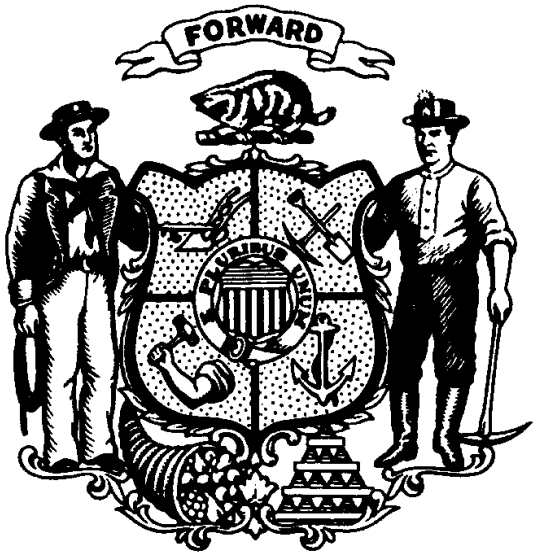
WISCONSIN ADMINISTRATIVE REGISTER

No. 505



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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

Department of Administration (Gaming Board)

Rules adopted revising **ch. WGC 13**, relating to the license fees of kennel owners that own and operate kennels at Wisconsin greyhound racetracks.

Finding of Emergency

Statutory Authority: ss. 16.004(1), 562.02(1) and 562.05(2)

Statutes Interpreted: ss. 562.02(1)(am) and 562.05(2)

The Department of Administration's Division of Gaming finds that an emergency exists and the rule amendments are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

For CY 1998, the Wisconsin racetracks were unable to recruit kennels to operate at the state's three existing racetracks. The 1997 license fee of $750.00 per kennel is too cost prohibitive to the kennels and therefore they pursue booking agreements in other states. By decreasing the cost to $350.00 and allowing the license to be valid at all Wisconsin racetracks, the racetracks will be able to attract quality kennels.

As a result of the increased competition for the availability of greyhounds throughout the country, license fees and purse revenues are the only considerations that racetracks have to offer when attempting to recruit kennels. If the racetracks are unsuccessful in recruiting new kennels or maintaining existing kennels, then races or whole performances would have to be canceled due to the lack of greyhounds.

In conjunction with the canceled races or performances and the associated decrease in handle, the revenue generated for the state related to greyhound racing would decrease accordingly.

Publication Date: **December 8, 1997**
Effective Date: **December 8, 1997**
Expiration Date: **May 8, 1998**

EMERGENCY RULES NOW IN EFFECT (2)

Department of Commerce
(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)

1. Rule adopted amending **s. Comm 108.21 (1) (f)**, relating to the emergency grants under the Community Development Block Grant (CDBG) program.

Finding of Emergency

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

A closer examination of the revised rules to take effect on November 1, 1997 will not allow Commerce to award emergency grants to local governments experiencing a natural disaster or catastrophic event using other state or federal grant funds as match. Those rules do not specify a source for the match funds, and up to the present time, many of the emergency grants did use state and/or federal grants as match. The most recent example of an emergency is the tornado that devastated the Village of Oakfield. In that case, the Federal Emergency Management Administration (FEMA) and state Division of Emergency Management (DEM) funds were used as match for a CDBG emergency grant.

The floods that occurred in June 1997 in the Milwaukee area may generate some emergency requests for repair and remediation activities. Under the rules that take effect November 1, 1997, Commerce would not be able to use the FEMA and DEM grants as match for these emergency projects.

The nature of the emergency program makes it impossible to anticipate future applications for obvious reasons. Commerce must have a program in place and ready to respond on short notice when an emergency occurs. The emergency rule will allow the use of other grant funds as match. It is very important that Commerce be ready to respond in a timely manner to the needs of the citizens of this state in times of emergency.

Publication Date: **October 30, 1997**
Effective Date: **November 1, 1997**
Expiration Date: **April 1, 1998**
Hearing Date: **January 13, 1998**

2. Rule adopted creating **ch. Comm 110**, relating to the Brownfields Grant Program.

Exemption From Finding of Emergency

On October 14, 1997, 1997 Wis. Act 27 took effect. That act created s. 560.13, Stats., which appropriated $5.0 million in funds for each of the state fiscal years of the biennium that can be

distributed by the Department of Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires the department to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under ch. 227, Stats., and exempts the department from making a finding of emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration.

Publication Date: **December 31, 1997**
Effective Date: **December 31, 1997**
Expiration Date: **May 31, 1998**

EMERGENCY RULES NOW IN EFFECT (4)

Department of Corrections

1. Rules adopted creating **ch. DOC 304**, relating to inmate secure work groups.

Finding of Emergency

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

Effective June 1, 1997, appropriations will be made available to the Department of Corrections for the establishment of secure work groups. Section 303.063 (2), Stats. requires that if the Department establishes a secure work program, the Department shall, before implementing the program, promulgate rules specifying the procedures and regulations relating to the program. The Department has just begun the permanent rule process for establishing the administrative rules for the secure work program. It typically takes nine months for a permanent administrative rule to be promulgated from the time the permanent rule making process begins.

The Department needs to adopt administrative rules regarding the organization and operation of the secure work group program in order to have rules in place which will comply with Sec. 303.063 (2), Stats. The rules will provide for the protection of the public, the correctional officers and the inmates by providing the requirements for participation in the program as well as providing for safety and security concerns.

An emergency currently exists as the prison population is idle and needs secure work groups to provide inmates work opportunities, to prepare inmates for work opportunities upon release to the community, and to reintegrate inmates into the community.

