1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Joint Committee for Review of Administrative Rules (JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- *Appointments ... Appt*
-
- *Clearinghouse Rules ... CRule*
-
- *Committee Hearings ... CH*
-
- *Committee Reports ... CR*
-
- *Executive Sessions ... ES*
- *97hr_JCR-AR_ES_pt13b*
- *Hearing Records ... HR*
-
- *Miscellaneous ... Misc*
-
- *Record of Comm. Proceedings ... RCP*
-

JCRAR March 31, 1998

Wisconsin
Department of Commerce

P. O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
William J. McCoshen, Secretary

March 6, 1998

MAR 0 9 1998

The Honorable Richard Grobschmidt
Senate Co-Chair
Joint Committee for Review of
Administrative Rules
100 N Hamilton St., Room 404
Madison, WI 53707

The Honorable Glenn Grothman
Assembly Co-Chair
Joint Committee for Review of
Administrative Rules
Room 125 West, State Capitol
Madison, WI 53702

Dear Senator Grobschmidt and Representative Grothman:

Thank you for your letter concerning the construction of a press box at the Cambridge School Athletic Field. The Department enforces the accessibility standards specified in chapter Comm 69 and chapter Comm 69 adopts the Americans with Disabilities Act Accessibility Guidelines (ADAAG) by reference as the base accessibility requirements. While Wisconsin does not enforce the ADAAG standards for the federal government, this agency is trying to ensure that decisions made at the state level based on Wisconsin's accessibility standards will be consistent with the federal design standards. Please note that building owners are responsible to comply with both the state requirements and the federal regulations.

Diane Meredith of this office has been in contact with the U.S. Department of Justice (DOJ) to receive their opinion on access to press boxes. They have verbally indicated that access to any sized press box is required. Diane has asked for a written opinion (see attached letter), but has not yet received an answer.

Diane Meredith has been provided with a copy of proposed changes to the ADAAG standards and it appears there may be an exemption for elevator access to certain areas in public facilities (government owned facilities) like press boxes less than 500 square feet and serving less than 5 people. The Department is pursuing an interpretation of this proposed rule to see whether it applies to press boxes.

The Cambridge School District through the petition for variance procedure has been granted an extension of time to comply with providing vertical access to the press box. The decision-making authority for the federal regulations is with the U.S. DOJ, not this agency. If it is determined that elevator access is required to the press box, the Division believes the following alternatives to an elevator may be possible:

1. Construct a press box at a height above grade that provides a view of the field as well as accessibility via a ramp complying with ADAAG 4.8. [ADAAG 4.1.3 (5)]
2. Provide vertical access to the press box at the top of the bleachers via a limited-use elevator complying with chapter Comm 18. [Petition for variance required to be submitted]
3. Provide vertical access to the press box via an inclined platform lift complying with chapter Comm 18 and complying with the exit width requirements for the stairway specified in the applicable chapters of ILHR 50 to 64. [Petition for variance required to be submitted.]

You have also asked the Department to provide information on both the state requirements and federal laws relative to accessibility for people with disabilities. The following information is offered:

- Public schools have been required to comply with federal accessibility laws since the enactment of Section 504 of the Rehabilitation Act of 1973. Section 504 of the Rehabilitation Act of 1973 covered programs receiving federal financial assistance and the Americans with Disabilities Act (ADA), Title II, covers all the activities of State and local governments whether or not they receive Federal funds. Attached for your review is a fact sheet on the ADA Titles, ADA Highlights for Title II entities and portions of Section 504 of the Rehabilitation Act of 1973 for new construction.

- After the passage of the Americans with Disabilities Act (ADA), the state accessibility requirements were changed to be consistent with the federal ADAAG. The ADAAG standards, as adopted in 28 CFR Part 36, § 36.406, are comprehensive design and construction standards for new construction and alterations. The Department adopted these standards as the base requirements in chapter Comm 69 and these rules became effective on December 1, 1994.

I hope this information is of help to you. If you have any questions on this material or would like to schedule a meeting with the appropriate staff to discuss alternatives, please contact Mike Corry, Administrator, Safety and Buildings Division, at 266-1816.

Sincerely,

William J. McCoshen
SECRETARY

Attachments

cc. Mike Corry
Diane Meredith

WISCONSIN GROCERS ASSOCIATION INC.

2601 CROSSROADS DRIVE • SUITE 185 • MADISON, WISCONSIN 53704-7923 • (608) 244-7150

LEGISLATIVE ALERT!!

TO: WGA Members

FROM: Brandon Scholz, WGA President

DATE: March 20, 1998

SUBJECT: Food Licensing Fee Increases

WE NEED YOUR HELP TO PREVENT YOUR FOOD LICENSE FEES FROM DOUBLING

The Department of Agriculture, Trade & Consumer Protection (DATCP) provides food safety licensing and inspection. DATCP has increased the licensing fees for food processing plants due March 31, 1998, and will issue renewals reflecting an increase for food warehouses and retail food establishments by June 30, 1998. The retail fee increases are about to be formally approved and we need your help today to prevent the increases from taking effect.

BACKGROUND

Despite numerous objections over the past year by the WGA, DATCP has received the authority to implement rule CR 97-038 that will increase fees from between 34% to 85%. At this point, the only way to prevent the June 30, 1998, increases from taking effect is to have the Joint Committee for Review of Administrative Rules (JCRAR) take executive action on CR 97-038 and suspend the rule.

HOW YOU CAN HELP

The JCRAR committee has agreed to hold a hearing on this rule on March 31, 1998 at 10:00 a.m. in room 225 Northwest of the State Capitol. Whether you have already received your renewal notice or will be up for renewal in June, we need you to at least show up and register your opposition. If you feel comfortable testifying, we need you to make the JCRAR committee aware of the enormous effect this increase will have on your bottom line. Please call Michelle Kussow toll-free at (888) 342-5942 to let her know you are interested in attending.

For those who would like to testify, the WGA will work with you to develop testimony and give you suggestions on presenting the testimony, but following are a few points to consider:

-OVER-

- The state legislature recently changed the way DATCP funds its food safety programs. The programs were previously funded by 60% taxpayers dollars and 40% license fee revenues. The Department is now trying to offset the difference by increasing license fees. Surely, this is not what the Legislature had in mind when changing the funding levels.

- We are concerned that the fee increases are only a short-term, two-year fix and that we can expect additional increases in the future. Continual fee increases are not the answer especially when there is no increased level of service.

- DATCP needs to adjust by becoming more effective and efficient. There should be no option of increasing license fees as a back up or recourse if they cannot remedy the shortcomings on their own.

- Continual fee increases are hard to swallow especially when there is no increased level of service. DATCP has admitted that some stores are visited as infrequently as once every two years. How can they justify charging an annual fee for a bi-annual inspection?

- On top of paying an annual inspection fee to DATCP, retailers are mandated to pay a substantial re-inspection fee if needed and a weights and measures inspection fee. In addition, grocery stores with delicatessen's, are required to pay a fee to the Department of Health and Family Services for similar inspections. This overlap subjects retailers to dual inspections, extra licensing costs and conflicting requirements in order to be licensed by both agencies.

- For most retailers, the need for an inspection is a state mandate that puts the customer at ease with certified approval of the hygiene and safety of the store. Stores take extra precautions and self-compliance efforts to ensure their facilities are sanitary and provide safe and reliable products to their customers.

- DATCP has established a Food Safety Task Force, and should slow down the rule long enough to take into consideration the recommendations and valuable feedback that the retailers on the task force will provide.

If you don't mind paying twice as much as last year for your food licensing fees, disregard this Legislative Alert. However, if you want to prevent the increases from taking effect call me today!

ATTENTION MILWAUKEE RETAILERS:

Not only has DATCP issued fee increases, but the City of Milwaukee Health Department has also proposed a 450% increase. If your business is located within the City of Milwaukee, you need to express your concern with this unrealistically large increase to the City Health Department by attending an informational meeting on April 1, 1998, at 9:30 a.m. at the Northwest Health Center in Milwaukee, 7630 West Mill Road. Information regarding this meeting has been sent to all WGA Members in the City of Milwaukee.

State Taxpayers
60/40 Fees → 50/50 — ½ of total increase

Fee increase —

Agents up to 100 %

— 18 Mill Threshold —

MAR 25 1998

WISCONSIN GROCERS ASSOCIATION INC.

2601 CROSSROADS DRIVE • SUITE 185 • MADISON, WISCONSIN 5370

John
Anything we need to do?

March 24, 1998

Senator Rick Grobschmidt
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Grobschmidt:

I would like to share the enclosed letter sent to me by one of your constituents, Elizabeth Kallas, who owns a grocery store in your district. Ms. Kallas is referring to the City of Milwaukee Health Department's proposal to implement a 450% increase in the food licensing fees.

As we have discussed with you before, the members of our association cannot absorb fee increases, whether imposed by the City of Milwaukee or the Wisconsin Department of Agriculture, Trade & Consumer Protection. Ms. Kallas does an excellent job of pointing out the dramatic effect an increase will have on her business—it will no longer exist!

I understand it is not your intention to force small businesses out of the City of Milwaukee or the State of Wisconsin. However, considering the minimal profit margins and the high level of competition with our industry, an unforeseen tax such as the increased license fees could have a devastating effect on our members.

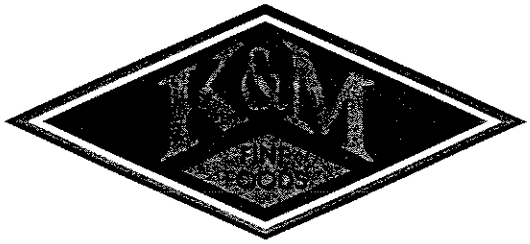
We appreciate your willingness to listen to the concerns of the food industry through the Joint Committee for Review of Administrative Rules hearing on March 31, 1998. We are certain that the heartfelt testimony of the targeted business owners will convince you that using GPR funding instead of increasing fees on retailers is the best course of action.

In addition, I would like to invite you to attend a City of Milwaukee Health Department informational meeting on their most recent proposal to impose an unrealistic increase on the food-related businesses in your district. The meeting will be held April 1, 1998 at 9:30 a.m. at the Northwest Health Center in Milwaukee, 7630 West Mill Road.

We would like to thank you in advance for listening to the concerns of your constituents and other members of the Wisconsin Grocers Association. We look forward to seeing you on March 31, 1998 at the JCRAR hearing and on April 1, 1998 at the Milwaukee Health Department meeting. As always, please call with questions or comments. Thank you.

Sincerely,

Brandon Scholz
President



MEATS ◆ PRODUCE ◆ BAKERY

March 22, 1998

Mr. Scholz,

I am writing to you to express my views on the proposed food license fee increase.

With all the other increases imposed on us now, I will be "done in". I own a small corner store and find it extremely difficult, now, to survive.

We have payroll taxes, sales tax, Stadium tax, Unemployment tax, Disposition tax, an increase in water and sewer rates, Gasoline tax, Federal Unemployment tax, Federal tax stamp, City permits galore, etc, etc, etc. Where does it end?

It ends by me closing my door.

Thank You,

Elizabeth J. Kallas

2898 S. Delaware ◆ Milwaukee, WI 53207 ◆ (414) 481-6620

"Serving the South Shore"

JOINT

COMMITTEE HEARINGS

*Amended - Note Updated Code Reference**

The Joint Committee for Review of Administrative Rules will hold a **public hearing** in Room 225 Northwest of the State Capitol, on the following at the time below:

Tuesday, March 31, 1998 at 10:00 a.m.

The Joint Committee will hold a public hearing on the following:

ATCP 75.015 (2m) (a) - (e), 75.15 (2n) (a) and (b), 1-5, Wis. Adm. Code	The Joint Committee will take public testimony on the impact of the recent increases in retail food establishment annual license and re-inspection fees upon the regulated community, as well as the justification for the fee increases by the Department.
* COMM 69.18 (2)(a) 1. b., Wis. Adm. Code	The Joint Committee will take public testimony on the interpretation of this rule by the Department with regard to the installation of elevators at various public school sports facilities for the purpose of providing accessibility to the disabled, and the impact of that interpretation upon school districts in this state.

The Joint Committee Will Hold an Executive Session on the Following:

Emergency Rule Comm 108.21(1)(f)	Relating to the funding of emergency grants under the Community Development Block Grant Program. Extension of the effective period of this emergency rule by 60 days, at the request of the Department of Commerce. *First Consideration.*

Senator Richard Grobschmidt
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

ATCP 75.015

RETAIL INSPECTION FEES BACKGROUNDER AND INFORMATION

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN
ROOM 125 WEST • STATE CAPITOL
MADISON, WI 53702
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Backgrounder

To: Joint Committee for Review of Administrative Rules

Date: March 26, 1998

Re: Food and Dairy License Fees

Description of the Rule

The Department of Agriculture, Trade, and Consumer Protection is charged with the responsibility of inspecting food processing plants and retail establishments to assure that handling and other standards are being met. This is ostensibly done to protect the consumer from food-borne illness. The Department recently increased fees for the initial licensure and follow-up inspections of processing plants, retail food establishments, and food warehouses via Clearinghouse Rule 97-038. The rule package also continues the current practice of allowing local units of government to contract with the Department to provide the inspections and to set fees at any amount, with 20% of the amount of the state fee to be remitted by the local unit of government to the Department for each inspection completed.

Materials produced by the Department provide justification for the fee increases in two major ways:

- *The fees have not been increased since 1991:* The Department claims that inflationary pressures on staff salaries, transportation, and other expenses necessitate a revenue increase.

- *GPR support for these inspections has decreased:* The 1995-97 Budget decreased general fund support for the Department. The ratio of GPR support to program revenue support for the inspection programs also changed, such that GPR support of the total cost decreased from 60 percent to 50 percent. The Department claims, therefore, that its inspection program is running a deficit and needs additional revenue to remain solvent.

The Joint Committee for Review of Administrative Rules is hearing public testimony on the justification for these fee increases from the agency, as well as on the impact of the increases on the regulated industry. The notice for this hearing specifies that the Joint Committee will concentrate on the fee increases imposed upon the retail food industry.

Fee Increases

The fee increases which are the focus of this hearing are as follows:

Retail Food Establishment - Annual License Fees		
Sales of at least $25,000 but less than $1,000,000 and processes potentially hazardous food	$90	$175
Sales of at least $1,000,000 and processes potentially hazardous food	$210	$450
Sales of at least $25,000 and is engaged in the processing of food which is not potentially hazardous	$80	$125
Sales of less than $25,000 and is engaged in processing of food which is not potentially hazardous	$40	$60
All retail food sellers not engaged in food processing of any kind	$20	$30
Retail Food Establishment - Annual Reinspection Fees		
Sales of at least $25,000 but less than $1,000,000 and processes potentially hazardous food	$60	$125
Sales of at least $1,000,000 and processes potentially hazardous food	$140	$300
Sales of at least $25,000 and is engaged in the processing of food which is not potentially hazardous	$80	$125
Sales of less than $25,000 and is engaged in processing of food which is not potentially hazardous	$40	$60
All retail food sellers not engaged in food processing of any kind	$50	$60

History of the Rule

- 1991-1993 Biennial Budget Act: The fee structure as it stood before 2/1/98 was put into effect (the "fee before increase" column in the grids above.)

- March 14, 1997: The initial draft of the rule package is transmitted to the Rules Clearinghouse for review.

- April 11, 1997: The package, now entitled Clearinghouse Rule 97-038, is sent back to the agency by the Clearinghouse.

- April 18, 1997: Department Public Hearing on the proposed rule held in Milwaukee.

- April 22, 1997: Department Public Hearing on the proposed rule held in Appleton.

- April 23, 1997: Department Public Hearing on the proposed rule held in Eau Claire.

- April 28, 1997: Department Public Hearing on the proposed rule held in Madison.

  - Over the course of four public hearings, the Department received comments from 25 persons and organizations, all opposed to the fee increases. Some called for a shift in the fee burden to others in the industry (some dairy processors called for grocers to pay higher fees, for instance.) The majority suggested cuts in the Department of Agriculture and the elimination of staff. One suggested that Department staff "spend less time per inspection, work longer, get paid less, less vacation, less sick days, and fewer holidays."

- August 25, 1997: The proposed final draft of the rules is approved by the Secretary of the Department.

- September 16, 1997: The proposed rule is sent to the presiding officer of each house.

- September 18, 1997: Senate President Risser refers the proposed rule to the Senate Committee on Agriculture and Environmental Resources. The chair is Sen. Alice Clausing.

  - **Senate Action**

    - October 20, 1997: No action taken. Rule returned to agency.

- September 23, 1997: Speaker Brancel refers the proposed rule to the Assembly Committee on Agriculture. The chair is Rep. Al Ott.

  - **Assembly Action**

    - October 22, 1997: Public Hearing Scheduled (30-day review period extended)

    - November 13, 1997: Public Hearing Held:

      - All members of the committee were present

      - Three persons appeared in support of the rule. These were Steve Steinhoff of DATCP, John Manske of the Federation of Cooperatives, and Brad Legreid of the Wisconsin Dairy Products Association.

      - Six person appeared in opposition to the bill, including representatives of the Roundy's corporation, the Midwest Food Processors, Copps, and the Wisconsin Grocers.

- One person, a representative of the Wisconsin Association of Convenience Stores, registered in opposition to the legislation.

- November 24, 1997: Rule is reported out of committee with no action taken. Returned to agency for promulgation.

