will spend developing the proposed rule and of other resources needed to develop the rule:

100 hours.

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 September 23, 1999, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Comm 32, relating to public employe safety and health.

Agency Procedure for Promulgation

A public hearing is required and hearings are scheduled for October 25 and 26, 1999. The agency unit responsible for the promulgation of the proposed rule is the Safety and Buildings Division.

Contact Information

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

Ron Acker
Safety and Buildings Division
Dept. of Commerce
P.O. Box 7970
Madison, WI 53707
Telephone: (608) 267-7907
TDD#: (608) 264-8777
Email: www.commerce.state.wi.us

Health and Family Services

(Community Services, Chs. HFS/HSS 30--)

Rule Submittal Date

On September 21, 1999, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Section 51.42 (7) (b), Stats.

The proposed rule repeals subch. V of ch. HFS 61 and creates ch. HFS 35, relating to standards for outpatient mental health clinics.

Reason for rules, intended effects, requirements:

This order renumbers and updates the Department's rules for certification of outpatient mental health clinics, which in the current rules are called outpatient psychotherapy clinics. There are 851 certified clinics in Wisconsin. The current rules are ss. HFS 61.91 to 61.98. They date from 1984. General provisions in ss. HFS 61.01 to 61.23 also currently apply to the clinics.

The new rules for clinics make the certification process and enforcement provisions similar to those in new rules for other community mental health certified programs. Some sections and other rule parts, including waivers, client satisfaction, suicide monitoring and prevention and reporting of certain deaths are standard or mostly standard in all new community mental health program rules.

The revised rules give greater flexibility to clinics by permitting a clinic to meet standards of one of 2 specified national accrediting organizations in lieu of the standards in the rules and permitting Master's-level mental health clinicians to offer one of 4 national professional listings in place of the requirement for 3000 hours of supervised clinical experience.

The revised rules also:

- 1) Add orientation and inservice training requirements, but without specifying the number of hours;
- 2) Require compliance with new statutes and rules on performing uniform background checks on applicants for employment and reporting instances of staff misconduct toward clients; and
- 3) Require assignment of responsibility for clinic operations and the treatment program, without thereby affecting the minimum required professional staffing of a clinic.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19. Stats.

Contact Information

Dennis Bobo
Division of Supportive Living
Telephone (608) 267-7711

Public Service Commission

Rule Submittal Date

On September 27, 1999, the Public Service Commission submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. PSC 4, relating to implementing the Wisconsin Environmental Policy Act (WEPA).

At its open meeting of September 16, 1999, the Public Service Commission approved proposed rules to revise ch. PSC 4, Wis. Adm. Code. These revisions are intended to reflect recent changes in the electric utility industry and advances in generation technologies resulting in cleaner, less environment-damaging plants. The proposed rules also clarify the purpose of environmental assessment documents prepared by the Public Service Commission.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for 1:30 p.m. on Tuesday, October 26, 1999 in the Amnicon Falls Hearing Room of the Public Service Commission Building, 610 North Whitney Way, Madison. The agency organizational unit responsible for the promulgation of the proposed rule is the Public Service Commission's Electric Division.

Contact Information

If you have any substantive questions regarding the proposed rules, you may contact:

Jacqueline Reynolds
Assistant Administrator
Electric Division
Public Service Commission
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707–7854
Telephone: (608) 266–1267

If you have any questions regarding the Public Service Commission's internal processing of the proposed rules, you may contact:

Attorney David A. Ludwig
Telephone: (608) 266–5621

NOTICE SECTION

Notice of Hearings

Commerce

(Public Employee Safety and Health, Ch. Comm 32)

[CR 99-139]

Notice is hereby given that pursuant to ss. 101.02 (1) and 101.055 (3), Stats., the Department of Commerce announces that it will hold public hearings on the proposed revision of ch. Comm 32, relating to public employee safety and health.

Hearing Information

October 25, 1999
Monday
10:00 a.m.

Room 3B, WHEDA Bldg.
201 W. Washington Ave.
Madison

October 26, 1999
Tuesday
10:00 a.m.

Room 105
Eau Claire State Office Bldg.
718 W. Clairemont Ave.
Eau Claire

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **November 9, 1999**, 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.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 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 Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Analysis

Statutory Authority: ss. 101.02 (1) and 101.055 (3)

Statute Interpreted: s. 101.055 (3)

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

Chapter Comm 32 currently contains general safety and health standards for all public employees through the incorporation by reference of several OSHA standards. Chapter Comm 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of revisions in chapter Comm 32, including the incorporation by reference of the new OSHA standards adopted since July 1, 1998. Those standards cover powered industrial truck operator training, permit-required confined spaces, and methylene chloride.

The proposed rules also contain revisions to current requirements relating to recirculation of contaminated air, ventilation for kilns, and ventilation for laboratory fume hoods.

Initial Regulatory Flexibility Analysis

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

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

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

Not applicable.

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

Not applicable.

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:

Robert Langstroth
 Division of Safety & Buildings
 Department of Commerce
 P.O. Box 2599
 Madison, WI 53701
 Telephone (608) 264-8801
 or TTY (608) 264-8777

Written comments will be accepted until **November 15, 1999**.

Fiscal Estimate

The Safety and Buildings Division currently administers and enforces the provisions of chapter Comm 32 as part of the public sector safety and health program. The proposed rules update the existing administrative rules now being enforced, with no new requirements that would affect costs or revenues. Therefore, the proposed rules will not have any fiscal effect on the Division.

At the local government level, there should be no significant fiscal effect. Some of the new requirements may result in additional costs in time and equipment for some local governments; however, these costs should be minimal.

Notice of Hearings

Corrections

[CR 97-158]

Notice is hereby given that pursuant to ss. 301.025 and 301.03 (10), Stats., and interpreting ch. 938, Stats., the Department of Corrections will hold four public hearings to consider the creation of chs. DOC 371 to 399, relating to juvenile corrections and delinquency-related services.

Hearing Information

October 28, 1999
Thursday
9:00 a.m.

Room 349
GEF#3 Bldg.
125 South Webster St.
Madison, WI

November 10, 1999
Wednesday
10:00 a.m.

Room 149
Marathon Co. Courthouse
500 Forest St.
Wausau, WI

November 16, 1999
Tuesday
10:00 a.m.

Room G–034
County Human Services Bldg.
721 Oxford Ave.
Eau Claire, WI

November 19, 1999
Friday
10:00 a.m.

First Floor Conference Room
DNR State Office Bldg.
2300 North Dr. M.L.King, Jr. Dr.
Milwaukee, WI

Information on parking and access for persons with physical disabilities is available by calling Jamie Wertel at (608) 266–9953. An interpreter for persons with hearing impairment will be available on request for the hearings. Please make reservations for an interpreter at least 10 days prior to the hearing.

Written Comments

The public record on this proposed rule–making will be held open until close of business **November 26, 1999**, to permit the submission of written comments from persons unable to attend the hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Shelley Hagan, Policy and Grants Coordinator, Division of Juvenile Corrections, Department of Corrections, 149 East Wilson Street, P.O. Box 8930, Madison, WI 53708–8930. Written comments may be faxed to (608) 267–3661 or sent via electronic mail to [Shelley.Hagan@doc.state.wi.us].

