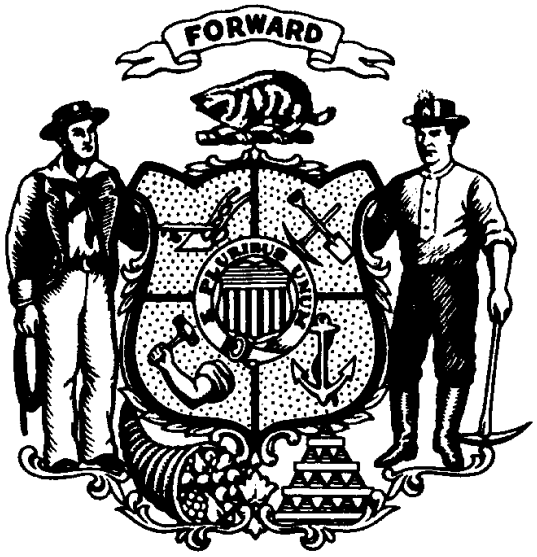
WISCONSIN ADMINISTRATIVE REGISTER

No. 496



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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Department of Agriculture, Trade & Consumer Protection

Rule adopted creating **s. ATCP 139.04 (11)**, relating to prohibiting the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Finding of Emergency

(1) On June 2, 1995, the United States Environmental Protection Agency ("EPA") issued a final rule prohibiting the use of HC–12a, a hydrocarbon–based refrigerant containing liquified petroleum gas, as a refrigerant in mobile air conditioning systems. EPA prohibited HC–12a, and a predecessor product called OZ–12, because of safety risks associated with the use of flammable refrigerants in mobile air conditioning systems. According to EPA, the manufacturer of HC–12a did not provide adequate information to demonstrate that the product was safe when used in a mobile air conditioning system.

(2) Despite the current EPA rule, at least one company is currently engaged in manufacturing and distributing HC–12a for use in motor vehicle air conditioning systems. The Idaho manufacturer argues that EPA lacks jurisdiction to regulate the sale of its product. HC–12a is currently being offered, distributed or promoted for sale at wholesale and retail outlets in Wisconsin and surrounding states, for use as a refrigerant in mobile air conditioning systems.

(3) HC–12a is a highly flammable substance, as defined by the American Society of Testing and Materials (ASTM) standard test procedure for refrigerants, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of HC–12a or its predecessor, OZ–12, in mobile air conditioning systems is inconsistent with standards adopted by the Society of Automotive Engineers. According to those standards, refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

(4) At least 13 states have enacted legislation prohibiting the sale of refrigerants for use in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

(5) HC–12a and other hydrocarbon–based refrigerants, when sold for use in motor vehicle air conditioning systems, present a serious risk to public health and safety for the following reasons:

(a) Motor vehicles and mobile air conditioning systems are not currently designed to use flammable refrigerants, or to prevent hazards associated with flammable refrigerants.

(b) Refrigerants in mobile air conditioning systems commonly leak into the engine compartments or passenger compartments of motor vehicles. Leaking refrigerant is often routed into the passenger compartment through the air distribution system from the evaporator. Hydrocarbon refrigerants, which are heavier than air, will tend to accumulate in low or confined spaces of a motor vehicle.

(c) Hydrocarbon refrigerants are flammable at low concentrations.

(d) Internal components of a motor vehicle provide many potential sources of ignition for flammable refrigerants. Passenger activities, such as smoking, may also create ignition sources.

(e) Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers. Automotive technicians who test for leaks, or who repair or service mobile air conditioning systems containing flammable refrigerants, are also at risk.

(6) The risk to public health and safety cannot be adequately addressed by product packaging or labeling, for the following reasons:

(a) The use of flammable hydrocarbon–based products in motor vehicle air conditioning systems is inherently hazardous. That hazard will not be materially altered by mere packaging or labeling.

(b) Use is hazardous to persons who are not aware that the refrigerant is present, and have not have seen or read the product label.

(c) Current product labels for HC–12a already contain a warning statement that the contents are under pressure and are extremely flammable. Current labels direct use by qualified personnel only, and list other cautions and instructions when recharging a mobile air conditioning system with this substitute refrigerant. These label statements do not materially alter the hazard inherent in the use for which the product is sold. There are few if any protective actions which a customer or technician could take to reduce the hazards associated with use of the product.

(d) There are no automotive industry standards which would allow a flammable refrigerant to be used in a motor vehicle air conditioning system as currently designed.

(7) Flammable hydrocarbon–based refrigerants, including HC–12a, OZ–12, and other refrigerants containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons, pose a serious risk to public health and safety when sold for use as refrigerants in mobile air conditioners. At this time, the public health and safety can only be protected by keeping these products out of the channels of commerce in this state. The department can and should adopt rules, under ss. 93.07(1) and 100.37(2), Stats., prohibiting the sale of such products in this state.

(8) Pending the adoption of rules according normal administrative rulemaking procedures, it is necessary to adopt

emergency rules under s. 227.24, Stats., to protect the public health, safety and welfare.

Publication Date: October 9, 1996
Effective Date: October 9, 1996
Expiration Date: March 8, 1997
Hearing Date: November 15, 1996
Extension Through: May 6, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

Rules adopted repealing **ch. DOD 13** and creating **ch. Comm 113**, relating to the annual allocation of volume cap.

Finding of Emergency

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

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately $260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Hearing Date: February 13, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules adopted creating **s. DOC 309.05 (2)(d)**, relating to inmate mail.

Finding of Emergency

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

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;

2. Threaten and harass elected officials, law enforcement officers, and other persons; and

3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

Publication Date: August 15, 1996
Effective Date: August 15, 1996
Expiration Date: January 12, 1997
Hearing Dates: January 10, 13 & 14, 1997
Extension Through: May 10, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Family Services
(Management, Policy and Budget, Chs. HSS 1––)

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court–ordered substitute care.

Exemption From Finding of Emergency

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court–ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court–ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court–ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court–ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

Publication Date: January 22, 1997
Effective Date: January 22, 1997
Expiration Date: June 21, 1997
Hearing Date: April 8, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services
(Health, Chs. HSS 110––)

1. Rules adopted creating **ch. HFS 125**, relating to do–not–resuscitate bracelets to alert emergency health care personnel.

Finding of Emergency

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

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do–not–resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do–not–resuscitate order in effect if the patient has on his or her wrist a do–not–resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do–not–resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., created by Wis. Act 200, permits the Department to establish procedures by rule for emergency health care personnel to use in following do–not–resuscitate orders, and s. 154.27, Stats., as created by Wis. Act 200, requires the Department to establish by rule a uniform standard for the size, color and design of do–not–resuscitate bracelets.

These rules are being published by emergency order because while most Wis. Act 200 provisions have taken effect and do–not–resuscitate orders are being written for patients who are qualified, as defined in s. 154.17 (4), Stats., as created by Wis. Act 200, and request the order, without rules that establish a uniform standard for the bracelets the Department cannot approve bracelets. If the bracelet is not approved by the Department, it cannot be affixed. In the absence of a DNR bracelet on the wrist of a person in cardiac or respiratory arrest, emergency health care personnel ordinarily cannot know that a DNR order is in effect, and so must initiate cardiopulmonary resuscitation which in some cases will contravene a DNR order.

The rules establish a uniform standard for do–not–resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do–not–resuscitate orders.

Publication Date: **January 18, 1997**
Effective Date: **January 18, 1997**
Expiration Date: **June 17, 1997**
Hearing Date: **March 19, 1997**

2. Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

Finding of Emergency

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

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead– based paint. When lead–based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead–safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead–based paint and lead– contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a $6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employes who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state–accredited training courses and state–certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection,

a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead–based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over $6.5 million. The grants require that money be disbursed only for lead–based paint activities performed by state–certified persons who have completed state– accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1 997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD–funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

Publication Date: **February 18, 1997**
Effective Date: **February 18, 1997**
Expiration Date: **July 18, 1997**
Hearing Date: **March 18, 1997**

EMERGENCY RULES NOW IN EFFECT

Health & Social Services
(Economic Support, Chs. HSS 200–)

Rules adopted creating **s. HSS 201.135**, relating to time limits on benefits for AFDC recipients participating in the JOBS program.

Exemption From Finding of Emergency

The Legislature in s. 275 (3) of 1995 Wis. Act 289 directed the Department to promulgate the rule required under s. 49.145 (2) (n), stats., as created by Wis. Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency. The rule will take effect on October 1, 1996.

Analysis Prepared by the Department of Workforce Development

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W–2), the replacement program for AFDC, as created by 1995 Wis. Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W–2 employment position benefits or a combination thereof. Under s. 49.145 (2) (n), Stats., as created by 1995 Wis. Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W–2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141 (2) (b), Stats., as created by 1995 Wis. Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W–2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to count toward the 60–month limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which proves that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the Federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) Training Program. Implementation of the time limits is part of the continuing transition from AFDC to the W–2 program. W–2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long–term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria county or tribal economic support agency would use to determine whether an extension of the 60 month time limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

Publication Date: **September 30, 1996**
Effective Date: **October 1, 1996**
Expiration Date: **February 28, 1997**
Hearing Date: **November 19, 1996**
Extension Through: **April 28, 1997**

EMERGENCY RULES NOW IN EFFECT (2)

Commissioner of Insurance

1. Rule adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in 1996–97 premium rates for the health insurance risk–sharing plan.

Exemption From Finding of Emergency

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

1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk–Sharing Plan ("HIRSP") board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP's operating and administrative costs. This rule adjusts the premium rates for the period of October 1, 1996 through June 30, 1997, based upon a recalculation of costs and subsidy payments for the 1996–1997 fiscal year. This adjustment represents a 12% reduction in premium payments for the both the non–subsidized major medical and medicare plans for person under age 65. The rates for low–income persons entitled to a premium reduction under s. Ins 18.07 (5) (b) are not affected.

Publication Date: **September 4, 1996**
Effective Date: **October 1, 1996**
Expiration Date: **February 28, 1997**
Hearing Date: **November 8, 1996**
Extension Through: **April 28, 1997**

2. A rule adopted creating **s. Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal "Kassebaum–Kennedy" law, P.L. 104–191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

Publication Date: **December 20, 1996**
Effective Date: **January 1, 1997**
Expiration Date: **May 31, 1997**
Hearing Date: **February 19, 1997**

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

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

Exemption From Finding of Emergency

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

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

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

2. Rules adopted revising **chs. NR 25** and **26**, relating to the Lake Superior fisheries management plan.

Finding of Emergency

The waters of Lake Superior were not part of the extensive off–reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: **November 18, 1996**
Effective Date: **November 28, 1996**
Expiration Date: **April 27, 1997**
Hearing Date: **December 17, 1996**

EMERGENCY RULES NOW IN EFFECT

Public Instruction

Rules adopted revising **ch. PI 35**, relating to the Milwaukee private school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996–97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the

1996–97 school year. Permanent rules will be developed when judicial review is finalized.

Publication Date: February 19, 1997
Effective Date: February 19, 1997
Expiration Date: July 19, 1997
Hearing Date: April 1, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Transportation

1. Rules adopted revising **ch. Trans 76**, relating to general transportation aids.

Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles*, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefor, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

Publication Date: October 25, 1996
Effective Date: October 25, 1996
Expiration Date: March 24, 1997
Hearing Date: December 16, 1996
Extension Through: May 22, 1997

2. Rules adopted revising **ch. Trans 117**, relating to occupational driver's license.

Finding of Emergency

1995 Wis. Act 269 rewrote state law regarding the issuance of occupational licenses. That Act goes into effect on November 1, 1996. Absent this emergency rule making, the Department will lack rule authority necessary to administer the new law. This emergency rule will permit the Department to issue occupational licenses until the permanent rule establishing procedures for issuing occupational licenses are in place. Therefore, the Department of Transportation finds that an emergency exists and that the rule is necessary.

Publication Date: November 1, 1996
Effective Date: November 1, 1996
Expiration Date: March 31, 1997
Hearing Date: November 26, 1996
Extension Through: May 29, 1997

3. Rules were adopted amending an emergency rule revising **ch. Trans 76**, Wis. Adm. Code, relating to uniform cost reporting procedure during calendar year 1996 for general transportation aids to be paid in calendar year 1997.

Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles,* 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, and to limit its application to late filing events in 1996 only, the Department must promulgate this as an emergency rule.

Publication Date: March 25, 1997
Effective Date: March 25, 1997
Expiration Date: May 22, 1997
Hearing Date: May 8, 1997
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

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

1. Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

Finding of Emergency

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

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W–2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W–2 offers participants the opportunity to move into the work world and become self–sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W–2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W–2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other

employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W–2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W–2 no sooner than July 1, 1996 and must fully implement the W–2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV–A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self–sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104–193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W–2 health plan. Therefore, W–2 participants who meet the July 16, 1996, AFDC eligibility requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101–108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W–2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self–sufficient through employment. The W–2 program provides cash benefits only for those individuals who participate in W–2 employment and training activities. W–2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W–2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self–sufficiency plan and determine their place on the W–2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self–sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of $555 and individuals placed in a transitional placement will receive a monthly benefit of $518. W–2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W–2 employment position. The W–2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W–2 employment position or child care, time–limited benefits for participants in W–2 employment positions, good cause for failure or refusal to participate in W–2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W–2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W–2 employment position participants.

Publication Date: **March 1, 1997**
Effective Date: **March 1, 1997**
Expiration Date: **July 29, 1997**

EMERGENCY RULES NOW IN EFFECT

Workforce Development
(Labor Standards, Chs. ILHR 270–279)

Rules adopted revising **ch. ILHR 272**, relating to the minimum wage.

Finding of Emergency

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

The minimum wage set by federal law will be raised to $4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employes in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employes would be subjected to confusion and uncertainty in the calculation and payment of wages.

Publication Date: **August 28, 1996**
Effective Date: **October 1, 1996**
Expiration Date: **February 28, 1997**
Hearing Date: **December 17, 1996**
Extension Through: **April 28, 1997**

EMERGENCY RULES NOW IN EFFECT

Workforce Development
(Wage Rates, Chs. ILHR 290–294)

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

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

1995 Wis. Act 213 made a number of major changes to the laws which require the department to determine prevailing wage rates for state and local public works projects. In place of a case–by–case investigations, the Department of Workforce Development is required to conduct an annual survey of employers and issue prevailing wage rate determinations for all trades or occupations in all areas of the state throughout the year based on the survey data. The statutes also provide that members of the public, employers, local governmental units and state agencies may ask the DWD to review prevailing wage rate determinations under a number of specified circumstances.

This emergency rule establishes deadline and appeal criteria for the process that will be used to compile the 1996 survey results and

consider requests for review. The use of an emergency rule for this purpose will benefit the public, employers local governments units and state agencies by giving them clear information as to the procedures to be followed, and it will also help the DWD to meet the statutory requirement that prevailing wage rates be compiled and issued promptly.

Publication Date: **December 11, 1996**
Effective Date: **December 11, 1996**
Expiration Date: **May 10, 1997**
Hearing Date: **March 31, 1997**

STATEMENTS OF SCOPE OF PROPOSED RULES

Accounting Examining Board

Subject:

Accy Code – The education required to write the certified public accountant examination.

Description of policy issues:

Objective of the rule:

To fulfill the mandate of 1995 Wis. Act 333, which requires that after December 31, 2000, a person may not take the examination leading to the certificate to practice as a certified public accountant unless the person has completed at least 150 semester hours of education with an accounting concentration at a recognized institution, and has received a bachelor's or higher degree with an accounting concentration. If a person has a bachelor's or higher degree from an institution, but the degree does not consist of an accounting concentration, the Board may review the person's educational experience to determine whether the education constitutes the "reasonable equivalence" of an accounting concentration, and permit the person to take the examination.

Policy analysis:

Section 442.04 (4), Stats., as amended by 1995 Wis. Act 333, will require a person to have either a degree representing 150 semester hours of education with an "accounting concentration," or its "reasonable equivalence" as determined by the board in order to take the qualifying examination on December 31, 2000. It is necessary for the Board to define the educational prerequisites for taking the examination which will be deemed to constitute an "accounting concentration" and its "reasonable equivalence."

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats., and s. 442.04 (4) (b), Stats., as amended by 1995 Wis. Act 333.

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

20 hours.

Health & Family Services

Subject:

Sections HSS 45.05 (11) and HFS 46.06 (11) –– Relating to outdoor play space at family and group day care centers for children.

Description of policy issues:

Description of objectives:

The rule changes will permit the Department to grant an exemption from its requirement that a day care center's outdoor play space be located on the premises of the center.

Description of policies –– Relative existing policies, proposed new policies and policy alternatives considered:

The Department's current rules for group day care centers (9 or more children) require the centers to have outdoor play space for the children, and that the outdoor play space be on the premises. The Department's current rules for family day care centers (4 to 8 children) require those centers to have outdoor play space for the children but do not specify that the outdoor play space be on the premises. That, however, is how the requirement for outdoor play space is interpreted.

Section 5 of 1995 Wis. Act 439 directed the Department to promulgate rules that establish a procedure under which an applicant for a license to operate a group day care center or a family day care center may obtain an exemption from the requirement in the Department's rules that outdoor play space be on the premises of the center. The applicant requesting an exemption is to submit to the Department for approval an outdoor play space plan. The Department may grant an exemption if the Department finds that the plan identifies an alternative to on–site outdoor play space that is safe, provides for adequate supervision of the children and meets any other requirements established by the Department by rule.

The directive to the Department enacted as s. 5 of 1995 Wis. Act 439 was recommended by the Legislative Council's Special Committee on Child Care Economics.

Statutory authority:

Section 48.67, Stats.

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

Estimated hours of staff time – 40 hours.

Health & Family Services

Subject:

Ch. HFS 77 (formerly, ch. HSS 267) – Relating to criteria and procedures for reimbursement of interpreting services for persons who are deaf or hard–of–hearing.

Description of policy issues:

Description of objectives:

An updating of ch. HFS 77 is needed because the program has made changes in how interpreters are scheduled and in the method of certifying and verifying interpreters who are not certified by the National Registry of Interpreters for the Deaf, and because the preferred terminology for referring to people with hearing problems is no longer "hearing impaired" but rather "deaf or hard of hearing" and the preferred terminology for "interpreter services" is "interpreting services".

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

1. Certification of interpreters:

The current rules do not mention the Wisconsin Interpreting and Transliterating Assessment (WITA) as a means for certifying and verifying the qualifications of interpreters for persons who are deaf or hard of hearing.

In May, 1996, the Department began using the Wisconsin Interpreting and Transliterating Assessment (WITA) as a primary method of certifying and verifying interpreters to eventually replace the Wisconsin Quality Assurance Program. Interpreters verified through WITA qualify for reimbursement by the Department for interpreting services provided under ch. HFS 77.

The development of the WITA process began in 1992 when the Department brought together a group of individuals with expertise in the area of assessing interpreters. A number of assessment tools were reviewed by the group. The group determined that the Kansas Quality Assurance Screening Test was the most comprehensive tool available. As a result, it was adopted with modifications as the tool to be used in Wisconsin for certifying and verifying interpreters.

2. Scheduling of interpreters:

The current rules state that the Department will schedule interpreting services for an individual or agency authorized to receive interpreting services funded by the Department.

Although the Department continues to fund interpreting services and maintain a list of qualified interpreters, it no longer directly schedules interpreters. Requests for interpreting services are received and reviewed by the Department's six region–based Coordinators of Deaf and Hard of Hearing Services, to ensure that the circumstances for which services are being requested meet the requirements of s. 46.295, Stats., and ch. HFS 77. If qualified, the individual or organization requesting the services is provided with a registry of certified and verified interpreters. The individual or organization then schedules the interpreter.

3. Terminology:

The preferred reference to services for people with "hearing impairments" is now "deaf and hard of hearing services". The preferred reference to people who are "hearing impaired" is now "deaf or hard of hearing". All references in the rules to "hearing impaired person" or "hearing impaired services" will be changed to the new terminology.

The preferred reference to "interpreter services" is now "interpreting services". All references in the rules to "interpreter services" will be changed to the new terminology.

Statutory authority:

Section 46.295 (6), Stats.

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

Two staff people from the Bureau for Sensory Disabilities (BSD) will commit a total of approximately 24 hours to developing the rule changes and an additional 24 hours to the review phase of the rulemaking process.

Nursing, Board of

Subject:

N Code – Relating to clarification of administrative rules.

Description of policy issues:

Objective of the rule:

The changes being recommended relate to such technical matters as amending form, style, grammar or punctuation in order to improve readability, eliminate outdated provisions, and update citations to rules and statutes for accuracy.

Policy analysis:

The proposed changes focus primarily on minor defects in the form, style, grammar and punctuation of the existing rules. The proposed changes will ensure that the rules reflect clarity and streamline the application procedures. One substantive provision addresses verification of graduation submitted to the Board on behalf of applicants for license by endorsement by the state of original licensure.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 441.01 (3), Stats.

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

8 hours.

Public Service Commission

Subject:

PSC Code – Relating to "Fresh–Look" Procedures for Telecommunications Service Contracts Governed by s. 196.194 (1), Stats.

Description of policy issues:

A. Objective of Rule:

The objective of this rule is to promote competition in the local telecommunications exchange service territories in this state as meaningful "head–to–head" facilities–based competition arises. This objective is consistent with the legislative intent of 1993 Wis. Act 496 (Act 496) to promote competition in the provision of telecommunications services, especially competition based upon investment in new telecommunications infrastructure. The proposed rules, however, would not immediately affect smaller telecommunications utilities (those with 150,000 or fewer access lines), but reserves the areas they serve for case–by–case treatment.

B. Existing Policies Relevant to Rule:

1. Promotion of Competition. The Commission has been in the process of introducing competition into the telecommunications markets for the last two years. The Commission's efforts have been directed towards providers, the "supply" side of the telecommunications market, in three ways. As discussed in C. below, the rulemaking proposed here is a complementary effort to open up the "demand," or customer side, of the market.

a. In docket 05–TI–138, in which every major telecommunications provider in the state has participated, the Commission has been actively investigating and determining the necessary conditions for competitive local exchange telecommunications markets. This proposed rulemaking is an outgrowth of that investigation. In its "Supplemental Findings of Fact, Conclusions of Law, and Interim Order," docket 05–TI–138 (September 23, 1996), the Commission determined that it has jurisdiction to create, in the public interest, a fresh–look procedure to be inserted in tariffs authorizing individual contracts pursuant to s. 196.194 (1), Stats. The Commission also expects to issue shortly a further order in docket 05–TI–138 to establish a level of regulation for new local exchange service providers.

b. While investigating market conditions, the Commission also has granted interim certification to more than ten new facilities–based providers to serve in the previously–protected exchange territories of GTE North Incorporated and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin).

c. Also, the Commission, in order to advance competition, has actively assumed the role given to states by Congress in the Telecommunications Act of 1996, 47 U.S.C. §§ 151 et. seq. (1996 Act) to open to competition the local exchange monopolies held by the Regional Bell Operating Companies and other incumbent local exchange carriers (ILECs). Under the 1996 Act, the Commission has already arbitrated and approved several agreements necessary for interconnection and related services. "Interconnection" is the means by which communications can be transferred seamlessly among networks of competing providers in order to provide service to the subscribers, regardless of their presubscribed service providers.

At this time, however, substantial, effective competition still does not exist in the local (intrastate) exchange services market. (The services in this market are distinguished from the market where facilities–based providers offer competitive access for originating and terminating interstate communications.)

2. Promotion of Infrastructure. Another objective of Act 496 is the development of leading edge telecommunications infrastructure. New facilities–based entrants are an important new source of investment in new telecommunications infrastructure. Unlike resellers, facilities–based entrants can create new, efficient networks that offer a source of "independent" competition. Resellers are a "dependent" form of competition as they rely largely upon the networks of the incumbent local exchange carriers. New provider infrastructure investment is costly, and investors in new competitors require a reward for their competitive risk–taking.

