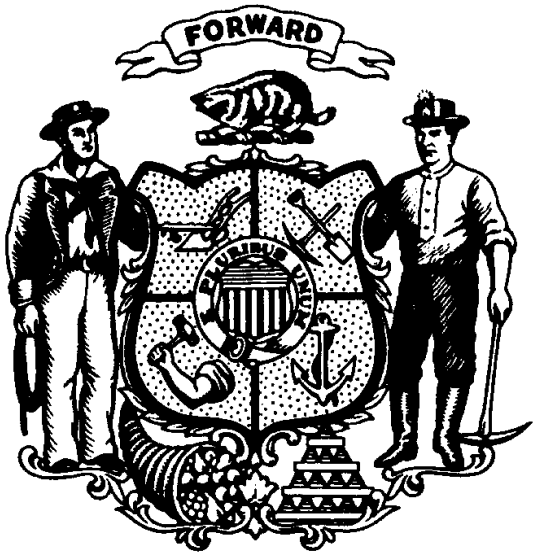
WISCONSIN ADMINISTRATIVE REGISTER

No. 498



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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 Commerce

(Fee Schedule, Ch. Comm 2)
(Credentials, Ch. Comm 5)
(Elevators, Ch. Comm 18)

Rules adopted revising **chs. Comm 2, 5 and 18,** relating to inspection of elevators and mechanical lifting devices.

Finding of Emergency

The Department of Commerce 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 Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

Publication Date: **May 4, 1997**
Effective Date: **June 1, 1997**
Expiration Date: **October 30, 1997**

EMERGENCY RULES NOW IN EFFECT (2)

Department of Corrections

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

Finding of Emergency

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

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

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

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

Publication Date: **May 30, 1997**
Effective Date: **May 30, 1997**
Expiration Date: **October 28, 1997**

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

Finding of Emergency

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

victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

Publication Date: **June 1, 1997**
Effective Date: **June 1 , 1997**
Expiration Date: **October 30, 1997**

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**
Extension Through: **August, 19, 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**
Extension Through: **August 15, 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 (3)

Commissioner of Insurance

1. 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**
Extension Through: **July 29, 1997**

2. Rule was adopted revising **s. Ins 18.07 (5) (bg)**, relating to an increase in 1997–98 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.

Analysis Prepared by the Commissioner of Insurance

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 July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. Ins 18.07 (5) (bg). The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This adjustment represents an average 5.8% increase in premium payments over the most recent rates.

Publication Date: May 16, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: June 30, 1997

3. A rule was adopted repealing **s. Ins 3.46 (18) (d)**, relating to the requirements for tax deductible long term care insurance policies.

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:

These changes would repeal the current requirement in the existing emergency rule which requires the offer of a non–tax qualified plan in each solicitation of a tax–qualified plan. After the public hearing on the permanent rule, it was determined that this requirement is no longer needed. The permanent rule was submitted to the legislature on May 30, 1997 with this provision deleted. This procedure to modify the emergency rule was presented to JCRAR at the hearing to extend the time period the emergency rule is effective.

Publication Date: June 13, 1997
Effective Date: June 13, 1997
Expiration Date: July 29, 1997

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 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

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 (2)

Department of Revenue

1. Rules were adopted amending **s. Tax 11.05 (2)(s)** and revising **s. 11.86 (6),** relating to sales and use tax treatment of landscaping services.

Finding of Emergency

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

Sections Tax 11.05 (2)(s) and 11.86 (6), Stats., state that landscaping services (e.g., planting, mowing, and fertilizing grass) are only taxable when they are performed in developed areas. Similar services performed in undeveloped areas (e.g., along

highways) were determined by the department to not be landscaping services and therefore, the sale of such services was not subject to sales or use tax.

In case of the *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket#93–S–569), the Wisconsin Tax Appeals Commission held that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

It necessary to promulgate this rule order to remove any threat of estoppel arguments and revenue loss to the state as a result of information contained in these rules that implies planting, mowing, fertilizing, and similar services performed in undeveloped areas are not taxable.

Publication Date: **May 18, 1997**
Effective Date: **May 18, 1997**
Expiration Date: **October 16, 1997**

2. Rules adopted repealing **ch. ATCP 53** and creating **ch. Tax 53**, relating to increasing plat preview fees to cover all of the current costs of activities and services provided by the department under ss. 70.27 and 236.12, Stats.

Finding of Emergency

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

For the past three years, program costs have out paced revenues received. The Plat Review section has relied on their substantial cash balance to cover the difference. Projections indicate that cash reserves will be depleted within the next year or earlier. Without a plat review fee increase significant cutbacks in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut–backs state certified plats with saleable but not buildable lots could result. It should be noted that this program has not had a rate increase since 1985.

In order to address this problem, an administrative rule is in the process of being promulgated. Due to the complexities of where the Plat Review section physically resides (DATCP), who has program responsibility for it, combined with the 1996 Memorandum of Understanding between the Department of Revenue and the Department of Commerce, the administrative rule process has taken longer than anticipated and it is expected that the rule will not be completed for another 90 days.

In order to ensure that funding will be sufficient and that services to the citizens of this state remain uninterrupted, an emergency rule is necessary. In particular, this rule addresses the following needs:

•Ch. ATCP 53 is repealed.

•Ch. Tax 53 is created. Under this rule certain fees charged for plat review are increased.

Publication Date: **June 1, 1997**
Effective Date: **June 1, 1997**
Expiration Date: **October 30, 1997**
Hearing Date: **July 11, 1997**
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rule adopted creating **s. VA 2.01 (2)(b)18.**, relating to the health care aid grant program.

Finding of Emergency

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

The department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2)(b)2., Wis. Adm. Code, the Department is restricted to a $50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

Publication Date: **April 7, 1997**
Effective Date: **April 7, 1997**
Expiration Date: **September 5, 1997**
Hearing Date: **April 18, 1997**

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**
Extension Through: **July 27, 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**
Hearing Dates: **May 21 & 28, 1997**

EMERGENCY RULES NOW IN EFFECT

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

Rules were adopted revising **ch. DWD 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:

In addition to raising the minimum wage to $4.75 per hour on October 1, 1996, and $5.15 per hour on September 1, 1997, the federal Fair Labor Standards Act provides for an "opportunity wage" of $4.25 per hour which may be paid by each new employer to a person under the age of 20 during the first 90 days of employment. The Department's permanent rules to raise the state minimum wage contained provisions creating an opportunity wage that are the same as those of the federal law.

On April 10, 1997, the State Senate Committee on Labor, Transportation and Financial Institutions suspended the portions of CR 96–181 relating to the opportunity wage. The Department proceeded with formal adoption of the provisions of the rule that were not suspended; the permanent rule changes will become effective on June 1, 1997. On April 17, 1997, the Joint Committee for Review of Administrative Rules (JCRAR) unanimously approved extension of the Department's emergency rule on minimum wage, which includes the provisions on the opportunity wage. The emergency rule extension lasts until June 27, 1997.

The respective votes of the two Legislative committees have caused uncertainty as to whether the provisions relating to the opportunity wage remain in effect through June 27, 1997, or expire on June 1, 1997. The JCRAR has met several times since the standing committee's suspension but its only action on this issue was to extend the emergency rule, which includes the opportunity wage provision. The legal interpretation from the Legislative Council as to the precedence of the emergency rule provision vs. the permanent rule provision has not been definitive.

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee's suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this

provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state's employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

In absence of definitive legal opinion or action on the opportunity wage issue by the JCRAR, this emergency rule alleviates uncertainty as to whether the opportunity wage provisions are effective after June 1 by explicitly maintaining their effect. The Department will make every reasonable effort to comply with the JCRAR's intent once action is taken. If the JCRAR affirms the standing committee's suspension, the Department will immediately withdraw the provisions of this emergency rule. If the JCRAR does not affirm the standing committee's suspension, this emergency rule will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a germane modification to CR–96–181 on March 31, 1997. It was the Department's intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

Publication Date: **May 31, 1997**
Effective Date: **May 31, 1997**
Expiration Date: **October 29, 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:

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former ch. ILHR 290, Wis. Adm. Code, in accordance with 1995 Act 215, which enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

Publication Date: **May 10, 1997**
Effective Date: **May 10, 1997**
Expiration Date: **October 8, 1997**
Hearing Date: **June 19, 1997**

STATEMENTS OF SCOPE OF PROPOSED RULES

Financial Institutions (Securities)

Subject:

DFI–Sec Code – Rules relating to the Wisconsin Uniform Securities Law and the Wisconsin Franchise Investment Law.

Description of policy issues:

Description of the objective of the rule:

The Division's annual rule revision process is conducted for the following purposes:

1) Making changes to simplify and streamline the process by which securities and franchise issuers register offerings of their securities and franchises;

2) Developing new securities registration exemptions or making modifications to existing securities registration exemptions to reflect new legal or interpretive issues under the federal and state securities laws;

3) Adopting new rules or amending existing rules, relating to the securities broker–dealer, agent and investment adviser licensing requirements, procedures and sales practices to effectively regulate new licensing developments that have occurred in the securities industry and marketplace that require regulatory treatment;

4) Making clarifications to any current securities or franchise rule provisions where language is vague or ambiguous.

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

The Division's annual rule revision process for 1997 will be particularly important in view of recent federal securities legislation, the National Securities Markets Improvement Act of 1996 ("NSMIA," enacted October 11, 1996) which preempted state securities law regulatory authority in several respects. In addition to legislative changes that the Division will be proposing during 1997, a number of administrative rule changes will be necessary, particularly with regard to the investment adviser, broker–dealer, and agent licensing rules that are impacted by NSMIA. Additionally, recent U.S. Securities and Exchange Commission rule–making under NSMIA, (most significantly, a comprehensive series of new rules applicable to investment advisers that will become effective July 8, 1997) will require numerous amendments to the existing Wisconsin rules regarding investment adviser licensing requirements.

Statutory authority for the rules:

Sections 551.63 (1) and (2), 553.58 (1) and (2), Stats.

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

Estimated time to be spend by state employes––150 hours. No other resources are necessary.

State Fair Park Board

Subject:

Wisconsin State Fair Park serves the citizens of Wisconsin by providing a permanent location for the annual state fair and other programs of civic interest. Development of this unique park is made possible through procedures enabling the park to be financially self–supporting. Its contractual involvement with private enterprise is consistent with its legislative purpose.

Description of policy issues:

Existing policy and purpose was implemented effective October 1, 1996, to parallel the municipal code with the processing municipality. The current requested revisions address two issues:

1) Section 1, s. SFP 2.07 (3); Section 2, s. SFP 2.16 (4) (b); Section 3, s. SFP 2.16 (5) (b); and Section 4, s. SFP 2.18 are amended to change the legal age from 18 to 17, to coincide with current state and municipal statutes.

2) Section 5, s. SFP 7.02 is amended to repeal the old bond schedule and recreate the new bond schedule to coincide with current processing municipalities.

Statutory authority for rule–making:

SS. 42.01 (1), (2) and (3) and 227.11 (2), Stats.

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

Estimated hours of staff time – 126 hours.

Transportation

Subject:

Ch. Trans 300 – Relating to the transportation of schoolchildren.

Description of policy issues:

Description of the objective of the rule:

The proposed rule change to ch. Trans 300, relating to the transportation of schoolchildren, will provide school bus manufacturers flexibility to use alternative materials in the construction process. The current rule has specific requirements for the thickness of metal used in the construction of the floor and rub rails. In addition, several corrections and revisions will also be proposed to allow new safety technologies and make Wisconsin school bus rules more uniform with federal school bus standards.

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

The Department proposes to allow alternative school bus construction material. The current rule requires specific steel thicknesses for the floor and rub rails. To keep the gross vehicle weight rating (GVWR) at or below 10,000 lbs., the revision would allow "other metal or material with strength at least equivalent to all–steel as certified by the bus body manufacturer." There are estimated to be 60 buses on order by operators. Without the proposed changes, these buses could not be used in Wisconsin, and schools will start using alternative vehicles (production vans) when the school year begins in August 1997 because of the unavailability of the smaller school buses built to the safer school bus standards.

Statutory authority for the rule:

S. 110.06 (2), Stats.

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

It is estimated that state employes will spend 45 hours on the rule–making process, including research, drafting and conducting public hearing(s).

University of Wisconsin System

Subject:

Ch. UWS 18 – Relating to conduct on University of Wisconsin System lands.

Description of policy issues:

Objectives of the rules:

Under s. 36.11 (1) (c), Stats., the Board of Regents of the University of Wisconsin System has promulgated rules governing conduct on university lands. These rules are enforced by university police officers in accordance with the citation procedure provided under s. 778.25, Stats. The proposed rules would amend existing provisions and create new provisions to address current campus law enforcement problems.

Policy analysis:

The last major revision to these rules was completed in 1991. Since that time, campus police officers have experienced new problems and have recommended that the rules be amended to deal with these situations. The changes would be consistent with modifications in certain state criminal statutes and municipal ordinances. New provisions under the rules would address specified fire safety issues, possession of drug paraphernalia, resisting or obstructing police officers, abuses of telephones, assaultive behavior, the operation of motor vehicles off roadways, misuse of parking permits, damage to computers and related equipment, abuse of computer communication equipment, deposit of human waste, curfew violations by minors, conduct at athletic events and theft of library materials. Inclusion of these new provisions in ch. UWS 18 would allow university police to invoke the citation procedure for enforcement purposes in a manner parallel to that used by municipalities to deal with ordinance violations for similar offenses.

Policy alternatives to the rules:

The principal alternative to the proposal is to make no changes in the rules. If no changes are made, the law enforcement problems listed above either would not be actionable at all, or would have to be addressed through state criminal proceedings. Use of the state criminal process to address these relatively minor offenses is problematic because it is a more complex process than the citation process, and because using it places additional burdens on other law enforcement agencies and officials. Further, invoking the criminal process can lead to inequitable treatment of individuals charged with misconduct, since a person apprehended on university lands may be charged with a crime, while the same offense could be treated as an ordinance violation if it occurred in the neighboring municipality.

Statutory authority for the proposed rules:

Section 36.11 (1) (c), Stats.

State employe time required for development of the rules:

It is estimated that the amount of state employe time required to develop the rule will be at least 80 hours.

Workforce Development

Subject:

S. DWD 272.14 – Relating to minimum wage––displacement.

Description of policy issues:

Description of the objective of the rule:

This rule is being adopted to insure that a person cannot be displaced from a job by an employer whose sole purpose in displacing that person is to enable that employer to hire another employe and pay that new employe the opportunity wage, which is less than the minimum wage.

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:

Prior to the adoption of the emergency rule on the minimum wage, effective October 1, 1996, the minimum wage contained neither an opportunity wage nor displacement language. Before October 1, 1996, the minimum wage contained a probationary wage that could be applied one time, and which lasted for a total of ninety (90) days. It also had a minor minimum wage for all those employes under the age of 18.

The opportunity wage adopted in the emergency rule effective October 1, 1996, as well as the second emergency rule adopted effective June 1, 1997, allows employers to pay their new employes under the age of twenty (20) less than the minimum wage a period of ninety days. It also allows employes under the age of 20 to earn the minimum wage after they have served their ninety day time period as long as they stay with the same employer. It allows employers to train and evaluate the performance of their new employes for a three month period of time. The new language will prevent employers from taking advantage of the opportunity wage to displace other employes.

Both the opportunity wage and this displacement provision are modeled on provisions in the Federal Fair Labor Standards Act.

Statutory authority for the rule:

SS. 103.005 (1), 103.02 and 104.04, 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:

4 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 and Family Services

Rule Submittal Date

On June 13, 1997, the Department of Health and Family Services submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed rule affecting ch. HSS 163, relating to certification for lead abatement, other lead hazard reduction and lead management activities, and accreditation of training courses.

Analysis

Statutory authority:

Sections 254.176 (1) and (3), and 254.178 (2), Stats.

Reason for rules, intended effects, requirements:

This order amends the Department's lead (Pb) worker and supervisor certification and training course accreditation rules to add certification requirements for lead inspectors, risk assessors and project designers; accreditation requirements for training courses for these new disciplines; and fees for accreditation of all training courses for persons required to be certified.

The order also:

- Rearranges part of ch. HSS 163, in particular by moving training course and instructor requirements that are currently partly in Appendix A into the rules proper where there are other training course and instructor requirements, leaving only training course topics in Appendix A;
- Rephrases to whom the certification requirement applies: namely, to persons performing any of the identified activities involving target housing [pre–1978, with exclusions but an exception to exclusions for child–occupied facilities];
- Increases the maximum interval between required training;
- Adds approval of training managers; and
- Requires more advance notice about the start of a lead abatement or other lead hazard reduction project except where there exists a risk to health.

Many of the changes are to meet U.S. Environmental Protection Agency requirements for full approval of the state program.

Agency Procedure for Promulgation

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

Contact Person

Gail Boushon
Division of Health
Telephone (608) 266–5280

Natural Resources

Rule Submittal Date

On June 12, 1997, the Department of Natural Resources submitted a proposed rule [WM–17–97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 10, relating to the 1997 migratory waterfowl season regulations.

Agency Procedure for Promulgation

The dates for the public hearings are August 11–13, 1997.

Contact Person

Jon Bergquist
Bureau of Wildlife Management
Telephone (608) 266–8841

Natural Resources

Rule Submittal Date

On June 12, 1997, the Department of Natural Resources submitted a proposed rule [DG–11–97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 140, relating to groundwater quality standards.

Agency Procedure for Promulgation

The dates for the public hearings are July 28–31, 1997.

Contact Person

Steve Karklins
Bureau of Drinking Water and Groundwater
Telephone (608) 266–5240

Natural Resources

Rule Submittal Date

On June 12, 1997, the Department of Natural Resources submitted a proposed rule [SW–36–96] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 590 and 600 to 685, relating to used oil and hazardous waste management rules.

Agency Procedure for Promulgation

The dates for the public hearings are July 22–25, 1997.

Contact Person

Al Matano
Bureau of Waste Management
Telephone (608) 267–3531

Psychology Examining Board

Rule Submittal Date

On June 6, 1997, the Psychology Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 455.065, Stats.

The proposed rule−making order relates to continuing education.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for July 25, 1997.

Contact Person

Pamela Haack
Rules Center Coordinator
Telephone (608) 266−0495

Railroads, Commissioner of

Rule Submittal Date

On June 4, 1997, the Wisconsin Office of the Commissioner of Railroads submitted this proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule changes primarily codify existing Office of the Commisssioner of Railroads hearing procedures and practices in ch. RR 1. The proposed rule changes also eliminate obsolete provisions no longer used by the OCR. The proposed rule establishes a procedure for the hearing examiner to issue a final decision in cases where the Commissioner is unable to do so.

Agency Procedure for Promulgation

The OCR intends to promulgate the proposed rules after conducting a public hearing and soliciting written comments from potentially interested parties.

Contact Person

If you have any questions, you may contact:

Douglas S. Wood
Legal Counsel
Telephone (608) 266−9536

Railroads, Commissioner of

Rule Submittal Date

On June 4, 1997, the Wisconsin Office of the Commissioner of Railroads submitted this proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule repeals ch. RR 3, which regulates intrastate rail rates. The ICC Termination Act preempts state economic regulation of railroads. See 49 USC 10501. Consequently, the OCR proposes this repeal.

Agency Procedure for Promulgation

The OCR intends to promulgate the proposed rules after conducting a public hearing and soliciting written comments from potentially interested parties.

Contact Person

If you have any questions, you may contact:

Douglas S. Wood
Legal Counsel
Telephone (608) 266−9536

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on June 11, 1997, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order revises ss. Tax 11.05 and 11.86, relating to the sales and use tax treatment of landscaping services, and of sales and purchases by governmental units.

Agency Procedure for Promulgation

A public hearing on the proposed rule order will be held in conjunction with a companion emergency rule. 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
Income, Sales and Excise Tax Division
Telephone (608) 266−8253

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on the proposed amendments to ch. ATCP 42, Wis. Adm. Code, relating to commercial feed.

Hearing Information

The hearings will be held at the times and places shown below. Three hearings are scheduled:

July 29, 1997	**Quality Inn**
Tuesday	**809 West Clairmont Ave.**
1:00 p.m. to 4:00 p.m.	**EAU CLAIRE, WI**
July 30, 1997	**Ramada Inn**
Wednesday	**200 North Perkins St.**
1:00 p.m. to 4:00 p.m.	**APPLETON, WI**
July 31, 1997	**Board Room**
Thursday	**WDATCP**
1:00 p.m. to 4:00 p.m.	**2811 Agriculture Dr.**
	MADISON, WI

Written Comments

The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **August 15, 1997** for additional written comments.

Copies of Rule

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

Agricultural Resource Management Division
Telephone (608) 224–4539
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708–8911

Copies will also be available at the public hearings.

An interpreter for the hearing–impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 18, 1997** either by writing to Kristina Gordon, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling **(608) 224–4537** or by contacting the message relay system (TTY) at **(608) 224–5058**. Handicap access is available at the hearings.

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

This rule amends the Department's current rules related to commercial feed under ch. ATCP 42, Wis. Adm. Code.

Commercial Feed Labeling; General:

The current rules establish specific labeling requirements for commercial feed, including label contents and format. Under the current rules, commercial feed other than "custom–mixed feed" and dog and cat food must be labeled with all of the following information:

- ❑ The product name.
- ❑ Drug information if the feed contains any drug.
- ❑ A statement of purpose.
- ❑ A guaranteed analysis.
- ❑ An ingredient statement.
- ❑ Use directions and precautionary statements, if required.
- ❑ The name and address of the manufacturer or distributor.
- ❑ A declaration of net quantity.

"Custom–Mixed Feed":

The current rules spell out different and less rigorous labeling requirements for "custom–mixed feed." Under the current rules, a "custom–mixed feed" is a commercial feed which a manufacturer prepares at the request of a retail purchaser according to a formula provided by the retail purchaser. This rule expands the definition of "custom–mixed feed" so that it also includes commercial feed made from ingredients provided, in significant part, by the retail purchaser.

"Mill Formulated Feed":

Under the current rules, a "mill formulated feed" means a commercial feed manufactured, on an individual basis, according to a formula provided by the feed manufacturer or labeler for the customer of that feed manufacturer or labeler. A "labeler" includes a person, other than the final retail purchaser, who retains proprietary rights to the feed formula.

Under the current rules, "mill formulated" feed must comply with general feed labeling requirements, and may not be labeled according to the less rigorous labeling standards for "custom–mixed" feed. Under this rule, a "mill formulated" feed may be labeled in the same manner as a "custom–mixed" feed unless the purchaser requests otherwise.

Bulk Feed Labeling:

Under current rules, packaged commercial feed must be labeled on the feed package. If commercial feed is sold in bulk rather than packaged form, label information may be provided on a delivery slip that accompanies the bulk delivery. This rule clarifies that when bulk deliveries of commercial feed are bagged at retail at the request of the purchaser, label information need not appear on the individual bags if each bag is clearly identified as part of a bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drug, the identification on each bag shall include the word "medicated."

Fiscal Estimate

State government:

The rule will be administered by the Agricultural Resource Management Division of the Department of Agriculture, Trade and Consumer Protection. The Department anticipates no fiscal effect on state or local governments.

The proposed rule requires labeling changes which will require review of new labels by Department staff; however, labels are already reviewed periodically.

Initial Regulatory Flexibility Analysis

Businesses affected:

Affected businesses will be commercial feed manufacturers and distributors, including persons acting as nutritional consultants who receive compensation for the preparation of commercial feed labels or formulas.

Commercial feed manufacturers and distributors:

There are currently 1000 commercial feed facilities in Wisconsin. Approximately 700 of these facilities engage in manufacturing commercial feed. The remainder are distribution points or labelers. A firm that identifies itself on the label as the party responsible for the feed and distributes a product that is manufactured by another is a

distributor. The Department estimates that about 70% of the manufacturing facilities also engage in other agri–business activities such as sales of fertilizer and pesticides. The Department also estimates that about 70% of the manufacturing facilities are small businesses.

Feed manufacturers – Distribution of labeled feed per year:

700 firms distribute from 0 and 2000 tons of commercial feed.

200 firms distribute from 2000 and 20,000 tons of commercial feed.

30 firms distribute greater than 20,000 tons of commercial feed.

Feed manufacturers – Category of feed produced:

300 firms produce medicated animal feed.

400 firms only produce non–medicated animal feeds.

Poultry and livestock farm operations:

There are a number of small businesses in the poultry and livestock operator business that depend enormously on the feed manufacturing industry to provide correct and useful information on animal nutrition and the use of commercial feed products. The impact of these proposed rules amendments on these businesses will be to provide them with product labeling suitable for their production practices and expertise.

Commercial feed consultants:

Commercial feed consultants that operate in Wisconsin provide farmers and manufactures with information related to the formulation and use of feed products. The number of consultants operating in Wisconsin is unknown at this time.

Many consultants are independent or work in cooperation with a feed manufacturer, but are not employed by a feed manufacturer. Other consultants are employes of the feed manufacturer and their employer must comply with all feed regulations affecting their employer. This would include: licensing, labeling and good manufacturing practices.

Through the current definition of distributor, consultants who are compensated by the final purchaser of the feed for providing a label or formula for a feed product will have to be licensed by the Department and comply with the appropriate regulations. This proposed rule amendment will only affect the label formatting of "mill–formulated feed" at the request of their customers.

Reporting, recordkeeping and other procedures required for compliance with the rules:

Commercial feed manufacturers and distributors:

Revision of commercial feed labels:

The proposed rule amendment should require little or no modification to current labeling practices. In most cases the proposal will reduce the difficulty that small feed manufacturers are currently facing with the required labeling for "mill formulated" and "custom–mixed" feeds.

Commercial feed consultants:

The consultants that are required to become licensed commercial feed distributors will have to comply with the same labeling affecting commercial feed manufacturers.

Professional skills necessary for compliance with the rules:

Commercial feed manufacturers and distributors:

Manufacturers who do not employ consultants or have access to nutrition program services may have to develop skills to assist them in proper feed formulating to meet the labeling requirement when a customer of a "mill formulated feed" requests full labeling, including nutrient and adequacy guarantees.

The majority of persons marketing commercial feed have expertise in the calculation of feed formulas. Those who need to develop this expertise have several options available at little or no cost. The University of Wisconsin–Extension service can provide training and assistance in feed formulation. Nutritional consultants can be employed by firms needing this service. Low cost computer software nutrition and product formulation packages are available from national and regional feed suppliers and cooperatives.

Special accommodations to reduce small business impact:

The proposed rule amendment has been developed to minimize impact on small business interests, recognizing that most feed manufacturers, consultants and their customers are small business operations.

The proposed rule amendment establishes options for manufacturers and customers alike. The flexibility of this rule will allow ease of compliance and still provide the customers with the product information that they need.

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 security.

Hearing Information

July 23, 1997	**Room 105**
Wednesday	**State Office Building**
1:00 P.M.	**718 West Clairemont**
	Eau Claire, Wisconsin
July 24, 1997	**Room 323**
Thursday	**State Office Building**
10:00 a.m.	**141 Northwest Barstow Street**
	Waukesha, Wisconsin
July 25, 1997	**Secretary's Conference Room**
Friday	**Department of Corrections**
10:00 a.m.	**149 E. Wilson Street, 3rd Floor**
	Madison, 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 rules relating to security procedures at correctional institutions have not been updated since the rules were created in 1980. With over 16 years of experience working with the rule, the department proposes to update the rule.