Analysis Prepared by the Dept. of Corrections

On July 1, 1996, several changes occurred in Wisconsin law that necessitated the creation of new administrative rules for juvenile corrections. The State juvenile corrections agency was transferred (by 1995 Wis. Act 27) from the Department of Health and Social Services to the Department of Corrections, making obsolete the administrative rules which formerly had governed juvenile corrections and delinquency–related services, Chapters HSS 49 and 331–348. Further, all delinquency–related law was removed from Chapter 48, Stats., the Children’s Code, and recreated in Chapter 938, Stats., the Juvenile Justice Code, by 1995 Wis. Acts 77 and 352. The new Juvenile Justice Code had a statement of legislative purpose that was significantly different from the “best interest of the child” principle that governed Chapter 48, Stats. The legislative intent of Chapter 938, Stats., was to promote a “balanced approach” under which courts and agencies would give equal weight to protecting the public from juvenile crime, holding youth accountable for their actions, and building youth competency to live crime–free lives. In order to conform to the intent of the new Juvenile Justice Code and to current practice in juvenile corrections, creation of new administrative rules was deemed to be appropriate at this time.

1995 Wis. Act 352 permitted the Department of Corrections to operate under administrative policies and procedures in lieu of having promulgated administrative rules between July 1, 1996, and June 30, 1997, by which date the Department was to submit proposed rules to the Legislative Council for review. This deadline was extended until December 31, 1997, in 1997 Wis. Act 10. The Department submitted proposed rules to the Legislative Council on December 30, 1997, and has since modified the rules based on the comments received from the Council staff.

Topical list of rules:

DOC 371	Planning, assessment and case management, including release planning, for youth placed in state Type 1 secured juvenile correctional facilities (Type 1 facilities).
DOC 373	Youth conduct while placed in Type 1 facilities, including the process for addressing misconduct by youth.
DOC 374	Administrative confinement of Type 1 facility youth who pose a significant risk of harm to self or others, escape, or causing a disturbance.
DOC 375	The process of placing a Type 1 facility youth in observation status when the youth is suspected of being mentally ill and a danger to self or others, is exhibiting acute mental distress, or has a communicable disease.
DOC 376	Rules to be followed by Type 1 facility staff and youth in maintaining institution security and safety.
DOC 379	Youth resources while placed in Type 1 facilities including communication (mail, phone, visits), property, activities, health and diet, religious practice, and other living conditions.
DOC 380	Youth complaint procedure in Type 1 facilities under which youth complaints may be investigated and resolved.
DOC 381	Temporary release of youth from a Type 1 facility for furloughs, offgrounds activities, and trial visits.
DOC 383	Administration of psychotropic medication to youth in a Type 1 facility.
DOC 392	Rules for a drug testing program to be administered for delinquent youth by the State or by county departments as required by s. 938.34 (6s), Stats.
DOC 393	Juvenile aftercare provided by the State and by county departments for youth released from Type 1 facilities.
DOC 394	Designation of certain child caring institutions (CCIs) as Type 2 CCIs, and the treatment of youth who are placed in Type 2 CCIs by the juvenile court as required by s. 938.359 (6), Stats.
DOC 396	Supervision of youth placed in Type 2 correctional supervision in the community by the department.
DOC 397	Supervision programs for delinquent youth provided by county departments.

DOC 398	Rules for county intensive supervision programs, required by s. 938.534 (2), Stats.
DOC 399	Training of juvenile court intake workers as required by s. 938.06 (1) (am) and (2) (b), Stats.

Initial Regulatory Flexibility Analysis

The proposed rules primarily affect the operations of the Department of Corrections' institutional and field supervision services for delinquent youth. They also affect county courts and human/social service agencies' juvenile delinquency programs. The rules do not affect small business.

Fiscal Estimate

The proposed rules will have no fiscal impact on any State or local unit of government.

Copies of Proposed Rule and Contact Information

Paper or electronic medium copies of one, some, or all of the rules listed above may be obtained without charge in one of four ways:

1. Visit the Department of Corrections Web site at [www.wi-doc.com] and click on the link to Division of Juvenile Corrections administrative rules information, which will provide links to copies of each administrative rule, which may be downloaded and printed;

2. Send a written request to:

Division of Juvenile Corrections
Attention: Jamie Wertel
149 East Wilson Street
P. O. Box 8930
Madison, WI 53708–8930

3. Call Jamie at (608) 266–9953; or

4. Send an electronic mail message to Jamie at [Jamie.Wertel@doc.state.wi.us].

In your request, please specify the DOC number of the rule(s) requested, whether you want to receive a paper copy or an electronic medium document (Word 7.0), and the address to which the rule(s) should be sent. (Please include an electronic mail Internet address if you request a Word 7.0 copy of a rule.)

If you have questions about the administrative rules process or content, please contact Gloria Marquardt at (608) 266–8238 [Gloria.Marquardt@doc.state.wi.us] or Shelley Hagan at (608)266–5820 [Shelley.Hagan@doc.state.wi.us].

Notice of Hearing

Crime Victims Rights Board

Notice is hereby given that the Crime Victims Rights Board will hold a public hearing at the **State Capitol, Senate Room 330SW, in the city of Madison, Wisconsin on the 9th day of November, 1999, at 1:00 p.m.**, to consider the creation of ch. CVRB 1, pursuant to s. 950.09(5), Stats., and interpreting ss. 950.09 and 950.095, Stats., relating to the review of complaints alleging violations of the rights of crime victims. Chapter CVRB 1, was adopted as an emergency rule effective September 17, 1999.

Analysis Prepared by the Crime Victims Rights Board

Statutory Authority: s. 950.09(5)

Statutes Interpreted: ss. 950.09 and 950.095

Under the proposed chapter, a party that has been involved in efforts by the Wisconsin Department of Justice (“Department”) to

resolve a complaint alleging violations of the rights of a crime victim may, once the Department has completed its efforts on the complaint, seek review of the complaint before the Crime Victims Rights Board (“Board”). The Board may implement various remedies if it concludes that a violation of the rights of a crime victim has occurred. The Board also has authority to issue reports and recommendations concerning the securing and provision of crime victims’ rights and services.

If the complaint is brought by a victim, or with a victim’s signed consent, the Board may consider one or more of the remedies provided by s. 950.09(2), Stats. In reviewing such complaints, the Board must make a probable cause determination before beginning any investigation or pursuing any of the authorized remedies. If the Board finds probable cause, it may conduct an investigation on the complaint. A hearing may be held at the request of either party or the Board. The Board, its designee, or a hearing examiner may conduct the hearing. Following the hearing, the Board will issue a written decision including findings of fact and conclusions of law. A party that is adversely affected by the Board’s decision may request rehearing and may also seek judicial review of the Board’s decision under the provisions of ch. 227, Stats.