Publication Date: **May 30, 1997**
Effective Date: **May 30, 1997**
Expiration Date: **October 28, 1997**
Hearing Dates: **August 25, 28 & 29, 1997**
Extension Through: **February 24, 1998**

2. Rules adopted creating **ch. DOC 332**, relating to registration and community notification of sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The legislature has directed the department to implement programs for sex offender registration and community notification by June 1, 1997. Emergency rules are necessary to implement the June 1, 1997, timeline mandated by the legislature, inform sex offenders of registration procedures, and inform law enforcement, victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

Publication Date: **June 1, 1997**
Effective Date: **June 1 , 1997**
Expiration Date: **October 30, 1997**
Hearing Dates: **August 27, 28 & 29, 1997**
Extension Through: **February 26, 1998**

3. Rules adopted revising **ch. DOC 310**, relating to inmates complaint review system.

Finding of Emergency

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

There is a Corrections Complaint Examiner with two investigator positions and a program assistant position at the Department of Justice. The number and placement of these Corrections Complaint Examiner positions have been in effect for years. At the present time there is a substantial backlog of approximately 3,000 inmate complaints which need to be reviewed by the Corrections Complaint Examiner. The Department of Justice's position is that it will no longer do the Corrections Complaint Examiner function.

The Department must change its administrative rule to reflect the placement of the Corrections Complaint Examiner function from the Department of Justice to the Department of Corrections. The Department must also change its administrative rule regarding inmate complaints to make the system more efficient as a substantial backlog now exists, and there will be no new positions at the Department of Corrections to do the work of the Corrections Complaint Examiner.

The Department's purpose in the inmate complaint review system is to afford inmates a process by which grievances may be expeditiously raised, investigated, and decided. An efficient inmate complaint review system is required for the morale of the inmates and the orderly functioning of the institutions. An emergency exists due to the current backlog and the proposed moving of the function which will require the Department of Corrections to do the work of the Corrections Complaint Examiners with no new positions.

Publication Date: **August 4, 1997**
Effective Date: **August 4, 1997**
Expiration Date: **January 2, 1998**
Hearing Dates: **October 15, 16 & 17, 1997**
Extension Through: **March 2, 1998**

4. Rules adopted revising **chs. DOC 328 and 332**, relating to polygraph examinations for sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and

parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re–offending.

The testing program cannot be implemented without rules. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

This order:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.

2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.

3. Establishes the authority, purpose and applicability of the lie detector examination process.

4.Requires an offender who is a sex offender to submit to a lie detector test if required by the department.

5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.

6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.

7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.

8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.

9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.

10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.

11. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.

12. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.

13. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.

14. Provides that an offender shall pay the costs of the lie detector test and a $5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.

15. Establishes procedures for the collection of lie detector fees.

16. Provides for sanctions for an offender's failure to pay the lie detector fees.

17. Provides the criteria for lie detector fee deferrals.

18. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

The order provides for including the rules for the lie detector program in the same chapter of the Wisconsin Administrative Code, ch. DOC 332, as the rules for registration and community notification of sex offenders, which were published as emergency rules on June 1, 1997.

Publication Date: **December 15, 1997**
Effective Date: **December 15, 1997**
Expiration Date: **May 15, 1998**

EMERGENCY RULES NOW IN EFFECT

Dentistry Examining Board

A rule was adopted revising **s. DE 2.04 (1) (e)**, relating to examination requirements for applicants licensed as dentists in other states.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats. The Governor vetoed a provision in the budget bill which would have permitted dentists licensed in other states to obtain a license in Wisconsin, despite their not having passed a clinical licensing examination with a periodontal part. In doing so, the Governor requested the board adopt an emergency rule to permit these dentists to obtain licenses in Wisconsin under other reasonable and appropriate methods. The concern for the public health, safety and welfare is that this state's citizens are currently being deprived of necessary dental services from qualified dentists who, themselves, are experiencing substantial and perhaps unnecessary hardship in becoming licensed in Wisconsin. These rules are put into effect prior to the time they would be effective under routine rulemaking procedures to assure that the public is not deprived of necessary dental services from qualified dental professionals and that adequate safeguards for protecting the health and safety of dental patients are part of the licensing process.

Publication Date: **October 18, 1997**
Effective Date: **October 18, 1997**
Expiration Date: **March 18, 1997**
Hearing Date: **January 7, 1998**

EMERGENCY RULES NOW IN EFFECT

Department of Employment Relations

Rules were adopted revising **ch. ER 18**, relating to sick leave credits, the adjustment of sick leave balances for state employes and catastrophic leave.

Finding of Emergency

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

It is the state's personnel policy to maintain a uniform system of fringe benefits for state employes in terms of retirement, insurance and leave provisions. This policy is followed in order to facilitate movement of employes between agencies and different types of positions, to minimize the number of benefit systems that must be administered by personnel and payroll staff and to ensure employe equity in benefits. Two of the benefits available to most state employes are sick leave and catastrophic leave. Catastrophic leave programs allow the donation of certain types of unused leave to employes who are on an unpaid leave of absence because they have exhausted their available leave due to a catastrophic need.

The sick leave accrual rate for represented state employes is governed by the applicable collective bargaining agreement. Likewise, provisions regarding catastrophic leave are contained in

the agreements. For nonrepresented state employes, the sick leave accrual rate and catastrophic leave are governed by administrative rules promulgated by the secretary of the Department of Employment Relations. Under current administrative rules and all of the 1995–97 collective bargaining agreements, employes earn sick leave at the identical rate of 4 hours per pay period for full–time employes. Under current agreements, catastrophic leave may be exchanged between employes only within bargaining units in the same employing unit, except that the appointing authority may allow exchange between employing units within the same agency. The catastrophic leave program in the current administrative rules for state employes allows exchange of leave only between nonrepresented employes within the same employing unit, except that the appointing authority may allow exchange within an agency.

The Department of Employment Relations recently negotiated new contracts with 11 bargaining units representing the majority of state employes. These contracts will increase the sick leave accrual rate for the covered represented employes and expand the exchange of catastrophic leave for represented employes. The sick leave accrual rate will increase from 4 to 5 hours per pay period for full–time employes, starting on the effective date of the contracts. (Sick leave balances for individual employes also will be adjusted on the effective dates of the contracts to apply the higher accrual rate to hours worked between July 6, 1997 and the effective date of the contracts.) The contracts also expand the catastrophic leave programs to allow exchange of leave between members of different bargaining units, between different employing units within the same agency and between represented and nonrepresented employes. Leave may also be exchanged across agency lines with the approval of each agency.