This rule:

1. Makes technical changes made in the rule.

2. Updates terminology.

3. Permits staff to use only weapons approved by the department.

4. Provides for the use of "incapacitating" agents instead of "chemical" agents.

5. When the use of mechanical restraints is permitted, permits staff to use only mechanical restraints approved by the department.

6. Permits, instead of requires, an inmate to be present during the search of the inmate's living quarters.

7. Provides that entering the living quarters of an inmate to retrieve state property does not constitute a search of living quarters.

8. Permits staff to read that part of an inmate's legal material which is necessary to determine that the item is legal material. The current rule prohibits staff to read any inmate's legal material during a search.

9. Requires the warden to detain a visitor who is found on a search to have an unauthorized object or to be under the influence of an intoxicating substance to inform the sheriff or local law enforcement agency, and to turn the object over to the law enforcement agency. The current rule requires the shift supervisor to detain a visitor who is found on a search to have an unauthorized object.

10. Permits the search of a staff member while the staff member is on the grounds of a correctional institution. The current rule permits the search of a staff member before the staff member enters and before staff member leaves a correctional institution.

11. Requires the warden to detain a staff member who is found on a search to have an unauthorized object or to be under the influence of an intoxicating substance to inform the sheriff or local law enforcement agency, and to turn the object over to the law enforcement agency.

12. Permits only authorized corrections staff members, instead of deputized correctional officer, to carry firearms off the grounds of the institution.

13. In s. DOC 306.05 (4) and DOC 306.10 (3) the cross references are to s. DOC 302.05. DOC 302 is in the process of being revised by the Department of Corrections. The cross references are to the proposed revised ch. DOC 302. There may be a time period when the cross references are inaccurate because the proposed ch. DOC 306 may be promulgated several months before the proposed ch. DOC 302. At the time ch. DOC 302 is promulgated the cross references will be accurate.

Text of Rule

SECTION 1. DOC 306.02 (1) is renumbered DOC 306.02 (5) and amended to read:

DOC 306.02 (5) "Division ~~of adult institutions~~" means the division of adult institutions, department of corrections.

SECTION 2. DOC 306.02 (3) is renumbered DOC 306.02 (1) and amended to read:

DOC 306.02 (1) "Administrator ~~of the division of adult institutions~~" means the administrator of the division ~~of adult institutions, department of corrections~~, or designee.

SECTION 3. DOC 306.02 (4) is renumbered DOC 306.02 (3) and amended to read:

DOC 306.02 (3) "Director of the bureau of ~~correctional~~ health services" means the director of the bureau of ~~correctional~~ health services, the department of corrections, or designee.

SECTION 4. DOC 306.02 (5) is repealed.

SECTION 5. DOC 306.02 (6) is renumbered DOC 306.02 (4).

SECTION 6. DOC 306.02 (7) is repealed.

SECTION 7. DOC 306.02 (8) is renumbered DOC 306.02 (6).

SECTION 8. DOC 306.02 (9) is renumbered DOC 306.02 (7).

SECTION 9. DOC 306.02 (10) is renumbered DOC 306.02 (8) and amended to read:

DOC 306.02 (8) "~~Superintendent~~ Warden" means the ~~superintendent~~ warden at an institution, or designee.

SECTION 10. DOC 306.045 is renumbered DOC 306.05 and DOC 306.05 (1) (intro.), (1) (a), (3) (intro.), (3) (a), (4), and (5) (a) and (b), as renumbered, are amended to read:

DOC 306.05 (1) (intro.) VOLUNTARY CONFINEMENT. The security director may place an inmate in voluntary confinement if both of the following exist:

(a) The inmate requests the placement in writing~~; and~~.

(3) (intro.) If the security director does not approve an inmate's release from voluntary confinement before 72 hours elapse, the inmate shall be released after 72 hours, if one of the following occurs:

(a) The inmate requests release in writing~~; or~~ .

(4) An inmate in voluntary confinement shall be in maximum ~~close~~ custody as defined in s. DOC ~~302.12 (1) (a)~~ 302.05 (1).

(5) (a) During the first 72 hours, privileges and property at least equivalent to privileges and property allowed to inmates in temporary lock–up ~~(TLU) status~~ or TLU, s. DOC 303.11~~;~~.

(b) After 72 hours, privileges and property at least equivalent to privileges and property allowed to inmates in program segregation, s. DOC 303.70~~; and~~.

SECTION 11. DOC 306.05 is renumbered DOC 306.06 and amended to read:

DOC 306.06 INMATE COUNT. Each ~~superintendent~~ warden shall establish and maintain a system to accurately account for all inmates in ~~his or her~~ the warden's custody at all times. A count of all inmates shall be made at least 4 times each day. These counts should be spaced as to interfere as little as possible with school, work, program, and recreational activities.

SECTION 12. DOC 306.06 (1) (intro.) is renumbered DOC 306.07 (1) (intro.).

SECTION 13. DOC 306.06 (1) (a) is renumbered DOC 306.07 (1) (d) and amended to read:

DOC 306.07 (1) (d) "Force" is the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way. ~~It includes the use of chemical, mechanical, and physical power or strength. Only so much force may be used as is reasonably necessary to achieve the objective for which it is used. The use of excessive force is forbidden.~~

SECTION 14. DOC 306.06 (1) (b) is renumbered DOC 306.07 (1) (i).

SECTION 15. DOC 306.06 (1) (c) is renumbered DOC 306.07 (1) (c).

SECTION 16. DOC 306.06 (1) (d) is renumbered DOC 306.07 (1) (b) and is amended to read:

DOC 306.07 (1) (b) "Bodily injury" means physical ~~pain or~~ injury, illness, or any impairment of physical condition.

SECTION 17. DOC 306.06 (1) (e) is renumbered DOC 306.07 (1) (f).

SECTION 18. DOC 306.06 (1) (f) is renumbered DOC 306.07 (1) (L).

SECTION 19. DOC 306.06 (2) is renumbered DOC 306.07 (2).

SECTION 20. DOC 306.06 (3) (intro.) is renumbered DOC 306.07 (3) (intro.)

SECTION 21. DOC 306.06 (3) (a) is renumbered DOC 306.07 (3) (a) and amended to read:

DOC 306.07 (3) (a) To prevent death or bodily injury to oneself or another~~;~~.

SECTION 22. DOC 306.06 (3) (b) is renumbered DOC 306.07 (3) (b) and amended to read:

DOC 306.07 (3) (b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another~~;~~.

SECTION 23. DOC 306.06 (3) (c) is renumbered DOC 306.07 (3) (c) and amended to read:

DOC 306.07 (3) (c) To regain control of an institution or part of an institution ~~after an inmate takeover;~~.

SECTION 24. DOC 306.06 (3) (d) is renumbered DOC 306.07 (3) (d) and amended to read:

DOC 306.07 (3) (d) To prevent the escape of an inmate ~~from an institution;~~.

SECTION 25. DOC 306.06 (3) (e) is renumbered DOC 306.07 (3) (e) and amended to read:

DOC 306.07 (3) (e) To apprehend an inmate who has escaped ~~from an institution;~~.

SECTION 26. DOC 306.06 (3) (f) is renumbered DOC 306.07 (3) (f) and amended to read:

DOC 306.07 (3) (f) To change the location of an inmate~~;~~.

SECTION 27. DOC 306.06 (3) (g) is renumbered DOC 306.07 (3) (h) and amended to read:

DOC 306.07 (3) (h) To prevent unlawful damage to property~~; or~~.

SECTION 28. DOC 306.06 (3m) is renumbered DOC 306.07 (4) and amended to read:

DOC 306.07 (4) The use of ~~a chemical~~ an incapacitating agent is a form of non–deadly force but it is regulated by s. DOC ~~306.08~~ 306.09.

SECTION 29. DOC 306.06 (4) (intro.) is renumbered DOC 306.07 (5) (intro.) and amended to read:

DOC 306.07 (5) (intro.) Deadly force may be used for any of the following situations:

SECTION 30. DOC 306.06 (4) (a) is repealed.

SECTION 31. DOC 306.07 (5) (a) is created to read:

DOC 306.07 (5) (a) To prevent death or bodily injury to oneself or another.

SECTION 32. DOC 306.06 (4) (b) is renumbered DOC 306.07 (5) (d) and amended to read:

DOC 306.07 (5) (d) To prevent escape and apprehend an escapee ~~from a maximum or medium security institution; or.~~

SECTION 33. DOC 306.06 (4) (c) is renumbered DOC 306.07 (5) (f).

SECTION 34. DOC 306.06 (5) is renumbered DOC 306.07 (6).

SECTION 35. DOC 306.07 (1) is renumbered DOC 306.08 (1) and amended to read:

DOC 306.08 (1) ~~Only the superintendent~~ The warden or next authority who is available may issue weapons to correctional staff. Correctional staff may only use weapons ~~issued to them by the superintendent~~ approved by the department.

SECTION 36. DOC 306.07 (1) (a) is created to read:

DOC 306.07 (1) (a) "Authority" is the highest ranking individual, based on the line of succession, who is available in the institution.

SECTION 37. DOC 306.07 (1) (e) is created to read:

DOC 306.07 (1) (e) "Force option continuum" means the systematic progression of force based on the perceived level of threat.

SECTION 38. DOC 306.07 (1) (g) is created to read:

DOC 306.07 (1) (g) "Issuance of firearms" means the deployment of firearms to authorized individuals, as determined by the warden, beyond designated armed posts in response to an emergency.

SECTION 39. DOC 306.07 (1) (h) is created to read:

DOC 306.07 (1) (h) "Line of succession" means the following positions which are listed in the order of authority: warden, deputy warden, security director, shift commander, or other designee.

SECTION 40. DOC 306.07 (1) (j) is created to read:

DOC 306.07 (1) (j) "Planned use of force" means the use of force in situations where the time and circumstances allow for consultation with and authorization by the person designated by the line of authority and where there is some opportunity to plan the actual use of force.

SECTION 41. DOC 306.07 (1) (k) is created to read:

DOC 306.07 (1) (k) "Reactive use of force" means the use of force in situations where time and circumstances do not permit authorization by higher ranking employes or consultation or planning.

SECTION 42. DOC 306.07 (2) is renumbered DOC 306.08 (2).

SECTION 43. DOC 306.07 (3) is renumbered DOC 306.08 (3).

SECTION 44. DOC 306.07 (3) (g) is created to read:

DOC 306.07 (3) (g) To control a disruptive inmate.

SECTION 45. DOC 306.07 (3) (i) is created to read:

DOC 306.07 (3) (i) To enforce a departmental rule, a posted policy or procedure or an order of a staff member.

SECTION 46. DOC 306.07 (4) is renumbered DOC 306.08 (4) and DOC 306.08 (4) (intro.), 306.08 (4) (a) to (d), as renumbered, are amended to read:

DOC 306.08 (4) (intro.) The division ~~of adult institutions~~ shall have a weapons training and qualification program which shall include instruction on the following:

(a) Safe handling of firearms while on duty~~;~~.

(b) Legal use of firearms and the use of deadly force~~;~~.

(c) Division rules regarding firearms~~;~~.

(d) Fundamentals of firearms use, including range firing~~; and~~.

SECTION 47. DOC 306.07 (5) (intro.) is renumbered DOC 306.08 (5) (intro.).

SECTION 48. DOC 306.07 (5) (a) is renumbered DOC 306.08 (5) (a) and amended to read:

DOC 306.08 (5) (a) Verbally warn the inmate to stop the activity giving rise to the use of the firearm, and inform the inmate that the staff member possesses a firearm~~;~~.

SECTION 49. DOC 306.07 (5) (b) is renumbered DOC 306.08 (5) (b) and amended to read:

DOC 306.08 (5) (b) If the verbal warning is disregarded, and the inmate continues with the activity giving rise to the use of the firearm, fire ~~a warning shot; and~~ shots as necessary to stop the activity and gain control over the inmate involved.

SECTION 50. DOC 306.07 (5) (b) is created to read:

DOC 306.07 (5) (b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another.

SECTION 51. DOC 306.07 (5) (c) is repealed and recreated to read:

DOC 306.07 (5) (c) To regain control of an institution or part of an institution.

SECTION 52. DOC 306.07 (5) (e) is created to read:

DOC 306.07 (5) (e) To prevent inmates from escaping, attempting to escape or to apprehend an escapee who escapes while being transported outside the institution.

SECTION 53. DOC 306.07 (6) is renumbered DOC 306.08 (6) and amended to read:

DOC 306.08 (6) A staff member who fires a shot under sub. (5) ~~(c)~~ (b) may aim to cause death or great bodily injury, if the inmate's activity poses an immediate threat of death or great bodily harm to another.

SECTION 54. DOC 306.07 (7) is renumbered DOC 306.08 (7) and DOC 306.08 (7) (a), 306.08 (7) (b), 306.08 (7) (c), and 306.08 (7) (d), as renumbered, are amended to read:

DOC 306.08 (7) (a) The staff member who discharged the firearm shall notify ~~his or her~~ the staff member's supervisor as soon as possible.

(b) The staff member who discharged the firearm shall file a written report of the incident in which the firearm was discharged with ~~his or her~~ the staff member's supervisor, as soon as possible, but not more than 16 hours after the incident. If the staff member is unable to file the report, the supervisor shall file it with the ~~superintendent~~ warden.

(c) The supervisor shall personally investigate the incident and file a report with the ~~superintendent~~ warden. This report shall state all facts relevant to the discharge of the firearm and shall include the supervisor's opinion as to whether the discharge was justified and occurred in accordance with this chapter. The ~~superintendent~~ warden shall send the reports required by sub. (7) (b) and (c) and ~~his or her~~ the warden's conclusions as to the justification for the discharge and whether it was in accordance with these rules to the administrator ~~of the division of adult institutions~~.

(d) 1. Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff who shall serve as chairperson~~;~~.

2. Two members designated by the administrator ~~of the division of adult institutions~~, one of whom shall be a member of the central office staff and one of whom shall be a member of the public~~; and~~.

3. One member, to be designated by the ~~superintendent~~ warden of the institution where the incident occurred, who is a member of the institution staff.

SECTION 55. DOC 306.08 (1)(a) is repealed.

SECTION 56. DOC 306.09 (1) (a) is created to read:

DOC 306.09 (1) (a) In this section, "incapacitating agent" means any agent or device commercially manufactured and authorized by the department for the purpose of temporary control of an inmate.

SECTION 57. DOC 306.08 (2) is renumbered DOC 306.09 (2) and amended to read:

DOC 306.09 (2) REGULATION. The use of ~~a chemical agency~~ an incapacitating agent is a form of non–deadly force and is regulated by this section.

SECTION 58. DOC 306.08 (3) is renumbered DOC 306.09 (3) and amended to read:

DOC 306.09 (3) EMERGENCY SITUATIONS. ~~Chemical~~ Incapacitating agents may be used when necessary in any of the following emergency situations:

(a) To prevent ~~imminent~~ escape~~;~~.

(b) To subdue an inmate who poses an immediate threat of bodily injury or death to self or someone else~~; or~~.

(c) To regain control of all or part of an institution during a disturbance as defined in s. DOC ~~306.22~~ 306.24 (1), or an emergency as defined in s. DOC ~~303.23~~ 306.25 (1).

SECTION 59. DOC 306.08 (4) (a) is renumbered DOC 306.09 (4) (a) and amended to read:

DOC 306.09 (4) NONEMERGENCY SITUATIONS. (a) To deal with situations other than those described in sub. (3), ~~chemical~~ incapacitating agents may only be used where s. DOC ~~306.06~~ 306.07 (3) permits the use of force and, unless par. (c) applies, the inmate physically threatens to use immediate physical force, which may involve a threat to use a weapon, against the staff member. ~~Unless par. (c) applies, an inmate's verbal threats do not justify using chemical agents.~~

SECTION 60. DOC 306.08 (4) (b) is renumbered DOC 306.09 (4) (b) and DOC 306.09 (4) (b) (intro.) and 306.09 (4) (b) 1. to 4., as renumbered, are amended to read:

DOC 306.09 (4) (b) (intro.) In order to ensure that ~~chemical~~ incapacitating agents are used only as a last resort in these situations, the staff member shall take the following steps, if ~~feasible~~ possible, before actually employing ~~a chemical~~ an incapacitating agent:

1. Communicate with the inmate~~;~~.

2. Ask one or more other available people to communicate with the inmate, such as another security officer, a social worker, a crisis intervention worker, a member of the clergy, or a psychologist or psychiatrist~~;~~.

3. Wait for a reasonable period of time, unless waiting would likely result in an immediate risk of harm to the inmate or to another person~~;~~.

4. Make a show of force to the inmate~~;~~.

SECTION 61. DOC 306.08 (4) (b) 5. is repealed.

SECTION 62. DOC 306.08 (4) (b) 6. is renumbered DOC 306.09 (4) (b) 5. and amended to read:

DOC 306.09 (4) (b) 5. Use any other reasonable means short of applying ~~a chemical~~ an incapacitating agent to enforce an order.

SECTION 63. DOC 306.08 (4) (c) is renumbered DOC 306.09 (4) (c) and amended to read:

DOC 306.09 (4) (c) When s. DOC ~~303.06~~ 303.07 (3) permits the use of force and a staff member knows of an inmate's history of violent behavior in similar situations while in custody and reasonably believes that the inmate will become violent in this situation, ~~a chemical~~ an incapacitating agent may be used after the procedures in par. (b) 1. to 4. have been followed but before the inmate physically threatens to use actual physical force.

SECTION 64. DOC 306.08 (4) (d) is renumbered DOC 306.09 (4) (d) and DOC 306.09 (4) (d) (intro.), 306.09 (4) (d) 1. and 2., as renumbered, are amended to read:

DOC 306.09 (4) (d) (intro.) ~~Chemical~~ Incapacitating agents may not be used in nonemergency situations if either one of the following exist:

1. It is clear that the ~~chemical~~ incapacitating agents would have no physical effect on the inmate~~; or~~.

2. An inmate refuses to follow an order and the use of ~~chemical~~ incapacitating agents is not otherwise justified under par. (a) or (c).

SECTION 65. DOC 306.08 (5) is repealed.

SECTION 66. DOC 306.08 (6) is repealed.

SECTION 67. DOC 306.08 (7) is repealed.

SECTION 68. DOC 306.08 (8) is repealed.

SECTION 69. DOC 306.09 (5) is created to read:

DOC 306.09 (5) AUTHORIZATION. Use of incapacitating agents may be authorized during situations requiring a reactive use of force as defined in s. DOC 306.07 (1) (k) by the senior staff member present or in situations requiring a planned use of force as defined in s. DOC 306.07 (1) (j).

SECTION 70. DOC 306.08 (9) is renumbered DOC 306.09 (6) and amended to read:

DOC 306.09 (6) APPLICATION. ~~Chemical~~ Incapacitating agents may be employed only by a trained ~~supervisor or~~ staff member. When ~~a chemical~~ an incapacitating agent is used in a situation under sub. (4), the use shall be under the immediate supervision of a supervisor. Each institution shall ensure that every staff member authorized to use ~~chemical~~ incapacitating agents is properly trained in their use.

SECTION 71. DOC 306.08 (10) is renumbered DOC 306.09 (7) and amended to read:

DOC 306.09 (7) MEDICAL ATTENTION AND CLEAN–UP. As soon as possible after ~~a chemical~~ an incapacitating agent has been used, all inmates who have been exposed to the ~~chemical~~ incapacitating agent shall be examined by the medical staff. These inmates shall have their eyes cleaned with water and be provided with a change of clothing. Exposed living quarters shall have bedding and mattresses changed and shall be thoroughly cleaned. Whenever ~~CS~~ an incapacitating agent is used, exposed inmates shall be offered an opportunity to shower.

SECTION 72. DOC 306.08 (11) is renumbered DOC 306.09 (8) and amended to read:

DOC 306.09 (8) INCIDENT REPORT. As soon as possible following the use of ~~a chemical~~ an incapacitating agent, an incident report shall be submitted to the administrator ~~of the division of adult institutions~~. The incident report shall be as thorough as possible, describing all of the following:

(a) The problem leading to the use of the ~~chemical~~ incapacitating agent~~;~~.

(b) The steps taken prior to the use of the ~~chemical~~ incapacitating agent~~;~~.

(c) Why those steps were inadequate~~; and~~.

(d) Measures taken following the use of the ~~chemical~~ incapacitating agent.

SECTION 73. DOC 306.09 (title) is renumbered DOC 306.10 (title).

SECTION 74. DOC 306.09 (1) is repealed.

SECTION 75. DOC 306.10 (1) is created to read:

DOC 306.10 (1) DEFINITION. In this section "mechanical restraint" means a commercially manufactured device approved by the department and applied to an inmate's wrist, arm, legs or torso to restrain or impede free movement of the inmate.

SECTION 76. DOC 306.09 (2) is repealed.

SECTION 77. DOC 306.10 is created to read:

DOC 306.10 MOVEMENT WITHIN INSTITUTION. Mechanical restraints may be used if the warden determines that the use of mechanical restraints is necessary to protect staff or other inmates or to maintain the security of the institution.

SECTION 78. DOC 306.09 (3) is renumbered DOC 306.10 (3) and amended to read:

DOC 306.10 (3) MOVEMENT OUTSIDE INSTITUTION. Commercially manufactured mechanical restraints may be used in transporting an inmate outside an institution, in accordance with s. DOC ~~302.12~~ 302.05.

SECTION 79. DOC 306.10 is renumbered DOC 306.11 and DOC 306.11 (1) (a), 306.11 (2) (a) and (b), 306.11 (3) (a), 306.11 (3) (d) 1. to 6., and 306.11 (3) (e), as renumbered, are amended to read:

DOC 306.11 (1) (a) To protect correctional staff and inmates from an inmate who poses an immediate risk of physical injury to others unless retrained~~; and~~.

(2) (a) As a method of punishment~~;~~.

(b) About the head or neck of the inmate~~;~~.

(3) (a) The shift supervisor shall so notify the clinical services unit supervisor, the crisis intervention worker, or the licensed clinician on call, and a member of the medical staff. They shall interview the inmate and arrange for a physical and mental examination as soon as possible. They shall recommend to the ~~superintendent~~ warden, based on their interview and the examinations, whether the inmate should remain in restraints. If the ~~superintendent~~ warden approves the recommendation, it shall be followed. If not, ~~he or she~~ the warden shall, as soon as possible, refer the issue to the administrator ~~of the~~

~~division of adult institutions and the director of the bureau of clinical services~~, who shall decide whether the inmate shall remain in restraints.

(d) A record ~~must~~ shall be kept of persons placed in restraints and it shall include all of the following:

1. The inmate's full name~~,~~ and number, and the date the inmate was placed in restraints~~;~~.

2. The names of the staff members and supervisor present when the inmate was placed in restraints~~;~~.

3. The reasons for placing the person in restraints~~;~~.

4. The times that the inmate was checked, the name of the person making the check, and comments on the individual's behavior while in restraints~~;~~.

5. The times the inmate was placed in restraints and removed~~;~~.

6. Medication given~~; and~~.

(e) No inmate ~~shall~~ may remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or psychiatrist or the crisis intervention worker, who shall make a recommendation to the ~~superintendent~~ warden as to whether the person should remain in restraints. ~~Such an~~ An examination shall occur at least every 12 hours an inmate is in restraints. The warden shall notify the administrator of the decision to continue the use of restraints beyond 12 hours.

SECTION 80. DOC 306.11 is renumbered DOC 306.12.

SECTION 81. DOC 306.12 (1) is renumbered DOC 306.13 (1) and DOC 306.13 (1) (intro.), and 306.13 (1) (a) to (o), and as renumbered, are amended to read:

DOC 306.13 ESCAPES (1) (intro.) Each institution shall have a written plan to be implemented if an escape occurs or is attempted. This plan shall be prepared by the security director who shall review and update the plan yearly. A copy of the plan shall be filed with the administrator ~~of the division of adult institutions~~. The plan shall provide for all of the following:

(a) Reporting the escape to the ~~superintendent~~ warden, or if ~~he or she~~ the warden is absent from the institution, the person in charge of the institution~~;~~

(b) Reporting the escape orally and in writing to the administrator ~~of the division of adult institutions;~~.

(c) Keeping an accessible list of the names, addresses, and phone numbers of off–duty staff members~~;~~.

(d) An immediate count of all inmates~~;~~.

(e) The operation of essential posts~~;~~.

(f) Securing tools and any implement which may be fashioned into a weapon~~;~~.

(g) The issuance of firearms to correctional staff~~;~~.

(h) The issuance of escape circulars~~;~~.

(i) The search of the institution~~;~~.

(j) The investigation of the background, mail, and visiting list of the escapee~~;~~.

(k) Notification of law enforcement officials of the escape~~;~~.

(L) Notification of victims who have requested notification and are registered with the department.

(m)The preservation of any evidence relevant to the escape and the chain of such evidence~~;~~.

(n) The repair of any facilities damaged in the escape~~;~~.

(o) The responsibility of staff members after an escape~~;~~.

SECTION 82. DOC 306.13 (1) (p) is created to read:

DOC 306.13 (1) (p) Notification of the administrator ~~of the division of adult institutions~~, and law enforcement agencies of the apprehension of an escapee~~; and~~.

SECTION 83. DOC 306.12 (2) through (7) are renumbered 306.13 (2) (intro.), 306.13 (2) (a) to (e), 306.13 (3), 306.13 (4), 306.13 (5), 306.13 (6), and 306.13 (7), and as renumbered, are amended to read:

DOC 306.13 (2) (intro.) Reports of escapes required to be made by sub. (1) shall include all of the following:

(a) The method of escape~~;~~.

(b) Who was involved in the escape~~;~~.

(c) A description of the escapee, including clothing worn~~;~~.

(d) Action taken by the institution, including procedures initiated~~;~~.

(e) A brief evaluation of the factors which may have contributed to the escape~~; and~~.

(3) In the event of an escape, the ~~superintendent~~ warden or the person in charge of the institution may order any off–duty staff member to work.

(4) If a correctional staff member, including the ~~superintendent~~ warden, is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by correctional staff. Any orders issued by a hostage shall be disregarded by the correctional staff.

(5) Firearms shall be issued in accordance with these rules. Only ~~deputized~~ correctional staff members authorized by the ~~superintendent~~ warden may carry firearms off the grounds of the institution.

(6) The pursuit of escapees shall be done under the supervision of local law enforcement authorities. Until local law enforcement authorities are able to supervise such pursuit, it shall be supervised by the ~~superintendent~~ warden.

(7) The ~~superintendent~~ warden may authorize staff members to use their own cars to pursue escapees if state–owned cars are unavailable.

SECTION 84. DOC 306.13 is renumbered DOC 306.14 and amended to read:

DOC 306.14 SEARCH OF INSTITUTION GROUNDS. A search of any area on the grounds of a correctional institution except the living quarters of an inmate may be conducted at any time by any correctional staff member. There is no requirement that there be evidence that contraband is concealed on institution grounds before such a search is conducted. Searches of living quarters are regulated by ss. DOC ~~306.14~~ 306.15 and ~~306.15~~ 303.16.