- February 1, 1998: Rule becomes effective.

Units of Government Which Contract with DATCP To Perform Their Own Inspections of Food Retailers

Appleton Health Department
100 N. Appleton
Appleton, WI 54911
414 832 6429
414 832 5853 FAX
Nancy Westphal
Internet: Nancy Westphal
(west102w@wonder.em.cdc.gov@inet@lmbrgr)

Beloit Health Department
100 State St.
Beloit, WI 53511
608 364-6635
608 364-6609 FAX
Jackie Phillips

Brown County Health Dept.
6105 Broadway St
PO Box 23600
Green Bay, WI 54305-3600
414 448 6400
414 448 6449 FAX
John Paul
Judy Priedericius

Dane County Health Department
1202 Northport Dr. Rm 154
Madison, WI 53704 2088
608 242-6515
608 242-6256 FAX
James Clark

Eau Claire Health Department
720 Second Ave.
Eau Claire, WI 54703
715 839-4718
715 839-4854 FAX
Darryll Farmer

Greenfield Health Department
7325 W. Forest Home Ave
Greenfield, WI 53220
414 543-5500 EXT 6
414 543-8579 FAX
Carol Skierka, RN
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Kenosha County Health Dept.
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Kenosha, WI 53140
414 605-6700
414 605-6715 FAX
Randy Wergin

LaCrosse County Health Dept.
300 N. Fourth
LaCrosse, WI 54601
608 785-9771
608 785-9846 FAX
Ron Berg
Internet: Ron Berg
(berg105w@wonder.em.cdc.gov@inet@lmbrgr)

08/01/97

Madison Health Department
City County Bldg.
215 Martin Luther King Jr.
Madison, WI 53710
608 266-4821
608 266-5948 FAX
Jim Steinhoff

CITY / CO
LICENS
AGENTS

Marathon County Health Dept.
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715 848-7160 FAX
Tom Wittkopf
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Menasha Health Department
140 Main st.
Menasha, WI 54952 3190
414 751-5119
414 751-5273 FAX
Sue Nett, RN

Milwaukee Health Department
Municipal Bldg.
841 N. Broadway
Milwaukee, WI 53202
414 286-3674
414 286-5164 FAX
Loyce Robinson
Internet: Gregory Carmichael
(gcarmich@omnifest.uwm.edu@inet@lmbrgr)

Outagamie County Health Dept.
401 South Elm Street
Appleton, WI 54911
414 832-5100
414 832-4924 FAX
Don Day

Waukesha County Department of Parks and Land Use
Division of Environmental Health
1320 Pewaukee Rd., Rm 260
Waukesha, WI 53188
414 896-8300
414 896-8298 FAX
George Morris

West Allis Health Department
7120 W. National Ave
West Allis, WI 53214
414 302-8657
414 302-8628 FAX

Michell
244-9

Proposed Final Draft
August 25,1997

PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to amend ATCP 70.03(1) and (2), 71.02(3) and (5)(b), 74.08(1), 75.015(2), and 80.04(2)(b)1.; and to create ATCP 70.03(2m), (2n) and (2r), and 75.015(2m) and (2n), relating to food and dairy license fees.

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

Statutory authority: ss 93.07(1), 97.20(4), 97.22(8), 97.27(5), 97.29(5) and 97.30(5), Stats.

Statutes interpreted: ss. 97.20(2c)(b), (2g)(b), and (2n)(b); 97.22(2)(b) and (4)(am); 97.27(3m), 97.29(3)(am) and (3)(cm); and 97.30(3m), Stats.

The department of agriculture, trade and consumer protection enforces Wisconsin's food safety laws. Among other things, the department licenses and inspects food processing plants, retail food establishments, food warehouses, dairy plants and dairy farms. These programs are designed to safeguard public health, and ensure a safe and wholesome food supply. They also facilitate the sale of Wisconsin dairy and food products in interstate and international markets.

Wisconsin's food safety programs are funded by general tax dollars (GPR) and program revenue from industry license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995-97 biennial budget act reduced GPR funding, and raised the percentage of PR funding to 50%. Program costs have also increased due to external factors, such as inflation and statewide pay increases. As a result, the department projects a deficit in its food safety budget in FY 1997-98.

In order to maintain current food safety inspection services, the department is proposing to increase certain food and dairy license fees. The department has not increased license fees since 1991. This rule increases license fees and reinspection fees for food processing plants, retail food establishments and food warehouses. It also increases the grade A milk procurement

fee for dairy plants.

Milk Procurement Fees

Currently, dairy plants pay a monthly milk procurement fee which is intended to fund a portion of the dairy farm inspection program. This rule increases the grade A milk procurement fee from 0.4 cents per hundredweight of grade A milk received from producers to 0.6 cents per hundredweight. The milk procurement fee for grade B milk is not changed by this rule and remains at the current rate of 0.2 cents per hundredweight.

Food Processing Plant License Fees

This rule will increase annual food processing plant license fees as follows:

- The current annual $120 fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is engaged in processing potentially hazardous food or in canning will increase to $250.

- The current annual $270 fee for a food processing plant that has an annual production of at least $250,000, and is engaged in processing potentially hazardous food or in canning, will increase to $525.

- The current annual $50 fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is not engaged in processing potentially hazardous food or in canning, will increase to $100.

- The current annual $110 fee for a food processing plant with an annual production of at least $250,000 that is not engaged in processing potentially hazardous food or in canning will increase to $325.

- The current annual $40 fee for a food processing plant that has an annual production of less than $25,000 will increase to $60.

- The current annual $195 surcharge for food processing plants engaged in canning operations will increase to $200.

Food Processing Plant Reinspection Fees

This rule will increase food processing plant reinspection fees as follows:

- The current $80 reinspection fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is engaged in processing potentially

hazardous food or in canning, will increase to $170.

- The current $180 reinspection fee for a food processing plant that has an annual production of at least $250,000, and is engaged in processing potentially hazardous food or in canning, will increase to $350.

- The current $50 reinspection fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is not engaged in processing potentially hazardous food or in canning, will increase to $100.

- The current $110 reinspection fee for a food processing plant with an annual production of at least $250,000 that is not engaged in processing potentially hazardous food or in canning will increase to $325.

Retail Food Establishment License Fees

This rule will increase annual retail food establishment license fees as follows:

- The current annual $90 fee for a retail food establishment that has annual food sales of at least $25,000 but less than $1,000,000, and processes potentially hazardous food, will increase to $175.

- The current annual $210 fee for a retail food establishment that has annual food sales of at least $1,000,000, and processes potentially hazardous food, will increase to $450.

- The current annual $80 fee for a retail food establishment that has annual food sales of at least $25,000 and is engaged in food processing, but does not process potentially hazardous food, will increase to $125.

- The current annual $40 fee for a retail food establishment that has annual food sales of less than $25,000, and is engaged in food processing, will increase to $60.

- The current annual $20 fee for a retail food establishment not engaged in food processing will increase to $30.

Under current law, agent cities and counties that license retail food establishments on behalf of the department may establish license fees that are different from state license fees. Under s. 97.41(5), Stats., an agent city or county must pay 20% of the state license fee amount to the department. This rule incorporates the 20% payment requirement without change. However, the amount of the payment will be higher, because it will be calculated on a higher state license fee amount. Agent cities and counties may therefore wish to amend local ordinances

which set retail food license fees. The increased fee payment requirement is delayed until fiscal year 1999-2000 to give agent cities and counties time to amend their ordinances.

Retail Food Establishment Reinspection Fees

This rule will increase retail food establishment reinspection fees as follows:

- The current $60 reinspection fee for a retail food establishment that has annual food sales of at least $25,000 but less than $1,000,000, and processes potentially hazardous food, will increase to $125.

- The current $140 reinspection fee for a retail food establishment that has annual food sales of at least $1,000,000, and processes potentially hazardous food, will increase to $300.

- The current $80 reinspection fee for a retail food establishment that has annual food sales of at least $25,000 and is engaged in food processing but does not process potentially hazardous food, will increase to $125.

- The current $40 reinspection fee for a retail food establishment that has annual food sales of less than $25,000, and is engaged in food processing, will increase to $60.

- The current $50 reinspection fee for a retail food establishment not engaged in food processing will increase to $60.

Food Warehouse License Fees

This rule will increase annual food warehouse license fees as follows:

- The current $50 license fee for a food warehouse that stores potentially hazardous food and that has fewer than 50,000 square feet of storage area will increase to $75.

- The current $100 license fee for a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area will increase to $200.

- The current $25 license fee for a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to $50.

- The current $50 license fee for a food warehouse that does not store potentially hazardous food and has at least 50,000

square feet of storage area will increase to $100.

Food Warehouse Reinspection Fees

This rule will increase food warehouse reinspection fees as follows.

- The current $50 reinspection fee for a food warehouse that stores potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to $75.
- The current $100 reinspection fee for a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area will increase to $200.
- The current $50 reinspection fee for a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to $100.
- The current $100 reinspection fee for a food warehouse that does not store potentially hazardous food and has at least 50,000 square feet of storage area will increase to $200.

SECTION 1. ATCP 70.03(1) and (2) are amended to read:

ATCP 70.03(1) LICENSE REQUIRED. Except as provided under sub. (7), no person may operate a food processing plant without a valid license issued by the department for that food processing plant under s. 97.29, Stats. A food processing plant license expires on March 31 annually. A license is not transferable between persons or food processing plants.

(2) LICENSE APPLICATION. Application for an annual food processing plant license shall be made on a form provided by the department. The application shall be accompanied by the fees required under ~~s. 97.29 (3), Stats.~~ sub. (2m) and (2n), and by the sworn statement required under s. 100.03 (2), Stats.

SECTION 2. ATCP 70.03 (2m), (2n) and (2r) are created to read:

ATCP 70.03(2m) ANNUAL LICENSE FEE. An applicant for a food processing plant license shall pay an annual license fee as follows:

(a) For a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is engaged in processing potentially hazardous food or in canning, an annual license fee of $250.

(b) For a food processing plant that has an annual production of at least $250,000 and is engaged in processing potentially hazardous food or in canning, an annual license fee of $525.

(c) For a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is not engaged in processing potentially hazardous food or in canning, an annual license fee of $100.

(d) For a food processing plant that has an annual production of at least $250,000, and is not engaged in processing potentially hazardous food or in canning, an annual license fee of $325.

(e) For a food processing plant that has an annual production of less than $25,000, an annual license fee of $60.

(2n) CANNING OPERATIONS; LICENSE FEE SURCHARGE. If a food processing plant is engaged in canning operations, the operator shall pay an annual license fee surcharge of $200, which shall be added to the license fee under sub. (2m).

(2r) REINSPECTION FEE. (a) If the department reinspects a

food processing plant because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the food processing plant operator the reinspection fee specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to a food warehouse operator.

(b) The reinspection fee required under par. (a) is as follows:

1. For a food processing plant that has an annual production of less than $250,000, and is engaged in processing potentially hazardous food or in canning, the reinspection fee is $170.

2. For a food processing plant that has an annual production of at least $250,000, and is engaged in processing potentially hazardous food or in canning, the reinspection fee is $350.

3. For a food processing plant that has an annual production of less than $250,000, and is not engaged in processing potentially hazardous food or in canning, the reinspection fee is $100.

4. For a food processing plant that has an annual production of $250,000 or more, and is not engaged in processing potentially hazardous food or in canning, the reinspection fee is $325.

SECTION 3. ATCP 71.02(3) and (5)(b) are amended to read:

ATCP 71.02(3) ANNUAL LICENSE FEE. An applicant for a food warehouse license shall pay an annual license fee as follows:

(a) For a food warehouse that stores potentially hazardous food, and ~~that~~ has fewer than 50,000 square feet of storage area, ~~$50~~ $75.

(b) For a food warehouse that stores potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, $~~100~~ 200.

(c) For a food warehouse that does not store potentially hazardous food, and ~~that~~ has fewer than 50,000 square feet of storage area, $~~25~~ 50.

(d) For a food warehouse that does not store potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, $~~50~~ 100.

(5)(b) The reinspection fee required under par. (a) is as follows:

1. For a food warehouse that stores potentially hazardous food, and ~~that~~ has fewer than 50,000 square feet of storage area, $~~50~~ 75.

2. For a food warehouse that stores potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, $~~100~~ 200.

3. For a food warehouse that does not store potentially hazardous food, and ~~that~~ has fewer than 50,000 square feet of storage area, $~~50~~ 100.

4. For a food warehouse that does not store potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, $~~100~~ 200.

SECTION 4. ATCP 74.08(1) is amended to read:

ATCP 74.08(1) The fiscal year under an agency agreement shall begin on July 1 and end on June 30, except as otherwise authorized by the department. Each agent city or county shall pay the department 20% of the license fee charged under s. ATCP 75.015(2m), to reimburse the department for its costs as required under s. 97.41(5), Stats. By September 30 of each year, the agent city or county shall file with the department all reimbursement required under ~~s. 97.41 (5), Stats.,~~ this subsection for licenses issued during the previous fiscal year.

SECTION 5. ATCP 75.015(2) is amended to read:

ATCP 75.015(2) LICENSE APPLICATION. Application for a retail food establishment license shall be made on a form provided by the department, or by the agent municipality or county, and shall be accompanied by the applicable fees under sub. (2m) or s. 97.30~~(3) or~~ (4), Stats.

SECTION 6. ATCP 75.015(2m) and (2n) are created to read:

ATCP 75.015(2m) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay an annual license fee as follows:

(a) For a retail food establishment that has annual food sales of at least $25,000 but less than $1,000,000, and processes potentially hazardous food, an annual license fee of $175.

(b) For a retail food establishment that has annual food sales of at least $1,000,000 and processes potentially hazardous food, an annual license fee of $450.

(c) For a retail food establishment that has annual food sales of at least $25,000 and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of $125.

(d) For a retail food establishment that has annual food sales of less than $25,000, and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of $60.

(e) For a retail food establishment that is not engaged in food processing, an annual license fee of $30.

(2n) REINSPECTION FEE. (a) If the department reinspects a retail food establishment because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the retail food establishment operator the reinspection fee specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator.

(b) The reinspection fee required under par. (a) is as follows:

1. For a retail food establishment that has annual food

sales of at least $25,000 but less than $1,000,000, and processes potentially hazardous food, the reinspection fee is $125.

2. For a retail food establishment that has annual food sales of at least $1,000,000 and processes potentially hazardous food, the reinspection fee is $300.

3. For a retail food establishment that has annual food sales of at least $25,000, and is engaged in food processing but does not process potentially hazardous food, the reinspection fee is $125.

4. For a retail food establishment that has annual food sales of less than $25,000 and is engaged in food processing, the reinspection fee is $60.

5. For a retail food establishment that is not engaged in food processing, the reinspection fee is $60.

SECTION 7. ATCP 80.04(2)(b)1. is amended to read:

ATCP 80.04(2)(b)1. For each 100 pounds of grade A milk received from milk producers, 0.6 cent.

SECTION 8. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.), Stats.

SECTION 12. INITIAL APPLICABILITY. (1) The treatment of section ATCP 70.03(2m) and (2n) first applies to applications for new licenses that are filed on or after the effective date of this section and to renewals of food processing plant licenses which expire on March 31, 1998.

(2) The treatment of sections ATCP 71.02(3) and 75.015(2m) first applies to applications for new licenses that are filed on or after the effective date of these subsections, and to renewals of food warehouse and retail food establishment licenses which expire on June 30, 1998.

(3) The treatment of section ATCP 74.08(1) first applies to reimbursements payable to the department on September 30, 2000, for licenses issued by agent cities or counties during fiscal year 1999-2000.

Dated this _____ day of _____, 19____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Joseph E. Tregoning,
Acting Secretary

Final Regulatory Flexibility Analysis

Proposed chs. ATCP 60, 70, 71, 75, 80, Wis. Adm. Code

FOOD AND DAIRY LICENSE FEES

This rule increases existing license fees for dairy plants, food processing plants, food warehouses and retail food establishments. The department has not increased license fees since 1991.

Wisconsin's food safety programs are funded by general tax dollars (GPR) and industry license fees (PR). In 1991, license fees funded about 40% of the food safety program costs. Program costs have increased due to external factors, such as inflation and statewide pay increases, over which the department has no control. In addition, the 1995-97 biennial budget reduced GPR funding, and required a higher percentage (50%) of license fee funding. As a result, the department projects a deficit in its food safety budget in FY 1997-98.

Increasing license fees as proposed in this rule will affect small businesses. License fees for all categories of dairy plants, food processing plants, food warehouses and retail food establishments will increase. Small businesses exist in each category of food and dairy establishment.

The department has attempted to accomodate small businesses and provide a reasonably fair and equitable license fee schedule. This is done by basing fees on the actual costs associated with each category of licensed establishment and then determining further subcategories of establishments based on the size or volume of each establishment and the food products processed or handled by the establishment. Smaller establishments processing and handling food with less potential food safety risks pay lower license fees than large establishments handling foods with higher food safety risks.

This rule requires no additional recordkeeping or other procedures for small businesses. Small businesses will need no additional professional skills or assistance in order to comply with this rule.