If a complaint is not submitted by a victim or with a victim’s signed consent, the Board may investigate the complaint and may issue a report or recommendation based upon the complaint under s. 950.09(3), Stats.

Text Of Rules

Chapter CVRB 1 RIGHTS OF CRIME VICTIMS

CVRB 1.01 Purpose. The purpose of this chapter is to establish procedures for the review of complaints made to the crime victims’ rights board. This chapter interprets the provisions of ss. 950.09 and 950.095, Stats., and also interprets the provisions of ch. 227, Stats., concerning the conduct of proceedings under this chapter.

CVRB 1.02 Definitions. In this chapter:

- (1) “Board” means the crime victims’ rights board.
- (2) “Chairperson” means the chairperson of the board.
- (3) “Complainant” means the individual filing a complaint with the board.
- (4) “Complaint” means a written, sworn complaint made to the board regarding a violation of the rights of a crime victim.
- (5) “Department” means the department of justice.
- (6) “Involved party” means an individual who participated in the mediation process as provided in s. 950.08(3), Stats.
- (7) “Mediator” means an employe of the department who has sought to mediate or has actually mediated a complaint made to the department as provided in s. 950.08(3), Stats.
- (8) “Party” means the complainant, the respondent, or both.
- (9) “Probable cause” means a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.
- (10) “Respondent” means the individual identified in the complaint as the subject of the complaint.
- (11) “Victim” has the meaning given in s. 950.02(4)(a), Stats.

CVRB 1.03 Delegation of responsibilities. The board may delegate its responsibilities in ss. CVRB 1.05 to 1.07 to an appropriate designee.

CVRB 1.04 Filing. (1) All written statements of a party’s position submitted to the board, including but not limited to the complaint and the answer, shall be signed by the person preparing the statement. A party shall verify that the contents of each filing submitted by that party or on that party’s behalf are true and correct to the best of the party’s knowledge and shall sign the filing.

(2) All complaints shall be prepared on a complaint form obtained from the mediator. The completed complaint shall be returned to the board at the address provided on the form.

(3) A complaint may be filed by any involved party. The board may not take any action provided by s. 950.09(2), Stats., other than seeking equitable relief as provided by s. 950.09(2)(c), Stats., unless the complaint is filed by a victim or a victim has signed the complaint indicating that he or she consents to the filing of the complaint by the involved party.

(4) The board may consider issuing a report or recommendation as provided by s. 950.09(3), Stats., in response to a complaint filed by an involved party without endorsement by a victim. The board may consider a complaint filed under this subsection, and may issue a report or recommendation as provided by s. 950.09(3), Stats., without making a probable cause determination.

(5) The board may consider complaints alleging violations of victims' rights that occurred on or after December 1, 1998. The board may not consider alleged conduct that occurred more than three years from the date the complainant knew or should have known of a violation of the rights of a victim. The board may consider issuing reports or recommendations as provided by s. 950.09(3), Stats., relating to conduct that occurred prior to December 1, 1998 or more than three years before a complaint was filed with the board or the board was otherwise notified of the conduct.

CVRB 1.05 Probable cause determination. (1) Upon receipt of the complaint, the board shall contact the mediator and request verification that the substance of the complaint has been presented to the department and that the department has completed its action as required by ss. 950.08(3) and 950.09(2), Stats.

(2) If the substance of the complaint has not been presented to the department, the board shall advise the complainant of the complainant's obligation to present the substance of the complaint to the department before filing a complaint with the board.

(3) If the department has not completed its action as provided in s. 950.08(3), Stats., the board shall return the complaint form to the complainant and shall advise the complainant that the board cannot review the complaint until the department has completed its action.

(4) If the department has completed its action as provided in s. 950.08(3), Stats., the mediator shall provide the board with information on the mediation process and its outcome. This information may take the form of a memorandum, other written documentation, or both.

(5) A complaint that names an employee of the department as a respondent need not be presented to the department before being presented to the board.

(6) The board may provide a copy of the complaint, with a cover letter, to the respondent and invite the respondent to submit an answer to the complaint. The board shall provide a copy of this letter to the complainant. If the respondent submits an answer, the board shall provide a copy of the answer to the complainant.

(7) The board shall determine probable cause at its next regularly scheduled meeting or at a meeting called by the chairperson. Upon a vote of the board, the board may deliberate and vote on the probable cause determination in closed session.

(8) In making the probable cause determination, the board may consider all relevant information, including but not limited to:

- (a) The complaint.
- (b) The answer.
- (c) The information provided by the mediator pursuant to sub. (3) of this section.

(9) The board shall notify the parties and the mediator of its probable cause determination.

(a) If the board finds probable cause, the board shall advise the parties of their right to request a hearing on the complaint.

(b) A finding of no probable cause is a final decision of the board. If the board finds no probable cause, the board shall provide notice to the parties of the right to seek judicial review pursuant to ch. 227, Stats.

CVRB 1.06 Investigations. (1) The board may conduct an investigation of any complaint which meets the probable cause

standards under this chapter. The board may request responses to written questions, participation in a personal or telephonic interview with the board, and written documentation. The board may consider a party's refusal to cooperate with the board's investigation in making its determination on the complaint.

(2) The board may request a party to sign a limited release to enable the board to obtain records for which a release is required. A party who is asked to sign a release may request a protective order from the board limiting the disclosure of any such records outside the board's process.

(3) Following its investigation and prior to the hearing, the board shall provide copies to the parties of any documentation obtained during its investigation that is not subject to a protective order prohibiting such distribution.

CVRB 1.07 Hearings. (1) A hearing may be requested by any party or by the board. A party may appear in person or by telephone at the hearing, or may submit a written statement of position on the complaint in place of a personal appearance.

(2) A party who chooses not to appear at the hearing shall notify the board not later than two weeks prior to the hearing of this intent. A party who chooses to submit a written statement shall submit that statement to the board not later than one week prior to the scheduled hearing date.

(3) One month prior to the hearing, or at another date determined by the board, the parties may provide the board with the following:

(a) A list of witnesses whom the party wishes to have the board subpoena for the hearing. Subpoenas may also be issued in accordance with s. 227.45(6m), Stats.

(b) A list of questions for the board to ask another party or witness at the hearing.

(4) The board, or its designee, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing.

(5) The parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, and to present evidence. Questioning of a party by another party is not favored and may be limited by the board consistent with s. 227.45(6), Stats.

(6) The board may set reasonable time limits for testimony and may limit the number of witnesses called by a party. No party may require the mediator to testify as a witness at the hearing.

(7) Proof of a violation of the rights of a crime victim shall be made by clear and convincing evidence. "Clear and convincing evidence" means evidence which satisfies and convinces the board, because of its greater weight, that a violation occurred.

(8) A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence. Testimony will not be transcribed unless a party requests a transcript and pays any costs required to prepare the transcript. The board shall prepare a transcript, at its own expense, in the event a party seeks judicial review of the board's decision.

(9) The board may vote to hold the hearing in closed session pursuant to s. 19.85(1)(f), Stats. Parties and their counsel or another advocate, including a family member, shall be permitted to be present during the entire hearing.