SECTION 85. DOC 306.14 is renumbered DOC 306.15 and DOC 306.15 (1), as renumbered, is amended to read:

DOC 306.15 PERIODIC SEARCH OF ENTIRE INSTITUTION. (1) A thorough search of the entire premises of each correctional institution, including living quarters of inmates ~~and staff and staff cars, may~~ shall be conducted periodically. Advance notice of ~~such~~ the searches ~~shall~~ may be provided, consistent with the need to prevent and detect the concealment of contraband. ~~Inmates shall~~ Institution staff may permit the inmate to be present when ~~their~~ the inmate's living quarters are searched ~~pursuant to this section, unless the inmate becomes unruly or is otherwise absent when the search is begun~~.

SECTION 86. DOC 306.15 is renumbered DOC 306.16 and DOC 306.16 (1), 306.16 (2) (intro.), 306.16 (2) (a) to (e), and 306.16 (5), as renumbered, are amended to read:

DOC 306.16 SEARCH OF INMATE LIVING QUARTERS. (1) A search of the living quarters of any inmate may be made at any time. Before such a search occurs, it must be approved by the ~~housing unit supervisor or shift supervisor~~ staff member in charge of the housing unit at the time of the search or the supervising officer. Entering the living quarters of an inmate to retrieve state property does not constitute a search of living quarters.

(2) (intro.) There shall be a written record of all searches conducted under sub. (1). This record shall be prepared by the ~~supervisor~~ staff member in charge at the time of the search of the living unit or the staff member who conducted the search. The report shall state all of the following:

(a) The identity of the staff member who conducted the search and the ~~supervisor~~ staff member who approved it~~;~~.

(b) The date and time of the search~~;~~.

(c) The identity of the inmate whose living quarters were searched~~;~~.

(d) The reason for conducting the search. If the search was a random one, the report shall so state~~;~~.

(e) Any objects which were seized pursuant to the search~~; and.~~

(5) Staff shall ~~not~~ read ~~any~~ only that part of the inmate's legal materials ~~during such searches~~ as necessary to determine that the item is legal materials.

SECTION 87. DOC 306.16 is repealed.

SECTION 88. DOC 306.17 is created as follows:

DOC 306.17 SEARCH OF INMATES. (1) There are 5 types of searches of inmates as follows:

(a) Personal search. 1. In this subsection, "personal search" means a search of an inmate's person, including, but not limited to, the inmate's pockets, frisking the body, an examination of the inmate's shoes and hat, and an inspection of the inmate's mouth.

2. A personal search of an inmate may be conducted by any correctional staff member under any of the following circumstances:

a. If the staff member has reasonable grounds to believe that the inmate possesses contraband.

b. At the direction of the supervising officer either verbally or in written job instructions or post orders.

c. Before an inmate enters or leaves the security enclosure of a maximum of medium security institution or the grounds of a minimum security institution.

d. Before an inmate enters or leaves the segregation unit or changes statuses within the segregation unit of a correctional institution.

e. Before and after a visit to an inmate or as part of a periodic search or lockdown of a housing unit or institution under s. DOC 306.15.

(b) Strip search. 1. In this subsection, "strip search" means a search in which the inmate is required to remove all clothes.

2. Permissible inspection includes examination of the inmate's clothing and body and visual inspection of body cavities. A strip search may only be conducted in a clean and private place. Visual inspection of body cavities may be by any staff. Except in emergencies, a strip search shall be conducted by a person of the same sex as the inmate being searched.

3. A strip search may be conducted under any of the following circumstances:

a. Before an inmate leaves or enters the security enclosure of a maximum or medium security institution or the grounds of a minimum security institution.

b. Before an inmate enters or leaves the segregation unit or changes statuses within the segregation unit of a correctional institution.

c. Before and after a visit to an inmate.

d. As part of a periodic search and lockdown of an institution under s. DOC 306.15.

e. At the direction of the shift supervisor who is satisfied that there are reasonable grounds to believe the inmate possesses contraband or if the shift supervisor is unavailable to discuss the situation at the time, if a staff member is satisfied that there are reasonable grounds to believe the inmate possesses contraband. A written report or log entry shall be made of the searches under this subdivision.

(c) Body cavity search. 1. In this subsection, "body cavity search" means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

2. Body cavity searches shall be by medical staff. A body cavity search may only be conducted if the warden or person in charge of the institution approves, upon probable cause to believe that contraband is hidden in a body cavity.

(d) Body contents search. 1. In this subsection, "body contents search" means a search in which the inmate is required to provide a biological specimen, including, but not limited to, a sample of urine, breath, blood, stool, hair, fingernails, saliva, and semen for testing.

2. Samples for a body contents search shall be obtained by appropriate and certified staff.

3. A body contents search may only be conducted under one of the following conditions and only after approval by the warden:

a. If a staff member has reasonable grounds to believe that the inmate has used, possesses or is under the influence of intoxicating substances, as defined in s. DOC 303.02 (11), or other contraband.

b. Upon intake in the assessment and evaluation process.

c. After an inmate returns from any of the following:

1. A furlough.

2. Work or study release.

3. Temporary release of grounds.

4. Any outside work details.

5. A visit.

d. As part of a random testing program.

e. For investigation purposes.

f. For court ordered or statutory procedures.

g. For identification purposes.

h. Biological specimen analysis. In this subsection, "biological specimen analysis" means a search in which the inmate is required by a court to provide a biological specimen for deoxyribonucleic acid or DNA analysis under s. 973.047, Stats., or any other biological specimen analysis. Biological specimens may include, but are not limited to, a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen.

(2) A written report or written log entry of all body cavity searches under (1) (c), of all body contents searches under sub. (1) (d), of all biological specimen analysis under sub. (1) (h), and of all searches in which contraband is found shall be filed with the security director. This report shall state all of the following:

(a) The identity of the staff member who conducted the search and the shift supervisor who approved it.

(b) The date and time of the search.

(c) The identity of the inmate searched.

(d) The reason for the search. If the search was a random search, the report shall so state.

(e) Any objects seized pursuant to the search.

(f) The identity of other staff members present when the search was conducted.

(3) Correctional staff shall strive to preserve the dignity of inmates in all searches conducted under this section.

(4) Before a search is conducted pursuant to this section, the inmate shall be informed that a search is about to occur, the nature of the search, and the place where the search is to occur.

(5) In deciding whether there are reasonable grounds to believe an inmate possesses contraband or probable cause that it is hidden in a body cavity, a staff member shall consider all of the following:

(a) The observation by a staff member.

(b) Information provided by a reliable informant.

(c) The experience of the staff member.

(d) Prior seizures of contraband from the person or living quarters of the inmate.

SECTION 89. DOC 306.17 is renumbered DOC 306.18 and DOC 306.18 (2), 306.18 (4), 306.18 (7) (intro.), 303.18 (7) (a) to (d), and 306.18 (8), as renumbered are amended to read:

DOC 306.18 (2) Each correctional institution shall have information readily available to visitors informing them of the objects they may carry into the institution. Each institution shall have a place for the safekeeping of ~~all~~ objects which may not be carried into the institution and shall permit visitors to store objects in these places.

(4) Before admitting a visitor, the staff member responsible for admission of visitors may require a visitor to submit to a personal search or strip search as defined in s. DOC ~~306.16~~ 306.17 (1) (a) and (b). Such a search may be conducted only with the approval of the ~~superintendent~~ warden or the person in charge of the institution, and

the administrator ~~of the division of adult institutions~~, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(7) (intro.) If a visitor is refused entry to an institution for refusal to permit a search or if a search is conducted of a visitor pursuant to sub. (5), the staff member shall submit to the security director ~~and to the administrator of the division of adult institutions~~ a written report, a copy of which shall be provided to the warden and the administrator, which shall state all of the following:

(a) The identity of the staff member and the person who approved the search;.

(b) The identity of the visitor and the inmate being visited;.

(c) The date and time of the search or proposed search;.

(d) The reason for the request to permit a search which shall include the basis for the belief that unauthorized objects were concealed by the visitor; ~~and~~.

(8) (a) If an unauthorized object is found pursuant to a personal search or inspection of a visitor and it is illegal to conceal or possess the object the ~~shift supervisor~~ warden shall ~~so~~ inform the sheriff or local law enforcement agency ~~shall~~ and shall turn the object over to the sheriff or local law enforcement agency representative for referral to the district attorney pursuant to ss. 302.04 and 302.07, Stats. ~~or dispose of it in accordance with institutional procedure~~. If the visitor appears to be under the influence of an intoxicating substance, the warden shall detain the visitor and may inform the sheriff or local law enforcement agency.

(b) If it is not illegal to possess or conceal the object, it shall be returned to the visitor when the visitor is leaving the institution.

SECTION 90. DOC 306.18 is renumbered DOC 306.19 and DOC 306.19 (1), 306.19 (2), and 306.19 (5), as renumbered, are amended to read:

DOC 306.19 SEARCH OF STAFF. (1) The ~~superintendent~~ warden may require that correctional staff members be searched ~~before they enter and before they leave~~ while on the grounds of a correctional institution or require that correctional staff members' cars be searched. Such a search may be accomplished by requiring the staff member to empty pockets and containers and submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects, a personal search, or a strip search, as defined under s. DOC ~~306.16~~ 306.17 (1). Before a strip search of a staff member or the search of a staff member's vehicle is conducted, the approval of the ~~superintendent~~ warden or the person in charge of the institution and the administrator ~~of the division of adult institutions~~ is required. Such approval shall be given only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. A staff member who refuses to submit to a search shall not be admitted to the institution or may be removed from the institution and may be subject to disciplinary action.

(2) (a) If an unauthorized object is found pursuant to a search conducted ~~pursuant to~~ under this section and it is illegal to conceal or possess the object the ~~shift supervisor~~ warden shall ~~so~~ detain the staff member pursuant to ss. 302.04 and 302.07, Stats., inform the sheriff or local law enforcement agency and ~~shall~~ turn the object over to the sheriff or local law enforcement agency representative for referral to the district attorney ~~dispose of it in accordance with established procedures~~. If the staff member appears to be under the influence of an intoxicating substance, the warden shall detain the staff member and may inform the sheriff or local law enforcement agency.

(b) If it is not illegal to possess or conceal the object, it shall be returned to the staff member when ~~he or she~~ the staff member is leaving the institution.

(5) If a strip search is conducted pursuant to this section, a report containing the information required by s. DOC ~~306.17~~ 306.18 (7) shall be filed with the ~~administrator of the division of adult institutions and~~ security director. A copy of the report shall be provided to the warden and the administrator.

SECTION 91. DOC 306.19 is renumbered DOC 306.20 and DOC 306.20 (4), as renumbered, is amended, to read:

DOC 306.20 (4) Information provided by the person who may be searched which is relevant to whether ~~he or she~~ the person possesses contraband.

SECTION 92. DOC 306.20 is renumbered DOC 306.21 and amended to read:

DOC 306.21 REPORT OF CONTRABAND SEIZED. Each month the security director of each correctional institution shall submit to the administrator ~~of the division of adult institutions~~ a report of all contraband seized, the place and time it was seized, and the identity of the person possessing the contraband. If the contraband was not found in the possession of a person, the report shall so state.

SECTION 93. DOC 306.21 is renumbered DOC 306.22.

SECTION 94. DOC 306.215 is renumbered DOC 306.23.

SECTION 95. DOC 306.22 (title) is renumbered DOC 306.24 (title) and amended to read:

DOC 306.24 (title) DISTURBANCE.

SECTION 96. DOC 306.22 (1) is renumbered DOC 306.24 (1) and DOC 306.24 (1) (a) to (d), as renumbered, are amended to read:

DOC 306.24 (1) (a) An assault on any person by 2 or more inmates;.

(b) The taking of a hostage by an inmate;.

(c) The destruction of state property or the property of another by 2 or more inmates;.

(d) The refusal by 2 or more inmates, acting in concert, to comply with an order, to return to cells or rooms; ~~or~~.

SECTION 97. DOC 306.22 (2) is renumbered DOC 306.24 (2) and DOC 306.24 (2) (a) to (c), as renumbered, are amended to read:

DOC 306.24 (2) (a) To insure the safety and welfare of the general public, staff, and inmates;.

(b) To protect property;.

(c) To maintain and restore order to the institution;.

SECTION 98. DOC 306.22 (3) is repealed.

SECTION 99. DOC 306.24 (3) is created to read:

DOC 306.24 (3) Each institution must have a written plan, a copy of which shall be filed with the administrator, to control and stop a disturbance.

SECTION 100. DOC 306.22 (4) is renumbered DOC 306.24 (4).

SECTION 101. DOC 306.22 (5) is renumbered DOC 306.24 (5) and amended to read:

DOC 306.24 (5) If a disturbance occurs that prevents the normal functioning of the institution, the ~~superintendent~~ warden may suspend the administrative rules of the department or any parts of them, except ss. DOC ~~306.06~~ 306.07 to ~~306.08~~ 306.09, until the disturbance is ended and order is restored to the institution. Provisions should be made for access to medical care.

SECTION 102. DOC 306.22 (6) is renumbered DOC 306.24 (6) and amended to read:

DOC 306.24 (6) If a disturbance occurs and a person is injured ~~or~~ and if it results in the suspension of these rules, a disturbance review panel ~~will~~ may be convened by the secretary to investigate the disturbance. This panel shall be made up of persons selected in accordance with s. DOC ~~306.07~~ 306.08 (7) (d) and shall report in accordance with s. DOC ~~306.07~~ 306.08 (7) (e). This panel shall be provided with staff adequate to conduct a thorough investigation of the disturbance.

SECTION 103. DOC 306.23 (1) is renumbered DOC 306.25 (1) and DOC 306.25 (1) (intro.) and (a) to (f), as renumbered, are amended to read:

DOC 306.25 EMERGENCIES. (1) (intro.) An emergency is an immediate threat to the safety of the public, staff or inmates of a correctional institution, other than a disturbance as defined in s. DOC ~~306.22~~ 306.24 (1). An emergency may include, but is not limited to:

(a) An epidemic;.

(b) A malfunctioning of the water, electrical, or telephone system;.

(c) A fire;.

(d) A bomb threat or explosion;.

(e) A strike of employes~~;~~.

(f) Any natural disaster~~; or~~.

SECTION 104. DOC 306.23 (2) is renumbered DOC 306.25 (2) and, DOC 306.25 (2) (a) 2., 306.25 (2) (a) 3., and 306.25 (2) (a) 4. are amended to read:

DOC 306.25 (2) (a) 2. To protect property~~;~~.

3.To maintain and restore order to the institution~~; and~~.

4. To identify any person who contributed to the creation of an emergency and to provide this information to the police for ~~their~~ the person's arrest and prosecution.

SECTION 105. DOC 306.23 (3) is repealed.

SECTION 106. DOC 306.25 (3) is created to read:

DOC 306.25 (3) Each institution shall have a written plan, a copy of which shall be filed with the administrator and director of the bureau of health services, to be implemented in the event of an emergency.

SECTION 107. DOC 306.23 (4) is renumbered DOC 306.25 (4) and amended to read:

DOC 306.25 (4) If an emergency occurs that prevents the normal functioning of the institution, the ~~superintendent~~ warden may suspend the administrative rules of the department or any parts of them, except ss. DOC ~~306.06~~ 303.07 to ~~306.08~~ 306.09, until the emergency is ended and order is restored to the institution.

SECTION 108. DOC 306.23 (5) is renumbered DOC 306.25 (5)and is amended to read:

DOC 306.25 (5) If an emergency occurs, the secretary may convene an emergency review panel to investigate the ~~disturbance~~ emergency. This panel shall be made up of persons selected in accordance with s. DOC ~~306.07~~ 306.08 (7) (d) and shall report in accordance with s. DOC ~~306.07~~ 306.08 (7) (e). This panel shall be provided with staff adequate to conduct a thorough investigation of the emergency.

SECTION 109. Appendix DOC 306.04 (Note) Delete sentence 5 in paragraph 1.

SECTION 110. Appendix DOC 306.045 (Note) is renumbered DOC 306.05.

SECTION 111. Appendix DOC 306.05 (Note) is renumbered DOC 306.06 and amended to read as follows:

Delete sentences 1 and 5.

Amend sentence 4 to read: ... Rather.. ~~superintendent~~ warden ...

SECTION 112. Appendix DOC 306.06 (Note) is renumbered 306.07 and amended as follows:

Amend sentence 1 paragraph 1 to read: DOC ~~306.06~~ 306.07...

Delete sentence 2 paragraph 1.

Add to paragraph 1: The "force option continuum" definition was adopted from the techniques utilized by the Wisconsin Department of Justice Law Enforcement Standards Board (LESB) Defense and Arrest Tactics Tactical Advisory Committee on November 11, 1987. The format was revised on August 23, 1992, to better explain the concepts of mode, tactics and techniques. The format was again revised by the LESB on April 23, 1993. The force option continuum was amended to satisfy the needs and mission of the department of corrections.

Delete sentences 3 and 4 paragraph 2.

Amend sentence 6 paragraph 9 to read: ... correctional institutions ~~in recent years~~...

Delete sentence 3 paragraph 10.

Amend sentence 5 paragraph 10 to read:... DOC ~~306.22~~ 306.24.

Delete paragraph 11.

Delete sentence 3 in paragraph 12.

SECTION 113. Appendix DOC 306.07 (Note) is renumbered DOC 306.08 and amended as follows:

Amend sentence 1 paragraph 1 to read: DOC ~~306.07~~ 306.08...

Add sentence 2 paragraph 1 to read:

When firearms may otherwise be required, only the warden or a staff member in the line of succession on–site may authorize the issuance of firearms.

Amend sentences 1, 5, and 8 paragraph 2 to read:...DOC ~~306.06~~ 306.07... only the ~~superintendent~~ warden ... DOC ~~306.06~~ 306.07...

Delete sentence 9 paragraph 2.

Amend sentences 6 and 7 paragraph 3 to read:...~~superintendent~~ warden ...~~superintendent~~ warden ...

Delete sentence 8 paragraph 3.

Amend sentence 3 paragraph 6 to read:... a warning shot ~~should~~ may fired.

Delete sentences 4 and 5 paragraph 9.

SECTION 114. Appendix DOC 306.08 (Note) is renumbered DOC 306.09 and amended to read as follows:

Amend paragraph 1 to read: DOC ~~306.08~~ 306.09...~~chemical~~ incapacitating..."Incapacitating agent" includes oleoresin of capsicum. "Incapacitating agent" does not include firearms or straight jackets or similar devices.

Amend sentences 1 and 2 paragraph 2 to read:...~~chemical~~ incapacitating...~~chemical~~ incapacitating...~~chemical~~ incapacitating...

Amend sentences 1 and 2 paragraph 3 to read:... ~~chemical~~ incapacitating...~~chemical~~ incapacitating...

Amend sentences 1, 2, and 4 paragraph 4 to read:...~~chemical~~ incapacitating...~~chemical~~ incapacitating agent ...DOC ~~306.23~~ 306.25...DOC ~~306.22~~ 306.24...~~chemical~~ incapacitating...~~chemical~~ incapacitating...

Amend sentences 1, 2, and 3 paragraph 6 to read:...~~chemical~~ incapacitating...~~chemical~~ incapacitating...~~chemical~~ incapacitating...

Amend sentences 1 and 4 paragraph 7 to read:...~~chemical~~ incapacitating...~~chemical~~ incapacitating...~~chemical~~ incapacitating...

Amend sentences 1 and 2 paragraph 8 to read:...~~chemical~~ incapacitating...~~chemical~~ incapacitating...~~chemical~~ incapacitating...

Amend sentence 1 paragraph 9 to read:...~~chemical~~ incapacitating...

Repeal and recreate paragraph 10 to read:

The use of incapacitating agents in an enclosed area should be limited to those agents which can be released in small amounts and can be carefully controlled. This method of use further avoids unnecessary risks of injury. The manufacturer's safety instructions include guidelines as to the distance from which the agent should be delivered as well as the date after which the agent must be replaced.

Repeal and recreate paragraph 11 to read:

The use of incapacitating agents must meet the manufacturer's guidelines as to space requirements to avoid the risk of loss of life by a reduction in the oxygen available.

Repeal and recreate paragraph 12 to read:

Because the use of incapacitating agents creates risks, the department imposes severe limitations on who may authorize the use of incapacitating agents. In emergency situations the warden may authorize the use of incapacitating agents. To prevent an imminent escape, or to prevent death or serious injury, it may be necessary for the senior staff member present to authorize use of incapacitating agents. In non–emergency situations, only the person actually in charge of the institution at the time, the warden, deputy warden, security director, or administrative person on call, may authorize the use of incapacitating agents.

Repeal and recreated paragraph 13 to read:

When incapacitating agents are used, only trained personnel may use them under immediate supervision of supervisory personnel. These requirements and the training requirements are to ensure that incapacitating agents are used only when necessary and in a way that minimizes the risk to staff and inmates.

Amend paragraph 14 to read: ~~Subsection (11),~~ This rule requires...Inmates exposed to ~~CS~~ incapacitating agents...

Amend paragraph 15 to read: The... ~~in sub (12)~~...~~chemical~~ incapacitating...

SECTION 115. Appendix DOC 306.10 (Note) is renumbered DOC 306.11 and amended to read as follows:

Amend paragraph 1 to read: DOC ~~306.10~~ 306.11...(DOC ~~302.12~~ _____)...DOC ~~302.12~~ _____... DOC ~~306.10~~ 306.11...

Amend paragraph 3 to read:...~~superintendent~~ warden...continued use or removal after review of clinical, health and correctional staff reports

SECTION 116. Appendix DOC 306.11 (Note) is renumbered 306.12 and amended to read as follows:

Amend to read: DOC ~~306.11~~ 306.12...

Delete the last sentence.

SECTION 117. Appendix DOC 306.12 (Note) is renumbered 306.13 and amended to read as follows:

Amend sentence 1 paragraph 1 to read: DOC ~~306.12~~ 306.13

Amend paragraph 3 to read:...~~superintendent~~ warden...

Amend paragraph 5 to read:...~~superintendent~~ warden...

Create sentence 3 paragraph 5 to read:

Correctional staff officers need not be deputized since "Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates." (OAG 103−79).

Amend paragraph 6 to read:...~~superintendent~~ warden...

Delete paragraph 8.

SECTION 118. Appendix DOC 306.13 (Note) is renumbered 306.14 and amended to read:

Amend paragraph 1 to read: DOC ~~306.13~~ 306.14...

Delete sentence 3 paragraph 1.

Delete paragraph 7.

SECTION 119. Appendix DOC 306.14 (Note) is renumbered DOC 306.15 and amended to read:

Amend paragraph 1 to read: DOC ~~306.14~~ 306.15.

Repeal and recreate sentence 3 paragraph 2 to read:

Housing unit rules should include a notice that the housing unit space occupied by the inmate will be subject to random searches.

Amend sentence 6 paragraph 2 to read:

Inmates ~~are~~ may...

SECTION 120. Appendix DOC 306.15 (Note) is renumbered 306.16 and amended to read:

Delete paragraph 7.

SECTION 121. Appendix DOC 306.16 (Note) is renumbered DOC 306.17 and amended to read as follows:

Amend paragraph 1 to read: DOC ~~306.16~~ 306.17... DOC ~~306.15~~ 306.16...

Amend paragraph 2 to read: DOC ~~306.16~~ 306.17... DOC ~~306.15~~ 306.16...

Amend sentence 8 paragraph 4 to read: In response to a ~~recent~~ study...

Amend sentence 4 paragraph 5 to read:...Sub. ~~(2) (b)~~ (1) (a)

Delete paragraphs 7, 8, and 9.

Delete paragraph 11.

Delete Sub. (3) (a) in paragraph 12.

Delete Sub. (3) (b) in paragraph 13.

Amend paragraph 14 to read: Sub. ~~(3) (c)~~ (1) (b)...DOC ~~306.17~~ 306.18.

Amend paragraph 15 to read: Sub.~~(3) (c)~~ (1) (b)... DOC ~~306.14~~ 306.15.

Amend paragraph 16 to read: Sub. ~~(3) (c and f)~~ (1) (b)...Sub. ~~(2)~~ (1) (a). Sub ~~(9)~~ (5)...

Amend paragraph 18 to read: Sub. ~~(5)~~ (1) (d)...~~correctional~~ health... ~~correctional~~ health... ~~superintendent~~ warden ...~~superintendent~~ warden ...

SECTION 122. Appendix DOC 306.17 (Note) is renumbered 306.18 and amended as follows:

Amend paragraph 1 to read: DOC ~~306.17~~ 306.18...

Amend sentence 3 paragraph 5 to read: Visitors ~~are~~ may be...

Amend sentence 4 paragraph 7 to read:...~~superintendent~~ warden ...DOC ~~306.16 (1) (a) and (b)~~ 306.17 (1) (a) and (b)

Create sentences 4, 5, and 6 in paragraph 10 to read:

The warden is a peace officer within the institution and on institution grounds by virtue of 301.29 (2), Stats. Under s. 939.22 (22), Stats., "peace officer" means any persons vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes. Sec. 302.095, Stats., makes delivering articles to inmates a crime subject to being detained by staff and turned over to the sheriff or local law enforcement officers. (OAG−103−79).

SECTION 123. Appendix DOC 306.18 (Note) is renumbered DOC 306.19 and amended as follows:

Amend paragraph 2 to read:...DOC ~~306.13−306.17~~ 306.14−306.18.

SECTION 124. Appendix DOC 306.19 (Note) is renumbered DOC 306.20.

SECTION 125. Appendix DOC 306.20 (Note) is renumbered DOC 306.21 and amended as follows:

Amend sentence 1 paragraph 1 to read: DOC ~~306.20~~ 306.21...

SECTION 126. Appendix DOC 306.21 (Note) is renumbered DOC 306.22 and amended as follows:

Amend sentence 1 paragraph 2 to read: DOC ~~306.21~~ 306.22

SECTION 127. Appendix DOC 306.22 is renumbered DOC 306.24 and amended as follows:

Amend sentence 1 paragraph 1 to read: DOC ~~306.22~~ 306.24...

SECTION 128. Appendix DOC 306.23 is renumbered DOC 306.25 and amended as follows:

Amend paragraph 3 to read: DOC ~~306.22~~ 306.24... DOC ~~306.22~~ 306.24...

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

This administrative rule relates to many sections of the department of corrections' administrative rules relating to security procedures at correctional institutions. These rules have not been updated for a period of over sixteen years, and many of the changes are technical or updated terminology.

The only section of this rule which may have a fiscal impact is a new section that permits search of an inmate to acquire a sample for biological specimen analysis. This permits the institution to engage in a search in which the inmate is required by a court to provide a biological specimen for deoxyribonucleic acid or DNA analysis or any other biological specimen analysis. It is not expected that court requests for biological specimen analysis will be frequent. The approval of this rule should have no fiscal impact on the department.

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 **July 28, 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), 301.02, 301.03, 302.07, and 302.08, Stats., the department of corrections proposes the following rule relating to visitation for inmates.

Hearing Information

July 23, 1997	**Room 105**
Wednesday	**State Office Building**
3:00 P.M.	**718 West Clairemont**
	Eau Claire, Wisconsin
July 24, 1997	**Room 323**
Thursday	**State Office Building**
1:00 P.M.	**141 Northwest Barstow Street**
	Waukesha, Wisconsin
July 25, 1997	**Secretary's Conference Room**
Friday	**Department of Corrections**
1:00 P.M.	**149 E. Wilson Street, 3rd Floor**
	Madison, 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 rules relating to inmate visitation have not been updated since the rule 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. Amends and creates new definitions.

3. Requires inmates to provide accurate and complete information for visitation requests.

4. Permits an institution to require or utilize information from other sources in determining suitability for visitation.