Dated this 15th day of September, 1997

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

by: Steven B. Steinhoff

Steven B. Steinhoff, Administrator
Division of Food Safety

1997 Session

FISCAL ESTIMATE

DOA-2048 (R 10/94)

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.: ATCP 60,70,71,75 & 80

Amendment No. (If Applicable):

Subject: Food and Dairy License Fees

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☒ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☐ No local government costs

1. ☒ Increase Costs
   ☐ Permissive ☒ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☒ Increase Revenues
   ☒ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory

5. Types of Local Governmental Unit Affected:
   ☐ Towns ☐ Villages ☒ Cities
   ☒ Counties ☐ Others _____
   ☐ School Districts ☐ WTCS Districts

Fund Source Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

20.115(1)(gb)

Assumptions Used in Arriving at Fiscal Estimate

This rule will increase program revenues for the department's food safety programs by $.9M. The increase in revenues is needed to pay for cost increases since 1991 and increases which are anticipated during the next four fiscal years (FY 98-01). The department has not raised fees since 1991.

The department proposes to increase license and reinspection fees for the following categories of food and dairy businesses: dairy farms, dairy plants, food processing plants, retail food establishments, and food warehouses.

The 1991-93 biennial budget act created the current structure for food and dairy license fees and set the fees at the current level. The 1991 budget legislation also authorized the department to adjust license fees via the rulemaking process.

Wisconsin's food safety programs are funded by general tax dollars (general purpose revenue (GPR)) and industry license fees (PR). In 1991, license fees funded about 40% of program costs. Program costs have increased since 1991 and will continue to do so during the next four years. The 1995-97 biennial budget act reduced GPR funding, and required a higher percentage (50%) of license fee funding. No staff positions have been added since 1991. Cost increases are due to external factors, such as inflation and statewide employee pay and benefit increases. As a result, the department projects a deficit in its food safety budget in FY 1997-98 and subsequent years.

Local Government Impact

The cost to local governments will increase by $16,191.

As a result of these fee increases, local governments that license and inspect retail food establishments as agents of the department will be required to increase their reimbursement to the department for administrative services. Local governments can and do pass this increase on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs. Currently, agents must reimburse the department for 20% of the license fee the department would charge if the department was delivering inspection-related services. For FY 95-96, agent reimbursement to the department equaled $37,656. If the proposed fee increases are implemented, the rate of reimbursement will remain at 20%, but the total agent reimbursement to the department will increase to $53,847.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DATCP Peter Pawlisch 224-4702	Barbara Knapp Barbara Knapp 224-4746	2/26/97

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

☒ ORIGIONAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No/Adm.Rule No.	Amendment No.
ATCP 60,70,71,75 & 80	

Subject
Food and Dairy License Fees

I. One-time Cost or Revenue Impacts for State and/or Local Goverment (do not include in annualized fiscal effect):

II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	**Increased Costs**	**Decreased Costs**
State Operations - Salaries and Fringes	$	$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	$	$ -
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	$	$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Costs**	**Decreased Costs**
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS	899,901	-
SEG/SEG-S		-
TOTAL State Revenues	$ 899,901	$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ 0	$ 16,191
NET CHANGE IN REVENUES	$ 899,901	$ 16,191

Agency Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DATCP Peter Pawlisch 224-4702	Barbara Knapp Barbara Knapp (608) 224-4746	2/26/97

COMM 69.18

PRESS BOX ELEVATOR

ISSUE

MORE INFORMATION

FORTHCOMING

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West, • State Capitol
Madison, WI 53703
Phone: 608-264-8486

February 10, 1998

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

William J. McCoshen, Secretary
Department of Commerce
6th Floor
201 W. Washington Avenue
Madison, WI 53702

Dear Secretary McCoshen:

We are writing in hopes of obtaining information that will assist us in helping to resolve a concern about state building code regulations brought to our attention by the School District of Cambridge. Information provided by you will also help us respond to several inquiries we have had from our colleagues on this matter.

It is our understanding that the department's interpretation of provisions of chapter ILHR 69, Barrier-Free Design, will require the School District of Cambridge to install an elevator to provide access to a small press box being constructed as part of the district's rebuilding of its high school athletic field. We have enclosed a copy of correspondence sent to us by the School District of Cambridge that gives additional detail on the department's consideration of their project. We would appreciate your explanation of the department's interpretation of the ILHR 69.18(2)(b), Wis. Adm. Code, and specifically how a small press box at the top of the spectator bleachers meets the definition of a building subject to the Barrier-Free Access requirements.

We would also appreciate your commenting on what alternatives the School District of Cambridge can consider during the two-year variance period the department granted from the requirement. In a variance request on this code provision, the district requested a two year period of time to develop alternatives that might address this requirement. The department granted the variance but stated its expectation that after two years an elevator would be built. We would like to help the district in exploring other alternatives and would appreciate your assistance.

If our inquiry raises any questions not addressed by our letter or the attached correspondence, please do not hesitate to contact us.

Sincerely,

RICHARD GROBSCHMIDT
Senate Co-Chair

GLENN GROTHMAN
Assembly Co-Chair

RG:GG:js
Enclosure

Text of Rule

(2) **Access to and vertical circulation in buildings and facilities. [ADAAG 4.1.3 (5)]** These are department rules in addition to ADAAG 4.1.3 (5), intro. paragraph:

(a) Access to a primary floor. A building or facility that has a total gross area of 20,000 square feet or less and has less than 3 stories shall provide access to at least one floor complying with the following:

1. The accessible entrances shall provide access to a floor of a building or facility where the principal duties or functions of the building or facility are carried out for the benefit of the employes or patrons, or both. Floors containing only mechanical rooms, boiler rooms, supply storage rooms, or janitorial closets shall not be considered a floor where the principal duties or functions are carried out.

2. An accessible route shall be provided throughout the accessible floor level.

3. Access is required to any raised or depressed area that serves the accessible level and contains toilet rooms, lunch rooms, change rooms, locker rooms or similar facilities provided for the employes.

Note: 1

When an existing building is remodeled or altered, an elevator may be required to provide access to all floor levels. It is recommended that the owner of a building or facility consider how a building could be modified for the future installation of an elevator complying with ADAAG 4.10. It is suggested that a vertical shaft be provided for the future installation of an elevator.

Note: 2

The definitions of "story" and "mezzanine" as used in ADAAG differ from the definitions of these terms used in chs. ILHR 50 to 64.

(b) Access to all floor levels.

1. 'Buildings with a total gross area greater than 20,000 square feet.'

a. Except as specified in subpar. b., at least one passenger elevator complying with ADAAG 4.10 shall serve each level, including mezzanines, in multilevel buildings or facilities that have a total gross area greater than 20,000 square feet. Access is required to any floor level that contains toilet rooms, lunch rooms, change rooms, locker rooms or similar facilities provided for the employes.

b. Access is not required to mezzanines that contain duplicate facilities to those contained on the accessible level.

2. 'Buildings or facilities, regardless of the size of the buildings or facilities.' At least one passenger elevator complying with ADAAG 4.10 shall serve each level, including mezzanines, in buildings or facilities, regardless of the size of the buildings or facilities that contain the fol- lowing occupancies:

a. Except as specified in s. ILHR 69.49 (2), government-owned or operated facilities.

b. Terminals, airport passenger terminals, depots or other stations used for specified public transportation. In such buildings or facilities, any area containing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities and other common areas open to the public shall be on an accessible route from an accessible entrance.

Emergency

Rule

Extension

SENATOR RICHARD GROBSCHMIDT
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

TO: Members, JCRAR
FROM: Senator Richard Grobschmidt & Representative Grothman, Co-Chairs
DATE: March 30, 1998
RE: COMM 69, Barrier-Free design standards that apply to the construction of a press box at the top of the bleachers of a high school athletic field.

BACKGROUND

The School District of Cambridge, Wisconsin contacted the co-chairs to inquire about possible relief they could obtain from an administrative rule of the Department of Commerce. The department's rule has been interpreted as requiring the district to construct an elevator to provide access to a press box located at the top of bleachers at the high school athletic field. A copy of the district's letter is attached. The press box is being built as part of the district's reconstruction of the athletic field and bleachers.

After being made aware of the rule requirement, the School District of Cambridge applied to the Department of Commerce for a variance (exemption) from the requirement. The department has granted a temporary (two year) variance that will delay the requirement that the district install an elevator to the press box until January 8, 2000.

After receiving the complaint from the School District of Cambridge, the co-chairs wrote the Department of Commerce to request an explanation of the rule interpretation. (letter attached) The department responded that the rule is based upon federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). The department's policy is stated in section COMM 69.18 (2) (a) 1.b, of the Wisconsin Administrative Code. It states:

Elevator Access. {ADAAG 4.1.3 (5) } These are department rules in addition to the requirements ADAAG 4.1.3(5):

(a) Access to all floors. 1. Except a specified in subd. 2., at least one passenger elevator complying with ADAAG 4.10 shall serve each floor level, including mezzanines, in the following buildings or facilities:

b. Government-owned or operated facilities.

The Department of Commerce reports that at this time it is the position of the U.S. Department of Justice that the Americans with Disability Act Accessibility Guidelines (ADAAG) would require an elevator to a press box like the one proposed by the School District of Cambridge. The department also reports, that the federal government is proposing changes to the ADAAG standards that may create limited exemptions to elevator requirements for public buildings. The department has indicated it is seeking an explanation of the proposed rule change to determine whether it would apply to press boxes.

Arguments against the rule

The School District of Cambridge explains that because the press box proposed for their high school athletic field will be used by a very limited number of people, and for very few occasions, the expense of adding elevator access to the press box is not a reasonable accommodation of the disabled. The district indicates that cost estimates range between $40,000 and $60,000. The district also expressed the concern that the department's interpretation has not been consistent over the years. It is their impression that other school districts have not been required to equip press boxes with elevators.

Arguments for the rule

Supporters of disabled accessibility standards argue that the rights of the disabled have been hard won and still not sufficiently implemented. Disabled persons continue to have difficulty accessing public buildings. Eliminating any one of these standards is turning public policies meant to help the disabled in the wrong direction.

Supporters of the rule are also concerned that a rule objection meant to address a narrow set of circumstances could inadvertently create a wider exemption that would affect accessibility standards for other government buildings.

Supporters of the rule suggest that the rule is reasonable, and that even though there may not be any disabled persons known of at the time of construction that would use the press box, it is possible that there may be in the future. The current lack of accessibility may be deterring persons with disabilities from getting involved in the broadcasting and reporting of high school sports.

Attachments

- Letter from School District of Cambridge to the co-chairs
- Letter from co-chairs to Secretary McCoshen
- Reply from Secretary McCoshen

PREMIUM PLANVIEW

JOHN S. EAGON, AIA
1753 DUNNWOOD WAY, OREGON, WI 53575
PHONE 608-873-3748 FAX 608-873-3855

Date: MARCH 30, 1998

To: JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

From: JOHN S. EAGON, AIA

RE: PUBLIC HEARING COMMENTS ON ELEVATOR ACCESS TO PRESS BOXES FOR MARCH 31, 1998 HEARING

PERSONAL BACKGROUND

My name is John S. Eagon, AIA. I have been a registered architect in the State of Wisconsin since 1980. I operate a architectural services consulting firm called Premium Planview. Premium Planview works with building designers to assure plans used to construct buildings show compliance with applicable building codes.

Premium Planview is a private organization that does not have any actual or potential conflict of interest and is not affiliated with or influenced or controlled by any producer, supplier, designer, owner or vendor of plans in any manner which might affect its capacity to review; plans, specifications, and calculations; and prepare reports of findings objectively and without bias.

Prior to starting my own firm in 1995 I worked for the Safety and Buildings Division now in the Department of Commerce for 16 years. I was Director, Bureau of Buildings and Structures, from 1988-1995. In this position I managed Wisconsin's statewide building code programs for: plan review and inspection of commercial, residential, and 1 & 2; certification of inspectors and master electricians; electrical code; and rental unit energy efficiency; staff of 80 with an operating budget of $5.5 million; and 5 full service plan review offices around the state. I made the final determinations on code application to specific buildings through interpretation or official variances.

I was the individual with Safety and Buildings primarily responsible for getting Safety and Buildings full service plan review offices up and running in Hayward, Lacrosse, Shawano and Waukesha.

In the mid 1970"s I prepared and conducted accessibility surveys for all buildings on the University of Stevens Point and Oshkosh campuses. As part of these projects cost estimates to meet state and federal requirements were developed and program state developed to obtain funding from the Wisconsin Building Commission.

REASON FOR INVOLVEMENT WITH ACCESS TO PRESS BOXES

The Wisconsin Barrier Free Design Code section COMM 69.18(2)(a)1.b. requires that government owned or operated facilities provide access for individuals in wheelchairs to each occupiable floor level of the facility.

In August of 1998 I was contacted by JW Industries a supplier of bleachers and related structures to schools to review the issue of the need to provide an elevator to access small press boxes located above and behind bleachers located at school athletic field.

The driving force behind this request was a determination made by the Safety and Buildings Division of the Department of Commerce to require that an elevator or lift be installed within 2 years to provide access to a 400 square foot press box. The cost of providing the access would be more than the cost of constructing the press box.

Safety and Buildings Division indicated that this requirement was a federal requirement and that the Division did not want to grant a variance to state accessibility requirements based on their interpretation of the federal requirement. The interpretation of Safety and Buildings Division was based on the requirements of the Americans with Disability Act of 1990 (ADA).

RESEARCH BY PREMIUM PLANVIEW

Premium Planview spent over 250 hours reviewing various documents on the ADA. Documents reviewed included: federal legislation on architectural barriers since 1968. (see attached summary of legislation); over 200 documents published by the federal Department of Justice providing technical assistance in the interpretation of the ADA; and settlement agreements used to resolve complaints on the ADA.

As a result of this review the following determinations can be made about the federal ADA.

> The ADA is a anti discrimination law. It is not a building code. The law prohibits discrimination of the disabled in the work place and requires that all government activities, programs and services be accessible to individuals with disabilities.
>
> Only the Department of Justice or federal courts can make a determination on the applicability of ADA requirements to a specific situation. The DOJ may provide informal guidance to assist in understanding the ADA.
>
> For new or altered facilities, where access can often be provided without significantly increased cost, the title II regulation requires newly constructed or altered areas to meet specific standards of accessible construction set out in the ADA Standards for Accessible Design (ADAAG) or the Uniform Federal Accessibility Standards (UFAS).
>
> In new construction ADA requires: access to floor levels based on the use of the floor level for public facilities; private facilities require access based on size and use of the building.
>
> The DOJ has the ability to negotiate between an owner and an individual making a complaint to assure that discrimination is not occurring in a specific situation.

The Department of Justice reached a settlement with the owners of the stadium used for the Summer Olympics of 1996 in Atlanta Georgia. The issues involved were on a larger scale but were not unlike the issues raised for small press boxes at school districts athletic fields. The settlement allowed certain levels of the public building to not have access provided alternative locations were made available and notification given.

In January 1998 revised ADAAG standards were issued that exempt public facilities from having to provide access to floor levels that are not over 500 square feet or 3 stories, not open to the general public, and house less than 5 employees.

APPLICABILITY OF RESEARCH TO SMALL PRESS BOXES IN WISCONSIN.

Most press boxes of private facilities would not require access.

The construction standards for press boxes owned by school districts have not changed since 1968. There has not been any complaints received on existing press boxes that do not have access to the press box floor level.

Most press boxes at school district athletic fields will meet the exemption of January 1998. If this exemption is met the federal standards clearly will not require access to the floor level.

Safety and Buildings Division can grant a variance from the Wisconsin Barrier Free Code under Comm. 69.10(1) without receiving permission or fear of retribution by the federal government or the school district.

Granting of a variance by Safety and Buildings Division in no way relieves the school district of any of its obligations under the ADA. This obligation may require that access be provided to the press box floor level in individual cases due to the anti discrimination nature of the ADA.

RECOMMENDATION TO RESOLVE ACCESS TO PRESS BOX ISSUE.

School district must file a petition for variance with Safety and Buildings Division. The petition should be patterned after the settlement agreement that DOJ arrived at with the owners of the Olympic Stadium in Atlanta, Georgia.

The variance must indicate the number of times per year, size, use of the press box. The use may not include any function that would require the general public to have to go the press box floor level for any program, service or activity.

The variance must indicate the following will be provided by the school district to assure the intent of the code is met:

> To construct the bleachers so that alternative locations are accessible to photographers, game officials or press with disabilities who cannot climb or descend stairs. These stations will be located on an accessible route as referenced by Sections 4.1.3(1) and 4.3 of the ADAAG Standards.

To implement procedures whereby photographers, game officials or press with mobility impairments will be provided with either: (i) a fixed position along the perimeter of the field; or (ii) a fixed position and a limited range of mobility at certain locations along the perimeter of the bleachers. Operational procedures concerning the photographers, game officials and press stations with mobility impairments will be developed.

The bleachers will be designed with the underside having closed seating and walkways. This will reduce the effects of wind effects at the alternative locations.

Access will be provided to the press box either by stairs that comply with ADAAG 4.9 or via bleachers that have uniform risers and treads with enclosed undersides.

To assure that Safety and Buildings Division and the school district understand that approval of the variance has no effect on the school districts (owner) obligation under the ADA the following statements should be provide by the school district and accepted by Safety and Buildings.

The Department is concerned that not having access to the press box may violate the new construction and alterations provisions of Titles II and III of the ADA, respectively, by designing, or by contracting with others to design the PRESS BOX so that as a school athletic facility, it would not comply with the new construction and alterations provisions of: (a) Titles II and III of the ADA; and (b) the United States Department Of Justice's Implementing Regulations For Titles II And III, including the Standards for Accessible Design ("the Standards") incorporated into the regulations and found at Appendix A to 28 C.F.R. Part 36.