(10) Witnesses subpoenaed at the request of a party or the board shall be entitled to compensation from the board for attendance and travel as provided in ch. 885, Stats.

CVRB 1.08 Decisions. (1) At the close of the hearing, the board shall meet for purposes of deliberating on the complaint. Upon a vote of the board, the board may deliberate in closed session as provided by s. 19.85(1)(a), Stats.

(2) Within 30 days of the close of the hearing, or by another date established by the board, the board's legal counsel shall prepare a written proposed decision for the board, including findings of fact, conclusions of law, and remedy, and shall provide the proposed decision to the board.

(3) The board shall consider the proposed decision at its next regularly scheduled meeting or at a meeting called by the chairperson. The board may amend any portion of the

recommended decision prior to approving the final decision. Upon a vote of the board, the board may conduct its discussion of the final decision in closed session as provided by s. 19.85(1)(a), Stats.

(4) The board shall provide the final decision to the parties along with a notice of the right to request rehearing or seek judicial review under ch. 227, Stats.

(5) If no hearing has been held, the board shall make its final decision under the process provided in sub. (2) and (3) of this section.

CVRB 1.09 Rehearing. (1) A party aggrieved by the final decision may file a written request for rehearing with the board within 20 days of the date the final decision is provided to the parties.

(2) The request for rehearing shall include a detailed statement of the grounds for the request, including the material error of fact or law, or newly discovered evidence, that in the party's view warrants a rehearing. If the request is based on newly discovered evidence, the party shall state why the evidence could not have been previously discovered through reasonably diligent effort.

(3) The board may grant a rehearing on the basis of one or more of the following:

(a) A material error of law.

(b) A material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the original decision which could not have been previously discovered through reasonably diligent efforts by the parties.

(4) The board shall determine whether to grant the request for rehearing at its next regularly scheduled meeting or at a meeting called by the chairperson. If the board grants rehearing, it shall follow the procedures in s. CVRB 1.07 in conducting the rehearing.

CVRB 1.10 Judicial Review. Judicial review of the board's final decision is governed by ss. 227.52 to 227.59, Stats.

CVRB 1.11 Miscellaneous provisions. (1) RELIEF FROM DEADLINES. The board may grant a party's request for reasonable extension of the deadlines set forth in this chapter.

(2) NON–RETALIATION. In this subsection, "person" means any individual, corporation, association, business enterprise or other legal entity either public or private. "Person" also includes the state, any political subdivision of the state, and any department or agency of the state or its subdivisions.

(a) No person may discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with the board.

(b) No person may discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with the board.

(c) An individual who believes a violation of this subdivision has been committed may file a complaint with the equal rights division of the department of workforce development or the personnel commission as provided in ss. 111.39 and 230.45, Stats.

(3) COERCION PROHIBITED. Any form of coercion to discourage or prevent an involved party, or a representative acting on behalf of that involved party, from exercising any of the rights under these rules or ch. 950, Stats. is prohibited.

(4) REPRESENTATION. A party may be represented throughout these proceedings, including at hearing, by counsel or by another advocate.

Initial Regulatory Flexibility Analysis

The proposed rules do not affect small business.

Fiscal Estimate

The Crime Victims Rights Board is a five–member board charged to hear and decide complaints concerning possible violations of rights of crime victims. The Board is attached to the Department of Justice (DOJ) for administrative purposes. The Board will require

20 hours per week of staff assistance, as well as approximately 5 hours per week of legal counsel assistance, excluding special counsel for forfeiture actions. In addition to salary and fringe benefit costs, a majority of the Board's expenses will be related to travel and lodging for Board meetings. The estimate assumes an average of 500 miles of round trip travel, reimbursed at \$.29 per mile, for each Board member and staff for each of 6 meetings, in addition to meals and lodging.

Remedies available to the Board if it finds a violation include initiating legal action against the respondent to seek a forfeiture. Forfeiture actions have fiscal implications for the Board and the respondent, as both entities will need legal counsel. The estimate assumes that forfeiture actions will cost DOJ \$9000 in special counsel fees, and will cost the respondent, whether a state entity or municipality, another \$9000 in fees for special defense counsel.

It is impossible to predict with certainty at this time how many complaints the Board will receive each year and how many hearings the Board will hold. The estimate assumes that the Board will meet 6 times per year, that 8 complaints will lead to hearings, and that 2 cases will lead to forfeiture actions requiring special counsel for the Board and for the respondent in the forfeiture action.

Contact Person

Karen E. Timberlake
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI, 53707–7857
(608) 267–1300

Written Material in Lieu of Testimony

Written statements in lieu of testimony at the public hearing should be sent to Ms. Timberlake at the address above no later than **Monday, November 5, 1999**. The board will also accept written statements in lieu of testimony on the day of the hearing.

Notice of Hearing

*Health and Family Services
(Management and Technology,
Executive & Strategic Finance,
Chs. HFS 1––)*

Notice is hereby given that, pursuant to ss. 48.685 (5) and (7) (a) and 50.065 (5) and (7) (a), 1997–98 Stats., and ss. 227.11 (2) and 227.24 (4), Stats., the Department of Health and Family Services will hold a public hearing to consider the revision of the Appendix A Crimes List to ch. HFS 12, Wis. Adm. Code, which was published by emergency order on September 16, 1999.

Hearing Information

**October 28, 1999
Thursday
From 1:00 p.m. to
3:00 p.m.**

**Room B139
State Office Bldg.
One West Wilson St.
Madison, WI**

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Dept. of Health and Family Services

Since October 1, 1998, the Department has been implementing statutes that became effective on that date that require use of uniform procedures to check the backgrounds of persons who apply to the Department, to a county social services or human services

department that licenses foster homes for children and carries out adoption home studies, to a private child–placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non–client at the entity. The statutes, ss. 48.685 and 50.065, Stats., direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction, finding or charge, who have in their backgrounds a specified conviction, finding or charge substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or otherwise from having contact with the clients of a service provider.

The new statutes, commonly referred to as the Caregiver Law, were effective on October 1, 1998, for applicants for licensure, certification or other agency approval on or after that date, and for persons applying to be hired by or to enter into a contract with a regulated entity on or after that date to provide services to clients or to take up residence as a non–client at a regulated entity.

For regulated agencies approved before October 1, 1998, and for persons employed by, under contract to or residing as non–clients at regulated entities before October 1, 1998, the Caregiver Law's required uniform procedures and "bars" were to apply beginning on October 1, 1999. That is to say, by October 1, 1999, background checks, using the uniform procedures, were to be completed for all service providers who were approved before October 1, 1998, and for all employees, contractors and non–client residents employed by, under contract to or living at a regulated entity before October 1, 1998, and action was to be taken to withdraw approval, terminate employment or end a contract, as appropriate.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. Chapter HFS 12 included an appendix which consisted of a list of crimes. The original list specified 159 crimes for conviction of any one of which a person would be barred permanently (45 crimes), all programs, or would be barred temporarily, all programs, pending demonstration of rehabilitation, from being approved to be a service provider or from providing care or treatment to clients or otherwise having access to clients. The October 1998 emergency rules were modified in December 1998 and again in February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. The Crimes List in the permanent rules specified 117 crimes, with 9 of these being permanent bar crimes for all programs.