5. Permits the department to place additional limitations on the visitation of inmates during periods of intensive programming or special placements.

6. Permits the warden to determine whether a person may be approved for visiting or removed from the visiting list according to criteria.

7. Requires institutions to permit inmates in general population the opportunity for visitation at least 9 hours per week.

8. Requires institutions to permit inmates in segregation, except for those in controlled segregation or observation, the opportunity for visitation at least one hour per week.

9. Permits wardens to impose no–contact visiting for either an initial application or subsequent review of visiting status.

10. Permits the security director or adjustment committee to impose no–contact visiting for the identified security reasons.

11. Expands the rule violations for which the adjustment committee may impose no contact visiting.

12. Eliminates the difference in the inmate appeals process for no contact visiting imposed for more than or less than six months.

13. Deletes the provision requiring the visitors to be known to the inmate.

14. Repeals the provision that family members shall routinely be approved for visiting if requested by the inmate.

15. Repeals the provision that spouses of immediate family members not be counted against the 12 visitors an inmate is permitted.

16. Repeals provision related to interinstitution visits of family members.

Text of Rule

SECTION 1. DOC 309.10 is repealed.

SECTION 2. DOC 309.06 is created to read:

DOC 309.06 VISITATION. The department shall administer a visitation program which regulates visitation of inmates by family members, friends, and others consistent with resources available, the department's responsibility for the secure and orderly operation of institutions, public safety, and the protection of visitors, staff and inmates.

SECTION 3. DOC 309.11 is repealed.

SECTION 4. DOC 309.07 is created to read:

DOC 309.07 CONDUCT DURING VISITS. Visitors and inmates shall obey the administrative rules and institution policies and procedures regarding visitation.

SECTION 5. DOC 309.12 is repealed.

SECTION 6. DOC 309.08 is created to read:

DOC 309.08 VISITING LIST. (1) (a) Each inmate shall have an approved visitor's list.

(b) Except as otherwise provided under this section, only visitors on the inmate's approved list shall be permitted to visit the inmate. Except as provided under par. (d), each inmate shall be permitted 12 adult visitors on the visiting list.

(c) Children of the inmate and children of approved visitors who have not attained their 18th birthday may visit and shall not be counted against the 12 visitors permitted. In order to be permitted to visit an inmate, children shall have written approval of a non–incarcerated custodial parent or legal guardian, or have a court order directing the visit, and their names must appear on the approved visitors list.

(d) With the approval of the warden, an inmate may have more than 12 visitors on the visiting list if the first 12 visitors on the visiting list are close family members.

(e) The institution may require inmates to provide accurate and complete information regarding proposed visitors, including, but not limited to, the name and address of the proposed visitor, the inmate's relationship to the proposed visitor, and date of birth of the proposed visitor.

(f) The institution may require and utilize information from other sources in determining a proposed visitor's suitability for visitation.

(g) No changes shall be made in an inmate's visiting list for a minimum of six months from the date of its original approval or for a minimum of six months after each subsequent approval or disapproval determination is made.

(2) The department shall establish procedures for the formulation and maintenance of visiting lists.

(3) The warden may place additional limitations or conditions on the visitation of inmates during periods of intensive programming or special placement for an individual inmate or a class of inmates. The additional limitations shall be related to the special programs or placements for security or program reasons. Limitations may include, but are not limited to, the number of visits or visitors and time or duration of visits. Conditions may include, but are not limited to, no contact visits or visitation provided by technological means not requiring direct personal contact, such as video connections.

(4) The warden shall determine whether a person may be approved for visiting, including no–contact visiting, or removed from a visiting list based on the following:

(a) The requesting inmate has provided falsified, incorrect, or incomplete information.

(b) The proposed visitor has provided falsified, incorrect, or incomplete information or the questionnaire is not returned in 30 days.

(c) There is no signed and dated approval of a non–incarcerated custodial parent or legal guardian for a proposed visitor under 18 years of age or there is no court order directing the visit.

(d) There are reasonable grounds to believe the visitor has attempted to bring contraband into any penal facility, as defined in s.19.32 (1e), Stats., or otherwise poses a threat to the safety and security of visitors, staff, inmates or the institution.

(e) There are reasonable grounds to believe that the inmate's reintegration into the community or rehabilitation would be hindered.

(f) The inmate's offense history indicates there may be a problem with the proposed visitation.

(g) There are reasonable grounds to believe that the proposed visitor may be subjected to victimization.

(h) The proposed visitor has been incarcerated within the last twelve months.

(i) A visitor was approved for visiting by mistake or based on inadequate information.

(j) The proposed visitor is a current or former employee, volunteer, contract agent or similarly situated individual within the past 12 months.

(5) Visitors who have not attained their 18th birthday shall be accompanied by a custodial parent or authorized adult who is on the approved list, unless the visitor is the spouse of the inmate.

(6) If a proposed visitor is disapproved for visiting or approved for no–contact visiting only, the inmate and the visitor shall be informed of the reasons for the action in writing. The proposed visitor may appeal this decision in writing to the warden. An inmate may appeal through the inmate complaint review system.

(7) The warden may permit occasional visits by family members not on the visiting list. The warden may require notification in advance of such a visit.

SECTION 7. DOC 309.13 is repealed.

SECTION 8. DOC 309.09 is created to read:

DOC 309.09 REGULATION OF VISITS FOR INMATES. (1) The department shall set forth policies and procedures governing visitation in prisons. Each institution shall set forth in writing and make available to inmates and visitors policies and procedures governing visits at each institution.

(2) Each institution shall establish a visitation schedule consistent with other institution activities and available resources.

(3) Each institution shall permit each inmate in the general population the opportunity for visitation at least 9 hours per week according to the visitation schedule established under sub. (2).

(4) Each institution shall permit each inmate in a segregated status the opportunity for visitation at least 1 hour per week with the exception of controlled segregation and observation, which require the approval of the warden.

(5) Institutions shall require visitors to provide identification before permitting the visit.

(6) Institutions may limit visitation for inmates in segregation by issuing restrictions concerning minor visitors, number of visitors, hours and location of visits, or if the warden determines that the visit poses a threat to the proposed visitor, staff or inmates.

SECTION 9. DOC 309.14 (1) is renumbered DOC 3.09.10 (1) and amended to read:

DOC 309.10 (1) Public officials and members of private and public organizations who provide services to inmates may visit institutions with the approval of the ~~superintendent~~ warden. Arrangements for all such visits shall be made in advance with the ~~superintendent~~ warden to minimize interference with normal operations and activities. Such visits may be limited in duration by the ~~superintendent~~ warden for security reasons. A person who has not attained ~~his or her 18th birthday~~ the age of 18 may not participate in any group visit except with the approval of the ~~superintendent~~ warden, unless the person is a family member on the inmate's approved visitor list.

SECTION 10. DOC 309.14 (2) is repealed.

SECTION 11. DOC 309.10 (2) is created to read:

DOC 309.10 (2) Attorneys, attorney aides, and law students shall be permitted to visit their inmate clients to provide professional services during institution business hours on weekdays. Pastoral visits may also be permitted during institution business hours on weekdays. These persons shall not count against the allowable number of visitors or hours of visits of the inmate. Advance notice of these visits may be required by the warden. In emergencies, visits of this type may be permitted outside institution business hours with the warden's approval.

SECTION 12. DOC 309.15 is repealed.

SECTION 13. DOC 309.16 is repealed.

SECTION 14. DOC 309.165 is repealed.

SECTION 15. DOC 309.12 is created to read:

DOC 309.12 NO–CONTACT VISITING. (1) The warden may impose no–contact visiting in response to an initial application to visit or upon subsequent review of the visiting status of an inmate or visitor. In making such determination, the warden shall consider the criteria in s. DOC 309.08 (4). After a period of one year the inmate or visitor may request review of the conditions of visiting.

(2) The adjustment committee may impose no–contact visiting if an inmate is found guilty of any of the following:

(a) A violation of the administrative rules or institution policies or procedures relating to visiting.

(b) A violation of any of the following rules:

1. DOC 303.13, Sexual assault–intercourse

2. DOC 303.14, Sexual assault–contact

3. DOC 303.15, Sexual conduct

4. DOC 303.22, Escape

5. DOC 303.42, Possession of money

6. DOC 303.43, Possession of intoxicants

7. DOC 303.44, Possession of drug paraphernalia

8. DOC 303.45, Possession, manufacture or alteration of weapons

9. DOC 303.59, Use of intoxicants

10. Any violation which poses a threat to safety or security of the institution.

(3) The security director may impose no contact visiting if:

(a) A visitor is found to have introduced contraband into any institution or engaged in other behavior that threatens security or interferes with the rights of others; or

(b) An inmate is in temporary lockup, observation, voluntary confinement, adjustment segregation, program segregation, controlled segregation, disciplinary separation, or administrative confinement.

(4) If no–contact visiting is imposed on an inmate, it may apply to all visitors of the inmate.

(5) If no–contact visiting is imposed on a visitor, it applies to all visits of the visitor.

(6) If an inmate is alleged to have violated the rules cited in sub. (2) or institution policies or procedures relating to visiting, a conduct report shall be written and disposed of in accordance with the rules providing for disciplinary procedures. For a violation, the penalty may include imposition of no–contact visiting for up to one year for all visitors or for a specific visitor and any other penalty provided in the disciplinary rules, subject to the following:

(a) No–contact visiting may be imposed for up to one year by the adjustment committee and appealed to the warden.

(b) With the approval of the administrator, no–contact visiting may be imposed for more than one year. When no–contact visiting is imposed for more than one year, there may be a reapplication for contact visiting to the security director no less than one year after the imposition of no–contact visiting and every 90 days thereafter.

(7) If a visitor is alleged to have violated the rules relating to visitation or institution policies and procedures relating to visits, the security director shall investigate and decide if a violation occurred. If a violation occurred, the security director may impose no–contact visiting restrictions on that visitor. No–contact visiting restrictions may be appealed in accordance with sub. (6). The visitor and inmate

shall be informed of the restriction promptly in writing and the reasons for it.

(8) No–contact visiting under sub. (3) (c) may be imposed for the period of time the inmate is in temporary lockup, observation, voluntary confinement, adjustment segregation, program segregation, controlled segregation, disciplinary separation, or administrative confinement.

SECTION 16. DOC 309.17 is repealed.

SECTION 17. DOC 309.13 is created to read:

DOC 309.13 SUSPENSION OF VISITING PRIVILEGES. (1) In this section:

(a) "Rescission" means the removal of visiting privileges based upon new information or changed circumstances that affects visiting approval.

(b) "Suspension" means restriction of visits for an inmate by a specific visitor permanently or for a specific period of time upon an initiation of or following an investigation or review process initiated because of violation of institution rules and regulations.

(c) "Termination" means the cessation of a visit in progress, normally based on serious or disruptive violation of rules and regulations during the visit.

(2) Visiting privileges may be terminated by a supervisor and suspended or rescinded by the warden or security director.

(3) If an inmate is alleged to have violated these rules or institution policies or procedures during a visit, a conduct report shall be written and disposed of in accordance with the rules provided for in disciplinary procedures. For such a violation, the penalty may include suspension of visiting privileges with a specific visitor and any other penalty provided in the disciplinary rules, subject to the following:

(a) A suspension of 6 months or less may be imposed by the adjustment committee and appealed to the warden.

(b) A suspension of more than 6 months may be imposed by the adjustment committee and may be appealed to the warden and thereafter to the administrator.

(4) If a visitor is alleged to have violated these sections or institution policies and procedures relating to visits, the security director shall investigate and decide if such a violation occurred. If such a violation occurred, the security director may suspend visiting privileges with that visitor. Suspension of visiting privileges may be appealed in accordance with sub. (2). The visitor and inmate shall be informed of the suspension promptly in writing and the reasons for it.

SECTION 18. DOC 309.18 is repealed.

SECTION 19. DOC 309.14 is created to read:

DOC 309.14 Special events may be held in correctional institutions subject to the approval and regulation of the warden.

Note: DOC 309.10 is repealed and recreated to read:

Note: DOC 309.06. Although visitation serves several important corrections objectives: maintenance of family and community ties, maintenance of morale and motivation of inmates, opportunity for the exchange of ideas and information, the department must regulate visitation of inmates consistent with resources, security and orderly operation of institutions.

Note: DOC 309.11 is repealed and recreated to read:

Note: DOC 309.07. DOC 309.07 requires visitors as well as inmates to obey visiting rules.

Note: DOC 309.12 is repealed and recreated to read:

Note: 309.08. DOC 309.08 regulates visitation and the criteria for approval to visit. Each inmate is to have an approved visiting list. It may have only 12 people on it because institutions cannot accommodate unlimited numbers of visitors. Setting a limit by number has the virtue of permitting a substantial number of family visitors for those who desire them and of permitting people without family to include a substantial number of friends. It is an easier system to administer and, on the whole, seems more fair. It leaves to the inmate the choice of who may visit.

People who have not attained their 18th birthday who are the children of visitors or the inmate do not count against the 12. This is to enlarge the number of visitors and for the convenience of visitors. Children who have not attained the age of 18 are required to have written approval of a non–incarcerated custodial parent or legal guardian or there is a court order directing the visit.

Subsection (d) is to prevent hardship to inmates with large families. This exception to the limit of 12 requires that only close family members be on the visiting list.

Subsection (1) (d) requires inmates to provide accurate and complete information. Under subsection (4), the warden, in determining whether to approve visitation, is required to consider whether the inmate has provided falsified, incorrect, or incomplete information.

In determining whether to approve visitation, subsection (1) (d) permits staff to acquire and utilize information from other sources other than that provided by the inmate.

Subsection (1) (f) is to limit the administrative burden that results from frequent changes of visitors on the list.

Subsection (3) permits the warden to place other limits on visitations, including, the number of visits, visitors, or the time or duration of visits.

Subsection (4) states the criteria for a warden approving or removing a person from a visiting list.

The purpose of sub. (6) is to make known to nonapproved or no–contact visitors and inmates the reasons for nonapproval or no–contact visiting and to permit review of the decision.

An example is the best way to illustrate what is contemplated under sub. (8). An inmate may have a relative in California who visits Wisconsin once a year. Such a person may be allowed to visit the inmate without being added to the inmate's visiting list.

Note: DOC 309.13 is renumbered DOC 309.09.

Amend sentence #1 paragraph #1 to read:

DOC ~~309.13~~ 309.09...

Delete paragraph #4.

Amend paragraph #5 to read:

Subsection ~~(4)~~ (3) requires the opportunity for a minimum of ~~nine~~ 9 hours of visitation per week per inmate in general population of reasonable duration. This ensures adequate visitation for inmates in general population. If an inmate in general population has a visit of less than its allowable...~~nine~~ 9 ... Subsection (4) requires the opportunity for a minimum of one hour of visitation per week for inmate in segregation, except for the inmate in controlled segregation or observation. Visitation for inmates in controlled segregation and observation requires the approval of the warden.

Repeal and recreate paragraph #6 to read:

Subsection (6) permits the warden, if the warden determines that the visit poses a threat to the proposed visitor, staff or inmates, to limit visitation for of minor visitors, the number of visits, hours and location of visits for inmates in segregation.

Note: DOC 309.12 provides a less restrictive alternative to prohibition of visits when the visitation of an inmate by a visitor requires additional security or control, as penalty to violation of visiting regulations, or, to provide secure visiting for inmates in a segregated status.

Note: DOC 309.14 is renumbered DOC 309.10.

Amend paragraph #1 to read:

DOC ~~309.14~~ 309.10...

Amend sentence #3 paragraph #2 to read:

...DOC ~~309.13~~ 309.09...

Note: DOC 309.12 is created to read:

No–contact visiting refers to the inability of the inmate and visitor to physically touch during a visit. DOC 309.12 (1) states the policy for no–contact visits. The need to decrease the risk to the security of the institution may require such action.

Subsection (2) permits the warden to impose no–contact visiting based on criteria is s. DOC 309.98 (4). No–contact visiting may be imposed up to a year. After the year, the inmate or visitor may request a review of the no–contact visiting.

Subsection (3) permits the security director or adjustment committee to impose no–contact visiting if the inmate is found guilty of violation of administrative rules, institution policies or procedures, or a violation of the listed rules. Sub. (6) permits no–contact visiting for up to a year if imposed by the adjustment committee and appealed to the warden.

Under sub. (4), if no–contact visiting is imposed on an inmate or a visitor, no–contact visits may apply to all visitors of the inmate and to all visits. Under sub. (5), if no–contact visiting is imposed on a visitor, it applies to all visits.

Subsection (8) permits no–contact visiting to be imposed for the period of time an inmate is in segregation.

Note: DOC 309.15 is repealed.

Note: DOC 309.16 is repealed.

Note: DOC 309.17 is repealed and recreated to read:

Note: DOC 309.13. DOC 309.13 (2) provides for the termination, suspension, or rescission of visiting privileges for violations of administrative rules or institution policies or procedures relating to visiting.

Note: DOC 309.18 is renumbered DOC 309.14.

Amend sentence #1 to read:

DOC ~~309.18~~ 309.14...

Amend sentence #6 to read:

DOC 309.03 and ~~309.05~~ 309.04.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

These rules have not been updated for a period of fourteen years, and many of the changes are technical. Some of the provisions allow the department to place additional limitations on visitation during periods of intensive programming or special placements, to have increased ability to use other sources to determine whether proposed visitors on an inmate's list are suitable, and permit the warden to determine whether a person may be approved or removed from the visiting list.

The only section of this rule which could have a fiscal impact is the one that permits wardens to impose no–contact visiting for a number of different security reasons. A review of adult institutions shows that most institutions either have no–contact booths, using institution maintenance staff and buying materials from institution funds. In the future, if an appropriate building project is not underway where permanent construction of no–contact visiting areas is possible, institutions will obtain the necessary number of no–contact visiting booths by constructing or adding to existing booths using existing resources.

The approval of this rule should have no fiscal impact on the department.

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 **July 28, 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), 301.02, 301.03, 302.07, and 302.08, Stats., the department of corrections proposes the following rule relating to leisure time activities, inmate activity groups, and religious beliefs and practices for inmates.

Hearing Information

July 30, 1997
Wednesday
10:00 A.M.
Room 223
State Office Building
141 Northwest Barstow Street
Waukesha, Wisconsin

July 30, 1997
Wednesday
2:00 P.M.
Secretary's Conference Room
Department of Corrections
149 E. Wilson Street, 3rd Floor
Madison, Wisconsin

August 12, 1997
Tuesday
1:00 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 leisure time activities, inmate activity groups, and religious beliefs and practices for inmates have not been updated since it was created. With 14 years of experience working with the rule, the department proposes to update the rule.

Inmates' involvement in leisure time activities serves important correctional objectives, including the development of inmates' intellectual, self–discipline, cooperation, and personal development. Leisure time activities also helps to release energy and anxiety, and help avoid problems that accompany idleness.

Inmates have constitutional and federal statutory rights to the exercise of religion. The department may substantially burden an inmate's exercise of religion if it has a compelling interest in furthering its governmental interest. If the department burdens an inmate's exercise of religion, it must use the least restrictive means necessary to achieve its purpose. This rule is consistent with these limitations.

This rule:

1. Makes technical changes.

2. Adds the words "for the general population" to the provisions under leisure time activities.

3. Removes the words "religious", "recreational", and "leisure" from the definition of "activity group".

4. Repeals and recreates the criteria for approval of groups.

5. Repeals the specific topics for which the warden is required to establish written policies related to inmate activity groups.

6. Repeals the list of circumstances which the warden may not consider in determining whether an inmate's request to participate in religious practices that involve others is motivated by religious beliefs.

7. Repeals the provisions related to the warden employing and compensating chaplains.

8. Repeals the provision permitting inmates to wear garments and religious symbols.

9. Repeals the provision related to providing the inmate with a list of contents of each meal in advance of the meal.

Text of Rule

SECTION 1. DOC 309.36 is renumbered DOC 309.21 and amended to read:

DOC 309.21 (1) ~~The~~ For the general population, the department shall provide as much leisure time activity as possible for inmates, consistent with available resources and scheduled programs and work. Leisure time activity is free time ~~outside the cell or room~~ during which the inmate may be involved in activities such as recreational reading, sports, film and television viewing, and handicrafts.

(2) ~~Each~~ For the general population, each institution shall permit inmates to participate in ~~leisure time~~ out of cell activities for at least 4 hours per week. ~~Institutions with the facilities to permit more leisure time activity should do so.~~

SECTION 2. DOC 309.365 is repealed.

SECTION 3. DOC 309.22 is created to read:

DOC 309.22 INMATE ACTIVITY GROUPS. (1) ACTIVITY GROUP. In this section, "Activity group" means a group of inmates organized to promote educational, social, cultural, or other lawful activities.

(2) REQUESTS FOR APPROVAL. A group of inmates or an inmate on behalf of a group may submit a written request to the warden for approval as an activity group. The request shall include all of the following:

(a) The name of the group.

(b) The group's objective and proposed activities.

(c) The inmate population the group intends to include.

(d) The group's constitution or by–laws.

(e) The institutional services and resources, such as staff time or meeting rooms, needed for the group's activities.

(f) The anticipated length and frequency of group meetings or activities.

(3) APPROVAL OF GROUPS. (a) The decision to approve a group as an activity group rests solely with the warden.

(b) In deciding whether to approve a group, the warden shall consider whether the activities, services or benefits offered by the group are:

1. Inadequately provided by existing programs.

2. Not readily available from existing groups and resources.

3. Consistent with the orderly confinement of inmates.

4. Consistent with the security of the institution.

5. Consistent with fiscal limitations.

6. Consistent with other factors considered relevant by the warden.

(c) The warden shall notify the activity group in writing of the decision. If the warden decides to disapprove a group, the reasons shall be stated.

(4) INSTITUTIONAL POLICIES. Each warden shall establish written policies which govern inmate activity groups' activities.

(5) WITHDRAWAL OF APPROVAL. (a) A warden may withdraw approval of an activity group.

(b) The warden shall notify the activity group in writing of the withdrawal of approval and of the reasons for the withdrawal.

SECTION 4. DOC 309.61 (title) is renumbered DOC 309.44 (title).

SECTION 5. DOC 309.61 (1) is renumbered DOC 309.44 (1).

SECTION 6. DOC 309.61 (1) (a) is repealed.

SECTION 7. DOC 309.44 (1) (a) is created to read:

DOC 309.44 (1) (a) The department may not discriminate against an inmate group on the basis of the inmate's or group's religious beliefs. The extent to which an inmate may pursue lawful religious practices of the inmate's religion may be modified in a correctional setting because consideration must be given in these settings to health and safety considerations, to the security and order of the institution, to the rehabilitation goals of inmates, and to fiscal and operational limitations.

SECTION 8. DOC 309.61 (1) (b) is repealed.

SECTION 9. DOC 309.61 (1) (c) is renumbered DOC 309.44 (1) (b) and amended to read:

DOC 309.44 (1) (b) The department may not require inmates to participate in religious activities~~, and may not maintain information concerning an inmate's religious activities other than records required for administrative purposes.~~

SECTION 10. DOC 309.61 (1) (d) is renumbered DOC 309.44 (1) (c) and amended to read:

DOC 309.44 (1) (c) To the extent ~~feasible~~ possible, institutions shall make facilities and other resources available to inmates for religious practices permitted under sub. (2).

SECTION 11. DOC 309.61 (2) (title) is renumbered DOC 309.44 (2) (title).

SECTION 12. DOC 309.61 (2) (a) is renumbered DOC 309.44 (2) (a) and amended to read:

DOC 309.44 (2) (a) An inmate ~~who wants to participate in religious practices that involve others or that affect the inmate's appearance or institution routines shall submit a written request to the superintendent for permission to participate in specific religious practices. The request shall include a statement that the inmate professes, or adheres to, a particular religion and shall specify the practices of the religion in which the inmate requests permission to participate~~ shall be required to identify a religious preference, if any, to participate in certain religious activities. An inmate may change this religious preference once every calendar year.

SECTION 13. DOC 309.44 (2) (b) is created to read:

DOC 309.44 (2) (b) An inmate who requests a change in religious policy, practice, programming, religious diet, special foods or authorized religious property that involves others or that affects the inmate's appearance or institution routines shall submit a written request to the warden for permission to participate in the specific religious practice. The request shall include a statement that the inmate professes, or adheres, to a particular religion and shall specify the practices and tenets of the religion in which the inmate requests permission to participate.

SECTION 14. DOC 309.61 (2) (b) is renumbered DOC 309.44 (2) (c) and amended to read:

DOC 309.44 (2) (c) Upon receipt of the request, the ~~superintendent~~ warden, with the assistance of the chaplain or designated staff person, ~~with appropriate religious training,~~ shall determine if the request is motivated by religious beliefs and supported by tenets of the religion.

SECTION 15. DOC 309.61 (2) (c) (intro.) is renumbered DOC 309.44 (2) (d) (intro.) and amended to read:

DOC 309.44 (2) (d) (intro.) In determining whether the request is motivated by religious beliefs and supported by tenets of the religion, the ~~superintendent~~ warden may consider the following:

SECTION 16. DOC 309.61 (2) (c) 1. is renumbered DOC 309.44 (2) (d) 1. and amended to read:

DOC 309.44 (2) (d) 1. Whether there is literature stating religious principles that support the beliefs~~; and~~.

SECTION 17. DOC 309.61 (2) (c) 2. is renumbered DOC 309.44 (2) (d) 2.

SECTION 18. DOC 309.61 (2) (d) is repealed.

SECTION 19. DOC 309.61 (2) (e) is repealed.

SECTION 20. DOC 309.61 (2) (f) is renumbered DOC 309.44 (2) (e) and amended to read:

DOC 309.44 (2) (e) If the ~~superintendent~~ warden determines that the request is motivated by religious beliefs and supported by tenets of the religion, ~~he or she~~ the warden shall grant permission to participate in practices that are consistent with ~~orderly confinement,~~ the security and order of the institution, the rehabilitation goals of inmates, health and safety considerations, and fiscal limitations.

SECTION 21. DOC 309.61 (2) (g) is renumbered DOC 309.44 (2) (f) and amended to read:

DOC 309.44 (2) (f) The ~~superintendent~~ warden shall establish guidelines consistent with this section to govern inmate participation

in religious practices and the guidelines shall be ~~posted in a conspicuous place or distributed to all inmates~~ available to inmates.

SECTION 22. DOC 309.61 (3) is repealed.

SECTION 23. DOC 309.44 (3) is created to read:

DOC 309.44 (3) RELIGIOUS SERVICES AND PRAYERS. (a) Each warden, upon the recommendation of the chaplain or designated staff person, shall coordinate religious programming, to the extent possible.

(b) The warden, upon the recommendation of the chaplain or designated staff person, may permit approved representatives of religious groups from outside the institution to visit inmates, hold services, provide counseling, perform marriages and provide other services commonly provided by chaplains.

SECTION 24. DOC 309.61 (4) is repealed.

SECTION 25. DOC 309.61 (5) is renumbered DOC 309.44 (4).

SECTION 26. DOC 309.61 (6) is repealed.

SECTION 27. DOC 309.61 (7) (title) is renumbered DOC 309.44 (6) (title).

SECTION 28. DOC 309.61 (7) (a) is repealed.

SECTION 29. DOC 309.61 (7) (b) is repealed.

SECTION 30. DOC 309.61 (7) (c) is repealed.