C. New Policies Proposed:

The proposed rulemaking is intended to "unlock" customers from long–term contracts (e.g., 3–, 5–, or 7–year terms) that would otherwise significantly slow the introduction of telecommunications competition, as described in B.1. above. The opportunity for contract re–opening would be confined to contracts for services in local exchange markets now being opened to competition by the 1996 Act

and the Commission's determinations in 05–TI–138. The Commission views contracts for private line, CENTREX, and CENTREX–like services as the contracts most likely to be opened, but the rulemaking would allow participants to demonstrate other services have the potential to be "opened" for the first time to facilities–based competition. The proposed rulemaking would allow to customers a one–time "fresh–look" opportunity to re–evaluate, and under certain terms and condition, to opt out of, a telecommunications services contract with an ILEC. This fresh–look opportunity provides an incentive to both new entrants and customers. Customers can return to the newly de–regulated markets without the impediment of long–term contracts with ILECs. In turn, the presence of these "unlocked" customers gives an incentive to new entrants to invest in infrastructure responsive to real customer demands.

The fresh–look opportunity would likely be granted only where there is a meaningful choice of facilities–based providers capable of providing services immediately or within a reasonable time, upon demand. The anticipated fresh–look procedure would be expressly designed not to create a "taking." Under a fresh–look procedure terminated contracts would have to be, in effect,"re–priced" as if they were originally executed for the period of performance actually received by the customer. A long–term contract usually has a lower price because of the extended commitment. If a customer decides that it is desirable to opt out of the existing contract through the fresh–look procedure, then a higher price will have to be established. This will usually require that a terminating customer make up a price difference, plus interest, to prevent a windfall to the customer and to assure the ILEC provider is kept economically whole in the transaction.

D. Analysis of Alternatives:

Without a fresh–look process, development of competitive local exchange markets would be considerably slowed because customers bound by long–term contracts cannot be buyers in the market. These contracts typically have very substantial termination penalties that effectively raise the cost to a customer to switch to a new entrant. In the fresh–look public comment process in docket 05–TI–138, no provider furnished any better alternative to the fresh–look procedure used in past proceedings by the Federal Communications Commission.

In light of comments received, the Commission has determined that an adjudicatory–type hearing would fail to elicit significant customer input, and would not afford sufficient customer protection against any uncertainties associated with any subsequent litigation regarding the legality of a fresh–look procedure. A rulemaking is better for allowing non–adversarial exploration of fresh–look procedures, including alternative dispute resolution mechanisms to resolve disputes regarding the re–pricing of terminated contracts.

Statutory authority:

Sections 196.02 (1) and (3); 196.194 (1); 196.219 (3) (e), (4) (a), and (5); and 227.11 (2), Stats.

Time estimates for rule development:

The basic concept for the proposed rule has evolved in the last eight months from legal briefs and further comments specific to fresh–look procedures filed in docket 05–TI–138. Specific rule language must be drafted and reviewed by the agency, and public hearings must be held. Any re–drafting of language will likely be extensively aided by drafts and comments from industry providers. It is estimated that a total of about 200 staff hours will be required to complete the rulemaking process.

Other resources necessary to develop rule:

Some of the work needed with respect to the nature and volume of contracting done by incumbent local exchange carriers, can be derived from notices of ILEC contracts required to be filed with the Commission under s. 196.194 (1), Stats. Any further contract information would likely be developed by data requests for aggregate forms of contract information that could be readily compiled by the supplying providers. No additional staff or other agency resources will be needed for the rulemaking.

If you have further specific questions or comments regarding this proposed rule, please feel free to contact Scot Cullen, Administrator, Telecommunications Division, at 266–1567.

Public Service Commission

Subject:

Ch. PSC 160 – Relating to revising rules on the Univeral Service Fund.

Description of policy issues:

A. Objective of Rule:

The objective of existing universal service fund (USF) rules is to meet the general intent of the legislature as expressed by s. 196.218 (5) (a), Stats.:

The commission shall require that moneys in the universal service fund be used only for any of the following purposes:

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low–income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.

2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

3. To promote affordable access throughout this state to high–quality education, library and health care information services.

4. To administer the universal service fund.

Any changes made as a result of this rulemaking would be intended to continue and enhance support for these general purposes.

Existing rules were promulgated beginning in 1995 and most provisions became effective on May 1, 1996. Section 196.218 (4), Stats., specifies that biennially the Commission "shall promulgate rules that define a basic set of essential telecommunications services that shall be available to all customers at affordable prices and that are a necessary component of universal service." The Commission proposes to open this rulemaking to meet this mandate for a biennial review and to examine the need for changes to the existing programs defined by the USF rules.

B. Existing Policies Relevant to Rule:

Universal service definitions, the administration of the universal service fund (assessments, an administrator, and a Universal Service Fund Council), and universal service programs intended to address needs of low–income customers, customers in high–cost areas, customers with disabilities, schools, libraries, and hospitals are specified in ch. PSC 160, Wis. Adm. Code. This rulemaking will look at modifications, additions, and improvements to the rules to make administration more efficient and to make program operations more effective given experience to date. Further, modifications will be examined in light of changes to universal service that are being formulated by the Federal Communications Commission (FCC) pursuant to the Telecommunications Act of 1996 or are being considered in the 1997–99 state budget (i.e., the TEACH Wisconsin initiative).

C. New Policies Proposed:

Specifics are unknown at this time; however, some areas of focus are expected.

The Universal Service Fund Council (USF Council) has recommended that the Commission change some of the eligibility criteria as applied to the institutional discount program (s. PSC 160.11, Wis. Adm. Code). The USF Council is an active body and is examining a variety of other issues that may result in further recommendations to the Commission. An evaluation of the rules' existing programs is underway by the Council at this time.

Pursuant to s. 196.218 (2) (d), Stats., an annual audit of the universal service fund is currently underway, and a report from the auditor is expected soon. This rulemaking would offer a logical mechanism for considering administrative changes to the fund if any are recommended by that audit.

At the federal level, the FCC is expected, in May, to adopt rules on universal service. That federal action will dictate a need to examine the Commission's USF definitions and programs to achieve consistency with the federal initiative or to avoid conflicts between the state and federal rules.

The TEACH Wisconsin initiative now before the Legislature in the state budget includes provisions that tie to the universal service fund and would cause a need for changes of, or additions to, existing USF programs. This rulemaking will allow consideration of rule changes to reflect any USF mandates that may ultimately arise from approval of the budget.

Finally, as recognized in the initial universal service fund legislation, universal service is a dynamic issue. The Commission will consider changes to the rules to reflect changing circumstances that may be identified throughout the rulemaking process.

D. Analysis of Alternatives:

Exact rule changes that are needed are certainly not known at this time. Alternatives will be considered in the course of the proceeding. The general need to re–examine the USF rules is a mandate of the law, s. 196.218 (4), Stats.

Statutory authority:

Sections 196.218 and 227.11 (2), Stats.

Time estimates for rule development:

The basic concepts that direct the programs on universal service are specified in s. 196.218, Stats. The current rules in ch. PSC 160, Wis. Adm. Code, are aimed at meeting the legislative mandate. Specific changes must be examined by the USF Council so that its recommendations may be forwarded to the Commission. The outcomes of the federal rulemaking on universal service and the state budget must also be considered. Specific rule language must be drafted and reviewed by the agency, and public hearings must be held. Redrafting of existing rule language will likely be extensively aided by drafts and comments from industry providers, beneficiaries of the current programs and other interested persons. The process will take several months. The process of review by the USF Council and the subsequent rulemaking proceeding will take an estimated minimum of 600 staff hours.

Other resources necessary to develop rule:

The USF Council was established pursuant to s. 196.218 (6), Stats. This advisory body will be reviewing the existing USF rules and current programs and will be asked to provide the Commission with recommendations on the need for modifications. Actions taken on the state budget and in the FCC rulemaking will impact on the need for changes to the current state universal service program. Agency staff will be working with the USF Council, will be reviewing and analyzing the FCC decisions and state budget provisions, and will be preparing rule proposals. Beyond these requirements, no additional staff or other agency resources are anticipated for this rulemaking.

If you have specific questions or comments regarding this proposed rulemaking, please contact Gary A. Evenson, Assistant Administrator, Telecommunications Division, at (608) 266–6744.

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

Subject:

SFC Code – Establishment of biennial continuing education requirements for certified social workers.

Description of policy issues:

Objective of the rule:

To establish continuing education requirements for certified social workers; define the parameters for when a social worker is required to complete continuing education requirements; conditions for waiver of continuing education requirements; establish continuing education reporting procedures; establish continuing education program approval and sponsorship requirements; and establish program approval application procedures.

Policy analysis:

Current law grants the Social Workers Section authority to promulgate rules establishing requirements and procedures for certificate holders to complete continuing education programs or courses of study in order to qualify for certification renewal. The rules may not require an individual to complete more than 30 hours of continuing education programs or courses of study in order to qualify for certification renewal. The section may determine to waive all or part of the requirements established in rules promulgated if it determines that prolonged illness, disability or other exceptional circumstances have prevented the individual from completing the requirements.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 457.22, Stats.

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

40 hours.

Transportation

Subject:

Ch. Trans 400 – Relating to environmental documentation.

Description of policy issues:

1) Description of the objective of the rule:

The objective of the rule change to ch. Trans 400 is to reduce costs by allowing the Wisconsin Department of Transportation more flexibility in the preparation of environmental documents and to inform other agencies and the public about the process that WisDOT uses to determine and develop environmental documentation for system–level plans and transportation improvement projects.

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

The specificity of the list of categories of actions in s. Trans 400.08 makest it rigid because it is based upon the size of the action, not on the significance of the action's impacts; consequently, the state list does not allow flexibility to use another type of environmental document even when an action does not produce significant environmental impacts. Federal regulations, on the other hand, base the type of environmental document upon the significance of impacts.

The prescriptive nature of s. Trans 400.10 (2) requires the Department to address 8 specific "matters" whether or not they are affected by or affect a system–level plan. A system–level plan is one that identifies transportation or service needs for a statewide system.

It is proposed that s. Trans 400.08 be revised to make the state list reflect the federal list. An alternative would be to keep the status quo and its inherent costs. Similarly, s. Trans 400.10 (2) should be revised to change the prescriptive matters which must be addressed in a system–level plan environmental evaluation (SEE) to a list of matters that may be addressed in a SEE.

Statutory authority for the rule:

Sections 1.11, 85.16 (1) and 227.11 (2), Stats.

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

It is anticipated that 240 hours will be required to write the change and accomplish review and ready the change for legislative scrutiny. It is not anticipated that the use of other resources will be necessary.

Workforce Development

Subject:

S. DWD 80.02 – Relating to reports.

Description of policy issues:

1) Description of the objective of the rule:

The rule will revise and clarify the requirements for employers, self–insured employers and insurers to report work–related injuries.

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

Under current law, more serious work injuries (those involving disability beyond the third day after injury, permanent disability or death) must be reported to the Department. Unless exempted because their insurance companies report by electronic data interchange, employers are required to file a "first report" of injuries with both the Department and their insurance companies. Insurance companies and self–insured employers are then required to make supplemental reports to the Department, relating to benefit payments and medical treatment. Where insurance companies report by electronic data interchange, insurance companies also make the first report of injury on behalf of the employer. The Department may sanction employers and self–insured employers who fail to meet promptness standards for reporting and payment.

The proposed rule would:

1 Eliminate employers reporting to the Department;

2 Modify the information that is reported and the timelines for reporting by insurance companies and self–insured employers;

3 Modify the standards by which the Department evaluates prompt reporting by insurance companies and self–insured employers.

Statutory authority for the rule:

Sections 102.15 (1), 102.37 and 102.38, Stats.

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

200–300 hours.

Workforce Development

Subject:

S. DWD 80.05 – Relating to procedure on claim.

Description of policy issues:

1) Description of the objective of the rule:

The rule will assure that the Department does not schedule worker's compensation hearings for applicants who are not ready.

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

After the Department schedules a hearing on a worker's compensation claim, the applicant's attorney often requests a postponement because the attorney is not really ready to prosecute the claim at hearing. Too often, it is too late to substitute another case and valuable hearing time is lost. This rule would allow the Department to require attorneys or licensed agents to file a sworn "declaration of readiness." If an administrative law judge later determines that the attorney or licensed agent who filed a declaration of readiness was not ready, the judge could reduce the attorney's fee. This penalizes the legal representative, not the injured worker.