This order again modifies ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes is reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being permanent bar crimes for all programs. The changes to the ch. HFS 12 Crimes List are being made at this time because the 1999–2001 Budget Bill, which in mid–September 1999 was before the Legislature but not likely to take effect before October 1, 1999, was expected to provide for a more modest Crimes List than the one that was appended to ch. HFS 12. This meant that the Legislature intended that some persons who under the current rules would lose their jobs effective October 1, 1999, will be able to keep their jobs. The Department had the authority to further modify the Crimes List so that it would correspond to how the Legislature, after having heard arguments since October 1998 about how the Caregiver Law should be amended and implemented, wanted it to work. This is what the Department did through this order.

Contact Information

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

Paul Menge
 OLC/Rules
 Dept. of Health and Family Services
 P.O. Box 7850
 Madison, WI 53707–7850
 Telephone (608) 266–5602 or,
 if you are hearing impaired, (608) 266–3683 (TTY)

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

Written Comments

Written comments on the proposed rules received at the above address no later than **November 2, 1999** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This order revises the list of crimes appended to the ch. HFS 12 permanent rules that were effective on July 1, 1999 and that replaced emergency rules first published on October 1, 1998 to implement the Caregiver Law, ss. 48.685 and 50.065, Stats.

The Caregiver Law requires the Department in its regulatory activities, county social service and human service departments and private child–placing agencies that license foster care providers and approve adoptive family homes and school boards that contract for day care services to do the following:

- 1) Use uniform procedures to check the backgrounds of persons approved, hired or contracted with to provide care or treatment to persons who need the care or treatment or who will otherwise have access to those persons; and
- 2) Bar, permanently or temporarily, persons from providing services to clients or from residing at a regulated entity who have in their backgrounds a specified conviction, finding or charge substantially related to the care of clients.

Chapter HFS 12 was effective on October 1, 1998 for persons who were seeking regulatory approval, applying for employment or for a contract with a regulated entity or proposing to reside as a non–client at a regulated entity on or after that date. Chapter HFS 12 will be effective October 1, 1999 for persons who before October 1, 1998 had regulatory approval, were employed by or under contract to a regulated entity or resided as a non–client at a regulated entity.

The Crimes List is revised to reduce the number of specified crimes from 119 to 79 and the number of crimes from 9 to 6 for which a conviction would permanently bar a person, for all programs, from receiving regulatory approval or being hired or contracted with to provide services to clients or to reside at a regulated entity.

The effect of this order should be some reduction in the number of rehabilitation review requests received by the Department, counties and school boards to review and process. However, it is not possible to accurately estimate the number of requests that will be received and what this means for workload and staffing needs of the Department and local units of government. In any case, the

substantial new workload involved for the Department, counties and some school boards in implementing the caregiver background check requirements is the result of ss. 48.685 and 50.065, Stats.

Notice of Hearing

Health and Family Services

(Community Services,

Chs. HFS 30--)

[CR 95-140]

Notice is hereby given that pursuant to s. 48.67, Stats., the Department of Health and Family Services will hold a public hearing to consider the repeal and recreation of ch. HFS 52, relating to residential care centers for children and youth, currently called child care institutions.

Hearing Information

October 26, 1999
Tuesday
From 2:00 p.m. to
5:00 p.m.

Room 751
State Office Bldg.
One West Wilson St.
Madison, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Dept. of Health and Family Services

In Wisconsin 38 privately-owned residential care centers for children and youths provide treatment to children and youth, and to some young adults ages 18 to 20 who are under continuing juvenile court jurisdiction. A child, adolescent or young adult served by a center will have one or more of the following problems: an emotional disturbance, difficulty in acquiring life skills, an alcohol abuse or drug use or abuse problem or a developmental disability. Placements into residential care centers take place from youth correctional institutions and field supervision, mental health agencies and institutions, county human service and social service agencies and the interstate compact for placement of children under ss. 48.988 and 48.989, Stats., or are made by courts as protective placements under ch. 55, Stats., or by parents. The Department is responsible under ss. 48.60, 48.66 and 48.67, Stats., for licensing and supervising residential care centers on the basis of minimum requirements for issuance of a license and minimum standards for operation of a center. These requirements and standards are set out in ch. HFS 52, Wis. Adm. Code.

Chapter HFS 52 consists of standards for the administration and operation of residential care centers for children and youth, formerly called child care institutions, licensed under ss. 48.60, 48.66 and 48.67, Stats., as "child welfare agencies." The Department made some minor revisions in the rules while renumbering them from s. PW-CY 40.50 to ch. HSS 52 in 1983. However, no significant revisions have been made in the rules since 1971.

This order updates ch. HFS 52 to bring it into compliance with current drafting standards, statutes and other rules and to add new provisions to protect the health, safety and welfare of residents. The major new provisions added to ch. HFS 52 are:

1. Requirements for resident admission screening with formal assessment and treatment planning following admission.
2. A section on the applicability of resident rights under s. 51.61, Stats., and ch. HFS 94 to children and youth in residential care centers.
3. Incorporation by reference of the requirements in ch. HFS 12, relating to caregiver background checks and bars of persons with

certain offenses or criminal acts from working for, contracting with, or residing at a residential care center.

4. Policy and procedural requirements for the administration of medications, including psychotropic medications.

5. Stipulation that for residential care centers the Wisconsin Department of Public Instruction will establish and monitor compliance with educational standards.

6. Requirements relating to behavior management and control and the use of crisis intervention, physical hold restraint and physically enforced separation.

7. Prohibition of locked living units at a center except with approval of the Department and for purposes and under conditions specified in the rules.

8. Professional staff credentials more related to population served by the center.

9. Certain physical plant requirements, including Department approval for installation of psychiatric screening and magnetic or time delayed door locks.

10. Requirements for transporting residents.

11. Approval criterion for short-term (up to 90 days) and respite care (up to 9 days) programs operated by residential care centers.

12. Recognition that, if designated by the Wisconsin Department of Corrections, a residential care center may operate a program for type 2 status juveniles placed by a court under s. 938.34 (4d), Stats., or by the Department of Corrections under s. 938.357 (4), Stats.

The Department in September and October 1995 held three public hearings on an earlier version of these proposed revised rules for child care institutions. The proposed new rules were then held up in the rulemaking process for consideration of specific concerns raised by new Department executives and because drafting staff were temporarily reassigned to support implementation of major new state legislation relating to uniform procedures across Department regulatory programs for checking caregiver backgrounds. Although the proposed rules are very similar to the proposed rules the Department was going to send to the Legislature for review in October 1996 following the 1995 public hearings, the Department has decided to go back to public hearing with them through this notice because of the addition of three new sections to the chapter (for type 2 programs, short-term programs and respite care programs) and the length of time that has elapsed since the last public review.