SECTION 31. Appendix DOC 309.36 (Note) is renumbered DOC 309.21 and amended as follows:

Amend sentence #1 paragraph #1 to read:

DOC ~~309.36~~ 309.22...

Delete paragraph #3.

SECTION 32. Appendix DOC 309.61 (Note) is renumbered DOC 309.44 and amended as follows:

Amend sentence #1 paragraph #1 to read:

DOC ~~309.61~~ 309.44...See *U.S. v. Reynolds*, 98 U.S. 145 (1878) and the Religious Freedom Restoration Act of 1993. ~~However, the extent to which an inmate may practice his or her religion may be curtailed in a correctional setting because consideration must be given in these settings to security, order and fiscal limitations. Although the beliefs of each inmate must be respected, it would be impossible to provide a regular service or ritual for every denomination or sect represented in the general population. The limits on religious practice included in the section are consistent with ACA, Standards for Adult Correctional Institutions, standard 2–4468 (2d ed. 1985) (hereinafter ACA) and the Proposed Standards of the American Bar Association's Joint Committee on the Legal Status of Prisoners amended and approved by the American Bar Association's House of Delegates (1981), standard 6.5 (b) (hereinafter ABA).~~

Amend sentence #1 paragraph #2 to read:

Subsection (1) ~~(c)~~ (b) ...

Delete sentence #3 paragraph #2.

Amend paragraph #3 to read:

...The ~~superintendent~~ warden... The ~~superintendent~~ warden...~~The listed considerations and prohibited concerns are taken from the National Advisory Commission on Criminal Justice Standards and Goals, Corrections Standard 2.6 (6) (1973) and ACA standard 2–4468.~~ If the ~~superintendent~~ warden...

Delete paragraph #4.

Amend paragraph #5 to read:

Subsection ~~(5)~~ (4)...~~The standard is consistent with ABA standards 6.1 (b) and (c).~~

Amend paragraph #6 to read:

Subsection ~~(6)~~ (5)...~~See ABA standard 6.5 (f).~~

Amend paragraph #7 to read:

Subsection ~~(7)~~ (6)...~~See ABA standard 6.5 (c).~~

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

This rule updates and modifies the sections of the department's rules relating to religion, leisure, and groups. The rule makes some technical changes, adds the words "for the general population" to the provisions under leisure time activities, and removes the words "religious," "recreational," and "leisure," from the definition of "activity group."

The rule repeals the provision permitting inmates to wear garments and religious symbols, but permits inmates to possess religious property.

The rule repeals the provision related to providing the inmate with a list of contents of each meal in advance of the meal.

It is not believed that this rule has any fiscal impact on the department.

Contact Person

Deborah Rychlowski (608) 266–8426
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707–7925

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 **August 13, 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), 301.02, 301.03, 302.07, and 302.08, Stats., the department of corrections proposes the following rule relating to involuntary mental health treatment for inmates.

Hearing Information

July 23, 1997	**Room 105**
Wednesday	**State Office Building**
2:00 p.m.	**718 West Clairemont**
	Eau Claire, Wisconsin
July 24, 1997	**Room 323**
Thursday	**State Office Building**
11:00 a.m.	**141 Northwest Barstow Street**
	Waukesha, Wisconsin
July 25, 1997	**Secretary's Conference Room**
Friday	**Department of Corrections**
11:00 a.m.	**149 E. Wilson Street, 3rd Floor**
	Madison, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

The proposed rules repeal and recreate the current rules related to mental health treatment for inmates. The current rules have been effective for over 11 years and do not represent current law relative to involuntary administration of psychotropic medication.

These rules provide for the involuntary commitment of an inmate to a state treatment facility. These rules require a physician or

psychologist to inform the inmate about the inmate's treatment needs; the mental health services that are appropriate and available to the inmate, including appropriate voluntary treatment available in either a correctional institution or state treatment facility; and the inmate's rights under s. 51.61, Stats.

These rules provide for 2 situations in which an inmate may be treated involuntarily with psychotropic medication: (1) when an inmate is in a state treatment facility under an involuntary commitment for the treatment of mental illness and the court has found the inmate not competent to refuse psychotropic medication; and (2) when the court has found the inmate not competent to refuse psychotropic medication, and has committed the inmate as an outpatient to a correctional institution and the inmate refuses to take the medication voluntarily.

The rules provide for involuntary administration of psychotropic medication after the inmate has been counseled and has continued to refuse to take the psychotropic medication voluntarily.

The department is promulgating this rule under ss. 301.02, 301.03 (3), and 301.03 (6). The department is required to direct the correctional psychiatric service in all state correctional institutions under s. 301.03 (6). In order to accomplish this requirement, the department must interpret s. 51.20.

Text of Rule

SECTION 1. DOC 314 is repealed and recreated to read:

CHAPTER DOC 314
INVOLUNTARY MENTAL HEALTH TREATMENT FOR INMATES

DOC 314.01 AUTHORITY, APPLICABILITY AND PURPOSE. (1) This chapter is promulgated pursuant to the authority vested in the department by ss. 301.02, 301.03 (2), 301.03 (6) and 227.11 (2), Stats., and applies to the department and to all adult inmates in its legal custody in correctional institutions. This chapter interprets s. 51.20, Stats.

(2) The department has authority to provide specialized treatment for inmates and shall assess and direct inmates into treatment programs.

(3) The department may consider involuntary mental health treatment when the inmate otherwise cannot be treated adequately and when ordered by a court. Whenever feasible and appropriate, the department intends to use other forms of treatment for mental illness, including voluntary treatment in the correctional institution or state treatment facility or transfer to another more appropriate correctional institution. This chapter provides guidance to correctional institution staff concerning the times when it will become necessary to provide an inmate involuntary treatment.

DOC 314.02 DEFINITIONS. In this chapter:

(1) "Correctional institution" means a facility named in s. 302.01, Stats.

(2) "Department" means the department of corrections.

(3) "Nurse practitioner" means a person who meets the qualifications under s. 411.16, Stats.

(4) "Outpatient" means an inmate receiving treatment for a mental disorder in a correctional institution.

(5) "Physician" means a person licensed to practice medicine in Wisconsin under ch. 448, Stats.

(6) "Physician assistant" means a person licensed to practice as a physician assistant in Wisconsin under ch. 448, Stats.

(7) "Psychiatrist" means a person licensed to practice medicine in Wisconsin under ch. 448, Stats. and who is board certified to practice as a psychiatrist.

(8) "Psychologist" means a person licensed to practice psychology in Wisconsin under ch. 455, Stats.

(9) "Psychotropic medication" means controlled medication that is used to influence psychological functioning, behavior or experience.

(10) "Registered nurse" means a person licensed to practice as a registered nurse in Wisconsin under ch. 441, Stats.

(11) "State treatment facility" has the meaning given in s. 51.01 (15), Stats.

DOC 314.03 INVOLUNTARY COMMITMENT. The department may file a petition for an inmate's involuntary commitment to a state treatment facility under s. 51.20, Stats.

DOC 314.04 INFORMING THE INMATE. (1) Before filing a commitment petition under s. DOC 314.03 for an inmate's involuntary commitment for mental health care, a physician or psychologist shall inform the inmate about all of the following:

(a) The inmate's treatment needs.

(b) The mental health services that are appropriate and available to the inmate, including a description of the appropriate voluntary treatment available in either a correctional institution or state treatment facility.

(c) The inmate's rights under s. 51.61, Stats. Inpatients have all rights specified in s. 51.61, Stats.

(d) Outpatients have only the rights under s. 51.61, Stats., that are specified in s. 51.61 (1) (a), (d), (h), and (k), Stats.

(2) The correctional institution shall give the inmate an opportunity to consent to voluntary treatment, including voluntary placement in a state treatment facility or voluntary treatment with psychotropic medication.

(3) Correctional institution staff shall tell the inmate that the inmate retains the status as an inmate upon commitment under s. 51.20, Stats., and that the inmate is subject to the same rules as other inmates of the department, which include for outpatients the grievance procedure under ch. DOC 310 and for inpatients the grievance procedure required under s. 51.61 (5), Stats.

(4) Any information conveyed under subs. (1) to (3) shall be in a manner that is reasonably calculated to best enable the inmate to understand the information.

DOC 314.05 INVOLUNTARY TREATMENT. An inmate may be treated involuntarily with psychotropic medications only under the following circumstances:

(1) While the inmate is in a state treatment facility under an involuntary commitment under ch. 51, Stats., for the treatment of mental illness and the court has found the inmate not competent to refuse psychotropic medication under s. 51.61.

(2) If the inmate is committed under s. 51.20, Stats., as an outpatient in a correctional institution, the court has found the inmate not competent to refuse psychotropic medication, and the inmate refuses to take the medication voluntarily. All of the following steps shall be followed:

(a) Psychotropic medication shall be administered by a registered nurse, nurse practitioner, physician assistant, physician, or a designee.

(b) The registered nurse, nurse practitioner, physician assistant or physician shall give the inmate an opportunity to take the medication voluntarily.

(c) When an inmate has been adjudicated under ch. 880, Stats., to be incompetent to consent to treatment, the department of corrections shall obtain consent to voluntary treatment from the inmate's guardian.

(d) When the inmate refuses, the registered nurse, nurse practitioner, physician assistant or physician shall counsel the inmate and attempt to persuade the inmate to take the medication.

(e) If the inmate continues to refuse and there is a current physician order to involuntarily administer the psychotropic medication, the registered nurse, nurse practitioner, or physician assistant shall contact the physician who wrote the order to assess the situation. The physician shall decide the course of action to be taken. Possible actions may include all of the following:

1. Take no action for a period of time.

2. Transfer the inmate to a special unit within the correctional institution for treatment of mental illness.

3. Place the inmate in observation status pursuant to ch. DOC 311.

4. Recommend transfer of the inmate to an alternate correctional institution pursuant to ch. DOC 302.

5. Recommend transfer of the inmate to a state treatment facility, pursuant s. 51.20, Stats.

6. Direct that the medications be administered.

(f) If directed by the attending physician, the registered nurse, nurse practitioner, or physician assistant shall instruct the inmate to take the medication. If the inmate persists in refusing to take the medication, security staff will restrain the inmate while the registered nurse, nurse practitioner, physician assistant, or physician administers the psychotropic medication involuntarily.

DOC 314.06 REVIEW OF AN INMATE ON PSYCHOTROPIC MEDICATION. The department of corrections staff psychiatrist or psychologist shall review the need to request an extension of the court order 60 days prior to the end of the court order.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The repeal and recreation of Adm. Rule DOC 314 reflects the update in current law relative to involuntary administration of psychotropic medication to inmates.

The Department considers involuntary administration of medication only when the inmate has been informed of 1) available and appropriate treatment, 2) patient/inmate rights and 3) grievance procedures. If the inmate refuses medication the Courts must rule the inmate is mentally ill, dangerous to others or self, and not competent to refuse medications before the Department will deliver medication without consent.

This administrative rule should not have a Departmental fiscal effect separate from the statutory effect.

Contact Person

Deborah Rychlowski (608) 266–8426
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707–7925

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Written Comments

Written comments on the proposed rules received at the above address no later than **July 28, 1997**, will be given the same consideration as testimony presented at the hearing

Notice of Hearings

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

Notice is hereby given that pursuant to ss. 250.04 (7) and 254.36 (2), Stats., and interpreting ss. 160.07, 160.15 (1), 254.33, 254.34 and 254.36 (2), (3) and (6), Stats., the Department of Health and Family Services will hold public hearings to consider the proposed amendment of s. HSS 157.16 (2) (a), Wis. Adm. Code., and creation of s. HSS 157.165, Wis. Adm. Code, relating to radioactive substances in groundwater. The hearings will be joint hearings with the Department of Natural Resources.

Hearing Information

The public hearings will be held:

July 28, 1997	**Room 027, GEF #2**
Monday	**101 South Webster St.**
Beginning at 10:00 a.m.	**MADISON, WI**
July 29, 1997	**Room 120**
Tuesday	**State Office Bldg.**
Beginning at 10:00 a.m.	**141 Northwest Barstow St.**
	WAUKESHA, WI
July 30, 1997	**Room C227**
Wednesday	**Northeast Wis. Tech. College**
Beginning at 10:30 a.m.	**2740 W. Mason St.**
	GREEN BAY, WI
July 31, 1997	**Pinery Room**
Thursday	**Portage Co. Public Library**
Beginning at 10:00 a.m.	**1001 Main Street**
	STEVENS POINT, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

Section 254.36 (2), Stats., makes the Department the sole standard–setting agency in Wisconsin for radioactive contaminants. Other state agencies therefore depend upon the Department for issuance of standards for radioactive substances. Standards for certain radioactive substances in drinking water supplied by community water systems are currently set out in s. HSS 157.16, Wis. Adm. Code. The Wisconsin Department of Natural Resources (DNR) has asked the Department to also adopt standards for radioactive substances in groundwater so that the DNR can include those standards in ch. NR 140, Wis. Adm. Code, its rules relating to groundwater quality. These are the proposed standards. The State Radiation Protection Council reviewed and approved them and recommended that the Department promulgate them as administrative rules.

The rulemaking order creates s. HSS 157.165, radioactivity in groundwater, which establishes enforcement standards and preventive action limits for beta particle and photon radioactivity, gross alpha particle activity and radium–226 and –228 combined. The order also corrects s. HSS 157.16, radioactivity in community water systems, at two places.

Contact Person

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

Paul Schmidt, (608) 267–4792 or,
if you are hearing–impaired, 608–266–1511 (TDD)
Radiation Protection Unit
Dept. of Health & Family Services
P. O. Box 309
Madison WI 53701–0309

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at a 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 shown above. A person requesting a non–English or sign language interpreter should make that request at least 10 days before the hearing With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **August 7**, **1997,** will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

These are new standards for maximum levels of radioactive contaminants in groundwater. They are the same as those found in the

U.S. Environmental Protection's Agency's Drinking Water Standards for Community Drinking Water Supplies, 40 CFR 141 to 143, and in s. HSS 157.16 for community water systems.

The rules will not affect the expenditures or revenues of state government or local governments.

Initial Regulatory Flexibility Analysis

The standards included in this order will apply to any business, agency or other organization that releases long–lived radioactive material, which is usually radium, into the groundwater. This could include a small business as defined in s. 227.114 (1) (a), Stats. Groundwater quality protection staff in the Department of Natural Resources (DNR) and radiation protection staff in the Department of Health and Family Services (DHFS) do not know of any business, agency or other organization that would be subject to these standards when the standards take effect or when they are incorporated into ch. NR 140; however, disposal of radioactive waste or sludge containing radioactive substances into a landfill or onto the land are examples of where the standards could apply. The rules point toward the future, alerting enterprises developing or wanting to use technologies which involve release of radioactive substances into the groundwater that there are standards intended to protect the public's health and that DNR and other agencies are obliged to enforce those standards.

Notice of Hearings

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

Notice is hereby given that, pursuant to ss. 254.176 (1) and (3) and 254.178 (2), Stats., the Department of Health and Family Services will hold public hearings to consider the repeal and recreation of ch. HSS 163, relating to certification to perform lead abatement, HUD–funded lead hazard reduction and lead management activities, and accreditation of the training courses for individuals performing those activities, including approval of training managers, principal instructors and guest instructors.

Hearing Information

The public hearings will be held:

July 14, 1997	**Theater, EACH Bldg.**
Monday	**Marathon Co. Health Care Ctr.**
Beginning	**1100 Lakeview Dr.**
at 10:00 a.m.	**WAUSAU, WI**
July 15, 1997	**Room 027, GEF #2**
Tuesday	**State Office Bldg.**
Beginning	**101 South Webster St.**
at 10:00 a.m.	**MADISON, WI**

The public hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

Under s. 254.176, the Department is authorized to write rules that require persons who perform or supervise lead hazard reduction or lead management activities to be certified by the Department. A training course in lead hazard reduction or lead management that is represented as qualifying persons for certification must be accredited by the Department and staff approved under s. 254.178, Stats.

The Department's rules for certification of lead abatement, other lead hazard reduction and lead management activities and for accreditation of training courses are in ch. HSS 163, Wis. Adm. Code, first issued in 1993 to establish certification requirements for lead abatement workers and lead supervisors, including training, and accreditation of the corresponding training courses, including instructor approval.

Chapter HSS 163 was amended effective February 18, 1997, by an emergency order that added the certification disciplines of lead inspector, lead project designer, and lead risk assessor for persons engaged in lead management activities, and added accreditation requirements for the corresponding training courses. Certification fees for the new disciplines and course accreditation application fees were also added.

This proposed order includes replacement permanent rules for the emergency rules published on February 18, 1997. The repeal and recreation of ch. HSS 163 further revises the rules in response to three major needs, as follows:

1. In response to comments received from the public on the emergency rules, the proposed rules increase the maximum interval between mandatory training and reduce the experience qualifications until January 1, 1998.

2. To move the rules one step closer to full compliance with EPA lead–based paint certification and accreditation regulations at 40 CFR 745, Subparts L and Q, the proposed rules:

a) Extend the scope to all dwellings built before 1978, except owner–occupied dwellings, and to all child–occupied facilities;

b) Redesignate clearance as a lead management activity;

c) Include an optional certification examination and $25 registration fee, and extend the interval between mandatory training for persons who pass the certification examination;

d) Assign responsibility to an approved training manager;

e) Increase the role of guest instructors, subject to case–by case approval;

f) Require a training manager to implement a quality improvement plan by January 1, 1998; and

g) Require a course test for refresher courses effective January 1, 1998.

3. To improve compliance by making the rules more complete and easier to read, and by clearly stating expectations and consequences. This has involved:

a) Merging most of Appendix A into subchapter III;

b) Redefining lead–based paint to comply with statutes and to address various testing methods;

c) Increasing the replacement card fee from $8 to $25;

d) Adding a $25 service charge for checks not honored by the bank;

e) Changing the requirements for notification of abatement and HUD–funded lead hazard reduction activities to require notification 2 working days before the start of the activity, and allowing the use of phone or fax for revised or urgent notifications;

f) Allowing instructors to receive approval that is not tied to an accredited course; and

g) Spelling out the responsibilities of training managers in a new section.

In addition to the rules as proposed, the Department is requesting comments on a proposed option to the amended project notification requirements under s. HSS 163.13 (4) (a). The proposed option does not allow nonemergency notification or revised notification by telephone and requires written notification be sent to the Department not less than 5 working days before the start of the activity. Under this option, s. HSS 163.13 (4) (a) would be revised to read:

(a) *Requirement for written notification and revisions.* Except as provided under par. (b), a supervisor certified under the requirement of sub. (1) shall submit written notification and written revisions to the department as follows:

1. 'Original notice.' For a new notice, not less than 5 working days before the start of the activity.

2. 'Revised notice.' a. For a change in the project start date on an existing project, no later than 5 working days before the activity begins if the new start date is earlier than the original start date or a minimum of one working day before the original start date if the new start date is later than the original start date.

b. For a change in the project end date on an existing notice, as soon as the change is determined, but no later than the original end date.

Contact Person

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

Gail Boushon
Telephone (608) 266–5280 or,
if you are hearing impaired, 266–1511
FAX (608) 266–9711
Asbestos and Lead Unit, Room 117
1414 East Washington Ave.
Madison WI 53703–3044

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

Written comments on the proposed rules received at the above address no later than **July 18, 1997**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

Although s. 254.176 (2) (e), Stats., requires fees for certification, it exempts State and local government employes who must be certified in order to perform duties within the scope of their employment from the certification fees; therefore, certification fees are not imposed on State and local government agencies.

In addition, the proposed rules reduce the frequency at which refresher training is required, which should benefit State and local government agencies.

Registration fees for the optional certification examination, increases in replacement certification card fees and the addition of service charges for checks that are not honored by the banks on which they are drawn are expected to result in only a nominal increase in revenues.

Currently authorized staff will handle any increase in workload that may result from these rules. At this time, the lead training and certification program is funded by federal EPA grants.

Initial Regulatory Flexibility Analysis

Subchapter I and II apply to 135 certified lead workers, 475 certified lead supervisors, 15 certified lead inspectors and 10 certified lead risk assessors, either self–employed or employed by one of 110 identified lead abatement or consulting firms. Subchapter I and II also apply to approximately 160 certified individuals employed by state or local government agencies. Subchapter I, III, and Appendix A apply to 10 providers of accredited training.

The majority of the abatement or consulting firms are small businesses, as "small business" is defined in s. 227.114 (1) (a), Stats.

Every attempt was made to minimize the regulatory burden of the rule. Changes in the rules will not add to reporting or recordkeeping requirements for lead abatement and consulting firms. The changes do, however:

→ Clarify notification requirements;

→ Require that notification be filed earlier; and

→ Permit revised and emergency notification by fax.

Whenever feasible, the rules allow a person to request approval of alternative forms and to contact the Department by fax.

The revisions provide financial relief to local health agencies, lead abatement firms, and lead consulting firms by increasing the interval between mandatory training. This reduces the cost of training and the time spent on training.

Notice of Hearings

Natural Resources
(Fish, Game, etc., Chs. NR 1––)

Notice is hereby given that pursuant to ss. 29.085, 29.155, 29.174 (3) and 227.11 (2) (a), Stats., interpreting ss. 29.085, 29.155, 29.174 (1) and (2), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 10.001 (19), 10.01 and 10.125, Wis. Adm. Code, relating to the 1997 migratory game bird season.

Agency Analysis

The significant regulations are:

Ducks. The state is divided into two zones each with 60–day seasons. The season in the southern duck zone begins at noon October 4 and continues for 60 days, closing December 2. The north duck zone season begins at noon October 4 and continues through December 2. The daily bag limit in both zones is six ducks, including four mallards and one canvasback for the entire 60 days in both zones.

Canada geese. The state is apportioned into three goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, New Auburn, Rock Prairie and the Mississippi River. Season lengths are: Collins zone – 65 days; Horicon zone – 93 days; Exterior zone – 79 days; and Mississippi River subzone – 70 days. The Burnett County and New Auburn subzones are closed to Canada goose hunting.

Bismuth–tin and tungsten shot are legalized for migratory bird hunting.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearings will be held on:

August 11, 1997 **Monday** **At 7:00 p.m.**	**Basement Auditorium** **La Crosse Co. Office Bldg.** **300 N. 4th Street** **LA CROSSE, WI**
August 12, 1997 **Tuesday** **At 7:00 p.m.**	**Room E101** **North Central Voc. Tech. College** **1000 Campus Dr.** **WAUSAU, WI**
August 13, 1997 **Wednesday** **At 7:00 p.m.**	**Room 1020** **Washington Co. Courthouse** **432 E. Washington** **WEST BEND, WI** *Use handicapped entrance in back of building by Sheriff's Office.*

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jon Bergquist at (608) 266–8841 with specific

information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Jon Bergquist
Bureau of Wildlife Management
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **August 14, 1997**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WM–17–97] and fiscal estimate may be obtained from Mr. Bergquist.

Fiscal Estimate

This rule package establishes the seasons and bag limits for waterfowl hunting. Bismuth and tungsten shot are made legal for migratory bird hunting. The proposed changes will not result in any significant changes in spending or revenue.

Long–range fiscal implications:

Overall, Department expenditures and revenues should not change.

Notice of Hearings

Natural Resources
(Environmental Protection–– General, Chs. NR 100––)

Notice is hereby given that pursuant to ss. 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats. [formerly ss. 144.025 (2) (a), 144.025 (2) (b), 144.025 (2) (c) and 144.91, Stats.] and ch. 160, Stats., interpreting ss. 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats., and ch. 160, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 140, Wis. Adm. Code, relating to groundwater standards. These will be joint hearings with the Department of Health and Family Services (DHFS).

Agency Analysis

Chapter 160, Stats., requires the Department to develop numerical groundwater quality standards, consisting of enforcement standards and preventive action limits. Chapter NR 140, Wis. Adm. Code, establishes groundwater standards and creates a framework for implementation of the standards by the Department. The proposed amendments to ch. NR 140 would add groundwater standards for 25 additional substances, based on recommendations from the Department of Health and Family Services. Public health–related groundwater standards are proposed for acenaphthylene, ammonia, anthracene, bentazon, benzo(b)fluoranthene, beta particle and photon radioactivity, boron, carbon disulfide, chrysene, cobalt, dibutyl phthalate, fluoranthene, gross alpha particle radioactivity (including radium–226 but excluding radon and uranium), n–hexane, hydrogen sulfide, methanol, n–nitrosodiphenylamine, prometon, pyrene, pyridine, radium–226 and radium–228 combined, 1,1,1,2–tetrachloroethane, 1,2,3–trichloropropane, trimethylbenzenes (1,2,4– and 1,3,5–combined), and vanadium. Revised standards are proposed for cyanazine.

The proposed amendments to ch. NR 140 also include provisions to clarify groundwater sampling, analysis and reporting requirements, exemption procedures, and to reflect renumbering and reorganization of the environmental chapters of the Wisconsin Statutes effective January 1, 1997.

This package includes proposed new groundwater standards for certain radioactive parameters (gross alpha particle activity, beta particle and photon radioactivity, and radium–226 and radium–228 combined). The DHFS is the sole standard–setting agency for radioactive contaminants, and pursuant to s. 254.36 (2), Stats., other state agencies may only adopt DHFS standards for radioactive substances. DHFS which is concurrently promulgating these radioactive standards for groundwater at the DNR's request by creating s. 157.165, Wis. Adm. Code, so they can be added to ch. NR 140, Wis. Adm. Code. The State Radiation Protection Council reviewed and approved these standards and recommended that the DHFS promulgate them as administrative rules. This is the reason for the joint hearings.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice is hereby further given that the documents describing the information and methodology used and the conclusions reached in establishing the proposed enforcement standards are available from the Department of Natural Resources, as required by s. 160.11, Stats. Written questions on these documents may be submitted to the Department of Natural Resources until **July 18, 1997**. Responses to all such written questions will be presented at the public hearings. To obtain the documents or submit written questions on them, please write or call:

Mr. Steve Karklins
Telephone (608) 266–5240
Bureau of Drinking Water & Groundwater
P.O. Box 7921
Madison, WI 53707–7921

Hearing Information

Notice is hereby further given that the hearings will be held on:

July 28, 1997	**Room 027, GEF #2**
Monday	**101 South Webster St.**
At 10:00 a.m.	**MADISON, WI**
July 29, 1997	**Room 120, State Office Bldg.**
Tuesday	**141 N.W. Barstow St.**
At 10:00 a.m.	**WAUKESHA, WI**
July 30, 1997	**Room C227**
Wednesday	**Northeast Wis. Tech. College**
At 10:30 a.m.	**2740 W. Mason**
	GREEN BAY, WI
July 31, 1997	**Pinery Room**
Thursday	**Portage Co. Public Library**
At 10:00 a.m.	**1001 Main St.**
	STEVENS POINT, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Steve Karklins at (608) 266–5240 at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to

Mr. Steve Karklins
Bureau of Drinking Water & Groundwater
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **August 1, 1997**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [DG–11–97] and fiscal estimate may be obtained from Mr. Karklins.

Fiscal Estimate

Ch. NR 140, Wis. Adm. Code, adopted in 1985, established groundwater quality standards and created a framework for implementation of the standards by the Department. This amendment to ch. NR 140 would establish standards for 25 substances, modify the standards for 1 substance, clarify groundwater sampling, analysis and reporting requirements and exemption procedures. Proposed amendments would move reference to the Department's groundwater sampling publications from a note to the rule itself.