Notwithstanding the assertions made by the Department, the Owner deny that they have violated the new construction or alterations provisions of Titles II and III of the ADA with respect to the PRESS BOX. Further, the Owner deny that they have violated the implementing regulations, including the Standards. Nothing in this variance shall constitute an admission of liability by Owner.

Department consent to this variance does not constitute any acknowledgment by the Department that the actions specified this variance. are sufficient to meet the ADA's requirements for new construction and alterations under Titles II and III. The Department agreement to these provisions solely in order to resolve this matter without resorting to litigation.

Attachments

1. EXHIBIT A: Sample Press Box Variance to be submitted to Safety and Buildings Division
2. EXHIBIT B: UFAS Occupancy Standards.
3. EXHIBIT C: Settlement between United States and Atlanta Committee for the Olympic Games,
4. EXHIBIT D: Elevator Exception Discussion and Rules Federal Register January 13, 1998 by ATBCB,
5. EXHIBIT E: Summary of Federal and Wisconsin Legislation on Architectural Barriers

Wisconsin Department of Industry, Labor and Human Relations

EXHIBIT A

Date Rec'd: [redacted]
Check No.: [redacted]
Amount Paid: [redacted]

PETITION FOR VARIANCE APPLICATION

SAMPLE

Safety and Buildings Division
201 E. Washington Avenue
P O Box 7969
Madison, WI 53707
Telephone: (608) 266-3151

PLEASE TYPE OR PRINT CLEARLY - Personal information you provide may be used for secondary purposes (Privacy Law, s. 15.04 (1)(m)).

1. Owner Information	2. Project Information	3. Designer Information
Name: SCHOOL DISTRICT OF [redacted]	Building Occupancy Chapter(s) and Use: PRESS BOX	Designer: JOHN EAGON / Registration No.: A-5023
Company Name:	Tenant Name (if any):	Design Plan: PREMIUM PLANVIEW
Number and Street: [redacted]	Building Location (number and street): [redacted]	Number and Street: 1753 DUNNWOOD WAY
City, State, Zip Code: [redacted]	☐ City ☐ Village ☒ Township of [redacted]	City, State, Zip Code: OREGON, WI 53575
Contact Person: [redacted]	County of: [redacted]	Contact Person: JOHN S. EAGON, AIA
Telephone Number: [redacted] / FAX Number: [redacted]	Property ID # (tax parcel # - contact county):	Telephone Number: (608) 873-3748 / FAX Number: (608) 873-3855

4. Plan Review Status

Review by ☐ State ☐ Municipality

Plan Number: [redacted]

☐ On hold
☐ Preliminary design
☒ Approved, requesting revision
☐ Submitted with petition
☐ Already built
☐ Built according to older code but must be brought into compliance with current code
☐ Plan will be submitted after petition determination
☐ Other

5. State the code section being petitioned AND the specific condition or issue you are requesting be covered under this petition for variance.

SEE ATTACHED

6. Reason why compliance with the code cannot be attained without the variance.

SEE ATTACHED

7. State your proposed means and rationale of providing equivalent degree of health, safety, or welfare as addressed by the code section petitioned.

SEE ATTACHED

8. List attachments to be considered as part of the petitioner's statements (i.e., model code sections, test reports, research articles, expert opinion, previously approved variances, pictures, plans, sketches, etc.).

SEE ATTACHED

VERIFICATION BY OWNER - PETITION IS VALID ONLY IF NOTARIZED WITH AFFIXED SEAL AND ACCOMPANIED BY REVIEW FEE (See Section ILHR 2.52 for complete fee information)

Note: Petitioner must be the owner of the building or project. Tenants, agents, designers, contractors, attorneys, etc., shall not sign petition unless Power of Attorney is submitted with the Petition for Variance Application.

_____, being duly sworn, I state as petitioner that I have read the foregoing petition and I believe it is true and that I have significant ownership rights to the subject building or project.
Petitioner's Name (type or print)

Petitioner's Signature	Subscribed and sworn to before me this date	Notary Public	My commission expires on

Complete other side for variance requests from ILHR 20-25 and ILHR 50-64.

5. THE RULE BEING PETITIONED READS AS FOLLOWS:

COMM 69.18(2) ELEVATOR ACCESS. (ADAAG 4.1.3(5) These are department rules in addition to the requirements of ADAAG 4.1.3(5):

(a) Access to all floors. 1. Except as specified in subd. 2., at least one passenger elevator complying with ADAAG 4.10. shall serve each floor level, including mezzanines, in the following buildings or facilities:

b. Government-owned or operated facilities.

The intent of this code section is to assure that any public building as well as places of employment are designed and constructed so as to provide reasonable means of access for physically disabled persons.

Government facilities are held to a higher standard in determining what is a reasonable means of access, as public entities must assure that all programs, services and activities do not discriminate on the basis of a disability.

6. THE RULE BEING PETITIONED CANNOT BE ENTIRELY SATISFIED BECAUSE:

The owner is constructing a press box at a school athletic facility. The field and bleachers for observing the activities have been located to provide the public with access to the facility as is required by the Americans with Disability Act (ADA).

In order to assure that acceptable lines of site are maintained, for the public using the bleachers, the press box can not be located on the accessible route in front of the bleachers serving the public. The press box is located behind the bleachers with its floor at the upper bleacher level. (EXHIBIT A: Press Box and Bleacher Plans)

The only time the press box is occupied is when the athletic field is being used for an event. The press box will typically be used less than 20 hours a year. There are no permanent work stations in the press box. This time period of use is considerably less than many facilities that are not required to have access to the floor level. Typical uses of floor levels that do not require access are: storage, security, observation and mechanical such as in waste water treatment facilities.

Access to this floor level will be via steps with 8 inch risers and 24 inch treads. The installation of an elevator to serve this floor level is not warranted due to the limited time the press box is in use, the use meets ADA requirements, and cost of the elevator.

7. THE FOLLOWING ALTERNATIVES AND SUPPORTING INFORMATION ARE PROPOSED AS A MEANS OF PROVIDING AN EQUIVALENT DEGREE OF HEALTH, SAFETY OR WELFARE AS ADDRESSED BY THE RULE:

The press box is located behind and above the fields bleachers. It will be used by employees of private companies and game officials for observation of events on the field..

In order to facilitate the organizations using the press box to meet their Title I obligations under the ADA the following will be provided.

Photographer, game officials and press stations

To construct the bleachers so that alternative locations are accessible to photographers, game officials or press with disabilities who cannot climb or descend stairs. These stations will be located on an accessible route as referenced by Sections 4.1.3(1) and 4.3 of the ADAAG Standards.

To implement procedures whereby photographers, game officials or press with mobility impairments will be provided with either: (i) a fixed position along the perimeter of the field; or (ii) a fixed position and a limited range of mobility at certain locations along the perimeter of the bleachers. Operational procedures concerning the photographers, game officials and press stations with mobility impairments will be developed.

The bleachers will be designed with the underside having closed seating and walkways. This will reduce the effects of wind effects at the alternative locations.

Access will be provided to the press box either by stairs that comply with ADAAG 4.9 or via the bleachers that have enclosed undersides.

The press box is not intended for use by the public. The ADA recognized Uniform Federal Accessibility Standard (UFAS) states in 4.1.4(4) and (5) Assembly and Business occupancies: "All areas for which the intended use will require public access or which may result in employment of physically handicapped persons" must be accessible. This standard has been in place for this school district since 1968. The ADA legislation was specifically written to recognize this standard. The school district will continue to meet its obligations under all federal acts. (EXHIBIT B: UFAS Occupancy Standards.)

The press box is not intended for use as an education facility by any students. The ADA recognized Uniform Federal Accessibility Standard (UFAS) states in 4.1.4(6) Educational Occupancies : "Educational occupancy includes, among others, the use of a building or structure, or portion thereof, by six or more persons at any time for educational purposes through the 12th grade. All areas must comply".. This standard has been in place for this school district since 1968. The ADA legislation was specifically written to recognize this standard. The school district will continue to meet its obligations under all federal acts. (EXHIBIT B: UFAS Occupancy Standards)

The use of the floor level as a press area is not considered as "Employee Work Areas". In the settlement agreement between the Department Of Justice (DOJ)and the Owners of the Olympic Stadium in Atlanta Georgia. (Para. 24, ff) The use of this athletic facility by the press is clearly not to the degree that is involved in the Olympic Stadium. ADAAG requires that facilities that are required to be accessible must be on an accessible route. The press box floor level is not required to be accessible under the work area requirements and is not required to be on an accessible route. Paragraph 24, ff of the DOJ agreement states:

> Employee Work Areas
>
> ff. To construct the Stadium so that employee work areas are readily accessible to and usable by individuals with disabilities with regard to their ability to approach, enter, and exit those areas in so far as such accessibility is required in accordance with Sections 4.1.1(3) and 4.1.1(5)(b) of the Standards and as set forth in Exhibit 26. This subsection specifically does not apply to the camera platforms, the photographers' moat or the press areas in the Stadium, which the Department does not consider to be "employee work areas". (EXHIBIT C: Settlement between United States and Atlanta Committee for the Olympic Games).

An additional exception to the elevator requirement in the ADAAG was published in the Federal Register January 13, 1998 by Architectural and Transportation Barriers Compliance Board (ATBCB), the body responsible for development the ADAAG standards. These guidelines have not been incorporated in the Department of Justice accessibility standards and are, therefore, not enforceable at this time. When recognized by the Department of Justice these new standards will not require the press box to be accessible under the following condition. (EXHIBIT D: Elevator Exception Discussion and Rules Federal Register January 13, 1998 by ATBCB)

> ADAAG 4.1.3(5) EXCEPTION 1: Elevators are not required in:
>
> (b) public facilities that are less than three stories and that are not open to the general public if the story above or below the accessible ground floor houses no more than five persons and is less than 500 square feet. Examples may include, but are not limited to, drawbridge towers and boat traffic towers, lock and dam control stations, and train dispatching towers.

The additional cost of providing an elevator to the press box will be approximately the total cost of the construction of the press box.

The number of events where the press box floor level will be utilized is the limited number of athletic events held each year at the school.

The Department is concerned that not having access to the press box may violate the new construction and alterations provisions of Titles II and III of the ADA, respectively, by designing, or by contracting with others to design the PRESS BOX so that as a school athletic facility, it would not comply with the new construction and alterations provisions of: (a) Titles II and III of the ADA; and (b) the United States Department Of Justice's Implementing Regulations For Titles II And III, including the Standards for Accessible Design ("the Standards") incorporated into the regulations and found at Appendix A to 28 C.F.R. Part 36.

Notwithstanding the assertions made by the Department, the Owner deny that they have violated the new construction or alterations provisions of Titles II and III of the ADA with respect to the PRESS BOX. Further, the Owner deny that they have violated the implementing regulations, including the Standards. Nothing in this variance shall constitute an admission of liability by Owner. (EXHIBIT E: Summary of Federal and Wisconsin Legislation on Architectural Barriers)

Department consent to this variance does not constitute any acknowledgment by the Department that the actions specified this variance. are sufficient to meet the ADA's requirements for new construction and alterations under Titles II and III. The Department agreement to these provisions solely in order to resolve this matter without resorting to litigation.

Based on the owner willingness to provide facilities for photographers, game officials and press who are mobility impaired, the cost of the addition to the elevator, and the owners agreement not to use this variance as evidence that ADA has been met; the intent of the code has been met and this petition should be approved.

8. ATTACHMENTS TO BE CONSIDERED AS PART OF THE PETITIONER'S STATEMENTS.

1. EXHIBIT A: Press Box and Bleacher Plans
2. EXHIBIT B: UFAS Occupancy Standards.
3. EXHIBIT C: Settlement between United States and Atlanta Committee for the Olympic Games,
4. EXHIBIT D: Elevator Exception Discussion and Rules Federal Register January 13, 1998 by ATBCB,

EXHIBIT E: Summary of Federal and Wisconsin Legislation on Architectural Barriers

EXHIBIT B

FED - STD - 795
April 1, 1988

Uniform Federal Accessibility Standards

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

U. S. POSTAL SERVICE

AMSC N/A

AREA FACR

EXHIBIT B

***EXCEPTION: For exterior installations only, if dial tone first service is not available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

(b) At least one of the public telephones complying with 4.31, Telephones, shall be equipped with a volume control. The installation of additional volume controls is encouraged, and these may be installed on any public telephone provided.

(17) If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, at least 5 percent, but always at least one, of seating spaces, tables, or work surfaces shall comply with 4.32.

(18) Assembly areas:

(a) If places of assembly are provided, they shall comply with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
50 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	*
over 1,000	**

* 2 percent of total.
** 20 plus 1 for each 100 over 1,000.

(b) Assembly areas with audio-amplification systems shall have a listening system complying with 4.33 to assist a reasonable number of people, but no fewer than two, with severe hearing loss. For assembly areas without amplification systems and for spaces used primarily as meeting and conference rooms, a permanently installed or portable listening system shall be provided. If portable systems are used for conference or meeting rooms, the system may serve more than one room.

4.1.3 Accessible Housing. Accessible housing shall comply with the requirements of 4.1 and 4.34 except as noted below:

(1) **Elevators:** Where provided, elevators shall comply with 4.10. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(a) No accessible dwelling units are located above or below the accessible grade level; and

(b) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accessible grade level.

(2) **Entrances:** Entrances complying with 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities.

EXCEPTION: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(3) **Common Areas:** At least one of each type of common area and amenity in each project shall be accessible and shall be located on an accessible route to any accessible dwelling unit.

4.1.4 Occupancy Classifications. Buildings and facilities shall comply with these standards to the extent noted in this section for various occupancy classifications, unless otherwise modified by a special application section. Occupancy classifications, and the facilities covered under each category include, but are not necessarily limited to, the listing which follows:

(1) **General Exceptions.** Accessibility is not required to elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, lookout galleries, electrical and telephone closets, and general utility rooms.

(2) **Military Exclusions.** The following facilities need not be designed to be accessible, but accessibility is recommended since the intended use of the facility may change with time.

(a) Unaccompanied personnel housing, closed messes, vehicle and aircraft maintenance facilities where all work is performed by able-bodied military personnel, and, in general, all facilities which are intended for use or occupancy by able-bodied military personnel only.

(b) Those portions of Reserve and National Guard facilities which are designed and constructed primarily for use by able-bodied military personnel. This exclusion does not apply to those portions of a building or facility which may be open to the public or which may be used by the public during the conduct of normal business or which may be used by physically handicapped persons employed or seeking employment at such building or facility. These portions of the building or facility shall be accessible.

(c) Where the number of accessible spaces required is determined by the design capacity of a facility (such as parking or assembly areas), the number of able-bodied military persons used in determining the design capacity need not be counted when computing the number of accessible spaces required.

(3) **Military Housing.** In the case of military housing, which is primarily available for able-bodied military personnel and their dependents, at least 5

EXHIBIT B

Facilities	Application
Academies	All areas shall comply.
Kindergarten	
Nursery schools	
Schools	

(7) Factory Industrial. Factory industrial occupancy includes, among others, the use of a building or structure, or portion thereof, for assembling, disassembling, fabricating, finishing, manufacturing, packaging, processing or other operations that are not classified as a Hazardous Occupancy

Facilities	Application
Aircraft	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.
Appliances	
Athletic equipment	
Automobile and other motor vehicle	
Bakeries	
Beverages	
Bicycles	
Boats, building	
Brick and masonry	
Broom or brush	
Business machines	
Canvas or similar	
Cameras and photo equipment	
Carpets & rugs, including cleaning	
Ceramic products	
Clothing	
Construction & agricultural machinery	
Disinfectants	
Dry cleaning & dyeing	
Electronics	
Engines, including rebuilding	
Film, photographic	
Food processing	
Foundries	
Furniture	
Glass products	
Gypsum	
Hemp products	
Ice	
Jute products	
Laundries	
Leather products	
Machinery	
Metal	
Motion pictures & television film	
Musical instruments	
Optical goods	
Paper products	
Plastic products	
Printing or publishing	
Recreational vehicles	
Refuse incineration	
Shoes	
Soaps & detergents	
Steel products: fabrication, assembly	
Textiles	
Tobacco	
Trailers	
Upholstering	
Wood, distribution	
Millwork	
Woodworking, cabinet	
Postal mail: processing facilities*	

*See Part 9 for special applications.

(8) Hazardous. Hazardous occupancy includes, among others, the use of a building or structure, or a portion thereof, that involves the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosive hazard, including loose combustible fibers, dust and unstable materials.

Facilities	Application
Combustible dust	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.
Combustible fibers	
Combustible liquid	
Corrosive liquids	
Explosive material	
Flammable gas	
Flammable liquid	
Liquified petroleum gas	
Nitromethane	
Oxidizing materials	
Organic peroxide	

(9) Institutional. Institutional occupancy includes, among others, the use of a building or structure, or any portion thereof, in which people have physical or medical treatment or care, or in which the liberty of the occupants is restricted. Institutional occupancies shall include the following subgroups.

(a) Institutional occupancies for the care of children, including:

Facilities	Application
Child care facilities	All public use, common use, or areas which may result in employment of physically handicapped persons.