Without a change in the administrative rules, nonrepresented employes will not receive the increased sick leave, nor will they have the same broadened opportunities to donate and receive catastrophic leave as represented employes.

If the sick leave accrual rate for nonrepresented employes is not increased by this emergency rule, nonrepresented employes will accrue sick leave at a lower rate than those covered by collective bargaining agreements which provide a higher rate. This inconsistency will have the following negative impacts on state employes and agencies: (1) it will create inequitable treatment and morale problems between state employes; (2) it will discourage transfers and promotions by employes from represented to nonrepresented positions; and (3) it will require administration of two different sick leave accrual rates.

If the exchange of catastrophic leave is not broadened, nonrepresented employes will not be able to donate leave to or receive leave from represented employes, or to and from nonrepresented or represented employes in other agencies. Thus, there will be less opportunities for employes who face a catastrophic need to receive donated leave from other employes.

In order to avoid these negative consequences, the Department finds that there is an emergency affecting the public peace, health, safety or welfare. The Department further finds that it is necessary to provide the higher sick leave accrual rate and expanded catastrophic leave to nonrepresented state employes as soon as possible through an emergency rule.

Publication Date: **October 11, 1997**

Effective Date: **October 12, 1997**

Expiration Date: **March 12, 1998**

Hearing Date: **December 15, 1997**

EMERGENCY RULES NOW IN EFFECT (3)

Insurance

1. A rule was adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in premium rates for the Health Insurance Risk–Sharing Plan (HIRSP), effective January 1, 1998.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e), Stats., the Commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

Analysis Prepared by the Office of the Commissioner of Insurance

January 1, 1998 Premium Adjustments

The Commissioner of Insurance, based on the recommendations of the Health Insurance Risk–Sharing Plan ("HIRSP") board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles. This rule adjusts the non–subsidized premium rates effective January 1, 1998. This change in rates will result in a reduction of approximately 14.5%, and is mandated by plan financing changes in 1997 Wis. Act 27.

Publication Date: **November 20, 1997**
Effective Date: **January 1, 1998**
Expiration Date: **May 31, 1998**
Hearing Date: **December 30, 1997**

2. Rules adopted revising **s. Ins 2.14** and amending **s. Ins 2.16 (1) & (3) (a) 2.**, Wis. Adm. Code, relating to life insurance solicitations.

Finding of Emergency

Effective January 1, 1998 Wisconsin will adopt the National Association of Insurance Commissioners Life Illustrations Model Regulation as s. Ins. 2.17 Wis. Adm. Code. These changes are needed to adapt other rules pertaining to life illustrations to s. Ins. 2.17. These changes must be made by emergency rule to synchronize with s. Ins. 2.17.

The main changes proposed to s. Ins 2.14 include:

· Eliminating the requirement that a policy summary be provided at delivery, if a basic illustration was provided.

· Eliminating the requirement that cost indexes be shown on the policy summary.

· Prohibiting insurers from illustrating anything except guaranteed policy elements on the policy summary, and requiring that values be illustrated for years 1–20 and at least one year between age 60 and 65, or maturity, whichever is earlier.

· Requiring that only guaranteed elements be used in the calculation of cost comparison indexes. As a result, the formulas for calculating the net payment cost index and the surrender cost index have been revised and any reference to the equivalent level annual dividend has been deleted from the rule.

· Requiring that insurers use the latest published version of the NAIC Life Insurance Buyer's Guide.

The main changes proposed to s. Ins 2.16 include:

· Excluding the illustration as defined in s. Ins. 2.17 from the definition of an advertisement.

· Revising the purpose of the rule to indicate that the rule is in addition to, and not a substitute, for s. Ins 2.17.

Publication Date: **December 10, 1997**
Effective Date: **January 1, 1998**
Expiration Date: **June 1, 1998**

3. Rules were adopted amending **s. Ins 18.07 (5) (b)**, published as an emergency rule relating to a decrease in premium rates for the health insurance risk–sharing plan under s. 18.07 (5) (b), and correcting errors in the published rate table.

January 1, 1998 Premium Adjustment Correction

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk–Sharing Plan (HIRSP) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles. An emergency rule, already promulgated and published, adjusts the non–subsidized premium rates effective January 1, 1998. This emergency amendment corrects 4 errors in the published rate table.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5)(e) Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency amendment to an emergency rule.

Publication Date: **December 12, 1997**
Effective Date: **January 1, 1998**
Expiration Date: **June 1, 1998**

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

1. Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: **November 18, 1996**
Effective Date: **November 18, 1996**
Expiration Date: **See section 12m, 1996 Wis. Act 296**
Hearing Date: **January 14, 1997**

2. A rule was adopted revising **s. NR 45.10 (3)** and **(4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

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

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.

2. Establishes time frame for making reservations.

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

EMERGENCY RULES NOW IN EFFECT

Natural Resources

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

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

Finding of Emergency

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

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

Publication Date: **December 29, 1997**
Effective Date: **January 1, 1998**
Expiration Date: **June 1, 1998**

EMERGENCY RULES NOW IN EFFECT

Public Defender

A rule was adopted amending **s. PD 3.038 (2)**, relating to the calculation of indigency.

Finding of Emergency

The State Public Defender Board finds that an emergency exists and that the following rule is necessary for the immediate preservation of the public peace, health, safety or welfare. The statement of facts constituting the emergency is as follows:

The following emergency rule establishes the criteria to be used when determining whether a participant in the Wisconsin works

(W–2) program qualifies for public defender representation. W–2 replaces aid to families with dependent children (AFDC) and, pursuant to s. 49.141 (2) (b), Stats., goes into effect on September 1, 1997. Although the Office of the State Public Defender (SPD) has rules governing eligibility for public defender representation of AFDC participants, it does not have rules governing the eligibility of W–2 participants. Because W–2 goes into effect on September 1, 1997, and it will be several months before a permanent rule is in place, it is essential that the following rule be promulgated as an emergency rule.