Chapter NR 140 already contains groundwater standards for 101 substances of health concern and 8 substances of welfare concern. Regulated facilities, practices and activities which are the sources of the substances for which standards are proposed are, for the most part, the same sources for which standards already exist. Consequently, there should be few cases where the proposed standards would be exceeded and the existing standards are not exceeded. Adoption of these standards would ensure a uniform response to comply with the standards. Additional monitoring costs to the regulated community should be small. Some of the proposed standards are for substances for which facilities are already monitoring. Workload of state agencies should not change substantially. The Department believes it is unlikely that there will be additional costs to state and local government resulting from adoption of the proposed groundwater standards.

Groundwater standards would be lowered for the herbicide cyanazine. There may be more monitoring for this substance and possible use restrictions by the Department of Agriculture, Trade and Consumer Protection if it is found extensively in groundwater.

Fiscal impact:

None.

Long–range fiscal implications:

None.

Notice of Hearings

Natural Resources
(Environmental Protection––Solid Waste, Chs. NR 500––)
(Environmental Protection––Hazardous Waste, Chs. NR 600––)

Notice is hereby given that pursuant to ss. 289.05 (1), 289.06 (1) (a), 289.30, 289.43, 299.53, 291.001, 291.05, 291.07, 291.09, 291.11 and 227.11 (2) (a), Stats., interpreting ss. 289.41, 289.46, 299.45 and 299.53 and ch. 291, Stats., the Department of Natural Resources will hold public hearings on proposed revisions to chs. NR 590 and 600 to 685, Wis. Adm. Code, the creation of ch. NR 633, Wis. Adm. Code, and the repeal and recreation of ch. NR 675, Wis. Adm. Code, relating to used oil and hazardous waste management rules.

Agency Analysis

Rule revisions are proposed to incorporate current federal hazardous waste regulations into state rules. These rules are necessary to obtain state hazardous waste management program authorization from U.S. EPA. The proposed rules affect three major areas:

1) Fugitive organic air emissions from hazardous waste treatment, storage and disposal facilities and certain hazardous waste generators accumulating waste on–site in tanks and containers (proposed ch. NR 633);

2) Revisions to the land disposal restrictions (existing ch. NR 675), to adopt federal rules which tend to simplify this area of regulation by consolidation of certain tables of hazardous wastes into the Universal Treatment Standards; and

3) The universal waste rule, which is intended to streamline the recycling of certain common hazardous wastes (i.e., batteries, thermostats and recalled pesticides and other unused pesticides) by reducing regulatory hurdles by not subjecting them to the full array of hazardous waste management requirements.

In addition, less significant EPA–based revisions being proposed include:

◇ Updates to the hazardous waste listings;

◇ Expanded opportunities to conduct treatability studies;

◇ Technical corrections to the used oil management standards;

◇ The addition of an exclusion from regulation of hazardous waste to define and allow for the recycling of "recovered oil";

◇ Expanded public participation in licensing of hazardous waste facilities; and

◇ Revisions to rules governing imports and exports of hazardous waste.

Finally, "housekeeping" changes are proposed to correct various cross–reference errors and revisions to formulae used to determine financial assurance mechanisms for hazardous waste facilities.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearings will be held on:

July 22, 1997	**Room 2550**
Tuesday	**Eau Claire Co. Courthouse**
At 12:00 p.m.	**721 Oxford Ave.**
(noon)	**EAU CLAIRE, WI**
July 23, 1997	**Room 137B, State Office Bldg.**
Wednesday	**141 N.W. Barstow St.**
At 10:00 a.m.	**WAUKESHA, WI**
July 24, 1997	**Room 310, City Hall**
Thursday	**100 Jefferson St.**
At 11:00 a.m.	**GREEN BAY, WI**
July 25, 1997	**Room 511, GEF #2**
Friday	**101 South Webster St.**
At 9:00 a.m.	**MADISON, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Al Matano at (608) 267–3531 at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to:

Mr. Al Matano
Bureau of Waste Management
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **August 3, 1997**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [SW–36–96] and fiscal estimate may be obtained from Mr. Matano.

Fiscal Estimate

The proposed rule changes would update Wisconsin's hazardous waste management regulations to adopt regulations equivalent to regulations enacted by the U.S. Environmental Protection Agency (US–EPA). New chapters will include:

Ch. NR 633 – "Air Emission Standards for Tanks, Surface Impoundments and Containers"; and

Ch. NR 690 – "Standards for Universal Waste Management".

In addition, the land disposal restrictions, ch. NR 675, have been substantially rewritten and streamlined, in conformance with recent federal changes.

Fiscal impact:

There are no state fiscal impacts.

Long–range fiscal implications:

None.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.51(2), (4)(a)4. and (14)(intro.), 77.52(2)(a) and 77.61(3), 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 **July 1, 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 Department of Revenue

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

Statutes interpreted: ss. 77.51(2), (4)(a)4. and (14)(intro.), 77.52(2)(a) and 77.61(3)

SECTIONS 1 AND 2. Tax 11.32(4)(a), relating to sales tax collected from customers, is renumbered Tax 11.32(4) (a)(intro.) and amended, and Tax 11.32(4)(a)1. to 3. are created, to clarify the methods which a retailer may use to notify its customers of the amount of sales tax collected.

SECTION 3. Tax 11.32(4)(b) and (c) are amended to replace the term "vending machine operator" with "vending machine retailer" to provide consistency with other terminology in Tax 11.32, and to conform language and style to Legislative Council Rules Clearinghouse standards.

SECTION 4. Tax 11.32(5) is repealed and recreated to:

Conform to Legislative Council Rules Clearinghouse standards.

Provide consistency within the bracket charts and create two new bracket charts, a 5.1% state and stadium tax chart and a 5.6% state, county and stadium tax chart.

Reference all applicable statutes relating to sales and use tax rates.

Remove Tax 11.32(5)(d), relating to posting bracket system cards showing the tax collectible on a sales transaction, because it is unnecessary due to the amendment to sub. (4)(a).

SECTIONS 5 AND 6. Tax 11.32(6) and (7) are renumbered Tax 11.32(7) and (8) and new Tax 11.32(6) is created, to provide an alternative bracket system (a mathematical computation) for retailers to use in determining the amount of tax collectible from customers.

SECTION 7. Tax 11.68(4)(a)2. is amended to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.68(5)(L), relating to personal property which becomes a part of realty upon installation, is amended to remove traffic signals from this classification. This is to conform to the decision of the Wisconsin Court of Appeals, District IV, in Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue, October 29, 1987. In this case, highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation. Although traffic signals were not specifically mentioned in the case, the conclusion that the signing and marking of highways must be flexible and impermanent requires a tangible personal property classification for traffic signals.

SECTION 8. Tax 11.68(6)(a)15., relating to property provided under a construction contract which remains personal property, is created to add stop and go lights, railroad signs and signals and street identification signs to this classification.

SECTION 9. Tax 11.68(10)(c) is amended to correct punctuation in a direct statutory quote.

Text of Rule

SECTION 1. Tax 11.32(4)(a) is renumbered Tax 11.32(4)(a)(intro.) and amended to read:

Tax 11.32(4)(a)(intro.) Section 77.51(4)(a)4., Stats., provides in part that "if a retailer establishes to the satisfaction of the department that the sales tax . . . has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies. The notification may be by any one of the following methods:

SECTION 2. Tax 11.32(4)(a)1., 2. and 3. are created to read:

Tax 11.32(4)(a)1. Providing the customer a receipt which separately itemizes the tax or states "Prices Include Sales Tax."

2. Conspicuously posting the bracket system card, form S–213 or S–218, issued by the department.

3. Conspicuously posting a sign which states "Prices Include Sales Tax."

Note to Revisor: Replace the example after sub. (4)(a) with the following:

Example: A tavern, located in a county which has a combined 5.5% Wisconsin state and county sales and use tax rate in effect, conspicuously posts a sign stating "Prices Include Sales Tax." The tavern's gross receipts from sales of food and beverages are $10,000 for the month. When filing its sales and use tax return, form ST–12, the tavern may deduct $521.33 of sales tax to arrive at taxable receipts of $9,478.67 ($10,000 ÷ 1.055 = $9,478.67). The tax payable by the tavern is determined by multiplying its taxable receipts times the tax rate ($9,478.67 x .055 = $521.33 tax payable).

SECTION 3. Tax 11.32(4)(b) and (c) are amended to read:

Tax 11.32(4)(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible under the bracket ~~system~~ systems set forth in subs. (5) and (6), no part of the retailer's gross receipts ~~shall~~ may be treated as tax collected from customers.

Note to Revisor: Replace the example after sub. (4)(b) with the following:

Example: A vending machine retailer whose only receipts are from sales of 5¢ items is unable to collect any sales tax from customers, and the tax applies to the total gross receipts.

(c) If a vending machine ~~operator~~ retailer sells taxable property at a price such that a sales tax is collectible under the bracket ~~system~~

systems set forth in subs. (5) and (6), part of the gross receipts from these sales shall include sales tax if customers are advised that the vending machine prices include sales tax.

SECTION 4. Tax 11.32(5) is repealed and recreated to read:

Tax 11.32(5) BRACKET SYSTEM. (a) The following bracket system may be used by retailers in computing the amount of the state tax which may be collected from the retailer's customers.

Amount of Taxable Sale	5% Tax Collectible
$.01 to $.09	0¢
.10 to .29	1¢
.30 to .49	2¢
.50 to .69	3¢
.70 to .89	4¢
.90 to 1.09	5¢

On sales exceeding $1.00, the state tax equals 5¢ for each full dollar of sales, plus the tax shown above for the applicable fractional part of a dollar.

(b) In counties having a county tax, but no stadium tax, the following bracket system may be used:

Amount of Taxable Sale	Combined State and County Tax of 5.5%
$ .01 to $ .09	0¢
.10 to .27	1¢
.28 to .45	2¢
.46 to .63	3¢
.64 to .81	4¢
.82 to .99	5¢
1.00 to 1.18	6¢
1.19 to 1.36	7¢
1.37 to 1.54	8¢
1.55 to 1.72	9¢
1.73 to 1.90	10¢
1.91 to 2.09	11¢

The state and county tax equals 11¢ for each $2.00 of sales, plus the tax shown above for the fractional part of $2.00.

Example: For a sale of $11.50, the 5.5% tax is 63¢, consisting of 55¢ for $10.00 of sales plus 8¢ for $1.50 of sales.

(c) In counties having a stadium tax, but no county tax, the following bracket system may be used.

Amount of Taxable Sale	Combined State and Stadium Tax of 5.1%
$ .01 to $ .09	0¢
.10 to .29	1¢
.30 to .49	2¢
.50 to .68	3¢
.69 to .88	4¢
.89 to 1.07	5¢
1.08 to 1.27	6¢
1.28 to 1.47	7¢
1.48 to 1.66	8¢
1.67 to 1.86	9¢
1.87 to 2.05	10¢
2.06 to 2.25	11¢
2.26 to 2.45	12¢
2.46 to 2.64	13¢
2.65 to 2.84	14¢
2.85 to 3.03	15¢
3.04 to 3.23	16¢
3.24 to 3.43	17¢
3.44 to 3.62	18¢
3.63 to 3.82	19¢
3.83 to 4.01	20¢
4.02 to 4.21	21¢
4.22 to 4.41	22¢
4.42 to 4.60	23¢
4.61 to 4.80	24¢
4.81 to 4.99	25¢
5.00 to 5.19	26¢
5.20 to 5.39	27¢
5.40 to 5.58	28¢
5.59 to 5.78	29¢
5.79 to 5.98	30¢
5.99 to 6.17	31¢
6.18 to 6.37	32¢
6.38 to 6.56	33¢
6.57 to 6.76	34¢
6.77 to 6.96	35¢
6.97 to 7.15	36¢
7.16 to 7.35	37¢
7.36 to 7.54	38¢
7.55 to 7.74	39¢
7.75 to 7.94	40¢
7.95 to 8.13	41¢
8.14 to 8.33	42¢
8.34 to 8.52	43¢
8.53 to 8.72	44¢
8.73 to 8.92	45¢
8.93 to 9.11	46¢
9.12 to 9.31	47¢
9.32 to 9.50	48¢
9.51 to 9.70	49¢
9.71 to 9.90	50¢
9.91 to 10.09	51¢

The state and stadium tax equals 51¢ for each $10.00 of sales, plus the tax shown above for the fractional part of $10.00.

(d) In counties having a county tax and a stadium tax, the following bracket system may be used.

Amount of Taxable Sale	Combined State, County and Stadium Tax of 5.6%
$ .01 to $ .08	0¢
.09 to .26	1¢
.27 to .44	2¢
.45 to .62	3¢
.63 to .80	4¢
.81 to .98	5¢
.99 to 1.16	6¢
1.17 to 1.33	7¢
1.34 to 1.51	8¢
1.52 to 1.69	9¢
1.70 to 1.87	10¢
1.88 to 2.05	11¢
2.06 to 2.23	12¢
2.24 to 2.41	13¢
2.42 to 2.58	14¢
2.59 to 2.76	15¢
2.77 to 2.94	16¢
2.95 to 3.12	17¢
3.13 to 3.30	18¢
3.31 to 3.48	19¢
3.49 to 3.66	20¢
3.67 to 3.83	21¢
3.84 to 4.01	22¢
4.02 to 4.19	23¢
4.20 to 4.37	24¢
4.38 to 4.55	25¢
4.56 to 4.73	26¢
4.74 to 4.91	27¢
4.92 to 5.08	28¢
5.09 to 5.26	29¢
5.27 to 5.44	30¢
5.45 to 5.62	31¢
5.63 to 5.80	32¢
5.81 to 5.98	33¢
5.99 to 6.16	34¢
6.17 to 6.33	35¢
6.34 to 6.51	36¢
6.52 to 6.69	37¢
6.70 to 6.87	38¢
6.88 to 7.05	39¢
7.06 to 7.23	40¢
7.24 to 7.41	41¢
7.42 to 7.58	42¢
7.59 to 7.76	43¢
7.77 to 7.94	44¢
7.95 to 8.12	45¢
8.13 to 8.30	46¢
8.31 to 8.48	47¢
8.49 to 8.66	48¢
8.67 to 8.83	49¢
8.84 to 9.01	50¢
9.02 to 9.19	51¢
9.20 to 9.37	52¢
9.38 to 9.55	53¢
9.56 to 9.73	54¢
9.74 to 9.91	55¢
9.92 to 10.08	56¢

The state, county and stadium tax equals 56¢ for each $10.00 of sales, plus the tax shown above for the fractional part of $10.00.

(e) The bracket system method is designed so that the total amount of tax paid by customers approximates the tax payable by the retailer on the retailer's taxable gross receipts, if the retailer's sales fall equally throughout all the brackets. When more than one taxable item is sold in a single transaction, the tax is computed on the aggregate sales price of the taxable items sold.

(f) The gross sales and use tax payable by a retailer on retail sales is the total of the applicable tax rates under ss. 77.52(1) and (2), 77.53(3) and (9m) and 77.71, Stats., times the retailer's taxable gross receipts, regardless of the amount of tax collected from customers.

SECTION 5. Tax 11.32(6) and (7) are renumbered Tax 11.32(7) and (8).

SECTION 6. Tax 11.32(6) is created to read:

Tax 11.32(6) ALTERNATIVE BRACKET SYSTEM – MATHEMATICAL COMPUTATION. A retailer is not required to compute the tax due on a transaction using the bracket system described in sub. (5). A retailer who does not use the bracket system described in sub. (5) shall determine the amount of tax due on a transaction by multiplying the applicable tax rate times the aggregate sales price of all taxable items sold in a single transaction. The tax rate may not be multiplied times the sales price of each item separately and then summed. The tax collectible from the customer shall be rounded to the nearest $.01 by using the following rounding procedures:

(a) For amounts less than $.005, the amount shall be rounded down to the next lowest penny.

Examples: 1) Tax computed at $.0849999 would be rounded down to $.08.

2) Tax computed at $3.2549 would be rounded down to $3.25.

(b) For amounts equal to or greater than $.005, the amount shall be rounded up to the next highest penny.

Examples: 1) Tax computed at $.085000 would be rounded up to $.09.

2) Tax computed at $6.455001 would be rounded up to $6.46.

3) Retailer A sells Customer B three different taxable items in one transaction: Item 1's selling price is $14.70, item 2's selling price is $8.30, and item 3's selling price is $7.10. The aggregate selling price of the taxable items is $30.10. The Wisconsin sales tax due on this transaction, assuming a 5% tax rate, is $1.51; $30.10 x 5% = $1.505, and that amount is rounded up to $1.51.

SECTION 7. Tax 11.68(4)(a)2. and (5)(L) are amended to read:

Tax 11.68(4)(a)2. Application or adaptation to the use or purpose to which the real property is devoted~~; and~~.

(5)(L) ~~Traffic signals, and street~~ Street and parking lot lighting.

SECTION 8. Tax 11.68(6)(a)15. is created to read:

Tax 11.68(6)(a)15. Stop and go lights, railroad signs and signals and street identification signs.

SECTION 9. Tax 11.68(10)(c) is amended to read:

Tax 11.68(10)(c) Section 77.52(2)(a)10., Stats., provides in part that "... the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration~~,~~ but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration~~,~~ but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage–making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

Note to Revisor: Delete the word "and" immediately preceding "(m)," in the second note following Tax 11.68, and add the following to the end of the note: "; and (n) In Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue, Wisconsin Court of Appeals, District IV, No. 86–1813, October 29, 1987 (CCH 202–919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation."

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed order updates the Administrative Code with respect to the sales and use tax.

Section 1 clarifies the methods which retailers may use to notify a customer of the amount of sales tax collected, and replaces the term"vending machine operator" with "vending machine retailer" to provide consistent terminology. Sections 2, 3 and 4 create two new bracket charts and an alternative bracket calculation to address changes in the bracket system. Section 6 updates the Department's position with respect to traffic signals and other traffic control equipment that remain personal property. Other rule sections clarify existing language, reflect 1987 decision by the Wisconsin Court of Appeals, and change style and format to be consistent with Legislative Council Rules Clearinghouse standards.

The changes do not have a fiscal effect.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting s. 77.52(13) and (14), 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 **July 1, 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 Department of Revenue

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

Statutes interpreted: s. 77.52(13) and (14)

SECTIONS 1, 2, 3, and 4. Relating to exemption certificates, Tax 11.14(2)(a)(intro.) is amended, Tax 11.14(2)(a)7. and (12) are created, and Tax 11.14(12), (13), and (14) are renumbered, to reflect the department's creation of a new exemption certificate for governmental units.

SECTION 1. Tax 11.14(2)(a)(intro.) is amended to read:

Tax 11.14(2)(a)(intro.) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors shall exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with ~~6~~ 7 types of exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this section, are the following:

SECTION 2. Tax 11.14(2)(a)7. is created to read:

Tax 11.14(2)(a)7. Government sales and use tax exemption certificate, form S–209.

SECTION 3. Tax 11.14(12), (13) and (14) are renumbered Tax 11.14(13), (14) and (15).

SECTION 4. Tax 11.14(12) is created to read:

Tax 11.14(12) GOVERNMENT SALES AND USE TAX EXEMPTION CERTIFICATE, FORM S–209. (a) A retailer of tangible personal property or taxable services may accept from a federal or Wisconsin governmental unit a government sales and use tax exemption certificate, form S–209, as proof that a sale is exempt from sales or use tax.

(b) In lieu of accepting a form S–209 as provided in par. (a) a retailer may accept any one of the following:

1. A form S–207, certificate of exemption, described in sub. (7).

2. A purchase order or similar written document from the governmental unit identifying itself as the purchaser.

3. A verbal indication of the governmental unit's certificate of exempt status, or CES, number, which the retailer shall record on the copy of the invoice it retains.

Initial Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The rule order creates a new exemption certificate for governmental units. This change does not have a fiscal effect.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting s. 77.52(13) and (14), 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 **July 1, 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 Department of Revenue

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

Statutes interpreted: s. 77.54(2), (6)(a), (6m) and (6r)

SECTIONS 1, 3 and 5. Tax 11.39(2)(a), (3)(m), (ze) and (zf) and (4)(intro.) are amended to update language per Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 11.39(3)(fr), (jd) and (jr) are created to reflect the following:

a. The Wisconsin Supreme Court decision in the case of *Wisconsin Department of Revenue v. Bailey–Borhrman Steel Corporation* (February 7, 1980, CCH 201–636) which held that cutting rolls of coiled steel into specific widths so they could be fed into customers' presses was manufacturing. This decision, in effect, reversed the decision by the Wisconsin Tax Appeals Commission in the case of *Sargento Cheese Company, Inc. v. Wisconsin Department of Revenue* (April 20, 1978, CCH 201–492), that Sargento was not engaged in manufacturing when it cut blocks of cheese to produce a variety of packaged cheeses that could be sold at retail.

b. Based on tours of various dental labs, and changes in their operations that have occurred over the years, it is the department's position that dental labs are manufacturers.

c. Based on information provided by various contractors who make ductwork in their machine shops, it was determined by the department that, based on various Commission and court decisions in the past, such activities are manufacturing even though the contractor engages in real property construction when it installs the ductwork.

SECTION 4. Tax 11.39(3)(oc), (os), (wd) and (wr) are created to reflect the following:

a. In an unpublished decision that cannot be cited, the Court of Appeals held in the case of *Wisconsin Department of Revenue v. Artex Corporation* (January 26, 1987), that grain drying was a manufacturing process.

b. The Circuit Court, Branch 1, Milwaukee County, held in the case of *Wisconsin Department of Revenue v. Hide Service Corporation* that curing hides was manufacturing as the term was defined in s. 77.51(27), Stats. (now s. 77.54(6m), Stats.).

c. The department, after discussing with various experts in the area of manufacturing, determined that snowmaking for a ski hill is manufacturing.

d. The department, after touring many photofinishing operations and seeking the opinion of a person considered an expert in the area of manufacturing, determined that photofinishing is manufacturing.

SECTIONS 6 and 7. Tax 11.39(4)(a) is repealed to reflect the following decisions by the Wisconsin Tax Appeals Commission:

a. *Astra Plating, Inc. v. Wisconsin Department of Revenue* (March 14, 1990, corrected March 26, 1990, CCH 203–134). The Commission held that an automobile bumper recycling company was engaged in manufacturing, as the term is defined in s. 77.54(6m), Stats., when it restored damaged automobile bumpers for resale.

b. *Lerman Tire Service v. Wisconsin Department of Revenue* (June 6, 1983, Docket # S–8876). The Commission held that the taxpayer's process of tire retreading was popularly regarded as manufacturing as the term is defined in s. 77.54(6m), Stats.

Accordingly, Tax 11.39(4)(b) and (c) are renumbered Tax 11.39(4)(a) and (b). Tax 11.39(4)(a), as renumbered, is amended to clarify that certain activities when performed by contractors are not manufacturing. However, operations performed by contractors such as fabricating ductwork at its machine shop that it will install is a manufacturing operation.

SECTIONS 8 and 9. Tax 11.39(4)(d) is repealed to reflect the department's change in position with respect to dental labs. Based on tours of various dental labs, and changes in their operations that have occurred over the years, it is the department's position that dental labs are manufacturers.

Accordingly, Tax 11.39(4)(e), (f), (g), (h), (i), (j), (k), (L), (m) (n), (o) and (r)(intro.) and 1. are renumbered Tax 11.39(4)(c), (d), (e), (f), (g), (h), (i), (j), (k), (L), (m) and (n)(intro.) and 1. Tax 11.39(4)(k), as renumbered, is amended to provide consistent use of language.

SECTIONS 10 and 11. Tax 11.39(4)(r)2. is repealed to reflect the Wisconsin Tax Appeals Commission decision in the case of *House of Bidwell v. Wisconsin Department of Revenue* (September 1, 1981, CCH 202–890), which stated that production of customized prosthetic devices was manufacturing as the term is defined in s. 77.54(6m), Stats. Although the products sold to customers were customized for the customers, the operation was still found to be manufacturing.

Accordingly, Tax 11.39(4)(r)3. is renumbered Tax 11.39(4)(n)2.

SECTIONS 12 and 13. Tax 11.39(4)(r)4. is repealed to reflect the decisions in the case of *Artex Corp. v. Wisconsin Department of Revenue* (November 27, 1984, June 11, 1985 and January 26, 1987, CCH 202–496, 202–585 and 202–855), where it was held that grain drying was manufacturing as the term is defined in s. 77.54(6m), Stats.

Accordingly, Tax 11.39(4)(r)5., 6., 7., 8., 9., 11., 12., 13. and 14. are renumbered Tax 11.39(4)(n)3., 4., 5., 6., 7., 8., 9., 10. and 11.

SECTIONS 14, 15, 17, 18, 19, 20 and 21. Tax 11.41(1) is repealed and recreated and Tax 11.41(2) and (3)(b) are repealed to reflect the Wisconsin Tax Appeals Commission decision in the case of *Cherney Microbiological Services, Inc. v. Wisconsin Department of Revenue* (94–S–209, April 23, 1996, revised July 15, 1996). The Commission held that a testing laboratory was entitled to claim exemption from Wisconsin sales or use tax on certain purchases under s. 77.54(2), Stats. The Commission explained that virtually all of the quality control tests performed by Cherney were on samples supplied by manufacturers and, since the department has ruled that testing when performed by a manufacturer is part of the manufacturing process, Cherney was entitled to claim exemption on those purchases, even though it was not itself a manufacturer. The Commission also stated that the exemptions in s. 77.54(2) and (6)(a), Stats., were mutually exclusive and must be looked at separately, not together, when determining whether exemption applies.

The department filed a Notice of Nonacquiescence dated July 22, 1996, with respect to a portion of the decision. The Notice of Nonacquiescence filed by the department in response to the *Cherney* decision applies **only** to that portion of the decision that allowed exemption from sales or use tax for (a) equipment and (b) items (e.g., maps, books, and uniforms) not incorporated, consumed, or destroyed in performing testing services on work–in–process samples for manufacturers.

Accordingly, Tax 11.41(3)(title) and (a)(intro.), 1., 2., 3., 4., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15., (4) and (5)(title), (intro.), (a), (b) and (c) are renumbered Tax 11.41(2)(title) and (a)(intro.), 1., 2., 3., 4.a., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15., (3) and (4)(title), (a) and (b)1., 2. and 3.

Tax 11.41(4)(b)(intro.) is created and Tax 11.41(2)(title) and (a)4.a., (3)(title) and (intro.) and (4)(a), as renumbered, are amended to update language and improve presentation per Legislative Council Rules Clearinghouse standards.

SECTION 16. Tax 11.41(2)(a)4.b. and (b) are created to:

a. Update language and presentation to reflect Legislative Council Rules Clearinghouse standards.

b. Address the exemption from Wisconsin sales or use tax for ingredients or component parts of tangible personal property manufactured and destined for sale. Although included in the exemption under s. 77.54(2), Stats., it was not addressed in the rule.

Text of Rule

SECTION 1. Tax 11.39(2)(a) is amended to read:

Tax 11.39(2)(a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on ~~his or her~~ the producer's behalf and the package or container becomes a part of the tangible personal property as ~~such~~ the unit is customarily offered for sale by the ~~manufacturer~~ producer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant~~,~~ and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the ~~production cycle~~ scope of manufacturing.

SECTION 2. Tax 11.39(3)(fr), (jd) and (jr) are created to read:

Tax 11.39(3)(fr) Cheese cutting and repackaging plants.