Statutory authority for the rule:

Sections 102.15 (1) and 102.17 (1) (b), Stats.

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

20 hours.

Workforce Development

Subject:

S. DWD 80.51 – Relating to computation of weekly wage.

Description of policy issues:

1) Description of the objective of the rule:

The rule will clarify and simplify the method for determining an injured worker's average weekly earnings for the purpose of paying worker's compensation benefits.

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

The level of benefit payments for wages lost due to a work injury depends upon an injured worker's average weekly earnings. The current statutory and regulatory process for determining average weekly wages is complex (e.g., for part–time employment) or not well defined (e.g., community service jobs or offsets for a second–job). In addition to wage rules such as ss. DWD 80.29, 80.30 and 80.51, many of the Department's interpretations of how to determine wages and benefits under ch. 102, Stats., are summarized in a wage manual.

This proposed rule will simplify the wage calculations and codify relevant portions of the wage manual. It may also improve the Department's ability to audit the accuracy of insurer's and self–insurer's wage determinations.

Statutory authority for the rule:

Section 102.15 (1), Stats.

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

200–300 hours.

Workforce Development

Subject:

S. DWD 80.60 – Relating to exemption from duty to insure (self–insurance).

Description of policy issues:

1) Description of the objective of the rule:

The rule will modify the requirements for employers who self–insure under the Worker's Compensation Act.

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

Section 102.28 (2) (a), Stats., requires all employers to obtain insurance for paying worker's compensation benefits unless exempted by the Department under s. 102.28 (2) (b), Stats. With advice from the Self–Insurer's Council (created under s. 15.227 (11), Stats.) the Department will clarify the procedures and reporting requirements, and strengthen the financial security requirements needed to receive and maintain an exemption from the Department from the duty to insure.

Statutory authority for the rule:

Sections 102.15 (1) and 102.28 (2) (b), Stats.

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

200–300 hours.

Workforce Development

Subject:

S. DWD 80.65 – Relating to notice of cancellation or termination.

Description of policy issues:

1) Description of the objective of the rule:

Under the current rule, insurance companies must send policy cancellation or termination notices to the Wisconsin Compensation Rating Bureau by personal service and certified mail. This rule will authorize insurance companies to use modern electronic means of communication such as facsimile transmission (fax) and electronic data interchange (EDI) acceptable to the Rating Bureau.

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

Several years ago, s. DWD 80.02 (3m) was created to authorize the same type of electronic reporting to the Department's Worker's Compensation Division for documents which employers or insurance companies were required to file. The proposed change will authorize the same electronic reporting for documents required to be filed with the Wisconsin Compensation Rating Bureau.

Statutory authority for the rule:

Sections 102.15 (1) and 102.31 (2) (a), Stats.

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

2 hours.

Workforce Development

Subject:

S. DWD 80.72 – Relating to the health service fee dispute resolution process.

Description of policy issues:

1) Description of the objective of the rule:

The rule will clarify and simplify the process by which health care providers and insurers (or self–insurers) resolve disputes about the reasonableness of providers' fees when treating injured workers.

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

Section 102.16 (2), Stats., and s. DWD 80.72, Wis. Adm. Code, specify the process for determining whether a health care provider's fee is reasonable to cure and relieve the effects of a work injury under s. 102.42, Stats. This process is an alternative to the formal hearing process initiated by an application under s. 102.17 (1), Stats.

This rule has not been amended since the fee dispute resolution process in s. 102.16 (2), Stats., and s. DWD 80.72 was completely re–structured in 1992. The Department now has five years of experience under this rule. We need to clarify the relationship of the formal hearing process under s. 102.17, Stats., to this alternative dispute resolution process. The rule will also clarify or amend various sections, particularly those relating to the notice, filing, and dispute resolution processes.

Statutory authority for the rule:

Sections 102.15 (1) and 102.16 (2) (h), Stats.

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

100–200 hours.

Workforce Development

Subject:

S. DWD 80.73 – Relating to the health service necessity of treatment dispute resolution process.

Description of policy issues:

1) Description of the objective of the rule:

The rule will clarify and simplify the process by which health care providers and insurers (or self–insurers) resolve disputes about the necessity of treatment to cure and relieve the effects of a work injury.

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

Section 102.16 (2m), Stats., and s. DWD 80.73, Wis. Adm. Code, specify the process for determining whether a health care provider's treatment is necessary to cure and relieve the effects of a work injury under s. 102.42, Stats. This dispute resolution process is an alternative to the formal hearing process initiated by an application under s. 102.17 (1), Stats.

This rule has not been amended since the necessity–of–treatment dispute resolution process in s. 102.16 (2m), Stats., and s. DWD 80.73 was completely rewritten in 1992. The Department now has 5 years of experience under this rule. We need to clarify the relationship of the hearing process under s. 102.17, Stats., to this alternative dispute resolution process. The rule will also clarify or amend various sections, particularly those relating to notice, filing, and dispute resolution processes.

Statutory authority for the rule:

Sections 102.15 (1) and 102.16 (2m) (g), Stats.

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

100–200 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Health & Family Services

Rule Submittal Date

On March 31, 1997, the Wisconsin Department of Health & Family Services submitted a proposed rule order affecting ch. HFS 127 to the Wisconsin Legislative Council Rules Clearinghouse, relating to rural medical centers.

Analysis

Statutory authority: Section 50.51 (2), Stats.

These rules are for a new type of licensed health care entity, called a rural medical center, established under subch. III of ch. 50, Stats., as created by Act 98 from the last session.

Section 50.51 (2), Stats., directs the Department to promulgate rules that establish standards for center operation, minimum requirements for issuance of licenses, fees for licenses and a procedure and criteria for waiver of or variance from a standard or minimum requirement.

A licensed rural medical center would be a multiservice health care provider located in rural Wisconsin which has a single governing body and corporate structure, a single license issued by the Department, pays a consolidated license fee, goes through a single license application process, is subject to consolidated surveys/inspections by Department staff, and has a common 2–year license period for all services rather than separate one–year license periods that may not coincide. The types of health care services provided could include any combination of hospital, nursing home, home health agency, hospice, ambulatory surgery center or other services. Existing standards for the particular service types would continue in effect.

Forms to apply for a license (s. HFS 127.03 (2) (a)), to add a new health care service (s. HFS 127.03 (2) (b)) and to renew a license (s. HFS 127.03 (6)) are not yet developed.

Agency Procedure for Promulgation

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

Contact Person

Larry Hartzke
Division of Health
Telephone (608) 267–1438

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on March 18, 1997, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Sections Tax 12.065 (2) (c) and 12.065 (5) (a) 2 deal with customers meeting assessor continuing education requirements within their five–year certification period by:

❑ *First,* removing the requirement that recertification be applied for two months prior to the expiration of certification; and

❑ S*econd*, by removing the thirty day requirement for notifying the Department upon completion of a credit program.

Progress in computerization and administration has eliminated any necessity that may have previously existed for these specific requirements.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Person

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

Wallace T. Tews, Assistant Administrator
Division of State and Local Finance
Telephone (608) 266–9759

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on March 25, 1997, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order revises s. Tax 11.66, relating to telecommunications services.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Person

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

Mark Wipperfurth
Division of Income, Sales and Excise Tax
Telephone (608) 266–8253

Transportation

Rule Submittal Date

On March 24, 1997, the Wisconsin Department of Transportation submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 152, relating to the Wisconsin interstate fuel tax.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for May 6, 1997. The organizational unit primarily responsible for the promulgation of the rule order is the Division of Motor Vehicles/Vehicle Services section.

Contact Person

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

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from March 31, 1997 *Wis. Adm. Register).***

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules (proposed chs. ATCP 60, 70, 71, 75 and 80, Wis. Adm. Code) relating to food and dairy license fees. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **May 12, 1997**, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224–4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by July 15, 1996 either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608–224–4712), or by contacting the message relay system (TTY) at 608–266–4399 to forward your call to the Department at 608–224–5058. Handicap access is available at the hearings.

Hearing Information

April 18, 1997	**Northwest Health Center**
Friday	**Room B8**
9:30a.m.–2:00p.m.	**Milwaukee Health Department**
	7630 W. Mill Road
	Milwaukee, WI 53218
Handicapped accessible	
April 22, 1997	**Outagamie Public Health Dept.**
Tuesday	**410 S. Walnut Street**
9:30a.m.–2:00p.m.	**Appleton, WI 54911**
Handicapped accessible	
April 23, 1997	**Eau Claire County Extension**
Wednesday	**Agriculture and Resource Center**
9:30a.m.–2:00p.m.	**227 1st Street West**
	Altoona, WI 54720
Handicapped accessible	
April 28, 1997	**WI Department of Agriculture,**
Monday	**Trade and Consumer Protection**
9:30a.m.–2:00 p.m.	**Board Room**
	2811 Agriculture Drive
	Madison, WI 53704
Handicapped accessible	

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)

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)

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, food warehouses, dairy plants and dairy farms.

Milk Producer License and Reinspection Fees

Currently, the annual fee for a milk producer license is $20. This rule will increase that fee to $25 annually, effective July 1, 1999. This rule will also increase milk producer license reinspection fees from $20 to $25 and milk producer reinstatement inspection fees from $40 to $50 on July 1, 1999.

Dairy Plant License Fees

This rule will increase annual dairy plant license fees as follows:

The current $80 basic license fee will increase to $100.

The current $650 supplementary fee for a grade A processing plant receiving more than 2,000,000 pounds of milk from producers will increase to $1000.

The current $270 supplementary fee for a grade B processing plant manufacturing more that 1,000,000 pounds of dairy products or 200,000 gallons of frozen dairy products will increase to $350.

The current $270 supplementary fee for a grade B processing plant manufacturing more than 10,000,000 pounds of dairy products will increase to $850.

The current $250 supplementary fee for a grade A receiving station will increase to $300.

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.

Dairy Plant Reinspection Fees

This rule will increase dairy plant reinspection fees as follows:

The current $40 basic reinspection fee will increase to $80.

The current $160 supplementary reinspection fee for a grade A processing plant receiving more than 2,000,000 pounds of milk from producers will increase to $250.

The current $140 supplementary reinspection fee for a grade B processing plant manufacturing more than 1,000,000 pounds of dairy products or 200,000 gallons of frozen dairy products will increase to $175.

The current $140 supplementary reinspection fee for a grade B processing plant manufacturing more than 10,000,000 pounds of dairy products will increase to $425.

The current $60 supplementary reinspection fee for a grade A receiving station will increase to $75.

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.

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.

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.

Fiscal Estimate

See page 25 of the March 31, 1997 *Wis. Adm. Register.*

Initial Regulatory Flexibility Analysis

See page 26 of the March 31, 1997 *Wis. Adm. Register.*

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from March 31, 1997 *Wis. Adm. Register).***

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chapter ATCP 31, Wis. Adm. Code, relating to groundwater protection. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **May 9, 1997** for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer

Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling (608) 224–4505. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **April 11, 1997** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, **(608/224–4505)** or by contacting the message relay system (TTY) at **608/224–5058**. Handicap access is available at the hearings.

Hearing Information

April 21, 1997	**Best Western Arrowhead Lodge**
Monday	**Indianhead Room**
1:00 – 4:00 p.m.	**600 Oasis Rd.**
evening session	**Black River Falls, WI**
6:00 – 8:00 p.m.	
April 22, 1997	**Holiday Inn**
Tuesday	**Salon J**
1:00 – 4:00 p.m.	**US HWY 51 & Northpoint Dr.**
evening session	**Stevens Point, WI**
6:00 – 8:00 p.m	
April 23, 1997	**WI Dept. of Agriculture,**
Wednesday	**Trade & Consumer Protection**
1:00 – 4:00 p.m.	**Board Room**
evening session	**2811 Agriculture Dr.**
6:00 – 8:00 p.m.	**Madison, WI**
April 24, 1997	**County Courthouse**
Thursday	**1st Floor Board Room**
1:00 – 4:00 p.m.	**626 Main Street**
evening session	**Darlington, WI**
6:00 – 8:00 p.m.	