Contact Information

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

Donald Dorn
Division of Children and Family Services
P.O. Box 8916
Madison, WI 53708-8916
Telephone (608) 266-0415 or,
if you are hearing impaired, (608) 266-7376

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

Written comments on the proposed rule received at the above address no later than **October 29, 1999** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This order revises ch. HFS 52, the Department's rules for regulation of child care institutions (CCIs) which are being re-named residential care centers for children and youth.

The revision incorporates several new rules which may increase the operating costs of these child care institutions. The new rules deal with bonding requirements, staff–child ratios, interconnected smoke detector requirements and additional staff time needed to comply with requirements relating to child protection, patient rights and grievance procedures, permission to administer psychotropic medication and assessment and treatment planning. It is believed that most CCIs are already in compliance with the majority of the new requirements so their impact will depend on whether individual institutions have kept pace with current preferred standards and practices. Based on a survey of 8 CCIs, the new rules will generally have a minimal impact on operating costs. Some institutions will be impacted more than others, depending on their current staffing structure, service resources and plant facilities.

None of the 38 CCIs are operated by state government or local governments. However, state government agencies and county governments purchase CCI residential care and treatment services. Given that the impact on CCI operating costs will generally be minimal, the new rules should have a minimal impact on expenditures by the state and by local governments for CCI services. Even if the new requirements result in rate increases for CCIs in some areas of the state, the effect of those increases will depend on CCI placement trends in those areas.

Initial Regulatory Flexibility Analysis

These revised rules apply to 38 privately owned residential child care institutions in Wisconsin, a few of which are small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. The facilities provide treatment for children, youth and young adults who have an emotional disturbance, difficulty in acquiring life skills, a developmental disability or have been abusing alcohol or involved with drugs.

The rules have not been generally updated for many years. They are revised by this order to change the generic name of the facilities to residential care centers for children and youth, to bring the rules into compliance with current drafting standards, statutes and other rules, to permit centers to operate short–term programs (up to 90 days) and respite care programs (up to 9 days) and to add new provisions to promote the health, safety and welfare of residents.

There are new requirements relating to: notification of parents and the Department; staff training; preadmission screening; initial assessment of a new resident within 30 days of admission; development of a treatment plan for each new resident; a center program statement; conditions for use of behavior management and control techniques; use of locked living units only with approval of the Department, and for purposes and under conditions specified in the rules; resident rights; transportation of residents; medication administration; fire safety; and conducting caregiver background checks on prospective new employees.

The new rules are minimum requirements to protect the health, safety and welfare of center residents.

Many of the new requirements are recognized as good management practices by the industry.

No new professional skills are necessary for compliance with the revised rules.

Notice of Hearing

Public Instruction

[CR 99–130]

Notice is hereby given that pursuant to ss. 115.42 (4) and 227.11 (2) (a), Stats., and interpreting s. 115.42, Stats., the Department of Public Instruction will hold a public hearing as follows to consider the creation of ch. PI 37, relating to grants for national teacher certification.

Hearing Information

October 26, 1999
Tuesday
4:00 p.m. to
5:00 p.m.

Room 041
GEF #3 Building
125 South Webster St.
Madison, WI

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Peter Burke, Teacher Education, Licensing and Placement, at (608) 266–1879 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Information

A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **October 29, 1999**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Dept. of Public Instruction

1997 Wis. Act 237 created s. 115.42, Stats., which establishes a grant program for national teacher certification. Under the program, the state superintendent shall award \$2,000 in the 1999–2000 school year and \$2,500 in the 2000–01 school year to any applicant who meets all of the following requirements:

- The person is certified by the National Board for Professional Teaching Standards before July 1, 2000.
- The person is licensed as a teacher by the state superintendent or employed as a teacher in a private school located in this state.
- The person is a resident of this state.
- The person is employed as a teacher in this state.

A person receiving a national teacher certificate is exempt from meeting the teacher license renewal requirements in the 5 years immediately preceding his or her application for renewal if he or she has been initially certified by the National Board for Professional Teaching Standards during those 5 years.

The rules establish:

- The application process, including necessary documentation.
- The number of times that a teacher may be exempt from continuing professional education requirements.

The statutes also require the rules to specify a selection process for grant recipients. Since the appropriation for the program is sum sufficient for grants awarded, and there is no limit as to the number of awards that may be made (the language limiting grant recipients to 20 was vetoed), it would seem that all applicants meeting the eligibility criteria specified in the rule will be selected to receive grants. Therefore, the rules do not specify a selection process in addition to the eligibility criteria section.

Fiscal Estimate

The proposed rules establish procedures for awarding grants and specify exemption allowances for national teacher certificate holders. The rule will have no fiscal effect on local government.

Under the program, the state superintendent shall award \$2,000 in the 1999–2000 school year and \$2,500 in the 2000–2001 school

year to any applicant meeting certain specifications. A sum sufficient appropriation has been created to award grantees.

Administration of the program will be carried out using existing staff and resources and should not result in any significant costs to the state.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing

Public Service Commission

[CR 99–140]

Notice is given that a hearing will be held at the time and place indicated below and continuing at times to be set by the presiding Administrative Law Judge. This docket (Docket 1–AC–185) proposes to revise ch. PSC 4, Wis. Adm. Code. These rules currently describe procedures to provide the Public Service Commission of Wisconsin with adequate information on the short–term and long–term environmental effects of its actions, as required by the Wisconsin Environmental Policy Act (WEPA), ch. 274, section 1, laws of 1971 and s. 1.11, Stats.

Hearing Information

October 26, 1999	Amnicon Falls Hrg. Rm.
Tuesday	1st Floor, PSC
1:30 p.m.	610 North Whitney Way
	Madison, WI

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations or who needs to obtain this document in a different format should contact the case coordinator listed below under “Contact Information”.

Analysis

Statutory authority: ss. 196.02 (3) and 227.11

Statute interpreted: s. 1.11

Section 1.11, Stats., is known as the Wisconsin Environmental Policy Act (WEPA). This statute requires each state agency to consider and make known to the public the environmental impacts of any major action the agency is proposing, if the action would significantly affect the quality of the human environment. The Public Service Commission (Commission) has adopted rules to implement WEPA.

The Commission’s rules categorize various actions the Commission undertakes in three separate tables and describe when an environmental impact statement (EIS) or a preliminary document known as an environmental assessment (EA) must be prepared for these actions. Table 1 consists of “Type I” actions, which the Commission has determined are major actions significantly affecting the quality of the human environment. The rules specify that an EIS must be prepared for any Type I action. Table 2 consists of “Type II” actions, which the Commission has determined have the potential to significantly affect the quality of the human environment. The rules require the Commission to prepare an EA for each Type II action; the function of an EA is to provide a preliminary factual investigation of the action’s environmental impacts. Under current rules this preliminary investigation allows the WEPA coordinator, who is a qualified staff person designated by the Commission, to determine whether an EIS is necessary. For Type II actions, the WEPA coordinator also has the option of making a determination that an EIS is needed based on the information that is immediately available, without waiting for an EA to be completed. Table 3 consists of “Type III” actions, which the

Commission has found do not normally have the potential to significantly affect the quality of the human environment. Type III actions normally require neither an EA nor an EIS, although an evaluation of a specific Type III proposal may indicate that preparation of such a document is warranted.