(jd) Dental labs.

(jr) Ductwork fabricators.

SECTION 3. Tax 11.39(3)(m) is amended to read:

Tax 11.39(3)(m) Food processing plants ~~(~~, canning and freezing~~)~~.

SECTION 4. Tax 11.39(3)(oc), (os), (wd) and (wr) are created to read:

Tax 11.39(3)(oc) Grain dryers.

(os) Hide curers.

(wd) Persons engaged in snowmaking for a ski hill.

(wr) Photofinishers.

SECTION 5. Tax 11.39(3)(ze) and (zf) and (4)(intro.) are amended to read:

Tax 11.39(3)(ze) ~~Crushing~~ Persons engaged in crushing, washing, grading and blending sand, rock, gravel and other minerals.

(zf) ~~Ore~~ Persons engaged in ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.

(4)(intro.) ~~Examples of nonmanufacturers are~~ Nonmanufacturers include the following:

SECTION 6. Tax 11.39(4)(a) is repealed.

SECTION 7. Tax 11.39(4)(b) and (c) are renumbered Tax 11.39(4)(a) and (b) and Tax 11.39(4)(a), as renumbered, is amended to read:

Tax 11.39(4)(a) Contractors, when engaged in real property construction activities and installing or repairing tangible personal property.

SECTION 8. Tax 11.39(4)(d) is repealed.

SECTION 9. Tax 11.39(4)(e), (f), (g), (h), (i), (j), (k), (L), (m), (n), (o) and (r)(intro.) and 1. are renumbered Tax 11.39(4)(c), (d), (e), (f), (g), (h), (i), (j), (k), (L), (m) and (n)(intro.) and 1. and Tax 11.39(4)(k), as renumbered, is amended to read:

Tax 11.39(4)(k) ~~Repairperson~~ Repairpersons.

SECTION 10. Tax 11.39(4)(r)2. is repealed.

SECTION 11. Tax 11.39(4)(r)3. is renumbered Tax 11.39(4)(n)2.

SECTION 12. Tax 11.39(4)(r)4. is repealed.

SECTION 13. Tax 11.39(4)(r)5., 6., 7., 8., 9., 11., 12., 13. and 14. are renumbered Tax 11.39(4)(n)3., 4., 5., 6., 7., 8., 9., 10. and 11.

SECTION 14. Tax 11.41(1) is repealed and recreated to read:

Tax 11.41(1) GENERAL. (a) Tangible personal property consumed or destroyed or losing its identity in the manufacture of tangible personal property in any form destined for sale is exempt from Wisconsin sales or use tax.

(b) 1. Manufacture as used in par. (a) has the same meaning as manufacturing in s. 77.54(6m), Stats. and includes those activities described in s. Tax 11.39(2) as being within the scope of manufacturing.

2. An exemption under par. (a) is not allowed for property consumed or destroyed or losing its identity if any of the following apply:

a. The activity is not manufacturing or is not within the scope of manufacturing.

b. The property manufactured is not destined for sale.

SECTION 15. Tax 11.41(2) is repealed.

SECTION 16. Tax 11.41(2)(a)4.b. and (b) are created to read:

Tax 11.41(2)(a)4.b. Chemicals and cleaning agents used by food manufacturers to clean walls, ceilings, floors and drains of the rooms where manufacturing takes place in order to meet strict sanitation standards required by state and federal regulatory agencies.

(b) Tangible personal property becoming an ingredient or component part of tangible personal property destined for sale as tangible personal property is exempt from Wisconsin sales or use tax.

SECTION 17. Tax 11.41(3)(title) and (a)(intro.), 1., 2., 3., 4., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15. are renumbered Tax 11.41(2)(title) and (a)(intro.), 1., 2., 3., 4.a., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15. and Tax 11.41(2)(title) and (a)4.a., as renumbered, are amended to read:

Tax 11.41(2)(title) PROPERTY EXEMPT.

(a)4.a. Cleaning compounds and solvents for maintaining manufacturing machinery whether used during ~~the~~ manufacturing ~~process~~ or while the machinery is idle. ~~A food processor, who is required to maintain strict sanitation standards by a regulatory agency, may also purchase chemicals and cleaning agents used to clean the walls, ceilings, floors and drains of the rooms in which manufacturing takes place without tax.~~

Note to Revisor: Move the note following sub. (3)(a)4., prior to renumbering, to follow the example after sub. (2)(a)4.a. as renumbered.

SECTION 18. Tax 11.41(3)(b) is repealed.

Note to Revisor: Move the examples following sub. (3)(b) prior to repeal to follow sub. (2)(b).

SECTION 19. Tax 11.41(4) is renumbered Tax 11.41(3) and Tax 11.41(3)(title) and (intro.), as renumbered, are amended to read:

Tax 11.41(3)(title) PROPERTY NOT EXEMPT.

(intro.) The following property is not within the exemption provided by s. 77.54(2), Stats., although the property may be exempt under s. 77.54(6)(a), Stats., if the property is a ~~part of a~~ machine or specific processing equipment, or a part for that machine or equipment, used exclusively and directly in manufacturing, as described in s. Tax 11.40:

SECTION 20. Tax 11.41(4)(b)(intro.) is created to read:

Tax 11.41(4)(b)(intro.) Fuel includes:

SECTION 21. Tax 11.41(5)(title), (intro.), (a), (b) and (c) are renumbered Tax 11.41(4)(title), (a) and (b)1., 2. and 3. and Tax 11.41(4)(a), as renumbered, is amended to read:

Tax 11.41(4)(a) Fuel and electricity are specifically excluded from the exemption provided by s. 77.54(2), Stats., even though ~~such property~~ they may be consumed~~,~~ or destroyed or lose ~~its~~ their identity in the manufacture of ~~products~~ tangible personal property destined for sale~~. However, s. 77.54(30)(a)4., Stats., exempts "Any~~, except that any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edging, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.~~"Since "fuel" is not defined in s. 77.54(2), Stats., it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:~~ is exempt from sales or use tax.

Note to Revisor: Add the following note after Tax 11.41(4)(b)3. as renumbered:

Note: Since "fuel" is not defined in the sales and use tax statutes, it shall be given its ordinary meaning as provided in a dictionary. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire.

Note to Revisor: Replace the second–to–last note at the end of Tax 11.41 with the following:

Note: Section Tax 11.41 interprets s. 77.54(2), (6)(a), (6m) and (6r), Stats.

Initial Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The rule order updates the sales and use tax treatment of certain manufacturers. These changes conform to current law, therefore, they have no fiscal effect. Specifically, the changes:

* reflect two Wisconsin Tax Appeals Commission (TAC) decisions which determined that automobile bumper restoration for resale and tire retreading are manufacturing activities;

* reflect the Department of Revenue's position that certain dental laboratory operations are considered to be manufacturing activities;

* reflect a TAC decision that the production of customized prosthetic devices is a manufacturing activity;

*conform to three court decisions which determined that grain drying may be considered a manufacturing activity;

* adopt a TAC decision which determined that a testing laboratory was entitled to a sales and use tax exemption on certain purchases;

* incorporate the statutory exemption for ingredients used in the manufacturing process.

Other rule changes create titles, renumber sections, update language and presentation to provide consistency and to conform to Legislative Clearinghouse standards.

Notice of Hearing

Revenue

Notice is hereby given that pursuant to ss. 227.11 (2) (a) and 227.24 (1), Stats., and interpreting ss. 70.27 and 236.12 (7), Stats., the State of Wisconsin Department of Revenue will hold a public hearing at the time and place indicated below to consider the emergency rule promulgated **June 1, 1997**, relating to the repeal of ch. ATCP 53 and the creation of ch. Tax 53, which increases certain fees charged for plan review.

Hearing Information

July 11, 1997	**Room 207, GEF #3**
Friday	**125 South Webster St.**
9:00 a.m.	**MADISON, WI**

Analysis Prepared by the Wisconsin Dept. of Revenue

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

Statutes interpreted: ss. 70.27 and 236.12 (7), Stats.

Section 1. ATCP 53 is repealed. The unit which developed this rule was transferred from DATCP to the Department of Commerce in the 1995–97 budget. Through a Memorandum of Understanding, the work unit in question was transferred to the Department of Revenue who retains authority to administer rules and the rules process. Having been given this authority, the Department of Revenue hereby repeals ch. ATCP 53.

Section 2. Chapter Tax 53 is created to replace the repealed ch. ATCP 53. Under the rule, certain fees charged for plat review are increased. These fees include:

The fee schedule which applies to the submission of final plat or assessor's plat to the Department under s. 236.12 (2), s. 236.12 (6), or s. 70.27 (8), Stats., has increased from $15.00 to $20.00 per parcel or from $60.00 to $80.00 per plat, whichever is greater.

Under s. 236.12 (6), Stats., the fee increase to cover reproduction and postage costs apply to the submission to the Department of an original drawing for preliminary plat from $15.00 to $30.00 per sheet and for final plat or assessor's plat from $20.00 to $30.00 per sheet.

Under s. 236.12 (2), Stats., the fee increase to cover copy and postage costs, apply to the submission to the Department of copies of a final plat from $20.00 to $30.00 per sheet and for preliminary from $10.00 to $30.00 per sheet.

Initial Regulatory Flexibility Analysis

Under s. 227.11 (8) (a), Stats., this analysis is not required for emergency rules promulgated under s. 227.24, Stats.

Fiscal Estimate

Under the proposed rule, certain fees charged for plat review would be increased, beginning on the first day of the month following publication.

Based on estimates provided by the Plat Review Unit, program revenues of Plat Review would increase on an annual basis by $69,000, from $293,000 under the current rule to $362,000 under the proposed rule:

- Fees for final plat or assessor's plat submissions would increase by $62,500.
- Fees for reproduction and postage costs for submission of an original drawing of a preliminary or final plat under s. 236.12 (6), Stats., would increase by $2,000.
- Fees for copy and postage costs for submission of copies of a preliminary or final plat under s. 236.12 (2), Stats., would increase by $4,500.

Contact Person

Following the public hearing, the hearing record will remain open until **July 18, 1997**, for additional comments.

Copies of the complete rule text and fiscal estimate are available at no charge on request from Wallace T. Tews at the address listed below. An interpreter for the hearing–impaired will be available on request for the hearing. Please make reservations for a hearing interpreter by **July 9, 1997**, either by writing:

Wallace T. Tews, Assistant Administrator
Telephone (608) 266–9759
FAX (608) 264–6887
Division of State and Local Finance
Wisconsin Department of Revenue
125 South Webster Street
Madison, WI 53702

Notice of Hearing

Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.52(2)(a)20., (13) and (14) and 77.54(9a), (20)(c)4. and (30)(a)5., Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the revision of rules relating to landscaping services, and sales and purchases by governmental units and the use of exemption certificates.

Hearing Information

July 29, 1997	**Room #207, GEF 3**
Tuesday	**125 South Webster Street**
10:00 a.m.	**Madison, Wisconsin**

Handicap access is available at the Butler Street entrance of the building.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than **August 5, 1997**, and will be given the same consideration as testimony presented at the hearing.

Contact Person

Mark Wipperfurth, (608) 266−8253
Department of Revenue
125 South Webster Street
P.O. Box 8933
Madison, WI 53708−8933

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.52(2)(a)20., (13) and (14) and 77.54(9a), (20)(c)4. and (30)(a)5.

SECTION 1. Tax 11.05(2)(h) is amended to conform language and style to Legislative Council Rules Clearinghouse standards.

Tax 11.05(2)(k), relating to sales of beverages to hospitals, etc., is amended to more clearly reflect s. 77.54(20)(b) and (c)4., Stats., and to reflect the amendment to s. 77.54(20)(c)4., Stats., by 1993 Wisconsin Act 332.

Tax 11.05(2)(m), relating to sales to schools, is amended to reflect correct terminology.

Tax 11.05(2)(s) is amended to reflect the Wisconsin Tax Appeals Commission decision in the case of *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket 93−S−569), that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

Tax 11.05(3)(b), relating to sales of fuel and electricity by governmental units, is amended to reflect the creation of s. 77.54(30)(a)5., Stats., by 1991 Wisconsin Act 39.

Tax 11.05(3)(L), relating to sales of meals by governmental units, is amended to reflect the amendment to s. 77.54(20)(c)4., Stats., by 1991 Wisconsin Act 39 and 1993 Wisconsin Act 332.

Tax 11.05(4)(a), relating to sales to governmental units, is amended to include in the list of exempt governmental units a local exposition district, due to the creation of s. 77.54(9a)(g), Stats., by 1993 Wisconsin Act 263, and the University of Wisconsin Hospitals and Clinics Authority, due to the amendment to s. 77.54(9a)(a), Stats., by 1995 Wisconsin Act 27.

SECTIONS 2 AND 3. Tax 11.05(4)(b) is repealed and recreated and Tax 11.05(4)(e) is amended. These paragraphs, relating to how a retailer verifies an exempt sale to a governmental unit, are revised to reflect the department's creation of a new exemption certificate for governmental units.

SECTION 4. Tax 11.86(6) is repealed and recreated to reflect the Wisconsin Tax Appeals Commission decision in the case of *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket 93−S−569), that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

Text of Rule

SECTION 1. Tax 11.05(2)(h), (k), (m) and (s), (3)(b) and (L) and (4)(a) are amended to read:

Tax 11.05(2)(h) Sales of buildings or timber when the purchaser acquires ~~such~~ the property for removal.

(k) Sales of soda water beverages ~~and beer~~, fermented malt beverages and intoxicating liquor, including sales of these items by hospitals, sanatoriums ~~and~~, nursing homes,retirement homes, community−based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., to patients, employes or guests.

(m) Sales of books and supplies, including sales by ~~vocational,~~ technical ~~and adult education schools~~ college districts. Sales of tangible personal property by elementary and secondary schools are exempt under s. 77.54(4), Stats.

(s) The gross receipts from landscaping and lawn maintenance services, including weed cutting in lawn~~,~~ and garden ~~and other developed~~ areas and along highways, streets and walkways, but not charges for damages described in sub. (3)(c).

(3)(b) Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use. Electricity and natural gas sold for residential use and electricity sold for farm use during the months of November through April. Fuel sold for use in farming. "Sold" is defined in s. 77.54(30)(b), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57(2)(L)7.

(L) Meals, food, food products or beverages, except soda water beverages ~~and beer~~, fermented malt beverages and intoxicating liquor, sold by hospitals, sanatoriums ~~and~~ , nursing homes, retirement homes, community−based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employes, residents or guests; meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals; and meals sold to the elderly or handicapped by "mobile meals on wheels."

(4)(a) Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof, or any Wisconsin county, city, village, town, school district, county−city hospital established under s. 66.47, Stats., sewerage commission organized under s. 281.43(4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., local exposition district under subch. II of ch. 229, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

SECTION 2. Tax 11.05(4)(b) is repealed and recreated to read:

Tax 11.05(4)(b) A Wisconsin governmental unit shall provide one of the following to a retailer as proof that a sale to the governmental unit is exempt from tax:

1. A purchase order or similar written document identifying the governmental unit as the purchaser.

2. An exemption certificate, form S−207 or S−209.

Note: Form S−207, Certificate of Exemption, and Form S−209, Government Sales and Use Tax Exemption Certificate, are available from any Department of Revenue office.

SECTION 3. Tax 11.05(4)(e) is amended to read:

Tax 11.05(4)(e) Purchases, including lodging, meals or uniforms, by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental unit, receives ~~a purchase order or similar written document~~ from the governmental unit a document as described in par. (b) and keeps a copy of both documents.

Note to Revisor: Change the first note at the end of s. Tax 11.05 to read:

Note: Section Tax 11.05 interprets ss. 77.51(4)(c)6. and (10), 77.52(2)(a)1., 2., 9. and 20., (13) and (14) and 77.54(9a), (10), (15), (17), (20), (30), (32), (37) and (42), Stats.

Note to Revisor: In the second note at the end of s. Tax 11.05, delete the word "and" before part (o) and add the following at the end of the Note:

;(p) The exemption for fuel used in farming became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (q) The requirement that meals must be served on the premises of hospitals, nursing homes, etc., for exemption to apply became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (r) The exemption for sales to a local exposition district became effective April 26, 1994, pursuant to 1993 Wis. Act 263; (s) The exemption for sales of meals by community−based residential facilities became effective June 1, 1994, pursuant to 1993 Wis. Act 332; and (t) The exemption for sales to the University of Wisconsin Hospitals and Clinics Authority became effective July 29, 1995, pursuant to 1995 Wis. Act 27.

SECTION 4. Tax 11.86(6) is repealed and recreated to read:

Tax 11.86(6) LANDSCAPING SERVICES. Gross receipts from landscaping and lawn maintenance services are taxable. Except as provided in sub. (5)(a), landscaping and lawn maintenance services include:

(a) Landscape planning and counseling.

(b) Lawn and garden services, such as planting, mowing, spraying and fertilizing.

(c) Shrub and tree services.

(d) Spreading topsoil and installing sod or planting seed where trenches have been dug or sump pump, transmission and distribution lines have been buried in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other areas and along highways, streets and walkways.

Note to Revisor: Remove the example that follows sub. (6).

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

Initial Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The rule order updates the Wisconsin Administrative Code with respect to the sales and use tax treatment of landscaping services and sales and purchases by governmental units. The rule order also makes changes regarding the use of exemption certificates by governmental units to reflect the Department's creation of a new exemption certificate for governmental units.

These rule changes have no fiscal effect.

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.

Commerce (Development) (CR 97–37):
Chs. DOD 6 and Comm 108 – Relating to the community development block grant program.

Corrections (CR 96–184):
Ch. DOC 309 – Relating to food, hygiene, and living quarters for inmates.

Nursing Home Administrator Examining Board (CR 97–42):
Chs. NHA 1 to 6 – Relating to the licensure of nursing home administrators.

Revenue (CR 96–79):
Ch. Tax 18 – Relating to assessment of agricultural land.

Workforce Development (CR 97–33):
Ch. DWD 290 – Relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

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.

Employe Trust Funds (CR 96−127):
An order creating 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.
Effective 08−01−97.

Health and Family Services (CR 97−2):
An order creating ch. HFS 125, relating to do−not−resuscitate bracelets to alert emergency health care personnel of do−not−resuscitate orders.
Effective 08−01−97.

Health and Family Services (CR 97−8):
An order affecting ch. HSS 70, relating to loans to help pay for group housing for persons recovering from alcohol or other drug abuse.
Effective 08−01−97.

Justice (CR 96−38):
An order creating ch. Jus 9, relating to the deoxyribonucleic acid (DNA) databank.
Effective 08−01−97.

Public Defender (CR 97−31):
An order affecting ss. PD 1.035, 1.05 and 1.06, relating to the certification of private bar attorneys.
Effective 08−01−97.

Public Defender (CR 97−32):
An order affecting s. PD 2.06, relating to the assignment of trial division cases to the private bar.
Effective 08−01−97.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the ***June 30, 1997*** *Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266–3358.

Agriculture, Trade & Consumer Protection (CR 96–191):
An order creating s. ATCP 139.04 (11), relating to prohibiting the sale of flammable substances containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.
Effective 07–01–97.

Financial Institutions–Banking (CR 96–122):
An order amending s. Bkg 73.01, relating to adjustment service companies.
Effective 07–01–97.

Commerce (CR 97–4):
An order repealing ch. DOD 13 and creating ch. Comm 113, relating to the annual allocation of volume cap on tax–exempt private activity bonds.
Effective 07–01–97.

Employment Relations (CR 97–5):
An order affecting ss. ER 18.01, 18.04 and 18.15, relating to the creation of a catastrophic leave program that permits classified nonrepresented employes to donate certain types and amounts of leave credits to other classified nonrepresented employes who have been granted an unpaid leave of absence due to a catastrophic need and removal of the reference to Good Friday as a legal holiday for state employes.
Effective 07–01–97.

Health & Family Services (CR 96–81):
An order affecting ch. HSS 144, relating to immunization of students.
Effective 07–01–97.

Natural Resources (CR 96–41):
An order repealing and recreating s. NR 25.04 (2) (b), relating to the transfer of Great Lakes commercial fishing licenses upon the death or incapacity of the licensee.
Effective 07–01–97.

Natural Resources (CR 96–42):
An order affecting s. NR 25.08 (3) (b), relating to the transfer of individual license catch quotas upon the death or incapacity of the quota holder.
Effective 07–01–97.

Natural Resources (CR 96–133):
An order amending s. NR 10.09 (1) (c) 1. a., relating to the definition of a muzzleloader for the muzzleloader gun deer season.
Effective 07–01–97.

Natural Resources (CR 96–159):
An order affecting ss. NR 10.01, 10.26 and 11.08, relating to sharp–tailed grouse hunting.
Effective 07–01–97.

Natural Resources (CR 96–174):
An order affecting ss. NR 25.06, 25.09, 25.10 and 26.23, relating to the Lake Superior fisheries management plan.
Effective 07–01–97.

Natural Resources (CR 96–177):
An order creating s. NR 5.21 (2), relating to waiver of the slow–no–wake speed restriction on the Wild Rose Mill Pond, Waushara County.
Effective 07–01–97.

Natural Resources (CR 96–190):
An order affecting ss. NR 20.02, 20.03 and 25.06, relating to sport and commercial fishing for yellow perch in Green Bay.
Part effective 07–01–97.

Transportation (CR 96–168):
An order affecting ch. Trans 117, relating to occupational driver's license.
Effective 07–01–97.

Veterinary Examining Board (CR 96–194):
An order repealing and recreating s. VE 4.01 (3), relating to evidence that would be required (in order to obtain a veterinary license) of a candidate who is not a graduate of a school that has been approved by the Board.
Effective 07–01–97.

Workforce Development (CR 94–122):
An order creating ch. DWD 58, relating to higher quality of care standards for child care providers, and the administration of staff retention grants for providers who meet the higher quality of care standards and quality improvement grants for providers who need assistance in meeting the higher quality of care standards.
Effective 07–01–97.

Workforce Development (CR 96–7):
An order affecting ss. ILHR 100.02 and 132.001 and ch. ILHR 140, relating to unemployment insurance appeal rights and procedures.
Effective 07–01–97.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture , Trade and Consumer Protection (CR 96–191)

S. ATCP 139.04 (11) – Prohibiting the sale of flammable substances containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Summary of Final Regulatory Flexibility Analysis:

This rule revises ch. ATCP 139, Wis. Adm. Code, related to hazardous substances, by creating s. ATCP 139.04 (11) to prohibit the sale of flammable substances containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons when used or intended for use as refrigerants in motor vehicles whose mobile air conditioning systems were not designed and manufactured to use flammable refrigerants.

Refrigerants Used in Mobile Air Conditioning Systems:

Current motor vehicle air conditioning systems are designed by manufacturers to use one of only two refrigerants –– CFC–12 for pre–1993 model year vehicles, and HFC–134a for later year vehicles.

U.S. production of CFC–12 and other Class I ozone–depleting substances ceased on January 1, 1996 under terms of the Federal 1990 Clean Air Act Amendments. Currently, CFC–12 service needs for automotive air conditioning in the U.S. has been estimated at 43.8 million pounds. Current stockpiles of CFC–12, combined with supplies from recycling and reclaiming activities, have been meeting these automotive servicing needs.

As a result of diminishing supplies, the price of CFC–12 has risen dramatically on a statewide and national basis, increasing from about $8 per pound to more than $20 per pound. This has influenced business decisions to market and distribute substitute refrigerants, as well as retrofit supplies for converting CFC–12 systems to HFC–134a refrigerant.

Under federal law, the EPA has authority to review and approve substitutes to CFC–12 and other ozone–depleting substances. To date, the EPA has reviewed and approved nine separate refrigerant substitutes for use in motor vehicle air conditioning. The EPA has also acted to prohibit the general use of two flammable refrigerants –– OZ 12 and HC–12a because of public safety concerns.

Overall Effect on Small Businesses:

This general order prohibits the sale and use of flammable, hydrocarbon–based refrigerants in mobile air conditioning systems. These refrigerant products present an unreasonable public safety risk to motor vehicle owners and auto service technicians.

The Department identified a few businesses in Wisconsin which obtained product inventories, or were engaged in selling or distributing HC–12a to other automotive businesses. The Department issued an emergency rule to prohibit these sales. This rule makes the current sales ban permanent on flammable refrigerants used or intended for use in mobile air conditioning.

Any potential costs borne by businesses with banned inventory can be mitigated to the extent that these businesses seek refunds from distributors or the manufacturer under the refund remedies provided under s. 100.37 (7), Stats. This statute was revised in 1993 to allow businesses and consumers with product inventories purchased prior to a subsequent product ban adopted under Wisconsin's Hazardous Substances Law to demand and receive a refund.

Other refrigerant substitutes approved for use in mobile air conditioning systems are also available in the marketplace, thus eliminating the need for flammable refrigerants as a product in the after–market automotive parts and servicing industry.

Products affected by this rule are uncommon in the state, and do not constitute the principal product of any Wisconsin business. Refrigerants are also regulated under other state laws. The Department's mobile air conditioning rule under ch. ATCP 136, Wis. Adm. Code, currently prohibits the sale of refrigerant in containers holding less than 15 pounds. In addition, refrigerant suppliers are generally restricted to selling refrigerant to registered businesses in the state.

The interest of public safety far outweighs any potential cost to small businesses as a result of this rule. The rule also helps to protect investments made by small businesses in approved recovery and recycling equipment and refrigerant supplies by eliminating a potential source of refrigerant contamination. This contamination from intentional or inadvertent use of flammable refrigerants can lead to costly refrigerant disposal costs, the loss of warranty coverage on recovery/recycling equipment and motor vehicle parts, and defective motor vehicle repairs and follow–up servicing costs. Therefore, the rule is not expected to have a significant adverse impact on small businesses.

Summary of Comments by Legislative Committees:

Clearinghouse Rule 96–191 was referred to the Senate Committee on Agriculture & Environmental Resources on March 18, 1997, and the Assembly Environment Committee on March 25, 1997. The Department received no comments from either committee.

2. Financial Institutions––Banking (CR 96–122)

S. Bkg 73.01 – Adjustment service companies.

Summary of Final Regulatory Flexibility Analysis:

There will be no effect on small business with the promulgation of this rule.

Summary of Comments:

No comments reported.

3. Commerce (Development) (CR 97–4)

Chs. DOD 13 and Comm 113 – Annual allocation of volume cap on tax–exempt private activity bonds for 1997.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule is not expected to have any impact on small businesses, except for businesses located within the state that desire to obtain the economic benefit of industrial revenue bond financing using the volume cap allocated by the Department of Commerce. The small business ombudsman attended the public hearing and provided written testimony in support of the rule and indicated that the rule would not negatively impact small business.

No comments were received from small business.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Housing and by the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

4. Employment Relations (CR 97–5)

SS. ER 18.01, 18.04 and 18.15 – Creation of a catastrophic leave program that permits classified nonrepresented employes to donate certain types and amounts of leave credits to other classified nonrepresented employes who have been granted an unpaid leave of absence due to a catastrophic need and removal of the reference to Good Friday as a legal holiday for state employes.

Summary of Final Regulatory Flexibility Analysis:

The rule affects state employes and does not regulate small business.

Summary of Comments:

No comments were reported.

5. Health & Family Services (CR 96–81)

Ch. HSS 144 – Immunization of students.