Written Comments

Written comments will be accepted until **May 9, 1997.**

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

Statutory authority: ss. 93.07(1) and (9), 94.69(9), 160.19(2) and 160.21(1)

Statutes interpreted: ss. 94.69, 160.19(2) and 160.21(1)

This rule amends current groundwater protection rules under ch. ATCP 31, Wis. Adm. Code. This rule clarifies current standards for repealing pesticide use prohibitions which the department has imposed in response to groundwater contamination findings.

Background

The department of agriculture, trade and consumer protection ("DATCP") regulates the use of pesticides to protect public health and the environment. Under the state groundwater law, DATCP regulates pesticides to prevent groundwater contamination and maintain compliance with groundwater standards adopted by the department of natural resources ("DNR").

Under the groundwater law, DNR adopts numerical standards for groundwater contaminants including pesticides. For each contaminant, DNR adopts a preventive action limit and an enforcement standard. The preventive action limit is a "yellow light" which normally requires some management action (e.g., reduced application rates), but not necessarily a ban on use. The enforcement standard is a "red light" which presumptively calls for a local ban on use. Current DNR standards are contained in ch. NR 140, Wis. Adm. Code.

Current Rule

Chapter ATCP 31, Wis. Adm. Code, establishes general standards for DATCP's groundwater protection program. ATCP 31 identifies actions which DATCP may take in response to findings of groundwater contamination, and spells out "generic" criteria for choosing among those alternative actions.

Subject to the "generic" criteria in ATCP 31, DATCP may develop substance–specific groundwater protection strategies for pesticides such as atrazine. DATCP's current atrazine rule under ch. ATCP 30, Wis. Adm. Code, reflects the "generic" standards contained in ATCP 31.

Currently, under ATCP 31, if a reliable well test shows that a pesticide concentration in groundwater attains or exceeds the DNR enforcement standard ("red light") for that pesticide:

• DATCP must prohibit the use of that pesticide in that local area unless DATCP is shown, and determines to a reasonable certainty by the greater weight of credible evidence, that an alternative response will achieve compliance with the enforcement standard. The fact that contemporaneous tests of other wells show lower concentrations does not, by itself, relieve DATCP of the obligation to impose a local prohibition.

• The scope and duration of the prohibition must be reasonably designed to restore and maintain compliance with the enforcement standard at the initial test site, and at other downgradient points to which the pesticide contamination may migrate.

• The prohibition may remain in effect indefinitely unless DATCP is shown, and determines, that resumption of the pesticide use is not likely to cause a renewed or continued violation of the enforcement standard.

Repealing Pesticide Use Prohibitions; Proposed Rule

Under this rule, the department may repeal a site–specific prohibition against pesticide use if all of the following conditions are met:

• The department determines, based on credible scientific data, that renewed use of the pesticide in the prohibition area is not likely to result in a renewed violation of the enforcement standard.

• Tests on at least 3 consecutive groundwater samples, drawn from each well site in the prohibition area at which the pesticide concentration previously attained or exceeded the enforcement standard, show that the pesticide concentration at that well site has fallen to and remains at not more than 50% of the enforcement standard. The 3 consecutive samples must be collected at each well site at intervals of at least 6 months, with the first sample being collected at least 6 months after the effective date of the prohibition. A monitoring well approved by the department may be substituted for any well site which is no longer available for testing.

• Tests conducted at other well sites in the prohibition area, during the same retesting period, reveal no other concentrations of the pesticide that exceed 50% of the enforcement standard.

Under this rule, the department may do any of the following as a condition to repealing a site–specific prohibition:

• Provide for continued groundwater monitoring at well sites in the prohibition area (or at monitoring wells substituted for those well sites which are no longer available for testing). At a minimum, well sites which previously tested at or above the enforcement standard must be tested during the second and fifth years after the department repeals the site–specific prohibition.

• Impose pesticide use modifications (e.g., lower use rates or different application methods) which are reasonably designed to achieve and maintain compliance with the preventive action limit at all well sites in the prohibition area which previously tested at or above the preventive action limit, and at all downgradient points to which the pesticide contamination may migrate from those points. DATCP may continue to prohibit pesticide use in smaller areas where, because of special local conditions (e.g., susceptible soils), a continued ban is needed to maintain compliance with the enforcement standard.

Fiscal Estimate

See page 27 of the March 31, 1997 *Wis. Adm. Register.*

Initial Regulatory Flexibility Analysis

See page 27 of the March 31, 1997 *Wis. Adm. Register.*

Draft Environmental Assessment

The Department has prepared a draft environmental assessment (EA) for proposed 1997 amendments to rules on the groundwater program. Copies are available from the Department on request and will be available at the public hearings. Comments on the EA should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI, 53708 in care of Jeff Postle. Phone 608/224–4503. Written comments on the EIS will be accepted until **May 9, 1997**.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 301.02, 301.03, 302.07, and 302.08, Stats., the department of corrections proposes the following rule relating to leave for qualified inmates.

Hearing Information

May 20, 1997	**Room 324**
Tuesday	**State Office Building**
9:00 A.M.	**141 Northwest Barstow Street**
	Waukesha, Wisconsin
May 20, 1997	**Secretary's Conference Room**
Tuesday	**Department of Corrections**
1:30 P.M.	**149 E. Wilson Street, 3rd Floor**
	Madison, Wisconsin
May 22, 1997	**Room 105**
Thursday	**State Office Building**
1:00 P.M.	**718 West Clairemont**
	Eau Claire, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

These rules modify the department's rules for administratively confining an inmate. The rules are modified in order to update them.

The current rules provide for the administrative confinement of an inmate solely because the inmate is dangerous and to ensure personal safety and security within the institution. These proposed rules permit the administrative confinement of an inmate whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly functioning of the institution. These rules maintain the concept that administrative confinement is an involuntary nonpunitive status.

These rules modify the reasons an inmate may be placed in administrative confinement. These rules state that the reasons an inmate may be placed in administrative confinement are: (1) the inmate presents a substantial risk to another person, self, or institution security as evidenced by behavior or history of homicidal, assaultive, or other violent behavior or by an attempt or threat to cause harm; (2) the inmate's continued presence in general population poses a substantial risk to others, self, or institution security; (3) the inmate's activity gives a staff member reason to believe that the inmate's continued presence in general population will result in a riot; and (4) the inmate has been identified as having an active affiliation with an inmate gang or a street gang or there are reasonable grounds to believe that the inmate has an active affiliation with an inmate gang or street gang.

These rules require the designated staff member to prepare a summary, of a signed, corroborated statement of a confidential informant instead of requiring the staff member to edit the statement. These rules provide that the summary may be considered as evidence for placing the inmate in administrative confinement.

These rules require the time limits of the review to be tolled during the time the inmate is unavailable.

These rules extend the time an inmate may be placed in administrative confinement from 6 months to 12 months or more. These rules provide for a review by the program review committee once every 6 months instead of once every 3 months.

These rules provide that an inmate may earn compensation consistent with pay for an involuntarily unassigned inmate instead of at the rate of pay the inmate was receiving before placement in administrative confinement.

These rules allow an inmate in administrative confinement to have any property in the inmate's cell that is consistent with property limits for the assigned area.

S. DOC 308.03 (4) contains a cross reference to s. DOC 306.24 (1), a rule that currently does not exist. The current cross reference is s. DOC 306.22 (1). However, DOC 306 is in the process of being revised. The new cross reference for the definition of "disturbance" will be 306.24 (1). It is anticipated that DOC 306 will be effective several months after DOC 308. Therefore, there will be a period of several months where the cross reference will not be accurate.

Text of Rule

SECTION 1. DOC 308.01 is amended to read:

DOC 308.01 The purpose of this chapter is to provide for an involuntary nonpunitive status for the segregated confinement of an inmate ~~solely because the inmate is dangerous, to ensure personal safety and security within the institution~~ whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly running of the institution.

SECTION 2. DOC 308.03 (1) is renumbered DOC 308.03 (3).

SECTION 3. DOC 308.03 (1) is created to read:

DOC 308.03 (1) "Administrative confinement review committee" or "ACRC" means the administrative confinement review committee appointed by the warden, consisting of 3 members, one of which shall be from security, one from treatment, and at least one member shall be a supervisor who will serve as the hearing officer.

SECTION 4. DOC 308.03 (2) is amended to read:

DOC 308.03 (2) "Administrator ~~of the division of adult institutions~~" means the administrator of the division of adult institutions ~~of the,~~ department of corrections, or designee.

SECTION 5. DOC 308.03 (3) is renumbered DOC 308.03 (5) and amended to read:

DOC 308.03 (5) "Division" means the ~~department of corrections,~~ division of adult institutions, department of corrections.

SECTION 6. DOC 308.03 (4) is renumbered DOC 308.03 (7).

SECTION 7. DOC 308.03 (5) is repealed and recreated to read:

DOC 308.03 (4) "Disturbance" has the meaning given in s. DOC 306.24 (1).

SECTION 8. DOC 308.03 (6) is renumbered 308.03 (10) and amended to read:

DOC 308.03 (10) "~~Superintendent~~ Warden" means the ~~superintendent~~ warden at an institution, or designee.

SECTION 9. DOC 308.03 (6) is created to read:

DOC 308.03 (6) "Inmate gang" has the meaning given in s. DOC 303.02 (9).

SECTION 10. DOC 308.03 (8) is created to read:

DOC 308.03 (8) "Riot" has the meaning given in s. DOC 303.18.

SECTION 11. DOC 308.03 (9) is created to read:

DOC 308.03 (9) "Street gang" means a group of people, outside the institution, which threatens, intimidates, coerces, or harasses other people or engages in activities that intentionally violate or encourage the intentional violation of federal statutes, state statutes or administrative rules, county or municipal ordinances or resolutions, or institutional policies or procedures.

SECTION 12. DOC 308.04 (1) is amended to read:

DOC 308.04 (1) Administrative confinement is an involuntary nonpunitive status for the segregated confinement of an inmal ~~solely because the inmate is dangerous, to ensure personal safety and security within the institution~~ whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly running of the institution. Inmate misconduct shall be handled through the disciplinary procedures.

SECTION 13. DOC 308.04 (2) (a) is amended to read:

DOC 308.04 (2) (a) The inmate presents a substantial risk ~~of serious physical harm~~ to another person, self, or institution security as evidenced by ~~recent~~ a behavior or a history of homicidal, assaultive or other violent behavior or by an attempt or threat to cause that harm~~;~~.

SECTION 14. DOC 308.04 (2) (b) is repealed and recreated to read:

DOC 308.04 (2) (b) The inmate's presence in the general population poses a substantial risk to another person, self or institution security.

SECTION 15. DOC 308.04 (2) (c) is repealed and recreated to read:

DOC 308.04 (2) (c) The inmate's activity gives a staff member reason to believe that the inmate's continued presence in general population will result in a riot or a disturbance.

SECTION 16. DOC 308.04 (2) (d) is created to read:

DOC 308.04 (2) (d) The inmate has been identified as having an active affiliation with an inmate gang or street gang or there are reasonable grounds to believe that the inmate has an active affiliation with an inmate gang or street gang; and there is reason to believe that the inmate's continued presence in the general population will result in a riot or a disturbance.

SECTION 17. DOC 308.04 (3) is amended to read:

DOC 308.04 (3) An inmate may be placed in administrative confinement only after a review by the ~~program review committee (PRC)~~ administrative confinement review committee in accordance with this section. An inmate may be placed in administrative confinement from the general population or any form of segregation and may be confined in temporary lockup ~~(TLU)~~ or TLU in accordance with the departmental rules, pending a review according to this section.

SECTION 18. DOC 308.04 (4) (intro.) is amended to read:

DOC 304.04 (4) (intro.) An inmate shall be given written notice of the review which shall include all of the following:

SECTION 19. DOC 308.04 (4) (a) is amended to read:

DOC 308.04 (4) (a) The reason under sub. (2) that administrative confinement is considered necessary~~;~~.

SECTION 20. DOC 308.04 (4) (b) is amended to read:

DOC 308.04 (4) (b) The evidence to be considered at the review~~;~~.

SECTION 21. DOC 308.04 (4) (c) is amended to read:

DOC 308.04 (4) (c) The sources of information relied upon unless the disclosure would threaten personal safety or institution security~~;~~.

SECTION 22. DOC 308.04 (4) (d) is amended to read:

DOC 308.04 (4) (d) An explanation of the possible consequences of any decision~~;~~.