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA,
THE ATLANTA COMMITTEE FOR THE OLYMPIC GAMES, INC., AND
THE METROPOLITAN ATLANTA OLYMPIC GAMES AUTHORITY
UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990
CONCERNING THE OLYMPIC STADIUM LOCATED IN ATLANTA, GEORGIA

INTRODUCTION

1. This Agreement (the "Agreement") is made and entered into by the United States of America (the "United States"), the Atlanta Committee for the Olympic Games, Inc. ("ACOG"), and the Metropolitan Atlanta Olympic Games Authority ("MAOGA") (collectively, the United States, ACOG, and MAOGA will be referred to hereinafter as the "Parties").

2. This Agreement resolves an investigation conducted by the United States Department of Justice of ACOG and MAOGA under Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12189 (the "Act" or the "ADA"), concerning the Olympic Stadium (the "Stadium") located in Atlanta, Georgia.

3. The resolution of this matter through this Agreement serves the Parties' interests in securing the rights of individuals with disabilities by designing and constructing an accessible Olympic Stadium.

4. The Parties agree as follows:

THE PARTIES

5. The term "Respondents" refers to both ACOG and MAOGA and their parent companies, subsidiaries, departments, and/or agencies.

6. The term "the Department" refers to the U.S. Department of Justice, and, because the Department is the designated enforcement authority for the ADA under Titles II and III of the ADA, "the Department" is used interchangeably with "United States."

7. MAOGA is a political subdivision created by the State of Georgia in 1989 for the purpose of "conducting and staging the Olympic summer games in conjunction with the local organizing committee, . . . and to that end, of acquiring, constructing, equipping, maintaining, and operating any facilities within the state necessary or useful in the conduct of the Olympic Games." Metropolitan Atlanta Olympic Games Authority Act, Ga. L. 1989 at 5078.

8. MAOGA is the current owner of the Stadium and the lessee of the Stadium premises, which lease commenced on March 16, 1993, and terminates on or about April 1, 1997, and, for purposes of this agreement only, with respect to the ownership and lease of the Stadium premises and construction of the Olympic Stadium thereon, MAOGA is a public entity within the meaning of 42 U.S.C. § 12131(1)(B) and 28 C.F.R. § 35.104, and is subject to Title II of the ADA;

9. ACOG is a private corporation created to organize, conduct and stage the 1996 Centennial Olympic Games (the "Olympic Games"). Pursuant to a contractual agreement between ACOG and MAOGA, ACOG will manage the construction of the Stadium and will occupy the Stadium during the Olympic Games. During construction of the Stadium, and the hosting of the Olympic Games, ACOG will be an operator of the Stadium, and ACOG has played a role in the design and construction of the Stadium. Within the meaning of this Agreement only, the Parties agree that, with respect to its role in regard to the design, construction, operation, and occupation of the Stadium, ACOG is an operator of a place of public accommodation within the meaning of 42 U.S.C. § 12182(a), and is a public accommodation within the meaning of 28 C.F.R. § 36.104, and is subject to Title III of the ADA.

10. The Atlanta National League Baseball Club, Inc. ("the Braves") owns and operates the Atlanta Braves, a National League baseball team that plays its home games in Atlanta. The Braves have certain operating responsibilities at the Stadium from the time construction is substantially complete until April 1997 and beyond and will lease and operate the Stadium for a period of up to 40 years, commencing in April 1997. Moreover, the Braves have participated in the design of the Stadium with regard to its baseball configuration. For purposes of this Agreement only, the Parties agree that the Braves operate and lease a place of public accommodation within the meaning of 42 U.S.C. § 12182(a) and are a public accommodation within the meaning of 28 C.F.R. § 36.104 and are subject to Title III of the ADA.

THE STADIUM

11. The Stadium is a multi-use sports facility presently under construction. It is designed for use as a venue for the Olympic Games (the "Olympic configuration"), including serving as the location for the Opening and Closing Ceremonies and track and field events. Further, the Stadium is designed to be converted, after completion of the Olympic Games, into a baseball stadium (the "baseball configuration") where the Braves home games will be played.

12. The Stadium is a "stadium, or other place of exhibition or entertainment," and is, therefore, a public accommodation within the meaning of Title III, 42 U.S.C. § 12181(7)(C), and a place of public accommodation within the meaning of 28 C.F.R. § 36.104. Because the Stadium is a non-residential facility whose operations affect commerce it is also a commercial facility within the meaning of Title III, 42 U.S.C. § 12181(2), and 28 C.F.R. § 36.104.
13. The Stadium is a building, structure, site, or complex, and is, therefore, a "facility" within the meaning of 28 C.F.R. § 35.104 and is covered by Title II.

14. The Stadium, in both its Olympic and baseball configurations, is being designed and constructed for first occupancy after January 26, 1993, and is, therefore, a newly constructed facility within the meaning of Title III of the ADA, 42 U.S.C. § 12183(a)(1) and 28 C.F.R. § 36.401.

15. Construction of the Stadium began after January 26, 1992, and the Stadium is, therefore, a newly constructed facility within the meaning of Title II of the ADA, 42 U.S.C. § 12134(c) and 28 C.F.R. § 35.151(a).

16. The physical modifications that will be undertaken to convert the Stadium from its Olympic to its baseball configuration constitute alterations as defined by Titles II and III of the ADA, 42 U.S.C. § 12183(a)(2) and 28 C.F.R. §§ 35.151 and 36.402. See, 42 U.S.C. § 12132.

THE DEPARTMENT OF JUSTICE INVESTIGATION

17. The Department has informed the Respondents that this matter was initiated by complaints filed with the Department by people with disabilities from the Atlanta metropolitan area, alleging that the Stadium was not being designed and constructed in compliance with the ADA. The complaints were investigated by the Disability Rights Section (formerly known as the Public Access Section and the Office on the Americans with Disabilities Act) and the Coordination and Review Section of the Civil Rights Division of the Department of Justice, under the authority granted by Sections 203 and 308(b) of the ADA, 42 U.S.C. §§ 12133 and 12188(b).

18. From 1993 through the present, the Department conducted an in-depth investigation (the Department's File No. DJ 202-19-11) into the design of the Stadium. The investigation included several meetings, many telephone conferences, an on-site visit, and the review of a vast number of design documents which were at various stages in the development process.

19. The Parties acknowledge that the design and construction of the Olympic Stadium is a complex undertaking that has lasted a period of years and has involved modifications and refinements during the design and construction process. Notwithstanding such ongoing changes, Respondents cooperated with the Department's investigation by providing extensive design documents, some of which Respondents assert were interim "progress" drawings which had not yet been finalized. As a result, Respondents contend that a number of the issues raised by the Department during the investigation as asserted violations, would not have been included in the final construction of the facility.
20. The Department asserts that MAOGA and ACOG have violated the new construction and alterations provisions of Titles II and III of the ADA, respectively, by designing, or by contracting with others to design the Stadium so that, in both its Olympic and baseball configurations, it would not comply with the new construction and alterations provisions of: (a) Titles II and III of the ADA; and (b) the Department's implementing regulations for Titles II and III, including the Standards for Accessible Design ("the Standards") incorporated into the regulations and found at Appendix A to 28 C.F.R. Part 36.

21. Notwithstanding the assertions made by the United States, the Respondents deny that they have violated the new construction or alterations provisions of Titles II and III of the ADA with respect to the Stadium. Further, the Respondents deny that they have violated the implementing regulations, including the Standards. Nothing in this Agreement shall constitute an admission of liability by Respondents.

22. Neither the making of this Agreement nor anything contained herein shall, in any way, be construed or considered to be an admission by either of the Respondents, or by any officials, contractors or agents of either of the Respondents, of violation

of any federal, state or local statute, any State or municipal fire safety or building code, or of any other wrongdoing or liability whatsoever.

23. The Parties have agreed to the terms of this Agreement in order to resolve the Department's investigation, to avoid litigation, and to resolve their disagreements concerning the interpretation of the ADA, which was enacted in 1990 and became effective in 1992.

AGREEMENT WITH RESPECT TO THE NEW CONSTRUCTION PROVISIONS OF TITLES II AND III

24. The Respondents agree to the following provisions:

Accessible Seating

Number of Wheelchair Seating Locations

a. To construct and alter the Stadium so that, in both its Olympic and baseball configurations, there are wheelchair seating locations in a number equal to at least one percent of the total number of seats in the Stadium in accordance with Sections 4.1.3(19)(a), 4.33.2, 4.33.3, 4.33.4, and 4.33.5 of the Standards and as set forth in the attached Exhibits 1(a), 1(b), and 2.

Companion Seating

b. To construct and alter the Stadium so that, in both its Olympic and baseball configurations, fixed companion seats will be located next to the wheelchair seating locations as referenced by Sections 4.1.3(19)(a) and 4.33.3 of the Standards and as set forth in the attached Exhibits 1(a), 1(b), and 2.

Provision of Lines of Sight

c. The United States contends that the Standards' requirement that comparable lines of sight be provided includes a requirement to provide wheelchair users with a line of sight over standing spectators. Respondents dispute that contention. Nevertheless, the Respondents agree to construct and alter the Stadium so that, in both its Olympic and baseball configurations, substantially all of the wheelchair seating locations will afford spectators seated in wheelchairs with a line of sight of the playing surface when spectators in rows in front of them stand, as referenced by Sections 4.1.3(19)(a) and 4.33.3 of the Standards and as set forth in the attached Exhibits 3(a) and 3(b).

Dispersal of Wheelchair and Companion Seating Locations

d. To construct and alter the Stadium so that, in both its Olympic and baseball configurations, the wheelchair and companion seating locations required by sub-section (a) of this Paragraph 24 will be dispersed throughout the seating areas as referenced by Sections 4.1.3(19)(a) and 4.33.3 of the Standards and as set forth in the attached Exhibits 1(a) and 1(b).

Restrooms

e. To construct the Stadium so that each of the toilet rooms will afford individuals with disabilities with 1) sufficient unobstructed turning space in accordance with Sections 4.1.3(11), 4.2.3, 4.2.4, 4.16.2, 4.17.3, 4.18.3, 4.19.3, and 4.22.3 of the Standards; and 2) sufficient clear floor space at lavatories in accordance with Sections 4.1.3(11), 4.2.4, 4.19.3, 4.22.2, 4.22.3, 4.22.4, and 4.22.6 of the Standards, and other accessibility features in accordance with Section 4.22 of the Standards and as set forth in the attached Exhibits 4(a) and 4(b).

f. To construct the Stadium so that each restroom contains a designated accessible stall that is readily accessible to and usable by individuals with disabilities, including those who use wheelchairs, in accordance with Sections 4.1.3(11), 4.16, 4.17, and 4.22.4 of the Standards and as set forth in the attached Exhibits 5(a), 5(b), and 5(c).

g. To construct the Stadium so that each restroom with 6 or more toilet stalls will contain an ambulatory stall that is 36 inches wide and is equipped with grab bars and a self-closing, outward swinging door in accordance with Sections 4.1.3(11), 4.22.4, and 4.26 of the Standards and as set forth in the attached Exhibit 6.

h. To construct the Stadium so that each toilet room designed for use by occupants of specific areas will be readily adaptable for accessibility in accordance with Sections 4.1.3(11) and 4.22 of the Standards and as set forth in the attached Exhibit 7.

Portable Toilets

i. That for all events occurring at the Stadium during the term of this Agreement for which portable toilets are used at least five percent but not less than one in each cluster of the portable toilets utilized will be readily accessible to and usable by individuals with disabilities in accordance with the requirements for standard stalls set forth at Sections 4.1.2(6), 4.16, 4.17.3, 4.22.4, and 4.26 of the Standards. If such an event takes place while the Stadium is utilized or operated by a third party, either as a result of a contract or any other arrangement, the Respondent(s) agrees to require that such third party comply with this provision of the Agreement.

Shower Stalls

j. To construct the Stadium so that each bathroom or shower room that contains showers is equipped with at least one shower that is readily accessible to and usable by individuals with disabilities in accordance with Sections 4.1.3(11), 4.21, 4.23.3, 4.23.8, 4.26, and 4.27.4 of the Standards and as set forth in the attached Exhibit 8.

Dressing Rooms

k. To construct the Stadium so that each dressing room is readily accessible to and usable by individuals with disabilities by being equipped with at least one 24 inch by 48 inch bench with its long side attached to a wall in accordance with Sections 4.1.3(21) and 4.35.4 of the Standards and as set forth in the attached Exhibit 9.

Locker Rooms

l. To alter the Stadium so that, in its baseball configuration, each locker room is equipped with at least one locker that provides storage space that is readily accessible to and usable by individuals with disabilities in accordance with Sections 4.1.3(12)(a), 4.2.4, 4.2.5, 4.2.6, 4.25, and 4.27.4 of the Standards and as set forth in the attached Exhibit 10.

Storage

m. To alter the Stadium so that, in its baseball configuration, coat rods and shelves are mounted at heights that are within the required reach ranges for persons who use wheelchairs in accordance with Sections 4.1.3(12)(a), 4.2.5, 4.2.6, and 4.25.3 of the Standards and as set forth in the attached Exhibit 11.

Ramps

n. To construct the Stadium so that each pedestrian ramp is readily accessible to and usable by individuals with disabilities, including those who use wheelchairs, in accordance with Sections 4.1.3(1), 4.3.8, 4.5.2, and 4.8 of the Standards and as set forth in the attached Exhibit 12.

Curb Ramps

o. To construct the Stadium so that the curb ramps will be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs, in accordance with Sections 4.1.2(2), 4.3.8, 4.5.2, and 4.7.5 of the Standards and as set forth in the attached Exhibits 13(a) and 13(b).

Accessible Routes

General

p. To construct the Stadium so that an accessible route will connect the accessible buildings, facilities, elements, and spaces on the site in accordance with Sections 4.1.2(2) and 4.3 of the Standards and as set forth in the attached Exhibits 13(a), 13(b), 14(a) and 14(b).

q. To construct the Stadium so that an accessible route will connect any required accessible parking spaces owned, leased, or operated by the Respondent(s) to the entrance of the Stadium in accordance with Sections 4.1.2(1) and 4.3 of the Standards and as set forth in the attached Exhibits 13(a) and 13(b).

r. To construct the Stadium so that an accessible route will connect accessible entrances to the Stadium with accessible spaces and elements within the Stadium in accordance with Sections 4.1.3(1) and 4.3 of the Standards and as set forth in the attached Exhibits 14(a) and 14(b).

The Dugouts

s. To alter the Stadium so that, in its baseball configuration, there is an accessible route to each dugout from the playing field and from their respective locker rooms by equipping the dugouts with platform lifts as referenced by Sections 4.1.3(5)(Exception 4(a)), 4.2.4, 4.5, 4.11, and 4.27 of the Standards and as set forth in the attached Exhibit 15.

Club Level Restaurant

t. To alter the Stadium, so that in its baseball configuration, each level of the Club Level Restaurant will be accessible, through use of a platform lift, to people with disabilities who cannot climb or descend stairs. Sections 4.2.4, 4.5, 4.11, and 4.27 of the Standards, any applicable State or local codes, and as set forth in the attached Exhibit 16 will govern the design and installation of this platform lift.

Photographers' Moat

u. To construct the Stadium so that there will be located a total of five fixed stations that are accessible to photographers with disabilities who cannot climb or descend stairs. These stations will be at field level and will, therefore, be located on an accessible route as referenced by Sections 4.1.3(1) and 4.3 of the Standards and as set forth in the attached Exhibits 1(a) and 17.

v. To implement procedures whereby photographers with mobility impairments (who are credentialed to use the moat but who may not be able to do so because of their mobility impairment) will be provided with either: (i) a fixed position (as described in sub-paragraph u above) along the perimeter of the moat; or (ii) a fixed position (as described in sub-paragraph u above) and a limited range of mobility at certain locations along the perimeter of the moat. The operational procedures concerning the moat and credentialed photographers with mobility impairments are attached hereto as Exhibit 18.

Camera Platforms

w. To construct the Stadium so that one or more of the camera platforms are located along an accessible route as referenced by Sections 4.1.3(1) and 4.3 of the Standards and as set forth in the attached Exhibits 1(a), 19(a) and 19(b).

Stairways

x. To construct the Stadium so that stairways which are required to be readily accessible are usable by individuals with disabilities by, among other things, ensuring that the handrails extend past the top and bottom risers for a sufficient distance in accordance with Sections 4.1.3(4) and 4.9.4 of the Standards and as set forth in the attached Exhibit 20.

Protruding Objects

y. To construct the Stadium so that it will not contain protruding objects without the presence of cane detectable barriers in accordance with Sections 4.1.2(3), 4.1.3(2), and 4.4.1 of the Standards and as set forth in the attached Exhibit 21.

Clear Headroom

z. To construct the Stadium so that it will not contain any protruding objects that interfere with the required clear headroom without the presence of cane detectable barriers in accordance with Sections 4.1.2(3), 4.1.3(2), and 4.4.2 of the Standards and as set forth in the attached Exhibit 21.

Doors

aa. To construct the Stadium so that required doors afford sufficient clear maneuvering space to be readily accessible to and usable by individuals with disabilities in accordance with Sections 4.1.3(7), and 4.13.6 of the Standards and as set forth in the attached Exhibits 22(a) and 22(b).

bb. To construct the Stadium so that required doors will provide sufficient clear width when opened in accordance with Sections 4.1.3(7), 4.13.4, and 4.13.5 of the Standards and as set forth in the attached Exhibit 23.