Publication Date: **September 15, 1997**
Effective Date: **September 15, 1997**
Expiration Date: **February 13, 1998**
Hearing Date: **October 27, 1997**

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted creating **ch. Trans 512**, relating to the Transportation Infrastructure Loan Program.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is that federally authorized funds for the Transportation Infrastructure Loan Program will be withdrawn if participating states are unable to meet the requirement to have at least one eligible project authorized for construction on or before April 1, 1998. There is insufficient time to have a permanent rule in place to meet the federal deadline. The state has been authorized $1.5 million in additional federal funds to capitalize the Transportation Infrastructure Loan Program. Without an emergency rule to implement the program, the state is in jeopardy of losing $1.5 million in federal assistance.

Publication Date: **January 5, 1998**
Effective Date: **January 5, 1998**
Expiration Date: **June 5, 1998**
Hearing Date: **January 15, 1998**

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rules were adopted revising **ch. VA 12**, relating to the personal loan program.

Exemption From Finding of Emergency

1997 Wis. Act 27, s. 9154 authorizes the department to promulgate rules for the administration of the personal loan program using the emergency rule procedures without providing evidence of the necessity of preservation of the public peace, health, safety or welfare.

Analysis

By repealing and recreating ch. VA 12, Wis. Adm. Code, the department establishes the underwriting and other criteria necessary for the administration of the personal loan program. The personal loan program was authorized by the legislature and governor through the amendment of s. 45.356, Stats., upon enactment of 1997 Wis. Act 27.

Publication Date: **October 17, 1997**
Effective Date: **October 17, 1997**
Expiration Date: **March 17, 1998**
Hearing Date: **January 9, 1998**

EMERGENCY RULES NOW IN EFFECT

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

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

Exemption From Finding of Emergency

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

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

Analysis

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

Statute interpreted by the rule: s. 49.26

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

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

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

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

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

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

✎ Family emergency.

✎ Illness, injury or incapacity of the child or a family member living with the child.

✎ Medical or dental appointment for the minor parent or the minor parent's child.

✎ Breakdown in transportation.

✎ A review or fair hearing decision identifies good cause circumstances.

✎ Other circumstances beyond the control of the child or the child's parent, as determined by the W–2 agency.

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

Publication Date: **January 2, 1998**
Effective Date: **January 2, 1998**
Expiration Date: **June 2, 1998**

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from 12–31–97 *Wis. Adm. Register*)**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed Department rules related to the regulation of residential rental practices (proposed ch. ATCP 134, Wis. Adm. Code).

Written Comments

The hearings will take place at the times and places shown below. The public is invited to attend the hearings and to make comments on the proposed rules. Following the public hearings, the hearing record will remain open until **February 13, 1998**, for the public to submit additional written comments.

Copies of Rule

Interested people may obtain a free copy of this rule by contacting:

Division of Trade & Consumer Protection
Telephone (608) 224–4921
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
P.O. Box 8911
Madison, WI 53708–8911

Copies will also be available at the public hearings.

An interpreter for the hearing–impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **January 7, 1998**, either by writing to Judy Jung, P.O. Box 8911, Madison, WI 53708–8911; calling her at 608/224–4972; or contacting her via the Division's TDD telephone (608/224–5058). Handicap access is available at the hearings.

Hearing Information

The Department will hold five hearings as follows:

January 21, 1998	**Banquet Room 2**
Wednesday	**1st Floor**
Commencing at	**State Fair Park Youth Ctr.**
10:00 a.m.	**640 S. 84th Street**
	MILWAUKEE, WI
January 23, 1998	**Room 152A**
Friday	**Wis. Dist. Office Bldg.**
Commencing at	**200 N. Jefferson St.**
10:00 a.m.	**GREEN BAY, WI**
January 28, 1998	**Wausau Room**
Wednesday	**3rd Floor**
Commencing at	**Marathon Co. Public Library**
10:00 a.m.	**300 N. 1st Street**
	WAUSAU, WI
January 29, 1998	**Conference Room**
Thursday	**1st Floor**
Commencing at	**WDATCP State Office Bldg.**
10:00 a.m.	**3610 Oakwood Hills Pkwy.**
	EAU CLAIRE, WI
January 30, 1998	**Board Room SR–106**
Friday	**Prairie Oak State Office Bldg.**
Commencing at	**2811 Agriculture Dr.**
10:00 a.m.	**MADISON, WI**

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

Statutory authority: s. 100.20 (2)

Statute interpreted: s. 100.20

The Department of Agriculture, Trade and Consumer Protection currently administers landlord–tenant rules under ch. ATCP 134, Wis. Adm. Code. These rules regulate residential rental practices by landlords and affect both tenants and landlords. The Department has not revised or updated the current rules since their creation in 1980. This rule amends the current rules to address new issues which have arisen during the last 17 years and to clarify parts of the rules which landlords and tenants have found to be ambiguous.

Rule coverage:

This rule clarifies the coverage of the current rules. The current rules apply to the rental of all residential dwelling units in this state, except for the following:

❑ A dwelling unit operated by a public or private institution, if occupancy is incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services. (This rule redrafts, but does not change, the current exemptions.)

❑ A dwelling unit operated by a fraternal or social organization for the benefit of its members. (This rule clarifies that the exemption applies only to dwelling units occupied by members of the organization.)

❑ A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest. (This rule redrafts, but does not change, the current exemption.)

❑ A dwelling unit in a hotel, motel, boarding house, lodging house, or similar premises occupied on a transient basis. (This rule clarifies that the exemption applies to a dwelling unit, other than a student dwelling unit, that is located in a hotel, motel, boarding house, lodging house, dormitory, or similar premises rented for occupancy on a tourist or transient basis.)

❑ A dwelling unit which the landlord provides free of charge. (This rule clarifies that the exemption applies to a dwelling unit which the landlord provides as compensation to an employe operating or maintaining the premises, or which the landlord provides free of charge to any person.)