SECTION 23. DOC 308.04 (4) (e) (intro.) is amended to read:

DOC 308.04 (4) (e) (intro.) An explanation of the inmate's rights at a review which ~~are~~ include all of the following:

SECTION 24. DOC 308.04 (4) (e) 1. is amended to read:

DOC 308.04 (4) (e) 1. The right to be present at the review~~;~~.

SECTION 25. DOC 308.04 (4) (e) 2. is amended to read:

DOC 308.04 (4) (e) 2. The right to deny the allegation~~;~~.

SECTION 26. DOC 308.04 (4) (e) 3. is amended to read:

DOC 308.04 (4) (e) 3. The right to present documentary evidence~~;~~.

SECTION 27. DOC 308.04 (4) (e) 4. is repealed and recreated to read:

DOC 304.04 (4) (e) 4. The right to present and question witnesses in accordance with sub. (7) and the hearing procedures for major disciplinary offenses. In the case that the witness is a confidential informant, then sub. (5) shall apply.

SECTION 28. DOC 308.04 (4) (e) 5. is amended to read:

DOC 308.04 (4) (e) 5. The right to assistance of an advocate in accordance with DOC 303.78~~;~~.

SECTION 29. DOC 308.04 (4) (e) 6. is amended to read:

DOC 308.04 (4) (e) 6. The right to receive a written decision, stating the reasons for it based upon the evidence~~; and~~.

SECTION 30. DOC 308.04 (4) (e) 7. is amended to read:

DOC 308.04 (4) (e) 7. The right to appeal the finding~~; and~~.

SECTION 31. DOC 308.04 (5) is renumbered DOC 308.04 (6) and amended to read:

DOC 308.04 (6) The review shall take place not sooner than 2 days and not later than ~~10~~ 21 days after service of notice to the inmate. The inmate may waive these time limits in writing. ~~Prior to the waiver, the inmate shall be informed what type of review the inmate will receive if the inmate waives the time limits.~~ The administrative confinement hearing officer may extend the time limit upon written request from the inmate for good cause. The time limits will be tolled during any time the inmate is unavailable.

SECTION 32. DOC 308.04 (5) is created to read:

DOC 308.04 (5) (a) If a witness is a confidential informant, a designated security staff member shall do all of the following:

1. Investigate to determine whether testifying would pose a significant risk of bodily injury to the witness.

2. Attempt to obtain a signed statement under oath from the witness and determine that the statement is corroborated in accordance with s. DOC 303.86 (4) if the designated staff member finds a significant risk of bodily injury.

3. Prepare a summary of the signed, corroborated statement to avoid revealing the identity of the witness.

4. Deliver a copy of the summary to the inmate and the ACRC hearing officer.

(b) The summary of the statement of the confidential informant may be considered as evidence.

(c) The ACRC hearing officer shall have access to the original signed statement and may question the confidential informant if the confidential informant is available.

(d) The original signed statement shall be available to the warden or administrator for review.

(e) The original signed statement shall be kept in a restricted department file.

SECTION 33. DOC 308.04 (6) is renumbered DOC 308.04 (7) and amended to read:

DOC 308.04 (7) At the review, all of the following shall occur~~;~~:

(a) ~~the~~ The reason for placing the inmate in administrative confinement shall be read aloud.

(b) ~~and all~~ All witnesses for or against the inmate, including the inmate and the staff member who recommended the placement, shall have a chance to speak.

(c) The ~~PRC~~ ACRC hearing officer may require medical or physical evidence to be offered.

(d) The ~~PRC~~ ACRC hearing officer may permit direct questions or require the inmate or the inmate's advocate, if any, to submit questions to the ~~PRC~~ ACRC hearing officer to be asked of the witnesses.

(e) Repetitive, disrespectful, or irrelevant questions may be forbidden.

SECTION 34. DOC 308.04 (7) is renumbered DOC 308.04 (8) and amended to read:

DOC 308.04 (8) ~~After~~ All of the following shall occur after the review~~;~~:

(a) ~~the~~ The ~~PRC~~ ACRC shall deliberate in private considering only the evidence presented to it that supports or refutes the need for administrative confinement and the inmate's records.

(b) The ~~PRC~~ ACRC shall decide whether the evidence and the records support the need for administrative confinement and, if so, shall order the placement.

(c) If the vote is not unanimous, the record, with the views of each ~~PRC~~ ACRC member, shall be forwarded to the ~~superintendent~~ warden for a decision.

(d) ~~This information~~ The record, except portions regarding the identities of sources of information or containing statements or evidence that could, upon disclosure, threaten personal safety or institution security, shall be shared with the inmate who may make known any additional relevant information in writing to the ~~superintendent~~ warden.

(e) The reasons for the decisions of the ~~PRC~~ ACRC and ~~superintendent~~ warden shall be based upon the evidence and given to the inmate in writing.

SECTION 35. DOC 308.04 (8) is repealed.

SECTION 36. DOC 308.04 (9) is renumbered DOC 308.04 (10) and amended to read:

DOC 308.04 (10) An inmate's progress in administrative confinement shall be reviewed by the ~~PRC~~ ACRC at least ~~once~~ every ~~3~~ 6 months following the procedures for review under this section. Monthly progress will be reviewed consistent with the segregation review process as outlined in s. DOC 303.70 (12).

SECTION 37. DOC 308.04 (9) is created to read:

DOC 308.04 (9) An inmate may appeal the ACRC's decision to the warden within 10 days of the date of the decision and again to the administrator within 10 days of the date of the warden's decision.

SECTION 38. DOC 308.04 (10) is renumbered DOC 308.04 (11) and amended to read:

DOC 308.04 (11) If an inmate has been in administrative confinement for ~~6~~ 12 months or longer, the ~~superintendent~~ warden and administrator ~~of the division of adult institutions~~ shall do all of the following:

(a) ~~automatically~~ Automatically review a decision by the ~~PRC~~ ACRC to continue the inmate's confinement in this status.

(b) ~~and affirm~~ Affirm, reverse, or remand ~~it~~ the decision within 10 working days of the earlier decision. A decision to affirm, reverse, or remand the earlier decision ~~must~~ shall state the reasons for it based on the evidence. A failure to issue a decision within the time allotted shall constitute an affirmance of the earlier decision.

(c) ~~and shall be sent~~ Send a copy of the warden's and administrator's decision to the ~~PRC~~ ACRC and inmate. ~~A failure to issue a decision within the time allotted shall constitute an affirmance of the earlier decision.~~

SECTION 39. DOC 308.04 (11) is repealed.

SECTION 40. DOC 308.04 (12) is amended to read:

DOC 308.04 (12) While in administrative confinement, an inmate:

(a) Shall ~~reside alone and~~ have a classification of maximum security ~~close~~; supervision, movement, and program shall be in accordance with ss. DOC ~~302.12 (1) (a)~~ 302.05 (1) and ~~306.09~~ 306.10~~;~~.

(b) Shall be allowed to have any property in ~~his or her~~ the inmate's cell that is ~~allowed to inmates in the general population~~ consistent with property limits for the assigned area. ~~An inmate who resides in the segregation building shall be allowed to have any property in his or her cell that is allowed to any inmate in program segregation;~~

(c) Shall be permitted visitation in accordance with ch. DOC 309~~;~~.

(d) May receive and send mail in accordance with ch. DOC 309~~;~~.

(e) Shall be permitted to shower at least once every 4 days~~;~~.

(f) Shall be provided religious, social, and clinical services as possible~~;~~however, they must be provided at the inmate's cell unless otherwise authorized by the ~~superintendent;~~ warden.

(g) ~~Who is eligible may~~ May earn extra good time credit in accordance with ch. DOC 302, and all inmates ~~may~~ shall earn compensation ~~in accordance with ch. DOC 309;~~ consistent with pay for involuntarily unassigned inmates.

(h) May not go to the canteen in person but may have approved items from the canteen delivered to ~~him or her; and~~ the inmate.

(i) May have any other properties and privileges consistent with ~~his or her status and the~~ departmental rules, at the discretion of the ~~superintendent~~ warden.

Note DOC 308: Administrative confinement under DOC 308.04 is a nonpunitive measure taken to ensure personal safety and security within the institution. This measure may be infrequently needed and of short duration but, as to a particular inmate, the reasonable needs of safety and security ~~of others~~ within the institution may require ~~continuing close~~ continued confinement for long periods of time.

Sub. (2) establishes the conditions under which administrative confinement may be used. Administrative confinement is a vehicle for removing ~~dangerous persons~~ inmates from the general population to protect and ensure the safety, security and orderly running of the institution. ~~Proper use of administrative confinement includes dealing with dangerous gang activity, particularly the ringleaders of such activity. It should be clear to inmates that participating in dangerous gang activity or identification as a leader of a gang that participates in dangerous activities will inevitably result in long periods of administrative confinement. It is better for the inmates and the credibility of the system to deal with the problem of inmate gangs directly. Without the ability to confine gang leaders, institution staff will have to exercise discretion in dealing with a dangerous situation which threatens the security and order of the institution.~~ Without the ability to confine this type of inmate, the primary security objectives of the department, namely protecting the public, staff, inmates, and property, cannot be met.

Inmate misconduct is handled through the disciplinary process. Segregation in administrative confinement cannot be a penalty for misconduct, but may result either prior to or subsequent to a disciplinary proceeding or independent of any such proceeding.

Sub. (3) requires special review by the ~~PRC~~ ACRC. This review ~~combines~~ incorporates components of the standard ~~PRC review under ch. DOC 302 and~~ of the major disciplinary hearing procedure. This review is provided despite the fact that the U.S. Supreme Court has indicated that due process does not require this review for these transfers. *Meachum v. Fano*, 427 U.S. 215 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976). In *Caldwell v. Miller*, 790 F2d 589 (7th Cir 1986), the court found no liberty interest in a transfer from one cell block in an institution to another. Due process protections are important and are afforded to few inmates affected by this provision because of the seriousness of the prolonged social isolation of administrative confinement. Nonetheless, by providing the review, the Department does not intend to create any protected liberty interest by using mandatory language. Administrative confinement is a typical approach used in prison to respond to situations listed in this chapter. See *Sandin v. Conner,* 115 S.Ct. 2293 (1995).

At this special review, in this status, there must be proof, from evidence presented at the hearing and from the inmate's records, that he or she meets one of the criteria for administrative confinement under sub. (2). The responsibility for placement rests solely with the ~~PRC, and the decision therefore is a classification decision~~ ACRC. An appeal is provided first to the ~~superintendent~~ warden and then to the administrator of the division of adult institution, one of the highest levels in the department, in recognition of the potential serious consequences of prolonged segregation in administrative confinement.

Sub. (4) gives the inmate certain rights. It requires that adequate written notice of the review be given the inmate. If necessary, a verbal explanation of the notice should be made in accordance with the inmate's needs. The rights also include the right to present and question witnesses in the same manner as for due process hearings, s. DOC 303.81.

Sub. (9) provides for a review of the inmate's status at least once every ~~3~~ 6 months. A review may occur earlier at the discretion of the ~~PRC~~ warden. This time period balances fairness to the inmate with the practicalities of providing for a meaningful review by the ~~PRC~~ ACRC. Compliance with departmental rules alone may not be sufficient and an inmate may continue to be confined if there is still reasonable fear of violent behavior, harm to the inmate by others, harm to others or riots.

Sub. (10) reflects the view that administrative confinement may have serious consequences and that extreme care should be exercised at the highest level in assessing the need for continued confinement.

This chapter is in substantial accord with the provisions regarding the special management of inmates in the American Correctional Association's Manual of Standards for Adult Correctional Institutions ~~(1977)~~ 1993, standards ~~4201, 4203–4206, 4208,4210, 4212–4221, 4381, and 4383~~ 3–4237, 3–4249, 3–4254, 3–4255, and 3–4261.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

These rules modify the department's rules for administratively confining an inmate, and are modified in order to update them.

These rules maintain the concept that administrative confinement is an involuntary nonpunitive status. However, they expand the current rule, which provides for administrative confinement solely because an inmate is dangerous and to ensure personal safety and security within the institution.

These rules permit administrative confinement of an inmate whose continued presence in the general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly function of the institution.