Parking

cc. To construct the Stadium so that any automobile parking provided for events at the facility on property owned, leased, or operated by Respondent(s) contains the required number of accessible and van accessible parking spaces in accordance with Sections 4.1.2(5), 4.6.2, 4.6.3, 4.6.4, and 4.6.5 of the Standards and as set forth in the attached Exhibit 24.

Automatic Teller Machines

dd. To the extent automatic teller machines are installed at the Stadium, to install them so that the required number of automatic teller machines will be accessible to individuals with disabilities in accordance with Sections 4.1.3(20) and 4.34 of the Standards.

Visual Alarms

ee. To construct the Stadium so that any room or area equipped with single station audible alarms will also be equipped with single station visual alarms in accordance with Sections 4.1.3(14) and 4.28.3 of the Standards and as set forth in the attached Exhibit 25. This sub-paragraph does not apply to the Stadium's public address system.

Employee Work Areas

ff. To construct the Stadium so that employee work areas are readily accessible to and usable by individuals with disabilities with regard to their ability to approach, enter, and exit those areas in so far as such accessibility is required in accordance with Sections 4.1.1(3) and 4.1.1(5)(b) of the Standards and as set forth in Exhibit 26. This subsection specifically does not apply to the camera platforms, the photographers' moat or the press areas in the Stadium, which the Department does not consider to be "employee work areas".

25. The United States' consent to this Agreement does not constitute any acknowledgement by the Department that the actions specified in Subparagraphs 24 c., d., t., u., v., and w. and the relevant attached exhibits are sufficient to meet the ADA's requirements for new construction and alterations under Titles II and III. The Department agrees to these provisions solely in order to resolve this matter without resort to litigation.

26. Neither the making of this Agreement nor anything contained herein shall in any way be construed or considered to be an admission by the Respondents that the ultimate design of the Stadium, as constructed consistent with this Agreement, does not satisfy in every regard the requirements applicable to said Stadium pursuant to Titles II and III of the ADA and the applicable regulations.

27. With respect to the lifts in the Club Restaurant and in the dugouts, the Braves are responsible for the operation and maintenance of the lifts that will provide access to those parts of the Stadium. The Department is presently working to reach an agreement with the Braves regarding this matter.

IMPLEMENTATION AND ENFORCEMENT OF THE AGREEMENT

28. The Department may review compliance with the Agreement at any time until the Agreement's expiration. If the Department believes that this Agreement or any provision of it has been violated, the Department shall promptly advise the Respondents in writing of the nature of that violation, and, within thirty days of receipt by Respondents of said written notice from the Department, the Parties shall meet and confer in a good faith attempt to resolve the issue. In the event the Parties are not able to resolve this issue to the reasonable satisfaction of the Department, the Department may seek enforcement of the Agreement or any provision thereof, in the United States District Court for the Northern District of Georgia, pursuant to Paragraph 34 of this Agreement.

29. During its investigation, the Department has reviewed certain drawings for the Stadium in both its Olympic and baseball configurations. Specific selected drawings for the Olympic configuration are incorporated in the appropriate subparagraphs of Paragraph 24. The Parties agree that the level of accessibility provided by those drawings incorporated in Paragraph 24

constitutes compliance with the Standards, except as referenced in Paragraph 25 of this Agreement. Respondent(s) agrees not to decrease accessibility in the event that different drawings are used in actual construction of any room or area, except as addressed under Paragraph 30.

30. In the event that Respondent(s) plans to make any changes in the design of any aspect of the Stadium that (1) are covered by Paragraph 24 of this Agreement and (2) may materially reduce the level of accessibility for individuals with disabilities provided by the design of the Stadium (as reflected in the exhibits to and design drawings incorporated in Paragraph 24), Respondent(s) shall notify the Department of the changes being planned, the expected timing of the changes, and a very brief description of the reason for making the change. Respondents shall make every reasonable effort to notify the Department of the planned changes as promptly as possible. Included in the planned design changes that are covered by this section are changes that could reasonably be considered to materially reduce the level of accessibility required by Paragraph 24 of the Agreement and its underlying interpretations, even if Respondent(s) does not believe that the change would actually have that effect. Changes covered by this Paragraph are those that occur or will occur after the commencement of the Agreement and during the effective dates of the Agreement. The basis for determining whether a change takes place or the effect of such a change are the design drawings referenced herein. Currently, neither Respondent has any obligation to build or design the Plaza area of the Stadium in its baseball configuration beyond that which is reflected on the design documents referenced herein. Accordingly, notwithstanding the language in any other paragraph of this Agreement, the Plaza area of the Stadium in its baseball configuration is not subject to the terms of this Agreement; provided, however, that if either Respondent assumes any responsibility for the construction or design of the Plaza area of the Stadium in its baseball configuration (over and above MAOGA's general responsibility to ensure that any Plaza construction is consistent with the general conceptual design of the Stadium), such undertaking will be subject to the terms of this Agreement.

31. In notifying the Department about any changes being planned, Respondent(s) may request an expedited review by the Department and the Department will make every reasonable effort, subject to its other work demands, to advise Respondent(s) as promptly as possible whether the Department views the changes as a breach of this Agreement that it would seek to prevent. As soon as the Department determines it will not object to a particular planned design change, it will notify Respondent(s) as promptly as possible of that determination. In the event the Department determines that such a change would amount to a breach of the Agreement, said change will be subject to Paragraph 28 of the Agreement. If, however, the Department determines that it is necessary to seek review by an expert of the changes, Respondent(s) agrees to share the cost of that service up to a maximum amount of $4,000 for each such planned change, and not to exceed an aggregate total of $25,000 for the review of all planned changes.

32. Respondent(s) may, but are not required to, wait for the Department to decide whether it will object to a particular planned change before making the change; however, in the event that a change is made before the Department's determination and the Department subsequently objects, the Parties agree that this will be treated by the Department as an asserted breach of the Agreement, and the Parties will follow the procedures set forth in Paragraph 28 of the Agreement. In the event that Respondents decide to go forth with construction of a planned change prior to receiving the Department's determination regarding that planned change, or in spite of the Department objecting to such change, such action by Respondent(s) shall not in any way impact or be used as a presumption to limit the remedies available to the Department to ensure that the Respondent(s) meets the requirements of the Agreement, including, inter alia, reconstruction. Nor shall Respondent(s) proceeding to make the change prior to receiving the Department's determination, or despite the Department objecting to the change, constitute evidence of any bad faith on the part of the Respondent(s). This Paragraph does not apply to design modifications covered by Paragraph 33 of this Agreement. Respondent(s) remains committed to the design and construction of an accessible Stadium that meets the requirements of the ADA and the Standards and will make every reasonable effort to minimize changes that diminish the accessibility of the Stadium, or which require invocation of this Paragraph. In this regard, Respondent(s) acknowledges that the Stadium will be substantially completed in approximately sixty days after execution of the Agreement and expect that, for a project of its scope, only a minimal number of changes will be made to the design drawings incorporated in Paragraph 24 with respect to the Olympic configuration.

33. The Department recognizes that hosting the Olympic Games will require some operational flexibility. In the event that the operation of the Olympic Games requires the Respondents to make modifications of either a part of the design of the facility or an operational policy or procedure, such modifications will not be deemed by the Department to violate the Agreement, provided the new design or policy: 1) continues to comply with all relevant provisions of the ADA and its implementing regulations, consistent with the interpretations thereof underlying paragraph 24 and its exhibits; and 2) results in the provision of equal or greater accessibility to people with disabilities.

34. In the event the Department seeks enforcement of this Agreement or any provision of it in the United States District Court, the Parties agree and hereby stipulate:

a. That the United States District Court for the Northern District of Georgia has personal and subject matter jurisdiction over this Agreement, the matters set forth in it, and the Parties to it;

b. That, as to Respondents' Agreement to undertake the actions expressly described in Paragraph 24 of this Agreement, the Department shall be entitled to enforcement of said terms of the Agreement and, in the event the Court concludes that Respondents, or any of them, have failed to fulfill their commitments in Paragraph 24 hereof, such breach shall be treated as if it had been a violation under Subsection 308(b)(2)(C)(ii) of the ADA, and said Respondents shall be liable, in the Court's discretion, to the United States for such equitable and/or monetary relief as is appropriate under Section 308(b)(2)(A) and (B) of the ADA, and, also in the Court's discretion, for a civil penalty, under Subsection 308(b)(2)(C)(ii). In considering what amount of civil penalty, if any, is appropriate, the Court shall consider the Respondent(s)' good faith efforts or attempts to comply with the ADA, as articulated in Section 308(b)(5) of the ADA.

35. Failure by any one of the Parties to enforce this entire Agreement or any provision of it with regard to any deadline or any other provision contained herein shall not be construed as a waiver by that Party of any right to do so.

36. This Agreement is a public document. A copy of this document or any information contained therein may be made available to any person. The Respondents, at their option, shall either provide a copy of the Agreement upon request or refer any person who inquires about obtaining a copy of this Agreement to the Department at the address and telephone number indicated after the Department's signature lines on this document. Notwithstanding any other language in this Agreement, the Parties acknowledge that, because of security reasons, design and construction drawings of the Stadium which are referred to herein and attached hereto as Exhibits will not be released pursuant to this paragraph until after the expiration of this Agreement pursuant to the Department's letter of November 9, 1994, attached hereto as Exhibit 29.

37. This Agreement shall be binding on the Respondents and their successors in interest, and each Respondent has a duty to notify all such successors in interest of these obligations and to include in all future documents transferring any right or interest in the Stadium any obligations to comply with this Agreement not retained by the Respondent(s).

38. If any provision of this Agreement is affected by any future proceeding in bankruptcy, the Parties shall jointly apply to the Bankruptcy Court for withdrawal to the United States District Court for the Northern District of Georgia for resolution of the matter.

39. This Agreement, including the Exhibits attached hereto and the drawings referenced herein, constitutes the entire Agreement among the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable. In the event a court of competent jurisdiction concludes that any part of this Agreement is unenforceable, such portion shall be severed from this Agreement and all other portions shall remain enforceable.

40. This Agreement is limited to the Stadium and does not apply to any other design or construction project of either Respondent. The Agreement covers all aspects of the design and construction of the Stadium in its Olympic configuration, including all additions or changes made during the term of this Agreement. Except as noted in Paragraph 30, this Agreement also covers the conversion of the Stadium into its baseball configuration, including all additions or changes made during the term of this Agreement. This Agreement does not affect any continuing responsibility of the Respondents, or either of them, to comply with the ADA, where applicable, concerning: (a) any duties of the Respondents with regard to other venues being designed, constructed, modified or operated for use during the Olympic Games; (b) any responsibilities the Respondents may incur toward employees under Titles I and II of the Act; and (c) any ADA responsibility the Respondents have for the Stadium where said responsibility is not covered by the provisions of Paragraphs 24 or 29 of this Agreement, except any changes or modifications in the design of the Stadium after the execution but during the term of this Agreement. With respect to any litigation between the Parties to this Agreement which may arise over any of the issues described in Subparagraphs (a) or (b) of this Paragraph 40, the Parties shall be free to argue any principles of law and shall not be bound by the terms or underlying principles of this Agreement.

41. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claims of the Parties or any matters related thereto.

42. The Parties acknowledge that they have been afforded an opportunity to consider this Agreement and the terms and conditions set forth herein, and that they have read and understood the terms of the Agreement and have been given an opportunity to consult with their respective counsel prior to executing this Agreement.

43. Where reduced-sized design drawings are attached hereto as exhibits, they are merely representative of full-sized design drawings, copies of which are to be maintained by each party. In the event of a discrepancy between a full-sized design drawing, and a reduced-sized version of the same document, the full-sized version is to be considered authoritative.

44. Provided no changes are made after the date hereof to the design contained or referenced in an Exhibit set forth in Paragraph 24, if there is any disagreement between the Parties concerning the requirements of the Agreement with respect to (1) the referenced sections of the ADA, its implementing regulations or Standards and (2) any listed Exhibit, then the Exhibit shall govern.

45. A signer of this document, in a representative capacity for MAOGA, ACOG, or the Department, represents that he or she is authorized to bind such entity to this Agreement.

ATBCB final guidelines for ADAAG for STATE AND LOCAL GOVERNMENT FACILITIES

DISCUSSION

4.1.3(5) Elevators

The interim rule added several exceptions to the requirement for elevator access for State and local government facilities.

Exception 1(a) of ADAAG 4.1.3(5) contains an exception based on the number of stories or square footage per floor specific to private facilities, which are defined in 3.5 as those facilities subject to title III of the ADA.

Exception 1(b) of ADAAG 4.1.3(5) provides that elevators are not required in drawbridge towers and boat traffic towers, lock and dam control stations, train dispatching towers and similar structures subject to title II of the ADA as a public facility that are less than three stories and not open to the public, where the story above or below the accessible ground floor houses no more than five persons and is less than 500 square feet. This provision has been editorially revised for clarity.

Comment. One commenter opposed this exception because it may deny persons with disabilities certain job opportunities. Another commenter recommended that the language of the exception, including the reference to "similar structures," be more specific.

Response. Exception 1(b) is based on the design and cost impact of providing elevator access in small limited use structures and applies only to those facilities that are less than three stories, are not open to the public, and where the story above or below the accessible ground floor has a maximum occupancy of five and is less than 500 square feet. Each of these conditions must be met for the exemption to apply. Specific facilities such as drawbridge and boat traffic towers, lock and dam control stations, and train dispatching towers are referenced to illustrate the type of structures the exception may cover.

ADAAG STANDARD

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements.

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with section 4, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections provide additional requirements based on building use. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

(5) General Exceptions.

(b) Accessibility is not required to or in:

(i) raised areas used primarily for purposes of security or life or fire safety, including, but not limited to, observation or lookout galleries, prison guard towers, fire towers, or fixed life guard stands;

(ii) non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, tunnels, or freight (non-passenger) elevators, and frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment; such spaces may include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks, water or sewage treatment pump rooms and stations, electric substations and transformer vaults, and highway and tunnel utility facilities; or

(iii) single occupant structures accessed only by a passageway that is below grade or that is elevated above standard curb height, including, but not limited to, toll booths accessed from underground tunnels.

* * * * *

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

* * * * *

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in:

(a) private facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General; or

(b) public facilities that are less than three stories and that are not open to the general public if the story above or below the accessible ground floor houses no more than five persons and is less than 500 square feet. Examples may include, but are not limited to, drawbridge towers and boat traffic towers, lock and dam control stations, and train dispatching towers.

The elevator exemptions set forth in paragraphs (a) and (b) do not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction, if a building or facility is eligible for exemption but a passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

LIST OF FEDERAL AND WISCONSIN LEGISLATION ON ARCHITECTURAL BARRIERS TO DISABLED

1968 THE ARCHITECTURAL BARRIERS ACT passed.

1971 WISCONSIN STATE STATUE SECTION 101.13 created.

1973 REHABILITATION ACT OF 1973 passed.

***1974 SAFETY AND BUILDINGS ADMINISTRATED RULES ON ACCESSIBILITY** published.*

1978 REHABILITATION ACT OF 1973 amended.

1981 ATBCB "MINIMUM FEDERAL GUIDELINES & REQUIREMENTS FOR ACCESSIBLE DESIGN" published.

1984 UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS) published.

1990 AMERICAS WITH DISABILITIES ACT OF 1990 (ADA) passed.

TITLE I EMPLOYMENT

TITLE II PUBLIC SERVICE

TITLE III PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

TITLE IV TELECOMMUNICATIONS RELAY SERVICES

TITLE V MISCELLANEOUS PROVISIONS

1991 DEPARTMENT OF JUSTICE (DOJ) REGULATIONS IMPLEMENTING ADA published.

PART III NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES .

PART IV NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES.

ATBCB AMERICAN WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG) for PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES published.

1992 ATBCB proposed rulemaking for ADAAG for STATE AND LOCAL GOVERNMENT FACILITIES published.

***1994 SAFETY AND BUILDINGS ADMINISTRATED RULES ON ACCESSIBILITY** revised.*

1998 ATBCB final rules for ADAAG for STATE AND LOCAL GOVERNMENT FACILITIES published.

SUMMARY OF FEDERAL and WISCONSIN LEGISLATION ON ARCHITECTURAL BARRIERS TO DISABLED

1968 THE ARCHITECTURAL BARRIERS ACT passed.

This is an ACT to insure that certain buildings financed with Federal funds are so designed, constructed or altered as to be accessible to the physically disabled.

Any building for which the intended use either will require that such building or facility be accessible to the public, or may result in employment or residence therein of physically disabled persons falls under this ACT.

1971 WISCONSIN STATE STATUE SECTION 101.13 created.

Required Safety and Buildings Division to develop by rule minimum requirements to facilitate the use of public buildings and places of employment by physically disabled persons where traffic might reasonably be expected by such persons.

1973 REHABILITATION ACT OF 1973 passed.

Architecture and Transportation Barriers Compliance Board (ATBCB) created. This board was to insure compliance with the Architectural Barriers Act of 1968.

***1974 SAFETY AND BUILDINGS ADMINISTRATED RULES ON ACCESSIBILITY** published.*

Requirements were added to the Wisconsin Building Code establishing the standards that must be met in order to insure that all public buildings and places of employment are accessible and usable by all citizens, including those with functional limitations. The standards establish when access to; primary floors, toilet facilities and interior circulation between floor levels, is required, and how spaces must be designed to assure usability.