❑ A dwelling unit located on premises used primarily for agricultural purposes. (This rule clarifies that the exemption applies to a dwelling unit occupied by a tenant engaged in commercial agricultural operations on the premises.)

Pre–rental disclosures and practices:

Rental agreement:

Under current rules, a "rental agreement" means any oral or written agreement for the rental of a dwelling unit. This rule clarifies that a "rental agreement" means an oral or written agreement, for the rental of a specific dwelling unit, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent.

If the landlord and tenant have not yet agreed on the dwelling unit or essential terms of tenancy, the mere approval of a tenant's rental application does not create a "rental agreement" under this rule. A "rental agreement" creates the relationship of landlord and tenant, from which certain rights and responsibilities flow. However, based on long–standing common law principles, an enforceable "rental

agreement," which conveys a tenancy interest in real estate, does not arise until the parties agree on the essential terms of the tenancy, such as the identity of the specific dwelling unit and the amount of rent.

Current rules do not require that a "rental agreement" be in writing. However, under current rules, a landlord must make certain disclosures to a prospective tenant before entering into a "rental agreement."

Misrepresentations to prospective tenants:

This rule prohibits misrepresentations by landlords for the purpose of inducing any person to enter into a rental agreement. Under this rule, no landlord may:

✳ Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.

✳ Misrepresent the amount of rent the tenant must pay.

✳ Fail to disclose, in connection with any representation of rent amount, the existence of any non–rent charges that will increase the total amount payable by the tenant during tenancy.

✳ Engage in "bait and switch" practices by misrepresenting to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

Earnest money deposits; acceptance:

Under current rules, an "earnest money deposit" means a deposit which a rental applicant gives a landlord in return for the option of entering into a rental agreement in the future, or in return for submitting a rental application for the landlord to consider.

Under current rules, before a landlord accepts an "earnest money deposit" from a prospective tenant, the landlord must make certain disclosures related to dwelling unit habitability and utility charges (see later in this notice). This rule clarifies that a landlord may not accept an "earnest money deposit" from a prospective tenant until the landlord identifies the dwelling unit(s) for which the tenant is being considered and complies with the applicable disclosure requirements for each identified dwelling unit.

Earnest money deposits; withholding:

Under this rule, a landlord may withhold monies from a properly accepted earnest money deposit, if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant. Under this rule, as under the current rule, the landlord may withhold monies from the earnest money deposit for actual costs and damages incurred because of the tenant's failure to enter into a rental agreement. The landlord may not withhold monies from the earnest money deposit for "lost rents," unless the landlord makes a reasonable effort to mitigate those losses, as provided under s. 704.29, Stats.

This rule creates a note referring to the Wisconsin court of appeals decision in Pierce v. Norwick, 202 Wis.2d 588 (1996), regarding the award of damage claims when a landlord improperly withheld a security deposit. The principles discussed in that case regarding security deposits may also be applicable to earnest money deposits.

Earnest money deposits; return:

This rule modifies the current rule, which requires a landlord to refund an applicant's earnest money deposit if the landlord rejects the person's rental application. Under this rule, a landlord must refund an applicant's earnest money deposit by the end of the next business day after:

☞ The landlord rejects the rental application.

☞ The applicant withdraws the rental application before the landlord approves it.

☞ The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the earnest money deposit, or by the end of a later date to which the parties agree in writing. The later date may not be more than 7 business days after the landlord accepts the earnest money deposit.

This rule does not change current rules which require that when the landlord enters into a "rental agreement" with a tenant, the landlord must take one of the following actions:

☛ Apply the tenant's earnest money deposit, if any, to the rent.
OR

☛ Hold the tenant's earnest money deposit, if any, as a security deposit to secure the tenant's obligations under the rental agreement.
OR

☛ Return the tenant's earnest money deposit, if any, to the tenant.

This rule clarifies that, if a tenant accepts a partial refund of an earnest money deposit, the tenant does not automatically waive any claim he or she may have to a full or greater refund of the deposit.

Security deposits:

Under current rules, a "security deposit" means the total of all payments and deposits given by a tenant to a landlord as security for the performance of the tenant's obligations under the rental agreement. "Security deposit" includes all rent payments the tenant pays in excess of one month's prepaid rent.

This rule clarifies, by note, that a landlord is not prohibited from collecting more than one month's prepaid rent; however, if the landlord holds any rent prepayment in excess of one month's prepaid rent, when the tenant surrenders the premises the landlord must treat that excess prepaid rent as a "security deposit." (See later in this notice.)

Check–in procedures; pre–existing damages:

Under current rules, a landlord must do both of the following before accepting a security deposit from a tenant:

✓ Inform the tenant that the tenant has 7 days after the start of the tenancy to inspect the dwelling unit and notify the landlord of any pre–existing damages or defects.

✓ Give the tenant a list of damages charged to the previous tenant's security deposit.

This rule modifies the current rules. Under this rule, before a landlord accepts a security deposit or converts an earnest money deposit to a security deposit, the landlord must notify the tenant in writing that the tenant may do any of the following by a specified deadline date, which is not less than 7 days after the start of the tenancy:

❍ Inspect the dwelling unit and notify the landlord of any preexisting damages or defects.

❍ Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request in writing.

Under this rule, if a tenant requests a list of damages charged to the previous tenant's security deposit, the landlord must provide that list within 30 days, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may identify all the listed damages or defects the landlord has repaired, if that is the case. Under this rule, the landlord is not required to disclose the previous tenant's identity or the amounts the landlord withheld from the previous tenant's security deposit.

Landlord identification:

Under current rules, a landlord (other than the resident owner of a structure containing four or fewer dwelling units) must disclose both of the following at or before the time the landlord and tenant enter into a rental agreement:

═ The name and address of the person responsible for managing and maintaining the dwelling unit.

═ The name and address of the property owner, or a person authorized to accept service of legal process on behalf of the property owner.