These rules extend the time an inmate may be placed in administrative confinement from 6 months to 12 months or more, with a review by the program review committee once every 6 months instead of once every 3 months.

The department has not attempted to define the costs related to the status (general population, observation, segregation, reception/orientation, etc.) of an inmate within an institution. Some costs, such as food, are essentially the same for all inmates. It is true that segregated areas have more security staff. However, the inmates confined in these areas are not participating in programs, such as school, and thus not incurring the costs of some of the program staff.

It is also not possible to estimate how many inmates might be confined under these rules.

It is not believed that these rules will cause a significant impact on the department's costs of operation. These rules should therefore have no state or local impact.

Contact Person

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

Written Comments

Written comments on the proposed rules received at the above address no later than **May 23, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 301.03 (2), and 302.08, Stats., the department of corrections proposes the following rule relating to food, hygiene and living quarters for inmates.

Hearing Information

May 20, 1997
Tuesday
10:00 A.M.
Room 324
State Office Building
141 Northwest Barstow Street
Waukesha, Wisconsin

May 20, 1997
Tuesday
2:30 P.M.
Secretary's Conference Room
Department of Corrections
149 E. Wilson Street, 3rd Floor
Madison, Wisconsin

May 22, 1997
Thursday
2:00 P.M.
Room 105
State Office Building
718 West Clairemont
Eau Claire, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

Some provisions of the department of corrections administrative rule related to food, hygiene, and living quarters for inmates have not been updated since it was created. With over 14 years of experience working with the rule, the department proposes to update the rule.

This rule:

1. Makes technical changes.

2. Removes the words "or religious" from the requirement that inmates who require a modified diet be provided the diet consistent with available resources while it retains the provision that an inmate may abstain from food that violates the inmates religion.

3. Requires, instead of recommends, that inmates who perform hazardous work assignments maintain suitably cropped hair or wear protective appliances or head gear for safety purposes.

4. Requires an inmate's fingernails not to exceed the end of the inmate's fingertips.

5. Permits new identification photographs of any inmate whose appearance changes.

6. Repeals the provisions related to housing emergency, number of inmates at an institution or to a room, and assignments to double and multiple occupancy during a housing emergency.

7. Allows the department to establish specific policies and procedures for limits on length of hair, mustaches, and beards to address health and safety concerns. The current rule states that there should be no limit on the growth of mustaches or beards or length of hair provided the style of wear does not cover the eyes.

Text of Rule

SECTION 1. DOC 309.24 (3) (b) is created to read:

DOC 309.24 (3) (b) The department has the authority to regulate the length of hair, mustaches, and beards based upon institution health and safety concerns.

SECTION 2. DOC 309.24 (3) (e) is created to read:

DOC 309.24 (3) (e) The length of an inmate's fingernails may not exceed the end of the inmate's fingertips.

SECTION 3. DOC 309.24 (3) (g) is created to read:

DOC 309.24 (3) (g) An institution may require new identification photographs of any inmate whose appearance changes.

SECTION 4. DOC 309.25 is created to read:

DOC 309.25 MAINTAINING ORDERLY AND CLEAN LIVING QUARTERS. (1) An inmate shall keep assigned quarters neat and clean. Institution staff shall make necessary cleaning materials available to the inmate for this purpose.

(2) Bed sheets, pillow cases, and towels shall be changed at least once a week. Each inmate shall be provided with a standard issue of blankets and similar items necessary for physical comfort. The inmate shall take proper care of these items.

(3) The warden may establish other appropriate specific policies and procedures to ensure the maintenance of clean quarters to maintain institution health and safety.

SECTION 5. DOC 309.37 is renumbered DOC 309.23 and amended to read:

DOC 309.23 (1) The department shall provide nutritious and ~~high~~ quality food for all inmates. ~~Meals~~ Menus shall satisfy ~~the standard of nutrition of the division of health, department of health & social services~~ generally accepted nutritional standards. The sanitation requirements ~~set by the department~~ shall also be satisfied.

(2) Each institution shall make written policies regulating eating outside the dining ~~hall~~ area. Institutions may forbid taking certain foods into ~~the living quarters and out of the dining room~~ or out of the dining area and living quarters.

(3) The menu for each institution shall be posted ~~one week~~ in advance of the meal.

(4) Consistent with available resources, inmates who require a ~~special~~ modified diet for medical ~~or religious~~ reasons shall be provided with ~~such~~ a modified diet.

(5) An inmate may abstain from any foods that violate ~~his or her~~ the inmate's religion. Consistent with available resources, ~~such an inmate~~ staff may provide a substitute from ~~other~~ available foods. The substitution shall be consistent with sub. (1).

SECTION 6. DOC 309.38 (1) is renumbered DOC 309.24 (1).

SECTION 7. DOC 309.38 (2) is renumbered DOC 309.24 (2).

SECTION 8. DOC 309.38 (3) (intro.) is renumbered DOC 309.24 (3) (intro.).

SECTION 9. DOC 309.38 (3) (a) is renumbered DOC 309.24 (3) (a).

SECTION 10. DOC 309.38 (3) (b) is repealed.

SECTION 11. DOC 309.38 (3) (c) is renumbered DOC 309.24 (3) (c).

SECTION 12. DOC 309.38 (3) (d) is renumbered DOC 309.24 (3) (d) and amended to read:

DOC 309.24 (3) (d) Inmates performing work assignments that may reasonably be considered to be hazardous ~~should~~ shall ~~be required to~~ maintain suitably cropped hair or wear protective appliances or headgear for safety purposes.

SECTION 13. DOC 309.38 (3) (e) is renumbered DOC 309.24 (3) (f) and amended to read:

DOC 309.24 (3) (f) Use of hair pins, barrettes, or curlers are permitted under such policies and procedures established by the ~~superintendents~~ warden.

SECTION 14. DOC 309.38 (3) (f) is repealed.

SECTION 15. DOC 309.39 is repealed.

SECTION 16. Appendix (Note) DOC 309.37 is renumbered DOC 309.23 and is amended to read:

Amend sentence #1 paragraph #1 to read:

DOC ~~309.37~~ 309.23...

Amend sentence #1 paragraph #4 to read:

Subsection (4)...~~or religious~~...

Delete sentence #2 paragraph #4.

SECTION 17. Appendix (Note) DOC 309.38 is renumbered DOC 309.24 and is amended to read:

Amend sentence #1 paragraph #1 to read:

DOC ~~309.38~~ 309.24...

Delete sentence #2 paragraph #3.

SECTION 18. Appendix (Note) DOC 309.39 is repealed.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

This rule updates and modifies the department's rules relating to food, hygiene, and living quarters. The rule changes some recommendations, such as suitably cropped hair for certain hazardous work assignments, to requirements. Other hygiene changes include the allowed length of fingernails. The rule also requires new identification photographs of any inmate whose appearance changes.

Changes relating to food include removing the words "or religious" from the requirement that inmates who require a modified diet be provided the diet consistent with available resources while it retains the provision that an inmate may abstain from food that violates the inmate's religion.

All provisions related to housing emergencies, numbers of inmates at an institution, or to a room, are repealed.

Inmates are required to keep their assigned quarters neat and clean, and the department shall provide a change of bed sheets, pillow cases, and towels at least once a week.

It is not believed that this updating of the rules relating to food, hygiene, and living quarters, will have any impact on the department's budget.

Contact Person

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Written Comments

Written comments on the proposed rules received at the above address no later than **May 23, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Proposed Repeal of Rules

Health & Family Services (Health, Chs. 110––)

Notice is hereby given that pursuant to s. 255.06 (2) (a) and (3), 1993–94 Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health and Family Services will repeal ch. HSS 148, Wis. Adm. Code, relating to rural counties participating in the Wisconsin Breast Cancer Screening Project, as herein proposed, without public hearing, unless a petition for a hearing is received by the Department within 30 days after the publication of this notice on **April 15, 1997**. A petition for a hearing will be accepted if signed by 25 persons who will be affected by the proposed repeal of rules, the representative of a municipality that will be affected by the proposed repeal of rules or the representative of an association which represents a farm, labor, business or professional group that will be affected by the proposed repeal of rules.

Contact Person

If you have any questions about the repeal of these rules or about filing a petition for a hearing, write or phone:

Gale Johnson, (608) 261–6872
Bureau of Public Health
1414 E. Washington Ave.
Madison, WI 53703–3044

Analysis Prepared by the Dept. of Health & Family Services

The Department's rules that identify rural counties for coverage by the Wisconsin Breast Cancer Screening Project, ch. HSS 148, Wis. Adm. Code, were adopted as emergency rules in July 1992, following the amendment of s. 146.0275, Stats., by 1991 Wis. Act 269. The rules were to identify the 12 rural counties in the state that have the highest incidence of late–stage breast cancer for the purpose of making grants from the appropriation under s. 20.435 (1) (cd), Stats., to applying hospitals, nonprofit corporations or public agencies providing or willing to provide mammography services to women 40 years of age or older in those counties.

Identical permanent rules were promulgated in January 1993.

The program statute for the breast cancer screening project, s. 146.0275, 1991–92, Stats., was renumbered s. 255.06, Stats., by 1993 Wis. Act 27.

This order repeals ch. HSS 148 because 1995 Wis. Act 27 amended s. 255.06 (2) (a) (intro.), Stats., to delete the reference to 12 rural counties specified by Department rules and to repeal the requirement in s. 255.06 (3), Stats., that the Department promulgate rules that specify those counties. The funds appropriated for this purpose are now combined with federal funds for breast and cervical cancer screening for low–income older women and are distributed statewide using a population–based formula for allocating the funds.

Text of Rule

SECTION 1. Chapter HSS 148 is repealed.

Fiscal Estimate

This order will not affect the expenditures or revenues of state government or local governments. The order repeals ch. HSS 148 because 1995 Wis. Act 27 amended s. 255.06 (2) (a) (intro.), Stats., to delete the reference to the 12 rural counties that have the highest incidence of late–stage breast cancer, as specified by Department rules, and to repeal the requirement in s. 255.06 (3), Stats., that the Department promulgate rules that specify those counties.

Initial Regulatory Flexibility Analysis

The repeal of ch. HSS 148 will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

The rules are being repealed because the program statute was amended to delete mention of a list of the 12 rural counties in the state that have the highest incidence of late–stage breast cancer and to repeal the requirement that the Department specify those counties by rule.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 77.54 (3) (a), (3m) and (33), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **April 15, 1997**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266–8253, if you have any questions regarding this proposed rule order..

Analysis by the Dept. of Revenue

Statutory authority: s. 227.11 (2) (a)

Statute interpreted: ss. 77.54 (3) (a), (3m) and (33)

SECTION 1. Tax 11.12 (1) is amended to conform language to Legislative Council Rules Clearinghouse (Clearinghouse) standards.

SECTION 2. Tax 11.12 (2) (d), (e) and (f) are renumbered s. Tax 11.12 (2) (f), (d) and (e), to alphabetize the definitions in conformity with Clearinghouse standards.

SECTION 3. Tax 11.12 (4) (a) (intro.) is amended to correct a direct statutory quote.

Tax 11.12 (4) (a) 5. b. is amended to clarify that, when buying certain machines, farmers may claim exemption only if they buy the machines without installation by the retailer, even though the machines may later be attached to, fastened to, connected to or built into real property or may become an addition to, component of or capital improvement of real property. It is also amended to delete the reference to "automated livestock feeder bunks, but not ordinary building materials." This reference is confusing because powered feeders may qualify for exemption under s. 77.54 (3) (c) 9., Stats., whether or not installed by the retailer.

Tax 11.12 (4) (a) 7. c. is amended to delete feed carts and non–powered gravity flow feeders from the list of taxable items, as this position is incorrect, and to conform language to Clearinghouse standards.

Tax 11.12 (4) (b) 1. is amended to conform language to Clearinghouse standards.

Tax 11.12 (4) (b) 6. a. is amended to include feed carts and feeders as exempt containers for grain if used to hold hay, silage, or feed which contains grain, and to include plastic bags, plastic sleeves, and plastic sheeting as exempt containers for grain if used to contain hay or silage. This change is made to reflect the Department's position that, for purposes of the container exemption in s. 77.54 (3m), Stats., "grain" includes hay and silage.