1978 REHABILITATION ACT OF 1973 amended.

Architecture and Transportation Barriers Compliance Board (ATBCB) was given responsibility to establish minimum guidelines and requirements for standards

1981 ATBCB "MINIMUM FEDERAL GUIDELINES & REQUIREMENTS FOR ACCESSIBLE DESIGN" published.

The ATBCB does not have the authority to write rules for other federal agencies. These guidelines were used by the Federal agencies that must establish rules to assure that the Architectural Barriers Act of 1968 are met.

These guidelines in general tend to reflect the commercially acceptable standards such as American National Standard Institute (ANSI) standard ANSI A117 Technical Accessibility Standard.

1984 UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS) published.

The UFAS standard is the standard that the Federal agencies adopted to insure that the requirements of the Architectural Barriers Act of 1968 or met. UFAS is based on the ATBCB guidelines.

1990 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA) passed.

TITLE I EMPLOYMENT:

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, condition, and privileges of employment.

TITLE II PUBLIC SERVICE

Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by the Rehabilitation Act of 1973. Title II of the ADA essentially extends the nondiscrimination mandate to those State and local governments that do not receive Federal financial assistance.

The standards adopted to assure accessibility must be consistent with the ATBCB guidelines developed under Title V.

TITLE III PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation or commercial facility.

The standards adopted to assure accessibility must be consistent with the ATBCB guidelines developed under Title V.

TITLE IV TELECOMMUNICATIONS RELAY SERVICES

To make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, by ensuring that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing impaired and speech impaired individuals in the United States.

TITLE V MISCELLANEOUS PROVISIONS

Requires that the ATBCB supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of the ADA.

1991 ATBCB AMERICAN WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG) for PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES published.

The ATBCB issued guidelines to assist the Department of Justice to establish accessibility standards for new construction and alterations in places of public accommodation and commercial facilities, as required by title III the ADA. The guidelines will ensure that newly constructed and altered portions of buildings and facilities covered by title III of the ADA are readily accessible to and usable by individuals with disabilities in terms of architecture and design, and communication.

The ADAAG allows certain buildings be constructed without elevators

1991 DEPARTMENT OF JUSTICE (DOJ) REGULATIONS IMPLEMENTING ADA published.

PART III NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES .

This rule establishes standards and procedures for the implementation of title III of the ADA, which addresses discrimination by private entities in places of public accommodations and commercial facilities.

The standards adopted for design and construction are the ATBCB's ADAAG accessibility guidelines.

PART IV NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES.

This rule establishes standards and procedures for the implementation of title II of the ADA, which addresses discrimination by State and local government services.

The standards adopted for design and construction gives the public entity a choice between the UFAS **or** the ATBCB's ADAAG accessibility guidelines. The ADAAG exemption to allow certain buildings be constructed without elevators would not apply to State and local government facilities.

1992 ATBCB proposed guidelines for ADAAG for STATE AND LOCAL GOVERNMENT FACILITIES published.

The ATBCB issued proposed guidelines to assist the Department of Justice to establish accessibility standards for new construction and of State and local government facilities covered by title II of the ADA. The guidelines will ensure that newly constructed and altered State and local government facilities covered by title III of the ADA are readily accessible to and usable by individuals with disabilities in terms of architecture and design, and communication.

The proposed guidelines require that ADAAG standards must be met. The option to use UFAS would not be available. The ADAAG exemption to allow certain buildings be constructed without elevators would not apply to State and local government facilities.

***1994 SAFETY AND BUILDINGS ADMINISTRATED RULES ON ACCESSIBILITY** revised.*

The Barrier Free Design Code chapter COMM. 69 was published. This chapter incorporated the accessibility requirements previously found in the Wisconsin Building Code. The new set of standards adopts the requirements of ADAAG and require all buildings in Wisconsin to meet these standard. The adoption of ADAAG establish a single standard to be met. Previously a designer of owner of a building had to meet the most stringent requirements between the state and federal standards.

1998 ATBCB <u>final</u> guidelines for ADAAG for STATE AND LOCAL GOVERNMENT FACILITIES published.

The ATBCB issued final guidelines to assist the Department of Justice to establish accessibility standards for new construction and of State and local government facilities covered by title II of the ADA. The guidelines will ensure that newly constructed and altered State and local government facilities covered by title II of the ADA are readily accessible to and usable by individuals with disabilities in terms of architecture and design, and communication.

The proposed guidelines require that ADAAG standards must be met. The option to use UFAS would not be available. The ADAAG will include an exemption to allow certain facilities to be constructed without elevators in state and local government facilities.

The elevator exemption applies in limited situations. It is not the same exemption as is in place for public accommodations and commercial facilities. The ADAAG rule is:

> ADAAG 4.1.3(5) One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each passenger elevator shall comply with 4.10.
>
> EXCEPTION 1: Elevators are not required in:
>
> (a) private facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General; or
>
> <u>(b) public facilities that are less than three stories and that are not open to the general public if the story above or below the accessible ground floor houses no more than five persons and is less than 500 square feet. Examples may include, but are not limited to, drawbridge towers and boat traffic towers, lock and dam control stations, and train dispatching towers.</u>

These guidelines have not been incorporated in the Department of Justice accessibility standards and are, therefore, not enforceable at this time.

March 30, 1998

Joint Committee for the Review of Administrative Rules
Richard Grobschmidt

Senator Grobschmidt and Committee Members,

My name is Steven Graffin. I regret that I am unable to attend the hearing today but I have a class that I can not miss. I am writing about the accessibility of press boxes. I am a 26 year old quadriplegic. I have pretty good use of my upper body. When I was in school I was involved in many sports. When I got out of high school I continued to help coach. I became a quadriplegic in June of 1991. After this time I continued to help with some coaching and stats. With the press box not accessible by wheelchair I am unable to see over the crowd to take stats, help coach film or announce at games.

It is difficult even to see football games or track because people stand in front of or around me. The events which take place in the gym are even difficult to watch as I have to sit at the end of the bleachers which is in the direct path of travel for entering and exiting the gym.

It was my understanding that the American's with Disabilities Act has helped these situations by requiring that access be provided to the press box and accessible seating be integrated into the seating for the football field and gymnasium bleachers. I am aware that the state building code has been trying to comply as close as possible to the federal standards. It has been a real blow to hear that a member of your committee wants to pull back on these requirements.

If I would have been wheelchair bound in high school I could not have participated in one of the things I love, sports. If I can not be active on the field or gym floor at I would at least like the opportunity to participate by keeping stats, filming, announcing or coaching. These things would not be possible if the requirements are not enforced for accessibility.

Don't rune the chances of people like me being an active participant instead of a nobody who can only sit at the sideline and not even see over the crowd.

Thank you for listening,

Steven Graffin
4405 Dwight Drive
Madison, WI 53704

608-241-3423

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
ROOM 404 • 100 NORTH HAMILTON
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Backgrounder

To: Joint Committee for Review of Administrative Rules

Date: March 30, 1998

Re: Food and Dairy License Fees

Description of the Rule

The Department of Agriculture, Trade, and Consumer Protection is charged with the responsibility of inspecting food processing plants and retail establishments to assure that handling and other standards are being met. This is ostensibly done to protect the consumer from food-borne illness. The Department recently increased fees for the initial licensure and follow-up inspections of processing plants, retail food establishments, and food warehouses via Clearinghouse Rule 97-038. The rule package also continues the current practice of allowing local units of government to contract with the Department to provide the inspections and to set fees at any amount, with 20% of the amount of the state fee to be remitted by the local unit of government to the Department for each inspection completed.

Materials produced by the Department provide justification for the fee increases in two major ways:

- *The fees have not been increased since 1991:* The Department claims that inflationary pressures on staff salaries, transportation, and other expenses necessitate a revenue increase.

- *GPR support for these inspections has decreased:* The 1995-97 Budget decreased general fund support for the Department. The ratio of GPR support to program revenue support for the inspection programs also changed, such that GPR support of the total cost decreased from 60 percent to 50 percent. The Department claims, therefore, that its inspection program is running a deficit and needs additional revenue to remain solvent.

The Joint Committee for Review of Administrative Rules is hearing public testimony on the justification for these fee increases from the agency, as well as on the impact of the increases on the regulated industry. The notice for this hearing specifies that the Joint Committee will concentrate on the fee increases imposed upon the retail food industry.

Fee Increases

The fee increases which are the focus of this hearing are as follows:

Retail Food Establishment - Annual License Fees		
Sales of at least $25,000 but less than $1,000,000 and processes potentially hazardous food	$90	$175
Sales of at least $1,000,000 and processes potentially hazardous food	$210	$450
Sales of at least $25,000 and is engaged in the processing of food which is not potentially hazardous	$80	$125
Sales of less than $25,000 and is engaged in processing of food which is not potentially hazardous	$40	$60
All retail food sellers not engaged in food processing of any kind	$20	$30
Retail Food Establishment - Annual Reinspection Fees		
Sales of at least $25,000 but less than $1,000,000 and processes potentially hazardous food	$60	$125
Sales of at least $1,000,000 and processes potentially hazardous food	$140	$300
Sales of at least $25,000 and is engaged in the processing of food which is not potentially hazardous	$80	$125
Sales of less than $25,000 and is engaged in processing of food which is not potentially hazardous	$40	$60
All retail food sellers not engaged in food processing of any kind	$50	$60

History of the Rule

- 1991-1993 Biennial Budget Act: The fee structure as it stood before 2/1/98 was put into effect (the "fee before increase" column in the grids above.)

- March 14, 1997: The initial draft of the rule package is transmitted to the Rules Clearinghouse for review.

- April 11, 1997: The package, now entitled Clearinghouse Rule 97-038, is sent back to the agency by the Clearinghouse.

- April 18, 1997: Department Public Hearing on the proposed rule held in Milwaukee.

- April 22, 1997: Department Public Hearing on the proposed rule held in Appleton.

- April 23, 1997: Department Public Hearing on the proposed rule held in Eau Claire.

- April 28, 1997: Department Public Hearing on the proposed rule held in Madison.

  - Over the course of four public hearings, the Department received comments from 25 persons and organizations, all opposed to the fee increases. Some called for a shift in the fee burden to others in the industry (some dairy processors called for grocers to pay higher fees, for instance.) The majority suggested cuts in the Department of Agriculture and the elimination of staff. One suggested that Department staff "spend less time per inspection, work longer, get paid less, less vacation, less sick days, and fewer holidays."

- August 25, 1997: The proposed final draft of the rules is approved by the Secretary of the Department.

- September 16, 1997: The proposed rule is sent to the presiding officer of each house.

- September 18, 1997: Senate President Risser refers the proposed rule to the Senate Committee on Agriculture and Environmental Resources. The chair is Sen. Alice Clausing.

  - **Senate Action**

    - October 20, 1997: No action taken. Rule returned to agency.

- September 23, 1997: Speaker Brancel refers the proposed rule to the Assembly Committee on Agriculture. The chair is Rep. Al Ott.

  - **Assembly Action**

    - October 22, 1997: Public Hearing Scheduled (30-day review period extended)

    - November 13, 1997: Public Hearing Held:

      - All members of the committee were present

      - Three persons appeared in support of the rule. These were Steve Steinhoff of DATCP, John Manske of the Federation of Cooperatives, and Brad Legreid of the Wisconsin Dairy Products Association.

      - Six person appeared in opposition to the bill, including representatives of the Roundy's corporation, the Midwest Food Processors, Copps, and the Wisconsin Grocers.

- One person, a representative of the Wisconsin Association of Convenience Stores, registered in opposition to the legislation.

- November 24, 1997: Rule is reported out of committee with no action taken. Returned to agency for promulgation.

- February 1, 1998: Rule becomes effective.

Units of Government Which Contract with DATCP To Perform Their Own Inspections of Food Retailers

Appleton Health Department
100 N. Appleton
Appleton, WI 54911
414 832 6429
414 832 5853 FAX
Nancy Westphal
Internet: Nancy Westphal
(west102w@wonder.em.cdc.gov@inet@lmbrgr)

Beloit Health Department
100 State St.
Beloit, WI 53511
608 364-6635
608 364-6609 FAX
Jackie Phillips

Brown County Health Dept.
610S Broadway St
PO Box 23600
Green Bay, WI 54305-3600
414 448 6400
414 448 6449 FAX
John Paul
Judy Friedericks

Dane County Health Department
1202 Northport Dr. Rm 154
Madison, WI 53704 2088
608 242-6515
608 242-6256 FAX
James Clark

Eau Claire Health Department
720 Second Ave.
Eau Claire, WI 54703
715 839-4718
715 839-4854 FAX
Darryll Farmer

Greenfield Health Department
7325 W. Forest Home Ave
Greenfield, WI 53220
414 543-5500 EXT 6
414 543-8579 FAX
Carol Skierka, RN
Internet: Mary Kapelis
(skie100w@wonder.em.cdc.gov@inet@lmbrgr)

Kenosha County Health Dept.
714 52nd st.
Kenosha, WI 53140
414 605-6700
414 605-6715 FAX
Randy Wergin

LaCrosse County Health Dept.
300 N. Fourth
LaCrosse, WI 54601
608 785-9771
608 785-9846 FAX
Ron Berg
Internet: Ron Berg
(berg105w@wonder.em.cdc.gov@inet@lmbrgr)

08/01/97

Madison Health Department
City County Bldg.
215 Martin Luther King Jr.
Madison, WI 53710
608 266-4821
608 266-5948 FAX
Jim Steinhoff

CITY / CO LICENS AGENTS

Marathon County Health Dept.
1200 Lakeview Dr.
Wausau, WI 54401
715 848-9060
715 848-7160 FAX
Tom Wittkopf
Internet: Tom Wittkopf
(mill109w@wonder.em.cdc.gov@inet@lmbrgr)

Menasha Health Department
140 Main st.
Menasha, WI 54952 3190
414 751-5119
414 751-5273 FAX
Sue Nett, RN

Milwaukee Health Department
Municipal Bldg.
841 N. Broadway
Milwaukee, WI 53202
414 286-3674
414 286-5164 FAX
Loyce Robinson
Internet: Gregory Carmichael
(gcarmich@omnifest.uwm.edu@inet@lmbrgr)

Outagamie County Health Dept.
401 South Elm Street
Appleton, WI 54911
414 832-5100
414 832-4924 FAX
Don Day

Waukesha County Department of Parks and Land Use Division of Environmental Health
1320 Pewaukee Rd., Rm 260
Waukesha, WI 53188
414 896-8300
414 896-8298 FAX
George Morris

West Allis Health Department
7120 W. National Ave
West Allis, WI 53214
414 302-8657
414 302-8628 FAX

Michell
244-91

Dick's SUPERMARKETS

BRODBECK ENTERPRISES, INC.

March 30, 1998

FAX MESSAGE
(608) 282-3659

Attention: Steve Krieser

State Representative Glenn Grothman
P. O. Box 8952
Madison, WI 53708-8952

Dear Representative Grothman:

I've had an opportunity to visit with Steve Krieser from your office, because you were busy at the time, regarding the Department of Agriculture, Trade & Consumer Protection increased licensing fees for food processing plants and retail food establishments. This fax provides my views for consideration by you and other members of the Joint Committee For Review of Administrative Rules.

As a brief introduction, Brodbeck Enterprises, Inc. operates eight Dick's Supermarkets of which seven are located in southwestern Wisconsin. In addition, we have a central processing facility located in Platteville, producing delicatessen and bakery products for our own eight stores as well as other retailers throughout Wisconsin. The increased licensing fees directly impact us. In fact, we will need to sell close to $200,000 in products to cover the added fees.

I realize the Department of Agriculture is contending with budget constraints. As a business owner/operator, I find that commonplace. As our company contends with exceedingly low food inflation (1997 equalled one percent inflation for food at home) and increased expenses such as wages and benefits that far exceed 1997's three percent CPI, but comprise 50 percent of our costs, we know all too well the difficulties associated with making ends meet. We have the added pressure of increased competition which is not forgiving related to increasing retails as the government might increase fees or taxes. Therefore, we focus on increasing efficiencies and developing new methods of cost control.

Glen, for the Department of Ag to solve budget problems through increasing licensing fees is an easy way out, but would result in a business failing if a similar philosophy were undertaken. Without question, there is tremendous duplication in the state's inspection process. The system should be overhauled and/or consolidated to remove unnecessary costs. It's not unheard of for our company's facilities to be inspected by three different government agencies within the same week, specifically, Department of Ag, Weights and Measures, and the Department of Health--an obviously inefficient use of resources with the cost borne by retailers via fees.

Regardless of the length of time it may have been since the last increase in licensing fees, a 114 percent additional cost in the retail food establishment license and a 94 percent increased cost in licensing food processing is inappropriate. Government, as in business, should spend far less time trying to justify cost increases, associating them to the CPI, but rather focus on pursuing a streamline operation that is more efficient, effective, and, ultimately, less expensive to operate.

Your consideration in this matter is greatly appreciated. Not only do the increased licensing fee and the associated process with this situation need to be evaluated, but I also hope that legislative philosophy and direction related to the government's role in reducing costs will proceed along these same lines. If government were to run processes as a business does, unquestionably, the end result would be improved efficiency and less cost, which benefit everyone.