Under current rules, the landlord must give the tenant an updated disclosure whenever this information changes. This rule clarifies that the landlord must mail or deliver the updated disclosure to the tenant within 10 calendar days after the change occurs.

Dwelling unit condition and utility charges; disclosures:

This rule clarifies current rental disclosure requirements. Under current rules, a landlord must disclose the following conditions, if they exist, before entering into a rental agreement or accepting an earnest money deposit or security deposit from the prospective tenant:

◆ Any uncorrected housing code violations affecting the dwelling unit. (This rule makes no change.)

◆ The dwelling unit lacks hot and cold running water. (This rule clarifies the provision to say hot or cold running water.)

◆ The dwelling unit lacks plumbing facilities in good operating condition. (This rule clarifies, but makes no substantive change.)

◆ The dwelling unit lacks sewage disposal facilities in good operating condition. (This rule clarifies, but makes no substantive change.)

◆ The heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature of 67°F (19°C) during all seasons of the year in which the dwelling unit may be occupied. (This rule clarifies that, for purposes of this disclosure, the temperature in living areas is measured at the center of the room, midway between the floor and ceiling.)

◆ The dwelling unit does not have electricity, or the electrical system is not in safe operating condition. (This rule makes no change.)

◆ Any structural or other conditions in the dwelling unit which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises, other than negligent use or abuse. (This rule makes no change.)

◆ Whether heat, water and electricity are included in the rent or billed separately. If dwelling units do not have separately metered heat, water and electricity, the landlord must also disclose the basis on which he or she will allocate the utility charges. (This rule makes no change.)

Nonstandard rental provisions:

Current rules identify certain rental provisions which a landlord may not incorporate into a rental agreement as boilerplate "form provisions," because of their potential unfairness to tenants. If a landlord uses "form provisions" at all, the landlord and prospective tenant must separately negotiate each provision and each provision must be included in a separate written document entitled, "NONSTANDARD RENTAL PROVISIONS." This rule clarifies the procedure which the landlord and tenant may use to separately negotiate nonstandard rental provisions.

This rule prohibits the use of the following provisions in a rental agreement, unless they are included in a separate written document entitled, "NONSTANDARD RENTAL PROVISIONS."

➜ Any agreement expanding the landlord's usual rights of entry to the tenant's dwelling unit (see later in this notice).

➜ Any agreement expanding the usual reasons for which a landlord may withhold monies from the tenant's security deposit (see later in this notice).

➜ Any lien agreement giving the landlord a lien on the tenant's personal property to secure performance of the tenant's obligations under the rental agreement (see later in this notice).

If the landlord wants to include any of the above provisions in the rental agreement, the landlord must discuss each "nonstandard rental provision" with the prospective tenant. If the tenant signs or initials a "nonstandard rental provision," then there is a presumption that the landlord discussed each provision with the tenant and the tenant agreed.

Practices during tenancy:

Receipts for cash rent payments:

Under current rules, a landlord must give a tenant an immediate receipt for any cash deposit, such as an earnest money or security deposit, paid by the tenant. Under this rule, a landlord must also give a tenant an immediate receipt for any cash payment of rent, stating the nature and amount of the payment. The landlord is not required to give a receipt for a rent payment made by check.

Fit and habitable premises:

Under current rules, a landlord may not use a boilerplate "form provision" in a rental agreement to secure the tenant's waiver of any statutory or other legal obligation which the landlord has to provide fit and habitable premises or to maintain the premises during tenancy. This rule strengthens the current provision, by prohibiting any rental provision that purports to waive those legal obligations.

Unauthorized entry:

With certain exceptions, current rules limit the reasons for which a landlord may enter a tenant's dwelling unit. The current rules also require prior notice of entry (normally 12 hours prior notice) and prohibit entry except at reasonable times.

This rule clarifies the current rules. With certain exceptions, this rule prohibits a landlord from doing either of the following:

⊗ Entering a dwelling unit during tenancy, except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05 (2), Stats. A landlord may enter for the amount of time reasonably required to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.

⊗ Entering a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice, unless the tenant, upon being notified of the proposed entry, consents to a shorter time period.

These entry restrictions do not apply in any of the following circumstances:

✖ The tenant, knowing the proposed time of entry, requests or consents in advance to the entry.

✖ A health or safety emergency exists.

✖ The tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.

Under current rules, a tenant may agree to a nonstandard rental provision (other than a boilerplate "form provision") which authorizes the landlord to enter a tenant's dwelling unit under circumstances not authorized above. This rule clarifies that:

✍ Any nonstandard provisions must be contained in a separate written document entitled, "NONSTANDARD RENTAL PROVISIONS" (see earlier in notice).

✍ The landlord must specifically identify and discuss the nonstandard rental provisions with the tenant, and provide a copy of the nonstandard provisions to the tenant.

✍ If the tenant signs or initials the nonstandard rental provisions, there is a presumption that the landlord specifically identified and discussed each provision with the tenant and the tenant agreed to the provisions.

This rule creates a new provision that no landlord may enter a tenant's dwelling unit during tenancy without first announcing the entry to persons who may be present in the dwelling unit (such as by knocking on the door or ringing the doorbell). The landlord must also identify himself or herself upon request.

Late rent fees and penalties:

This rule prohibits a landlord from charging a late rent fee or late rent penalty, except as specifically provided in a written rental agreement. Before charging a late rent fee or late rent penalty, the landlord must first apply all rent prepayments received from the tenant to offset the amount of rent owed by the tenant. A landlord may not charge a tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

Returning security deposits:

Deadline for returning security deposit:

Under current rules, a landlord must return or account for a tenant's security deposit within 21 days after the tenant "surrenders" the premises to the landlord. This rule clarifies that a tenant is deemed to "surrender" the premises on the last day of tenancy specified under the rental agreement, except that:

➤ If the tenant gives the landlord a written notice that the tenant has vacated before the last day of tenancy specified in the rental agreement, "surrender" occurs when the landlord receives the written notice that the tenant has vacated.