Text of Rule

SECTION 1. Tax 11.12 (1) is amended to read:

Tax 11.12 (1) STATUTES. Section 77.54 (3) and (3m), Stats., provides exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture ~~and~~ or floriculture as a business enterprise.

SECTION 2. Tax 11.12 (2) (d), (e) and (f) are renumbered s. Tax 11.12 (2) (f), (d) and (e).

SECTION 3. Tax 11.12 (4) (a) (intro.), 5.b. and 7.c. and (b) 1. and 6.a. are amended to read:

Tax 11. 12 (4) (a) Section 77.54 (3) (a), Stats., exempts: "The gross receipts from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property and excluding tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that that personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine." For purposes of this section:

5. b. Certain machines in addition to those in subd. 4. qualify for the exemption if purchased by farmers directly from retailers without installation by the retailer, even though ~~they are used to make realty improvements~~ after being purchased by the farmer, the machine may be attached to, fastened to, connected to or built into real property or may become an addition to, component of or capital improvement of real property by a person other than the retailer. Machines included are ~~automated livestock feeder bunks, but not ordinary building materials;~~ automatic stock waterers powered by electricity or water pressure and built into a permanent plumbing system; automatic water softeners, such as for milk houses; barn fans and blowers and other ventilating units; unit heaters and other heating units; water heaters serving production areas; and water pumps serving production areas.

7. c. Non–powered applicators for insecticides, cattle chutes, farrowing crates, ~~feed carts~~, fire extinguishers, flood gates,

~~non–powered gravity flow feeders,~~ saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self–treating stations, or "oilers," snowmobiles~~,~~ and stationary salt and mineral feeders.

(b) 1. 'Seeds for planting.' "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and ~~vegetable seeds~~ vegetables; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

6. a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains including hay and silage, or animal wastes. The phrase ~~does not include~~ includes feeders and feed carts ~~designed~~ if used to hold ~~various green and dry feeds~~ hay, silage or feed which contains grain and plastic bags, plastic sleeves and plastic sheeting used to contain hay or silage.

Initial Regulatory Flexibility Analysis

The proposed rule order does have a significant economic impact on a substantial number of small businesses. The provisions will require that sales or use tax be paid on certain supplies which are used in dairy farming outside the milk house.

Fiscal Estimate

The rule order updates the Wisconsin Administrative Code with respect to the sales and use tax treatment of certain purchases by farmers. The rule clarifies existing language regarding machines purchased with and without installation by retailers, amends the exemption of containers of grain to include hay and silage in the definition of "grain," and makes changes in style and format to conform with Legislative Council Rules Clearinghouse standards.

These changes do not have a fiscal effect.

Notice of Hearing

Transportation

Notice is hereby given that pursuant to s. 85.16, Stats., interpreting s. 86.303 (5) (f) (intro.) and (i) (intro.), Stats., the Department of Transportation will hold a public hearing at the time and place indicated in this notice, to consider the amendment to the current emergency rule of ch. Trans 76, Wis. Adm. Code, relating to uniform cost reporting procedure during calendar year 1996 for general transportation aids to be paid in calendar year 1997.

Hearing Information

The hearing will be held as follows:

May 8, 1997
Thursday
at 9:00 a.m.

Room 115B (Blackhawk Room)
Hill Farms State Trans. Bldg.
4802 Sheboygan Ave.
MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter no later than 10 days prior to the hearing.

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: s. 85.16

Statute interpreted: s. 86.303 (5) (f) (intro.) and (i) (intro.)

General Summary of Emergency Rule:

The General Transportation Aids (GTA) Program is a program provided to defray a portion of the costs incurred with constructing and maintaining roads under local jurisdiction. The GTA program is a reimbursement program based on each local government's spending patterns. GTA funds are distributed to all Wisconsin counties and municipalities in amounts determined using a formula which is based on local "eligible costs." Generally, all road or street construction and maintenance expenditures within the right of way are considered eligible costs. A percentage of other expenditures are also considered eligible costs, including law enforcement, street lighting maintenance and construction, and storm sewer construction.

The share of cost rate is determined by the available funding and the six–year average costs reported by each county and municipality. Distribution of GTA payments to local governments are computed and paid on a calendar year basis. Quarterly payments are made on the first Monday of January, April, July and October. The Department obtains cost data from Financial Reports which all local units of government must file annually with the Department of Revenue. The reports are based upon calendar year expenditures and revenues and are submitted each spring and summer.

Late filing of Financial Report forms will result in a reduction of the local government's GTA. Failure to submit the Financial Report with the Department of Revenue by the deadline will result in a reduction in GTA payments the following year. The reduction will be equal to 1% for each day late, to a maximum of 10%, as provided in s. 86.303 (5) (f) and (i), Stats.

As provided in s. 86.303 (5) (f) (intro.) and (i) (intro.), Stats., the Department proposes this rule–making to administratively interpret the phrase "each day" to exclude Saturday, Sundays and legal holidays. The Department's long–standing and consistent interpretation of the phrases "within 30 days" and "each day" has been calendar days. The Department has concluded that it would be fairer and more reasonable to continue to interpret the phrase "within 30 days" as calendar days, but to exclude Saturdays, Sundays and legal holidays from the interpretation of the phrase "each day" for the purposes of the one percent reduction for each day that the report is late. The reason for this revised interpretation is that the 10% penalty cap can still be reached within 30 calendar days. Using this interpretation, timely reports and calculations will still be available for state and local budgeting and planning purposes.

Fiscal Estimate

Four local governments that filed late in 1996 will be affected for 1997 GTA payments. These four local governments will receive a total of $18,061.93 more based on less days of penalties. This does slightly affect the distribution of funds, but not the appropriation amounts.

Initial Regulatory Flexibility Analysis

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

Contact Person and Copies of Emergency Rule

Copies of this emergency rule are available without cost upon request by writing to:

Department's Office of General Counsel, Room 115–B
Telephone (608) 267–3703
P. O. Box 7910
Madison, WI 53707–7910

Alternate formats of the proposed rule will be provided to individuals at their request. Hearing–impaired individuals may contact the Department using TDD (608) 266–0396.

Notice of Hearing

Transportation

Notice is hereby given that pursuant to s. 341.45(5g), Stats., and interpreting s. 341.45(5g), Stats., the Department of Transportation will hold a public hearing in **Room 421 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 6th day of May, 1997, at 1:00 PM**, to consider the amendment of ch. Trans 152, Wis. Adm. Code, relating to Wisconsin Interstate Fuel Tax.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business **May 7, 1997**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Susan Kavulich, Department of Transportation, Division of Motor Vehicles, Motor Carrier Services Section, 4802 Sheboygan Avenue, Room 151, P. O. Box 7981, Madison, WI 53707–7981.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: s. 341.45(5g)

Statute Interpreted: s. 341.45(5g)

General Summary of Proposed Rule.

The International Fuel Tax Agreement (IFTA) is an agreement among states and Canadian provinces that simplifies the reporting and distribution of fuel use taxes paid by interstate motor carriers. Currently Wisconsin–based interstate trucking companies pay $3 annually for an IFTA license and $2 per vehicle annually for IFTA decals. Prior to January 1, 1997, Wisconsin received fuel tax license and decal fees from IFTA and non–IFTA motor carriers. As of January 1, 1997, there are no longer any non–IFTA motor carriers purchasing fuel tax licenses or decals. Therefore, revenue from fuel tax license and decal fees no longer covers the Department's costs to administer the fuel tax program. The Department proposes a rule change to increase the annual IFTA decal and license fees, and replacement license and decal fees in an equitable manner to support the administrative cost of the IFTA program. This proposal will amend ch. Trans 152 to increase the fees paid by Wisconsin–based interstate trucking companies for IFTA decals and licenses, and replacement decals and licenses.

Fiscal Estimate

The purpose of the proposed fee increases is to raise the necessary revenue to support the costs of administering the IFTA program in Wisconsin. The Department estimates that annual administrative costs for the IFTA program are $518,000, and the proposed fees will raise approximately that amount of revenue each year, based upon 3,700 licenses and 69,500 decals.

Initial Regulatory Flexibility Analysis

The proposed fee increases assess the administrative costs of the IFTA program to smaller and larger carriers in an equitable manner. The administrative costs to process the quarterly fuel tax reports or annual IFTA license renewal do not vary significantly by fleet size. Administrative costs for conducting IFTA audits tend to increase for very large fleets. To reflect these trends, the Department balanced the fee increases between license fee (a flat fee assessed per fleet) and the decal fee (a fee assessed for each vehicle in a fleet). As a result, the proposed fees do not place an inordinate burden on either the smaller or larger fleets.

Copies of Rule

Copies of the proposed rule may be obtained upon request, without cost, by writing to Susan Kavulich, Department of Transportation, Division of Motor Vehicles, Motor Carrier Services Section, 4802 Sheboygan Avenue, Room 151, P. O. Box 7981, Madison, WI 53707–7981, or by calling (608) 261–6305. Hearing–impaired individuals may contact the Department using TDD (608) 266–3096. Alternate formats of the proposed rule will be provided to individuals at their request.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin, department of transportation, by s. 341.45(5g), Stats., the department of transportation hereby proposes an order to amend a rule interpreting s. 341.45(5g), Stats., relating to Wisconsin interstate fuel tax.

SECTION 1. Trans 152.05(2)(i) and (j), and (12), as renumbered by Clearinghouse Rule Number 96–171, are amended to read:

Trans 152.05(2)(i) License fee of ~~$3.00~~ $70.00.

(j) Decal fee of ~~$2.00~~ $4.00.

(12) REPLACEMENT LICENSE OR DECAL. If a license or a fuel decal is lost prior to expiration, the department may issue a replacement license for ~~$3.00~~ $10.00 or fuel decal for ~~$2.00~~ $4.00.

Notice of Submission of Proposed Rules to the Presiding Officer of each House of the Legislature, Under S. 227.19, Stats.

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

Employe Trust Funds (CR 96–127):
SS. ETF 10.03 (3t) and 20.12 – Relating to conditions under which the Department of Employe Trust Funds will treat payments received under a court order or compromise settlement as earnings for retirement benefit purposes.

Natural Resources (CR 96–133):
S. NR 10.09 (1) (c) 1. a. – Relating to the definition of a muzzleloader for the muzzleloader gun deer season.

Natural Resources (CR 96–190):
SS. NR 20.02, 20.03 and 25.06 – Relating to sport and commercial fishing for yellow perch in Lake Michigan.

Regulation and Licensing (CR 96–193):
Ch. RL 50 and ss. RL 52.02, 52.04, 53.02, 54.04 and 54.05 – Relating to the regulation of cemetery authorities, cemetery salespeople and preneed sellers of cemetery merchandise.

Regulation and Licensing (CR 97–1):
Ch. RL 25 – Relating to educational requirements for real estate salesperson's and broker's licenses.

Veterinary Examining Board (CR 96–194):
S. VE 4.01 (3) – Relating to evidence that would be required in order to obtain a veterinary license for a candidate who is not a graduate of a school that has been approved by the Board.

Administrative Rules Filed With The Revisor Of Statutes Bureau

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.

Agriculture, Trade & Consumer Protection
(CR 96–139):
An order creating s. ATCP 21.15, relating to potato late blight.
Effective 05–01–97.

Barbering & Cosmetology Examining Board
(CR 95–217):
An order creating s. BC 2.03 (7), relating to standards of conduct.
Effective 06–01–97.

Chiropractic Examining Board (CR 96–95):
An order affecting ss. Chir 6.015 and 6.02 and creating ch. Chir 11, relating to patient records.
Effective 06–01–97.

Medical Examining Board (CR 96–158):
An order affecting ch. Med 13, relating to continuing medical education for podiatrists.
Effective 06–01–97.

Natural Resources (CR 96–159):
An order affecting ss. NR 10.01, 10.26 and 11.08, relating to sharp–tailed grouse hunting.
Effective 06–01–97.

Transportation (CR 96–171):
An order affecting ch. Trans 152, relating to Wisconsin Interstate Fuel Tax and the International Registration Plan.
Effective 06–01–97.

Transportation (CR 96–179):
An order repealing and recreating ch. Trans 76, relating to general transportation aids.
Effective 06–01–97.

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