Sincerely,

Robert J. Brodbeck
President & CEO

RJB:rh

cc: Governor Tommy Thompson
Senator Rick Grobschmidt (JCRAR Co-Chairman)
Senator Dale Schultz
Representative Dave Brandemuehl
Wisconsin Grocers Assoc.--Michelle Kussow

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

TO: Members, JCRAR
FROM: Senator Richard Grobschmidt & Representative Grothman, Co-Chairs
DATE: March 30, 1998
RE: COMM 69, Barrier-Free design standards that apply to the construction of a press box at the top of the bleachers of a high school athletic field.

BACKGROUND

The School District of Cambridge, Wisconsin contacted the co-chairs to inquire about possible relief they could obtain from an administrative rule of the Department of Commerce. The department's rule has been interpreted as requiring the district to construct an elevator to provide access to a press box located at the top of bleachers at the high school athletic field. A copy of the district's letter is attached. The press box is being built as part of the district's reconstruction of the athletic field and bleachers.

After being made aware of the rule requirement, the School District of Cambridge applied to the Department of Commerce for a variance (exemption) from the requirement. The department has granted a temporary (two year) variance that will delay the requirement that the district install an elevator to the press box until January 8, 2000.

After receiving the complaint from the School District of Cambridge, the co-chairs wrote the Department of Commerce to request an explanation of the rule interpretation. (letter attached) The department responded that the rule is based upon federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). The department's policy is stated in section COMM 69.18 (2) (a) 1.b, of the Wisconsin Administrative Code. It states:

Elevator Access. {ADAAG 4.1.3 (5) } These are department rules in addition to the requirements ADAAG 4.1.3(5):

(a) Access to all floors. 1. Except a specified in subd. 2., at least on passenger elevator complying with ADAAG 4.10 shall serve each floor level, including mezzanines, in the following buildings or facilities:

b. Government-owned or operated facilities.

How to provide Narrow - exception?

The Department of Commerce reports that at this time it is the position of the U.S. Department of Justice that the Americans with Disability Act Accessibility Guidelines (ADAAG) would require an elevator to a press box like the one proposed by the School District of Cambridge. The department also reports, that the federal government is proposing changes to the ADAAG standards that may create limited exemptions to elevator requirements for public buildings. The department has indicated it is seeking an explanation of the proposed rule change to determine whether it would apply to press boxes.

Arguments against the rule

The School District of Cambridge explains that because the press box proposed for their high school athletic field will be used by a very limited number of people, and for very few occasions, the expense of adding elevator access to the press box is not a reasonable accommodation of the disabled. The district indicates that cost estimates range between $40,000 and $60,000. The district also expressed the concern that the department's interpretation has not been consistent over the years. It is their impression that other school districts have not been required to equip press boxes with elevators.

Arguments for the rule

Supporters of disabled accessibility standards argue that the rights of the disabled have been hard won and still not sufficiently implemented. Disabled persons continue to have difficulty accessing public buildings. Eliminating any one of these standards is turning public policies meant to help the disabled in the wrong direction.

Supporters of the rule are also concerned that a rule objection meant to address a narrow set of circumstances could inadvertently create a wider exemption that would affect accessibility standards for other government buildings.

Supporters of the rule suggest that the rule is reasonable, and that even though there may not be any disabled persons known of at the time of construction that would use the press box, it is possible that there may be in the future. The current lack of accessibility may be deterring persons with disabilities from getting involved in the broadcasting and reporting of high school sports.

Attachments

- Letter from School District of Cambridge to the co-chairs
- Letter from co-chairs to Secretary McCoshen
- Reply from Secretary McCoshen

Wisconsin Dairy Products Association, Inc.

MAR 3 1 1998

TO: The Joint Committee for Review of Administrative Rules

FROM: Wisconsin Dairy Products Association
Bradley A. Legreid, Executive Director

DATE: March 30, 1998

RE: Hearing on DATCP's Fee Increases

Wisconsin Dairy Products Association would like to provide information to committee members in regards to the Wisconsin Dept. of Agriculture, Trade and Consumer Protection's (DATCP) increase in dairy fees. Unfortunately, I will not be able to attend tomorrow's hearing since I will be in Green Bay for USDA's hearing on Federal Order Reform.

In order to provide background information on this issue, I am enclosing WDPA's testimony from a November 13, 1997 Assembly Ag Committee hearing. In addition, the committee members should know that a Food Safety Task Force has been meeting for the past five months to examine DATCP's funding and expense. This group has extensively reviewed the current fee levels and searched for possible funding relief. The task force will be completing its work in May and issuing a final report to Secretary Ben Brancel. That report will contain recommendations for fee funding that will be addressed in the next biennial budget.

Therefore, since the Food Safety Task Force (which is comprised of a wide variety of food and dairy representatives, in addition to selected legislators) is already involved in this review process, WDPA respectfully requests that this committee not take any action on this issue. This is an issue that will be addressed during the next budget process.

Thank you for your time and attention.

8383 Greenway Blvd., • Middleton, WI 53562 • Phone 608/836-3336 • Fax 608/836-3334

Wisconsin
Dairy Products Association, Inc.

Dairy License Fee Testimony
November 13, 1997
Assembly Agriculture Committee
Presented by Brad Legreid, Executive Director

-The Wisconsin Dairy Products Association (WDPA) is presenting testimony today in regards to the Department of Agriculture, Trade & Consumer Protection (DATCP) revised proposal to increase dairy fees.

-No one likes to see fees increased. Due to the highly competitive nature of dairy product sales throughout the United States, even a small increase in fees can have a significant impact on a company's profit margin.

-Wisconsin's dairy plants are no longer competing against other dairies within our state. The dairy industry has become national (and international) in scope. 85% of Wisconsin's dairy products are shipped out of state, meaning that our plants are competing with plants from California, New Mexico, Utah, Idaho, Texas, etc. As we all know, California produces cheese at a lower cost which gives them a competitive advantage over our plants. So therefore, since our dairy industry is already trying to be as cost efficient as possible in order to compete with California and other states, any increase in fees increases the cost of doing business which in turn shackles our ability to be competitive on the national market.

8383 Greenway Blvd., • Middleton, WI 53562 • Phone 608/836-3336 • Fax 608/836-3334

-With that said, I will state that WDPA is supporting the general concept of increasing these licensing fees in order for DATCP to achieve the 50/50 split between GPR (taxes) and PR (fees) as mandated by the WI Legislature in the last biennial budget.

-There's a state mandate that says no state agency can operate under a deficit budget. Without fee increases, the DATCP Food Division would fall into a deficit budget during this biennium.

-The Wisconsin Dairy Products Association is taking our position on dairy fees in order to make all fee increases fair and equitable.

-However, it appears that the timing isn't right for a major fee increase at this time. Due to fiscal hardships at both the plant and farm levels, the Dept. has agreed to cut back it's proposal to increase dairy fees.

-This revised proposal, which only increases grade A milk procurement fees from 0.4 cents to 0.6 cents per hundredweight, is only a stop-gap measure to get the Dept. through this biennium. The Dept. will once again be facing another financial shortfall in the 1999-2001 biennium.

-WDPA supports this revised proposal.

-WDPA members are also working closely with the Dept. on its efficiency study. Our members, along with other association's members who serve on the advisory committee. will be reviewing and suggesting ideas to streamline operations and improve cost

efficiencies.

-WDPA supports this efficiency study and will work diligently through its members on the task force.

-Only time will tell if this efficiency study will produce dramatic cost savings. Since a majority of the Dept's expenses are wrapped up in personnel (whose costs are determined by unions), and since many of the services provided by the Dept. are federally mandated, it will be interesting to see if significant cost decreases can be discovered. I believe that the industry members serving on this advisory committee will be extremely thorough and exhaustive in discovering possible cost efficiencies.

-And finally, in regards to legislative action, it would be wonderful if the Legislature increased the GPR (tax) portion of dairy fees back up to 60%. Wisconsin Dairy Products Association would be very supportive of this action. However, in this era of fiscal restraint, it appears unlikely at this time that this will occur.

-In conclusion, WDPA believes that the current proposal for increasing dairy fees is fair and equitable. WDPA members fully support the food safety programs of the Dept. of Agriculture, Trade & Consumer Protection and are willing to pay their proportionate share to fund these necessary programs.

-Thank you.

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 31, 1998

William McCoshen, Secretary
Department of Commerce
123 West Washington Avenue
Madison, WI 53707-7970

Dear Secretary McCoshen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 31, 1998 and adopted the following motion:

Emergency Rule Comm 108.21(1)(f)

Relating to: emergency community development block grants.
Submitted by the Department of Commerce.

Moved by Representative Grothman, seconded by Senator Grobschmidt, that pursuant to s. 227.24(2)(a), the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule Comm 108.21 (1)(f) by 60 days, at the request of the Department of Commerce.

Ayes:	(9)	Senators Grobschmidt, Potter, Welch, and Schultz; Representatives Grothman, Gunderson, Seratti, R. Young, and Kreuser.
Noes:	(0)	None.
Absent:	(1)	Senator George.

EXTENSION GRANTED, Ayes 9, Noes 0, Absent 1.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

RICHARD GROBSCHMIDT
Senate Co-Chair

GLENN GROTHMAN
Assembly Co-Chair

RG:GSG:swk

cc: Secretary of State La Follette
Revisor of Statutes Gary Poulson

Easter Seal Society of Wisconsin, Inc.

101 Nob Hill Road, Suite 301 • Madison, Wisconsin 53713
608.277.8288 Voice • 608.277.8031 TTY • 608.277.8333 Fax • www.wi-easterseals.org Website

DATE: March 31, 1998

TO: Co-Chairs Grobschmidt, Grothman, and members of the Joint Committee for Review of Administrative Rules

Thank you for the opportunity to present comments on the interpretation of COMM 69.18 (2) (a) 1.b, Wisconsin Administrative Code. For the past 13 years, I have served on the advisory committee to Safety and Buildings barrier-free design code (formerly s52.04, then ILHR 69, and now COMM 69). That committee's rationale for including this requirement in our state code was to ensure that both the public entities and persons designing facilities for public entities would be aware that Title II of the Americans with Disabilities Act (ADA) does not allow the elevator exemption for small buildings under ADA Accessibility Guidelines (ADAAG) to apply to public entities covered by Title II. As used in this Title of the Act, "Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities.

We are all still learning where some adjustments need to be made in the ADAAG, and at the Federal level, I believe that there has been a threshold established to ensure that applying the elevator requirement is not unreasonable in terms of the size of the structure. If, in Wisconsin, it were determined that the means of access to a press box in smaller sports facilities above the size threshold established by Federal requirements could be by means other than a full-sized passenger elevator, I am sure that most reasonable individuals would support this approach.

As a child who spent 6 years using a wheelchair, without walking, I never was able to go to a library or a museum. Nor was I able to attend school in my home locality, because none were accessible for persons unable to walk stairs. I know that the full implementation of ADA is far in the future, but if we start to identify certain places that persons with physical disabilities are prevented from using, we are beginning a regressive action which will affect many people in the future.

I cannot guarantee just when students with physical disabilities will start participating in activities in school press boxes in any identified school district, but if we exempt that type of structure from being required to provide access, we are guaranteeing that students with physical disabilities will NOT be able to participate. I have utmost confidence that design and architecture professionals can develop designs which will provide for access in a way that is reasonable and is incorporated into the design from its inception. I hope that you will give careful thought before modifying these rules. Regardless of what is required in Wisconsin, the Federal requirements will still apply, and I would assume that most designers would prefer to have consistency in the two.

Thank you for your kind attention and consideration of my concerns.

Cleo Eliason

Cleo Ann Eliason, Vice President
Client Assistance and Technical Services

State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

March 31, 1998

The Honorable Richard Grobschmidt
The Honorable Glenn Grothman
Joint Committee on Administrative Rules Co-Chairs

Dear Senator Grobschmidt:

Thank you for this opportunity to provide the Department's recommendation and perspective concerning recently implemented fee increases for Retail Food Establishments.

I appreciate the concerns of food and dairy businesses about the cost of the Department's Food Safety and Inspection program and the level of fees businesses pay to support this program. We are currently working with food and dairy businesses to assure that essential and valued food safety and inspection services are efficiently delivered and adequately funded.

The Department had not increased fees for Retail Food Establishment licenses since 1991. In late 1996, the Department initiated rulemaking action to increase fees because program revenue, primarily from license and inspection fees, no longer recovered fifty percent of the cost of operating the Department's Food Safety and Inspection program. The fee proposal was designed to assure adequate program revenue for this program until FY 2001.

Concurrent with the Department's rulemaking process, the 1997-1999 Biennial Budget bill directed the Department to analyze the efficiency of its Food Safety and Inspection program to identify potential cost savings. The Department has completed this Efficiency Study. This Study identifies sixteen actions the Department could pursue to improve efficiency or cut costs. The Study has been submitted to and approved by the Legislature's Joint Committee on Finance.

Several of the Efficiency Study recommendations propose adjustment or reduction of current services provided to food and dairy businesses which would require changes to State or Federal requirements. Because successful implementation of these recommendations will require active, broad based support by food and dairy businesses that would be most affected by these proposed changes, the Department has taken an additional step to assure input and consideration of Efficiency Study recommendations.

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In September, 1997, then Acting Secretary, Joe Tregoning, appointed a Food Safety Task Force to explore ways for the Department to cut costs or improve the efficiency of its Food Safety and Inspection program. This Task Force has been meeting monthly since November and will report its final recommendations to me on May 26. The objectives of the Task Force are to clearly define essential food safety services and recommend ways to:

- streamline or eliminate non-essential services
- gain further efficiency in delivery of current services
- provide adequate, long term funding for essential or highly valued food safety and inspection services.

As outlined briefly here, there is work in-progress to address industry concerns about costs and fees and Department concerns about adequate funding for essential food safety and inspection services. I believe the Task Force will present useful, practical recommendations that we can use as we develop the Department's 1999-2001 Biennial Budget request. I recommend that you withhold any action until the Task Force has completed its work and the Department has taken actions to appropriately respond to its recommendations.

Thank you again for this opportunity to provide the Department's perspective. I am confident that you will thoughtfully consider my recommendation.

Sincerely,

Ben Brancel

Ben Brancel
Secretary

FOR YOUR RECORDS

Committee Meeting Attendance Sheet

Joint Committee for Review of Administrative Rules

Date 3-31-98 Meeting Type Public Hearing

Location Room 225 NW, State Capitol

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator GROBSCHMIDT	✓		
2. Senator POTTER	✓		
3. Senator GEORGE		✓	
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative YOUNG	✓		
10. Representative KREUSER	✓		
Totals	9	1	0

John Sumi / Steve Krieser, Committee Clerk

Committee Meeting Attendance Sheet

Joint Committee for Review of Administrative Rules

Date 3-31-98 Meeting Type Exec Session

Location Room 225 Northwest, State Capitol

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator GROBSCHMIDT	✓		
2. Senator POTTER	✓		
3. Senator GEORGE		✓	
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative YOUNG	✓		
10. Representative KREUSER	✓		
Totals	9	1	0

John Sumi / Steve Krieser, Committee Clerk

Shelley Peterman Schwarz

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March 31, 1998

Senator Richard Grobschmidt
Senate Co-Chairman
Room 404, 100 N Hamilton St
PO Box 7882
Madison, WI 53707-7882

Dear Senator Grobschmidt,

I just returned from testifying before your Joint Committee for Review of Administrative Rules and I am still concerned that you will recommend suspending the rule requiring elevator access in government-owned or operated facilities. As you may remember I spoke on behalf of the **Wisconsin Council on Physical Disabilities**. I, we, think that this would be a gross overreaction to the problem of press box access in high school stadiums. It would also be a clear violation of the American's with Disabilities Act. I believe the problem is solvable without suspending the rule and I'd like to follow-up and add to my testimony.

I have an acquired disability, multiple sclerosis. Since I've been unable to walk, I've begun to discover how much of the world is not accessible to people like me. When my two children, were in high school, I was unable to attend many of their school athletic meets because the facilities were not accessible. On several occasions, I was carried up the stairs so that I could watch them compete. Can you imagine the lawsuit that could have resulted had I or one of the school personnel carrying me been injured as a result of not being accessible? The same situation could result from a student with a disability requesting to participate in athletics as a sports writer, an announcer, play-by-play or color commentator from an inaccessible press box. Personally, being carried into and out of a facility is embarrassing and demoralizing to an adult, I can only imagine how a self-conscious teenager would feel.

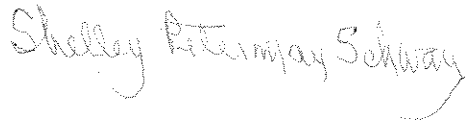
I understand that elevator access can be a costly solution. But I'd like to suggest that the concerned parties work together to find other creative, less costly solutions to barrier removal. The answer is not throwing out the rule and waiting for a lawsuit to be filed. The answer is to work for a common sense, reasonable solution to a solvable problem.

People with disabilities have been an overlooked, underrepresented minority for too long. We are speaking out now because we want to protect our civil rights. Basically, we just want to have the same choices in our lives that you have.

And, if I may leave you with one final thought; people with disabilities belong to the only minority group that anyone can join, at any time. Someday you, your son or daughter, niece or nephew may be unable to walk. Wouldn't you want them to have access to the same opportunities everyone else has?

Please do not recommend suspending this rule!

Sincerely,



Shelley Peterman Schwarz

cc:
Governor's Committee for People with Disabilities
Wisconsin Coalition for Advocacy
Office for People with Disabilities
ADA Partnership