➤ If the tenant vacates the premises after the last day of tenancy specified in the rental agreement, "surrender" occurs when the landlord learns that the tenant has vacated.

➤ If the tenant is evicted, "surrender" occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

Security deposit return or accounting:

Under current rules, a landlord must return the full amount of a tenant's security deposit within 21 days after a tenant "surrenders" the rental premises, less any amounts properly withheld by the landlord (see later in this notice). The landlord must provide the tenant with a written statement accounting for all amounts withheld.

Under current rules, the landlord must return the security deposit in person, or by mail to the tenant's last known address. If the tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant's last known address.

Under this rule, if a landlord returns a security deposit in the form of a check, draft or money order, the landlord must make the check, draft or money order payable to all tenants who are parties to the rental agreement, unless otherwise authorized in writing by the tenants.

Reasons for withholding security deposit:

Under current rules, a landlord may withhold money from a tenant's security deposit only for the following reasons:

$\$\mapsto$ Tenant damage, waste or neglect of the premises.

$\$\mapsto$ Unpaid rent for which the tenant is legally responsible, subject to the landlord's duty to mitigate under s. 704.29, Stats.

$\$\mapsto$ Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

$\$\mapsto$ Payment for direct utility service provided by a government–owned utility, to the extent the landlord becomes liable for the tenant's nonpayment.

$\$\mapsto$ Unpaid mobile home parking fees which a local unit of government has charged to the tenant under s. 66.058 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

$\$\mapsto$ Other reasons specified in a rental provision which the landlord and tenant negotiated separately as a "NONSTANDARD RENTAL PROVISIONS" agreement. (See earlier in notice.)

This rule clarifies that any rental provision that expands a landlord's authority to withhold a security deposit must be negotiated in the following manner:

■ The nonstandard provisions, if any, must be contained in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS" (see earlier in notice).

■ The landlord must specifically identify and discuss the nonstandard rental provisions with the tenant, and provide a copy to the tenant.

■ If the tenant signs or initials the nonstandard rental provisions, it is presumed that the landlord has specifically identified and discussed the provisions with the tenant, and that the tenant has agreed to the provisions.

Neither this rule nor the current rules authorize a landlord to withhold money from a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

Failure to return or properly account for security deposit:

This rule clarifies that, merely by accepting a partial refund of an earnest money deposit, a tenant does not automatically waive any claim he or she may have to a larger refund.

This rule creates a note referring to the appellate court decision in Pierce v. Norwick, 202 Wis.2d 588 (1996), regarding the award of damage claims for failure to comply with rules related to security deposits.

Eviction and related issues:

Confiscating personal property:

Under current rules, a landlord may not confiscate a tenant's personal property, or prevent a tenant from taking possession of the tenant's personal property, except as authorized by s. 704.05 (5), Stats., or a lien agreement with the tenant. The lien agreement may not be created by a boilerplate "form provision" in the rental agreement, but must be separately negotiated with the tenant. This rule clarifies the method by which the landlord and tenant must negotiate a lien agreement:

⊙ A lien agreement, if any, must be contained in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS" (see earlier in this notice).

⊙ The landlord must specifically identify and discuss the lien agreement with the tenant, and must give the tenant a copy.

⊙ If the tenant signs or initials the lien agreement, it is presumed that the landlord has specifically identified and discussed it with the tenant, and that the tenant has agreed to it.

Self–help eviction:

Current law, ch. 799, Stats., affords landlords a prompt judicial procedure for evicting tenants. This procedure was enacted, in part, to discourage self–help evictions by landlords.

Current rules prohibit rental agreements which purport to authorize self–help eviction. This rule prohibits self–help eviction. Under this rule, a landlord may not exclude, forcibly evict or constructively evict a tenant other than by the judicial eviction procedure provided under ch. 799, Stats.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate:

The proposed amendments will modify the current ch. ATCP 134 rules to make it easier for landlords and tenants to understand its requirements. The amendments also update the rule to reflect practical experience and to clarify language.

The proposed regulations affect enforcement activities in which the Trade and Consumer Protection Division's staff already engage; therefore, the Department estimates no fiscal effect.

Since municipalities are not responsible for enforcing ch. ATCP 134, there should be no fiscal effect on them, as the amendments impose no additional responsibilities.

The Department already handles complaints from tenants about problems with rental transactions. The Department assumes that the number of complaints about this subject will not increase due to this change in the law. The Department also assumes that this law will assist Department staff by providing clearer language that will enhance staff efficiency in dealing with these problems. The adoption of the proposed rule revisions will have no state or local fiscal effect.

Initial Regulatory Flexibility Analysis

Proposed ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices)

The Department's proposed rules will have an impact on most landlords who lease residential dwelling units. Many of these landlords are small businesses, as defined by s. 227.114 (1) (a), Stats.

The current rules regulate residential rental practices by landlords under ch. ATCP 134, Wis. Adm. Code. This rule, developed in consultation with an ad hoc advisory committee that included landlord and tenant representatives, clarifies and simplifies the current rules. This rule will assist landlords in complying with ch. ATCP 134, and should decrease the number of legal conflicts between landlords and tenants.

This rule clarifies how it regulates business practices and simplifies the procedures landlords must follow to comply with the rules. The revisions do not create additional financial burdens; therefore, they will not adversely affect small business.

The Department anticipates a period of education and information to assist landlords and tenants in learning the new revisions.

Notice of Hearing

Public Service Commission

Notice is given that a public hearing will be held with respect to a proposed amendment to s. PSC 112.05, Wis. Adm. Code, in the **Amnicon Falls Hearing Room, Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin 53705, on Thursday, February 26, 1998, at 1:30 p.m.** This building is accessible to people in wheelchairs through the Whitney Way main floor entrance (Lobby). Parking for people with disabilities is available along the south side of the building. Any party with a disability who needs accommodations should contact Richard Teslaw at 608–267–9766.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02(3), 196.49(3)(b), and 227.11

Statutes interpreted: ss. 196.49, 196.491, and 196.495

On December 4, 1997, the Commission directed on its own motion that a rulemaking proceeding be initiated to amend ch. PSC 112, Wis. Adm. Code, specifically, s. PSC 112.05, Wis. Adm. Code.