These proposed rules remove the WEPA coordinator’s authority to determine whether an EIS or an EA is required. Instead, this authority reverts to the Commission. The proposed rules also change the Type I, II, and III lists, in order to base the level of required environmental review on the potential for significant impacts rather than the current arbitrary thresholds. In addition, they change the process of preparing an EA. The proposed rules focus the EA on determining the need for an EIS, rather than using it to provide an encyclopedic description of potential environmental impacts. Finally, the proposed rules modify the process of securing public input during the Commission’s review process, so it can be received at appropriate times.

WEPA coordinator authority

Under current rules, the WEPA coordinator determines whether a proposed action of the Commission would significantly affect the quality of the human environment, for which an EIS must be prepared. If a project’s environmental effect is less certain the WEPA coordinator may direct that an EA be completed, and may then decide whether the EA shows that an EIS is required. The proposed rules specify that the Commission will make these determinations.

Changes to the Type I, II, and III lists

The proposed revisions to the Type I, II, and III lists concern the proper categorization of electric generating facilities and electric transmission lines. Current rules use the size in megawatts (MW) of a proposed new generating unit as the primary indicator of whether an EA or EIS should be prepared. An application for Commission approval of any new unit whose capacity is 20 MW or more is currently considered a Type I action, for which an EIS is mandatory. If the project would have a capacity of less than 20 MW, it is currently considered a Type II action. The proposed rules categorize a new generating unit according to the type of fuel it would use and the site where it would be located. Any new unit that would be powered by nuclear energy or fueled by coal is included in the Type I list. Combustion turbine facilities, combined cycle facilities, and cogeneration facilities that use gas or some other fuel are also included in the Type I list, but only if they would be constructed at a new electric generation site. If they would be located at an existing generation site, they are Type II projects. A similar distinction is made for hydroelectric facilities; if located at a new dam site, the project would be a Type I action, but if located at an existing dam site, the project is a Type II action.

Other Type II generating projects under these proposed rules would be new biomass or waste–to–energy units. A project to change an existing generating unit by adding another fuel type for the unit is also considered a Type II action. The proposed rules list new wind–powered electric generating facilities, less than 10 MW in size, and any new solar–powered facilities, as Type III actions. A proposal to construct any other new electric generating facility, not specifically listed elsewhere, is considered a Type II action.

Under existing rules, a proposal to construct, rebuild or upgrade a new electric transmission line at a voltage of 100 to 345 kilovolts (kV) is considered a Type II action if the new line would be more than one mile long. The proposed rules delete the criterion of length and substitute a criterion concerning where related construction activity occurs. If any construction activity takes place outside the area of an existing transmission line right–of–way, the project is classified as a Type II action. If all construction activity occurs inside existing transmission line right–of–way, the project is considered a Type III action. This criterion is modeled after a recently enacted statutory exemption that is found in s. 196.491 (4) (c), Stats., declaring that a Certificate of Public Convenience and Necessity is not necessary to build a new transmission line of less than 230 kV if “all related construction activity takes place entirely within the area of an existing electric transmission line right–of–way.” (A Certificate of Authority under s. 196.49, Stats., may still be necessary for such a project, depending on its cost.)

The proposed rules add two other items to these tables. Existing rules of the Department of Natural Resources (DNR) classify as Type II actions any proposals to adopt long–range agency plans or policies that would predetermine future agency actions, if the future actions may significantly affect the human environment. The proposed rules include the same item in the Commission's list of Type II actions. In addition, the proposed rules address a new action of the Commission that was created by 1997 Wis. Act 204. Under s. 196.491 (3m) (a), Stats., an affiliated interest of a public utility may not own, control, or operate a wholesale merchant plant without first securing the Commission's approval. The proposed rules list this as a Type III action.

Changes to the process of preparing an EA

The purpose of an EA has been defined by federal regulations issued by the Council on Environmental Quality, and by case law interpretations. An EA is intended to be a concise document that provides sufficient evidence and analysis of potential environmental impacts to determine whether preparation of an EIS is necessary. This purpose, however, is not described in Commission rules and those prepared in recent years have begun covering all potential impacts associated with a proposed project, including minor environmental impacts. The proposed rule incorporates a declaration of the purpose of EA preparation, to provide direction to Commission staff.

Public notice

Current rules require the Commission to deliver an announcement that it is commencing the preparation of an EA to area legislators, news media, and others whom the Commission knows are interested. The announcement must establish a public comment period, lasting at least 10 days. The proposed rule provides a broader list of those receiving the announcement of an EA. It includes any person who has requested to receive this type of information, and local government representatives such as the heads of local municipalities and county clerks. The proposed rule also removes the deadline for public comment, in order to allow comments to be received at any point during the process of preparing an EA.

Current rules allow the Commission's WEPA coordinator to make a preliminary determination about the need for an EIS before the EA is completed. If such a preliminary determination is made, the Commission must notify the same group and provide at least 10 days for public comment on the determination. The proposed rule revises this process. It grants the authority to make a preliminary determination about the need for an EIS to the Commission, as described above, and specifies that this determination must occur after the EA is completed. Notice of this preliminary determination will then be issued; in addition, the proposed rule provides that the Commission will make copies of the EA available upon request. A 15–day period for public comment on the determination is specified in the proposed rules. Based on the EA and the comments received, the Commission then makes a final determination as to whether the project constitutes a major action for which an EIS is required. The proposed rule also states that a copy of the EA will be sent to municipal offices in the project area.

Other changes

The proposed rule describes a process by which a supplemental EA or supplemental EIS can be prepared. The proposed rule declares that a supplemental EA must be produced if, after an EA has been completed but before the Commission has taken action, new circumstances or information arise that the Commission decides could affect the quality of the human environment in a manner not considered in the EA. Similarly, a supplemental EIS must be produced if new circumstances or information arise that the Commission decides would affect the quality of the human environment in a manner not considered in the EIS.

Current rules require anyone who seeks Commission approval of a project to contact the Commission at least 30 days before filing their application. This advance notice allows the Commission to provide advice on the project alternatives that should be analyzed and on other agencies that must be contacted. The proposed rule limits this advance notice to Type I and Type II projects, but requires that notice of such projects must occur at least 30 days before the applicant provides an engineering plan to the DNR. This change will ensure that the environmental and engineering analysis of reasonable alternatives, which is required by s. 1.11 (2) (c) 3., Stats., is properly coordinated with the DNR.

Copies of Proposed Rules

Anyone wishing to receive a free copy of the proposed rules should contact the case coordinator listed below under "Contact Information".

Initial Regulatory Flexibility Analysis

The proposed rules are not expected to affect small businesses. The changes in classification of projects will not increase the compliance or reporting requirements for project applicants. In addition, it is unlikely that applicants for Commission approval of these projects would be small businesses.