This chapter describes which electric construction projects are of significant scope and cost as to require review and approval under the statutory provisions of s. 196.49, Stats., for monetary thresholds or limits based on the estimated cost of the project. These rules were last revised in late 1995 and became effective December 1, 1995.

The principal reasons for the proposed amendment are to adjust the cost thresholds of the current rules and to strike a balance between the needs of the public and Commission for oversight, review and approval of the larger, more significant projects and the utility's need for reasonable latitude to pursue the large number of less significant, minor and routine construction projects without the delays and burdens of specific regulatory approval.

On September 30, 1997, the Commission, in its Report to the Governor on Electric Reliability, recommended increasing the cost thresholds of s. PSC 112.05, Wis. Adm. Code, to eliminate some projects from Commission review and approval. This recommendation furthers the effort to streamline the regulatory review process and to address reliability needs. Commission staff analysis of construction project applications indicates that many projects are additions, upgrades or modifications to existing generating plants and substations or are minor transmission improvements. The ability to complete these types of projects quickly will enable utilities to respond to local reliability concerns without either an unreasonable rate impact for utility customers or the increased risk of environmental harm.

Text of Rule

The Commission proposes that s. PSC 112.05(3), Wis. Adm. Code, be amended as follows:

(3)(a) Cost thresholds for projects requiring commission review and approval under this section are as follows:

1. If the applicant electric utility's prior year electric operating revenues are less than ~~$2,500,000~~$5,000,000, any project whose estimated gross cost exceeds ~~$50,000~~$100,000.

2. If the applicant electric utility's prior year electric operating revenues are between ~~$2,500,000~~$5,000,000 and ~~$150,000,000~~$250,000,000, any project whose estimated gross cost exceeds 2 percent of these revenues.

3. If the applicant electric utility's prior year electric operating revenues are more than ~~$150,000,000~~$250,000,000, any project whose estimated gross cost exceeds ~~$3,000,000~~$5,000,000.

Beginning in ~~1996,~~calendar year 2000, and on May 1 of each successive even–numbered year, thereafter, the Commission shall adjust the estimated gross cost thresholds in paragraph (a) to account for inflation in the cost of electric utility construction. The adjustment shall be based on cost index numbers published in the "Handy–Whitman Index of Public Utility Construction Costs, Cost Trends of Electric Utility Construction – North Central Region for Total Transmission Plant" (Handy–Whitman Index). The Commission shall make the adjustment calculation by multiplying each gross cost threshold in paragraph (a) by the ratio of the ~~cost index~~Handy Whitman Index number ~~of~~on January 1 of the most recent even–numbered year (numerator) to the ~~cost index~~Handy Whitman Index number ~~of~~on January 1, ~~1994~~1998 (denominator). The commission shall notify all electric utilities of the resulting adjusted cost limits by May 15 of each even–numbered year. If the referenced Handy–Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the electric industry and acceptable to the commission.

Fiscal Estimate and Initial Regulatory Flexibility Analysis

There will be no fiscal impact of the proposed rules on state or local units of government. Utilities and the Commission should benefit from a reduction in the number of small and relatively minor projects that will require specific review and approval. The proposed amendment will have no effect on small businesses.

This is a Type II action under s. PSC 4.10(2), Wis. Adm. Code. An environmental assessment was prepared to determine if an environmental impact statement is necessary under s. 1.11, Stats. It has been determined that no significant environmental impacts are likely. Therefore, an environmental impact statement is not required. Persons wishing to comment on the environmental aspects of this case should send comments to Kathy Zuelsdorff, Electric Division, Public Service Commission, P.O. Box 7854, Madison, WI 53707–7854, or call 608–266–2730. In order to be considered in this analysis, comments must be received within 20 days of the date of this notice.

Legal or procedural questions may be directed to the Examining Division, at 608–266–1261.

Other questions regarding this matter may be directed to James D. Loock, Chief Engineer, at 608–266–3165 or Leon Swerin, Legal Counsel, at 608–267–3589 of the Public Service Commission.

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.

Administration (CR 97–102):
Ch. Adm 2 – Relating to the use of state buildings and facilities.

Commerce (CR 97–93):
Chs. Comm 18 and 82 – Relating to elevators and mechanical lifting devices.

Corrections (CR 97–106):
Ch. DOC 310 – Relating to the inmate complaint review system.

Employment Relations (CR 97–142):
SS. ER 18.02, 18.03 and 18.15 – Relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employes and catastophic leave.

Transportation (CR 97–107):
S. Trans 201.15 – Relating to erecting outdoor advertising signs where messages may be changed by electronic process.

Transportation (CR 97–139):
S. Trans 276.07 (15) and (31) – 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.

Agriculture, Trade & Consumer Protection (CR 97–43):
An order creating ss. ATCP 31.03 and 31.08, relating to standards for repealing site–specific prohibitions against the use of pesticides found in groundwater.
Effective 02–01–98.

Insurance, Commissioner of (CR 96–192):
An order creating s. Ins 2.80, relating to valuation of reserve liabilities for life insurance.
Effective 03–01–98.

Natural Resources (CR 97–78):
An order amending s. NR 101.13 (2), relating to the wastewater fee program.
Effective 02–01–98.

Natural Resources (CR 97–87):
An order affecting s. NR 182.04 and chs. NR 590 and 600 to 690, relating to hazardous waste management.
Effective 03–01–98.

Regulation & Licensing (CR 97–101):
An order affecting ss. RL 17.02, 17.03 and 17.12, relating to the employment of personal assistants by real estate salespeople and broker–employes.
Effective 02–01–98.

Regulation & Licensing (CR 97–110):
An order affecting chs. RL 80 to 87, relating to the regulation of certified and licensed appraisers.
Effective 02–01–98.

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