Contact Information

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

Questions regarding this matter may be directed to Kathleen Zuelsdorff at (608) 266–2730.

Fiscal Estimate

Ch. PSC 4 establishes procedures to provide the Public Service Commission of Wisconsin (Commission) with adequate information on the short–term and long–term environmental effects of its actions, as required by the Wisconsin Environmental Policy Act, under s. 1.11, Stats.

The proposed revisions to ch. PSC 4 will have no fiscal effect. While the proposed revisions are expected to increase the efficiency and effectiveness of the Commission's environmental review of proposed actions, the number of applications requiring review continues to grow, due to other ongoing changes in the electric utility industry. Costs of the Commission should not change. In addition, there would be no fiscal impact on investor–owned or municipal utilities that would affect local governments.

**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 and Consumer Protection

(CR 99–78):

S. ATCP 60.19 (3) and (4) – Relating to drug residues in raw milk.

Agriculture, Trade and Consumer Protection

(CR 99–116):

SS. ATCP 77.06 and 77.22 – Relating to certification fees for laboratories engaged in public health testing of milk, water and food.

Commerce (CR 99–89):

Ch. Comm 111 – Relating to certified capital companies.

Corrections (CR 97–67):

Ch. DOC 309 – Relating to inmate access to legal materials and legal services.

Employment Relations Commission (CR 99–104):

Ch. ERC 33 – Relating to school district professional employee collective bargaining agreements and the calculation of a qualified economic offer.

Financial Institutions—Securities (CR 99–121):

Chs. DFI–Sec 1 to 5 and ss. DFI–Sec 7.06 and 9.01 – Relating to securities broker–dealer, agent and investment adviser licensing requirements and procedures, securities registration exemptions, definitions and forms.

Health and Family Services (CR 99–112):

S. HFS 105.39 (4) (b) 3. – Relating to refresher training requirements in cardiopulmonary resuscitation (CPR) and first aid for drivers of specialized medical vehicles (SMVs) under the Medical Assistance (MA) program.

Law Enforcement Standards Board (CR 99–93):

Ch. LES 4 – Relating to the certification of instructors for law enforcement, jail and secure detention training.

Nursing Home Administrator Examining Board

(CR 99–114):

SS. NHA 1.02, 4.01 and 4.03 – Relating to experience and reciprocity.

Transportation (CR 99–107):

Ch. Trans 134 – Relating to registration plates for authorized special groups.

Transportation (CR 99–119):

SS. Trans 276.07 and 276.09 – Relating to allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

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.

Commerce (CR 99-7):

An order affecting ss. Comm 2.15, 51.164 and 64.05 and chs. Comm 18 and 69, relating to elevators and mechanical lifting devices.

Effective 12-01-99.

Gaming Commission (CR 99-69):

An order affecting ch. WGC 3, relating to contested case hearings arising out of the regulating activities of the Division of Gaming.

Effective 12-01-99.

Pharmacy Examining Board (CR 99-90):

An order creating ss. Phar 7.01, 7.08, 8.06, 8.07 and 8.09, relating to the transmission and receipt of electronic prescription orders.

Effective 11-01-99.

Pharmacy Examining Board (CR 99-92):

An order creating ch. Phar 16, relating to continuing education programs offered by a provider approved by the American Council on Pharmaceutical Education at the time of the pharmacist's attendance, or other Board-approved programs.

Effective 12-01-99.

Workforce Development (CR 98-34):

An order affecting ch. DWD 120 and ss. DWD 128.02, 129.01 and 150.05, relating to ability to and availability for work, unemployment insurance (UI) notices and forms, and exceptional circumstances for failing to apply for UI.

Effective 12-01-99.

Workforce Development (CR 98-202):

An order affecting s. DWD 11.055 and ch. DWD 16, relating to the emergency assistance program.

Effective 11-01-99.

Workforce Development (CR 98-203):

An order affecting chs. HSS 217 and DWD 17, relating to the training of income maintenance workers.

Effective 11-01-99.

Workforce Development (CR 98-205):

An order affecting ch. DWD 56, relating to the administration of day care funds.

Effective 12-01-99.

NOTICE OF NONACQUIESCENCE

NOTICE OF NONACQUIESCENCE

Tax Appeals Commission

DAVID L. GILBERT,	:	
Petitioner,	:	NOTICE OF NONACQUIESCENCE
v.	:	Docket No. 98-D-248
WISCONSIN DEPARTMENT OF REVENUE,	:	
Respondent.	:	

Pursuant to s. 73.01 (4) (e) 2. of the Wisconsin Statutes, the respondent hereby gives notice that, although it is not appealing the decision or order of the Tax Appeals Commission rendered in the above captioned matter under date of August 27, 1999, it has adopted a position of nonacquiescence in regard to that decision or order.

The Department does not acquiesce in that portion of the Commission's decision in Docket No. 98-D-248 which indicates that the provisions of s. 227.48 (2), Wis. Stats., are applicable to the issuance of a denial of a refund claim or the consideration of a petition for redetermination.

Section 227.47 (1), Wis. Stats., provides in part:

Decisions. (1) Except as provided in sub. (2), every proposed or final decision of an agency or hearing examiner following a hearing and every final decision of an agency shall be in writing accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise and separate statement of the ultimate conclusions upon each material issue of fact without recital of evidence. Every proposed or final decision shall include a list of the names and addresses of all persons who appeared before the agency in the proceeding who are considered parties for purposes of review under s. 227.53. The agency shall by rule establish a procedure for determination of parties.

(2) Except as otherwise provided in this subsection, a proposed or final decision of the personnel commission, hearing examiner or arbitrator concerning an appeal of the decision of the secretary of employment relations made under s. 230.09 (2) (a) or (d) shall not be accompanied by findings of fact or conclusions of law. If within 30 days after the commission issues a decision in such an appeal either party files a petition for judicial review of the decision under s. 227.53 and files a written notice with the commission that the party has filed such a petition, the commission shall issue written findings of fact and conclusions of law within 90 days after receipt of the notice. The court shall stay the proceedings pending receipt of the findings and conclusions.

Section 227.48, Wis. Stats., provides:

Service of decision. (1) Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to the party's attorney of record.

(2) Each decision shall include notice of any right of the parties to petition for rehearing and administrative or judicial review of adverse decisions, the time allowed for filing each petition and identification of the party to be named as respondent. No time period specified under s. 227.49 (1) for filing a petition for rehearing, under s. 227.53 (1) (a) for filing a petition for judicial review or under any other section permitting administrative review of an agency decision begins to run until the agency has complied with this subsection.

Reading these two statutes together, it is the position of DOR that the provisions of s. 227.48 (2), Wis. Stats., are applicable only to proposed or final agency decisions following an administrative hearing. No hearing is required or authorized in connection with the consideration of a refund claim or the consideration of a petition for redetermination.

The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale and construction of statutes in the instant case are not binding upon or required to be followed by the respondent in other cases.

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