Summary of Final Regulatory Flexibility Analysis:

These rule changes will affect students, schools, local health agencies, county attorney offices and the Department. They will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats., except day care centers that are organized as small businesses.

About 700 of the 2200 group (9 or more children) day care centers in the state are small businesses, as are virtually all of the 2600 family (4 to 8 children) day care centers. Day care centers for many years have been checking for compliance with required immunizations for school entry. By adding two new diseases against which students must be immunized, the rule changes will modestly increase paperwork for all day care centers. This is unavoidable as part of the system for protecting children against certain serious diseases to which children are susceptible and which are preventable through administration of approved vaccines.

Summary of Comments of Legislative Standing Committees:

No comments were received.

6. Natural Resources (CR 96–41)

S. NR 25.04 (2) (b) – Transfer of commercial fishing licenses.

Summary of Final Regulatory Flexibility Analysis:

These proposed rule will directly affect only commercial fishers. No additional compliance or reporting requirements will be imposed as a result of these proposed rule changes.

Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. On March 5, 1997, the Assembly Natural Resources Committee held a public hearing. At the close of the public hearing, the committee objected to the proposed rule on the grounds that the proposed rule lacked statutory authority and failed to comply with legislative intent. The proposed rule was referred to the Joint Committee for Review of Administrative Rules.

On April 16, 1997, the Joint Committee for Administrative Rules held a public hearing. The Joint Committee voted to nonconcur with the Assembly Natural Resources Committee's objection.

7. Natural Resources (CR 96–42)

S. NR 25.08 (3) (b) – Transfer of individual licensee catch quotas upon the death or incapacity of the quota holder.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule changes will directly affect only commercial fishers. No additional compliance or reporting requirements will be imposed as a result of these proposed rule changes.

Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. On March 5, 1997, the Assembly Natural Resources Committee held a public hearing. At the close of the public hearing, the committee objected to the proposed rule on the grounds that the proposed rule lacked statutory authority and failed to comply with legislative intent. The objection was based on the committee's belief that the proposed rule invested commercial fishers with a property right to catch quotas. The proposed rule was referred to the Joint Committee for Review of Administrative Rules.

On April 16, 1997, the Joint Committee for Administrative Rules held a public hearing. At that public hearing, the Lake Michigan Commercial Fishing Board submitted a germane modification to the proposed rule. The modification removed the provision that, during a transfer abeyance period, an ineligible designated transferee or immediate family member would be able to apply for and authorize a transfer of the quota to an eligible third party who is not necessarily and immediate family member – even in cases where it is apparent to the Department that the designated transferee or immediate family member cannot possibly qualify within 2 years. The Joint Committee accepted the germane modification and voted to nonconcur with the Assembly Natural Resources Committee's objection.

8. Natural Resources (CR 96–133)

S. NR 10.09 (1) (c) 1. a. – Definition of a "muzzleloader" for the muzzleloader gun deer season.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate small business; therefore, a final regulatory flexibility analysis was not prepared.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Natural Resources Committee. There were no comments.

9. Natural Resources (CR 96–159)

SS. NR 10.01, 10.26 and 11.08 – Sharp–tailed grouse hunting.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules pertain to hunting and are applicable to individual sportspeople and impose no requirements on small businesses.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

10. Natural Resources (CR 96–174)

Chs. NR 25 and 26 – Lake Superior fisheries management plan.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule changes will directly affect licensed commercial fishers on Lake Superior. No additional compliance or reporting requirements will be imposed as a result of these rule changes.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. On April 2, 1997, the Assembly Natural Resources Committee held a public hearing. The Committee did not request any modifications to the proposed rule.

11. Natural Resources (CR 96–177)

S. NR 5.21 (2) – Wild Rose Mill Pond slow–no–wake waiver.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

12. Natural Resources (CR 96–190)

SS. NR 20.02, 20.03 and 25.06 – Sport and commercial fishing for yellow perch in Lake Michigan.

Summary of Final Regulatory Flexibility Analysis:

The proposed order will directly affect licensed commercial fishers. Indirect effects will be felt by businesses, including fish wholesalers and bait and tackle shops, that depend on sport or commercial fishing for yellow perch. No additional compliance or reporting requirements will be imposed as a result of these rule changes.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Natural Resources Committee. There were no comments.

13. Transportation (CR 96–168)

Ch. Trans 117 – Occupational driver's license.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to affect small businesses, except those engaged in the provision of interlock services to the public.

In accordance with the requirements of s. 227.19 (3) (e), Stats., the Department provides the following analysis of the administrative rule:

1. The methods suggested in s. 227.114 (2), Stats., for reducing the impact of a regulation upon a small business will not be useful in this situation. The small businesses affected require the government to supply them with clientele, and this proposed regulation may decrease the number of drivers who are required to obtain ignition interlock devices (IID's) as a condition of obtaining an occupational license. The potential impact on these businesses results not from cost of compliance with government regulations, but from potential change in demand for their product.

2. Representatives of National Interlock Service suggested at hearing that the Department require all drivers convicted of second or greater offense OWI to obtain IID's as a condition of occupational licensing. The Department believes s. 343.10 (5) (a) 3., Stats., grants the Department discretionary authority to impose the requirement on some, but not all such drivers. No other alternatives were suggested. The Department did, however, expand the scope of situations where it would order the use of ignition interlocks by repeat drunk drivers to include all situations in which a court recommends or orders imposition of the requirement.

3. No reports are required of small businesses under this rule.

4. No measures or investments are required of small businesses to comply with this rule.

5. The methods suggested by s. 227.114 (2), Stats., are inapplicable in this instance and therefore providing a cost analysis of using those methods is not possible.

6. The methods suggested by s. 227.114 (2), Stats., are inapplicable in this instance and therefore providing a public health, safety and welfare impact analysis is not possible.

Summary of Comments:

No comments were reported.

14. Veterinary Examining Board (CR 96–194)

S. VE 4.01 (3) – Evidence that would be required in order to obtain a veterinary license of a candidate who is not a graduate of a school that has been approved by the Board.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

15. Workforce Development (CR 94–122)

Ch. DWD 58 – Child care quality standards and grants.

Summary of Final Regulatory Flexibility Analysis:

No effect on small business.

Summary of Comments of Legislative Standing Committees:

No comments were reported.

16. Workforce Development (CR 96–7)

SS. ILHR 100.02 and 132.001 and ch. ILHR 140 – Unemployment insurance appeals.

Summary of Final Regulatory Flexibility Analysis:

Rule changes have no new compliance requirements on small business. Small business did not raise any issues or submit any comments. No additional costs, new measures, or investments are required of small business.

Summary of Comments of Legislative Standing Committees:

No comments received.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 312. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff on Memorial Day.

PUBLIC NOTICES

Public Notice

Health and Family Services (Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low−income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. Medicaid or Medical Assistance (MA) is administered by the State's Department of Health and Family Services. Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, which provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make several changes in these plans effective July 1, 1997. Many of these changes are included in the proposed 1997−1999 state budget. After enactment of the state budget for 1997−1999, certain of these proposed changes will be modified if necessary to effectuate the mandates included in the budget act.

Proposed changes in the state plan for reimbursement for <u>outpatient hospital services</u> are the following:

1. Adjustment of the percentages by which base year outpatient costs are increased for the July 1997 through June 1999 biennium to implement the payment adjustments included in the 1997−1999 budget act.

2. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds.

3. Modification of supplemental payments to essential access city hospitals (EACH) to maintain compliance with federal payments limits.

4. For the indigent care allowance, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for an allowance, and modification of the methodology for distributing the available funding to qualifying hospitals in order to carry out mandates of s. 49.45 (6y), Wisconsin Statutes, and to maintain compliance with federal payment limits.

Proposed changes in the state plan for reimbursement for <u>inpatient hospital services</u> are the following:

1. For the payment system which is based on diagnosis−related groups (DRGs), adjustment of DRG weighting factors, standard DRG−base rates, area wage indices, and capital and medical education payments to implement the average rate adjustment provided by the 1997−1999 budget act.

2. Adjustment of payment rates and payment maximums for AIDS treatment, ventilator care and brain injury treatment to implement the average rate adjustment included in the 1997−1999 budget act.

3. If mandated under the 1997−1999 budget act, establishment of a supplemental payment to only those hospitals which provide a significant amount of inpatient pediatric services.

4. Adjusting capital payment which is currently paid at 85% of capital costs to 95% of capital costs, or some other percentage, as may be mandated under the 1997−1999 budget act.

5. Modification of the methodology for establishing payment rates for mental health hospitals owned and operated by the State to implement mandates that may be provided under the 1997−1999 budget act.

6. For hospitals paid under the DRG−based payment system, conversion of the monthly payment rate for capital costs and direct medical education costs to a rate of payment per hospital stay. Such a rate per stay will more specifically pay for the current volume of hospital stays for which the Department directly pays a fee to hospitals for the services provided. With increasing numbers of hospital stays expected to be paid by managed care organizations (HMOs) under contract with the Department, the Department will be paying hospitals directly for significantly fewer stays. The monthly payment rate cannot be reliably adjusted to reflect the decrease in the number of stays for which the Department will directly pay a specific hospital. This change is necessary to ensure a more reliable level of payment for capital and direct medical education and to ensure that the Department's direct fee for service payments to hospitals does not exceed available funding included in the 1997−1999 budget act.

7. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds.

8. Updating the disproportionate share adjustment parameters to recognize the more current proportion of services provided by hospitals to Medicaid recipients.

9. Modification of the funding limit, the qualifying criteria and the methodology for determining supplemental payments to essential access city hospitals (EACH) to maintain compliance with federal payments limits and as may be mandated under the 1997−1999 budget act.

10. For rehabilitation hospitals which change ownership, modification of provisions identifying which fiscal year cost reports are to be used for setting rates to ensure that sufficient updated payment rates can be established for such hospitals.

11. Modification of criteria defining combined hospitals to clarify the intent of the Department.

12. Modification of the methodology for establishing the outlier cost−to−charge ratio for major border−status hospitals so that the methodology is more like that used for payment of outlier cases at instate hospitals.

13. For the indigent care allowance, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for an allowance, and modification of the methodology for distributing the available funding to qualifying hospitals in order to carry out mandates of s. 49.45 (6y), Wisconsin Statutes, and to maintain compliance with federal payment limits.

14. For the general assistance disproportionate share supplement, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for the supplement, and modification of the methodology for distributing the available funding to qualifying hospitals in order to carry out mandates of s. 49.45 (6z), Wisconsin Statutes, and to maintain compliance with federal payment limits.

Implementation of the above changes to the state plans for inpatient hospital services and outpatient hospital services is expected to increase MA annual expenditures by $5.4 million all funds for state fiscal year 1997–1998 ($3.2 million federal financial participation and $2.2 million general purpose revenue). This amount is the combination of $13.5 million all funds of expected increases and a decrease of $8.1 million all funds in the general assistance disproportionate share supplement and the indigent care allowance (outpatient item 4 and inpatient items 13 and 14).

Copies of State Plan with Detail of Proposed Changes

The Department is incorporating the implementing details of these proposed changes into the state plan documents which describe the methods and standards for paying hospitals. Copies of the detailed proposed changes will be sent to every county social services or human services department main office where they will be available for public review on or before **Friday, August 15, 1997**. For copies of the detailed proposed changes or more information, interested people may telephone, fax or write:

David Bodoh
Telephone (608) 267–9589
FAX (608) 266–1096
Hospital Reimbursement Unit
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701–0309

Written Comments

Written comments on the proposed changes are welcome and should be sent to David Bodoh at the above address. Comments should be submitted by **Monday, September 8**. Later comments may be considered. Before finalizing any state plan changes, the Department may modify its proposed changes after considering the comments. A copy of the changes will be available from the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Bureau of Health Care Financing
Room 265, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health and Family Services (Medical Assistance Reimbursement of Noninstitutional Providers for Noninstitutional Services)

The State of Wisconsin reimburses noninstitutional health care providers for services provided to Medical Assistance (MA) recipients under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services (DHFS), is called Medical Assistance or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Noninstitutional providers, such as physicians, dentists and home care agencies, are paid the lesser of:

(a) their usual and customary charges or

(b) maximum fees established by DHFS for each procedure.

The Department may make changes in the maximum fee schedules if authorized in the 1997–1999 state budget act.

The Legislature is considering a proposal to increase reimbursement by 2% for selected non–institutional providers for services provided effective July 1, 1997, and an additional 2% effective July 1, 1998, for services which may include: ambulance transportation, nurse practitioner, nurse midwife, certified nurse anesthetist, chiropractic, durable medical equipment and disposable medical supplies, family planning, early and periodic screening diagnostic and testing (HealthCheck) services, hearing aids, home care, laboratory, X–ray, psychology and mental health, physicians and clinics, podiatrist, prenatal care coordination, transportation by specialized medical vehicle, therapies, vision, and drug dispensing services. Additionally, the legislature is considering a 5% rate increase for dentists effective July 1, 1997, and an additional 5% effective July 1, 1998. Non–institutional providers with cost–based reimbursement, reimbursement linked to Medicare rates, or other price or cost–based methodologies may not receive an increase under this proposal.

The estimated fiscal impact of the proposal is to increase expenditures by $7,069,000 ($2,906,800 general purpose revenues (GPR) and $4,162,200 federal financial participation (FFP) funds) in state fiscal year (SFY) 1997–1998 and $14,282,600 ($5,909,800 GPR and $8,372,800 FFP) in SFY 1998–1999 for these rate increases.

Copies of the Proposed Changes

Copies of the proposed changes will be sent to every county social services or human services department main office where they will be available for review. For more information, interested people may write to:

Melanie Foxcroft, State Plan Coordinator
Attn: State Plan Issue
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701–0303

Written Comments

Written comments on the proposed changes are welcome. Comments should be sent to the above address. Comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:40 p.m. daily at:

Bureau of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health & Family Services (Required Recipient Copayment for Certain Medical Assistance Services)

The State of Wisconsin reimburses health care providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Federal statutes and regulations permit states to require MA recipients to share in the cost of receiving certain MA services through the payment of a flat, nominal fee (copayment) per service. However, federal regulations establish maximum copayments for services and exempt some groups and services from copayments, including:

(a) recipients under the age of 18;

(b) categorically needy persons enrolled in health maintenance organizations;

(c) services relating to pregnancy;

(d) institutional services if individuals are required to spend all their income for medical expenses, except for the amount exempted for personal needs, and

(e) emergency, family planning and hospice services.

The Legislature is considering a proposal to decrease MA benefits funding by an estimated $815,700 ($334,900 state general purpose revenues (GPR) and $480,800 federal financial participation (FFP) funds) effective July 1, 1997, and $1,631,500 ($671,800 GPR and $959,700 FFP) effective July 1, 1998, to reflect the projected cost savings of:

(a) creating a copayment for specialized medical vehicle (SMV) services and free−standing ambulatory surgery services, and

(b) increasing current copayments for other services to the maximum amount permitted under federal law, excluding prescription and over−the−counter (OTC) drugs. The copayment for blood glucose monitoring reagent strips may remain at the current rate of $0.50.

Federal law establishes maximum copayment amounts for services in relation to the state's MA payment for the service, as shown in the following table:

State's MA Payment for Service	Maximum Recipient Copayment
$10.00 or less	$0.50
$10.01 to $25.00	$1.00
$25.01 to $50.00	$2.00
$50.01 or more	$3.00

It is the provider's responsibility to collect copayments. However, no participating provider may deny services to an MA recipient because of the recipient's inability to pay copayments. The MA program does not provide additional compensation to providers when they do not collect payment.

Copies of the Proposed Changes

Copies of the proposed changes will be sent to every county social services or human services department main office where they will be available for review. For more information, interested people may write to:

Melanie Foxcroft, State Plan Coordinator
Attn: State Plan Issue
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701−0303

Written Comments

Written comments on the proposed changes are welcome. Comments should be sent to the above address. Comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:40 p.m. daily at:

Bureau of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health & Family Services (Medical Assistance Reimbursement of Providers of Dental Services for Dental Sealants)

The State of Wisconsin reimburses providers for dental services provided to Medical Assistance recipients. This is done under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Legislature is considering a proposal to increase funding to add dental sealants as a covered service for children under MA, effective January 1, 1998. Currently sealants are covered by MA only through the HealthCheck other services benefit, after a child has received a HealthCheck screening. Dental sealants are an important preventive measure that are expected to achieve a significant reduction in future dental expenditures. The fiscal impact of this proposal is to increase expenditures by an estimated $1,047,800 ($430,900 state general purpose revenues (GPR) and $616,900 federal financial participation (FFP) funds) in state fiscal year (SFY) 1997−1998 and $348,300 ($144,000 GPR and $204,300 FFP) in SFY 1998−1999.

Copies of the Proposed Change

Copies of the proposed change will be sent to every county social services or human services department main office where they will be available for review. For more information, interested people may write to:

Melanie Foxcroft, State Plan Coordinator
Attn: State Plan Issue
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701−0303

Written Comments

Written comments on the proposed change are welcome. Comments should be sent to the above address. Comments received on the change will be available for public review between the hours of 7:45 a.m. and 4:40 p.m. daily at:

Bureau of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health & Family Services (Medical Assistance Reimbursement of Providers of Ambulance Transportation Services)

The State of Wisconsin reimburses providers for ambulance transportation services provided to Medical Assistance recipients under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The MA program covers certain emergency and non−emergency ambulance transportation services in cases where a recipient is suffering from an illness or injury that contraindicates transportation by other means.

Ambulance providers are paid the sum of a basic life support (BLS) rate and a per mile rate under a maximum fee schedule which recognizes cost differences between providers that operate in Milwaukee county, metropolitan areas, and other areas of the state ("statewide").

The Legislature is considering a proposal to establish an advanced life support (ALS) rate for ambulance providers effective July 1, 1998, that would be 120% of the current BLS rate in each area: Milwaukee county, designated metropolitan areas, and statewide. ALS services are more costly than BLS services because they require more equipment and training of personnel. Currently MA pays only the BLS rate per trip. The fiscal impact of the new ALS rate is to increase expenditures by an estimated at $1,041,100 ($430,800 state general purpose revenues and $610,300 federal financial participation funds) in state fiscal year 1998−1999.

Copies of the Proposed Change

Copies of the proposed change will be sent to every county social services or human services department main office where they will be available for review. For more information, interested people may write to:

Melanie Foxcroft, State Plan Coordinator
Attn: State Plan Issue
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701−0303

Written Comments

Written comments on the proposed change are welcome. Comments should be sent to the above address. Comments received on the change will be available for public review between the hours of 7:45 a.m. and 4:40 p.m. daily at:

Bureau of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health & Family Services (Medical Assistance Reimbursement of Providers of Mental Health Services)

The State of Wisconsin reimburses providers for mental health services provided to Medical Assistance recipients under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Legislature is considering the establishment of a new psychosocial services benefit targeted to individuals whose mental health needs are less severe than individuals with chronic mental illness, if allowed under federal MA law. The new benefit would be at county option, and counties would pay the state share of the MA cost. The Department would be directed to establish:

(a) the scope of services;

(b) recipient eligibility criteria; and

(c) provider certification for this benefit.

The benefit would be effective on the date established in the 1997−1999 budget act. The estimated increase in expenditures attributable to these changes is approximately $570,000 in federal financial participation funds in state fiscal year (SFY) 1998−1999. No state general purpose revenue (GPR) dollars are required.

In addition, the Legislature may require the Department to provide counties, if permitted under federal MA law, the option of reimbursing as an MA service those mental health and alcohol and other drug abuse services under s. 49.46 (2) (9b) 6f, Stats., that are provided to recipients age 21 and over in their place of residence or other community settings. Counties would be responsible for paying the state share of the MA cost. The estimated increase in expenditures attributable to these changes is approximately $50,000 FFP in SFY 1997−1998 and $250,000 FFP in SFY 1998−1999. No GPR dollars are required.

Copies of the Proposed Changes

Copies of the proposed changes will be sent to every county social services or human services department main office where they will be available for review. For more information, interested people may write to:

Melanie Foxcroft, State Plan Coordinator
Attn: State Plan Issue
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701−0303

Written Comments

Written comments on the proposed changes are welcome. Comments should be sent to the above address. Comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:40 p.m. daily at:

Bureau of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health & Family Services (Medical Assistance Reimbursement of Nursing Homes)

State of Wisconsin Medicaid Nursing Facility Payment Plan: FY97−98

The State of Wisconsin reimburses Medicaid−certified nursing facilities for long−term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and

regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin (methods of payment for costs incurred by efficiently and economically operated providers) is now in effect as approved by the Federal Health Care Financing Administration (HCFA).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 1997. The proposed changes which comprise this plan amendment will not be finalized until the public comment period is concluded. The public comment period will continue until at least September 1. The plan amendment's proposed changes will be effective retroactive to July 1, 1997. Individuals and organizations may obtain or review copies of the draft proposed changes covered by the plan amendment and may also attend the public meetings on the plan amendment. See the end of this notice for information about the public meetings and where to send for or to review copies of the draft proposed changes.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement policies that will be included in the Wisconsin 1997–99 Budget Act; some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA recipients is approximately $50,975,000 all funds ($30,014,100 federal), excluding patient liability.

The proposed changes are being implemented to ensure that there is adequate funding related to cost increases incurred by efficiently and economically operated facilities, and to comply with state statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wisconsin Statutes.

Some of the proposed changes implement policies contained in the State's 1995–97 budget. Since the biennial budget is not yet final, many of the proposals are not yet available. See the end of this notice for information on public meetings and how to obtain or review copies of drafts when available. The public meetings are intended as public discussion forums on nursing home State Plan amendment proposals which are available as drafts and proposals which are in process pending passage of the final budget for the 1997–99 biennium. The plan amendment will not be submitted to the federal Health Care Financing Administration or implemented until drafts have been discussed at public meetings and both written and oral comments have been reviewed and considered.

General proposed changes

The general proposed changes are as follows:

1. Modify the methodology to adjust reimbursement for nursing homes within the parameters of the 1997–99 Budget Act.
2. Modify plan provisions to continue the federal Omnibus Budget Reconciliation Act (OBRA) provisions relating to nursing homes.
3. Revise various references to specific years and related provisions to clarify the base year, the rate year and various payment policies which are specific to a given year.
4. Incorporate technical revisions as needed in select sections requiring clarification.
5. Incorporate miscellaneous changes as necessary to implement the intent of the payment plan.
6. Change the Wisconsin Administrative Code references in the plan from Department of Health and Social Services (DHSS) to Department of Health and Family Services (DHFS) to reflect the Department's name change.

Proposed changes published in an advance notice on June 30, 1996, to take effect July 1, 1997

1. Revise Section 3.110 to permit a separate ICF 1 rate and ICF 2 rate.
2. Revise Section 3.110 to allow a setting of a rate for ICF 3 and ICF 4 residents equal to the payment rate for ICF 3 residents.

Proposed changes to implement provisions of the 1997–99 Budget Act

1. Modify the methodology to distribute approximately 6.1% or $50,975,000 (all funds), excluding patient liability, whichever is less, in the payment rate year of July 1, 1997, through June 30, 1998.
2. Reduce the direct care maximums in Section 5.410 from 110% of the median.
3. Reduce the cost–sharing percentage in Section 3.532 for nursing homes with property costs in excess of the target from the current level of 40%. This reduction may include phase down provisions possibly for nursing homes subject to Section 1.600 Resource Allocation Program maximums.
4. Modify Section 3.115 and pertinent sections relating to the classification of all Medicare–funded nursing home days as intensive skilled nursing (ISN) days rather than the current reclassification of 12.5% of Medicare days.
5. Modify Section 5.440 to increase the direct care increment, from 93% of the median of facilities in the State.
6. Amend Sections 2.650, 3.254 and 5.551 to increase the exceptional Medicaid utilization adjustment by increasing the additional payment to nursing homes with a high percentage of MA residents by increasing the base add–on to a facility's per diem rate from $0.25 per patient day.
7. Modify Section 3.000 on patient days, licensed bed adjustments and minimum occupancy relating to using a three–year average for the occupancy rate in applying the minimum occupancy standard and relating to a proposed bed bank policy. The modifications would allow a nursing home to delicense any of its nursing home beds to partially avoid the effect of the minimum occupancy standard on its Medicaid reimbursement.
8. Modify the Methods as necessary to implement a bed bank policy which would include a provision for recoupments.
9. Modify Section 3.775 to allow for the possible distribution of additional funds for operating deficits for facilities operated by local units of government.

Other proposed changes

1. Modify Sections 2.160, 3.123, 3.124, 3.125, 3.126, 3.128 and 5.420 and related sections to eliminate the emotionally disturbed supplement in accordance with 1995 Wisconsin Act 27, the 1995–97 budget act.
2. Create a section clarifying the authority of the Department to offset certain Medicare revenue against the related cost report expenses.
3. Modify Sections 3.220, 3.500, 3.700 and 5.300 through 5.900, as applicable, to adjust as may be necessary the payment parameters, factors, targets, maximums, increments and indices.
4. Modify the plan amendment to eliminate Section 7.000 since this section does not apply to the revised system for the plan amendment year. This includes the sample rate calculation included as part of the plan amendment, the policy on applicable formula maximums

drafted to clarify the implementation of the Section 7.000 rate on rate payment system, and references to Section 7.000 throughout the plan amendment.

5. Amend Section 1.241 to clarify the use of "allowable" worker's compensation costs in self–insurance plans under Section 1.248.
6. Modify Section 1.600 to clarify that prior year Ch. 150 rates effective as maximums at time of plan amendment remain in effect and to update the citations relating to ch. 150, Stats., and ch. HFS 122.
7. Modify Section 3.254 relating to exceptional Medicaid utilization adjustment to clarify when payment adjustment is effective when ownership changes.
8. Amend Section 3.525 (a) to change the useful life reference from Medicare guidelines to American Hospital Association guidelines.
9. Amend Section 3.525 on depreciation and amortization policy, Section 3.526 on interest expense, Section 3.526 (c) and (d) on systematic reduction of debt, and related provisions in Section 3.500 specifically to clarify, as needed, the policies regarding letters of credit which may not be addressed currently in the plan amendment.
10. Amend Section 3.526 (c) on interest expense relating to reduction of debt to assure that reduction of debt is required.
11. Amend Section 3.526 (d) on interest expense relating to refinancing of debt to assure that the plan amendment addresses bonding letters of credit.
12. Eliminate Section 3.013 (b) to exempt homes with phase–down agreements from minimum occupancy requirement.
13. Modify Section 4.520 relating to payment rates during a phase–down period to explicitly state that the Section 3.500 property allowance is included in the minimum patient days calculation.
14. Modify Section 1.500 on billing for bed hold relating to the criteria for billing and to eliminate Sections 1.530 (1) and (2) exclusions for determining the licensed beds for billing.
15. Amend Section 4.850 relating to payment for services to permit payment of the facility's daily rate to the evacuated–use sites during the evacuation period and to allow a retrospective settlement or calculation for determination of, and payment for, extraordinary expenses.
16. Modify Section 5.430 relating to the labor regions for the direct care allowances to reflect a revised methodology and a rebasing of the labor regions.
17. Amend Section 3.529 on energy savings projects relating to project incentives.
18. Modify Section 3.537 on the maximum allowable decrease for the property allowance to clarify, if necessary, that the allowance in effect was the allowance calculated in the 1995–96 payment rates.
19. Create Section 3.776 describing the use of supplementary funding for local government–owned facilities which are either closing or being sold.
20. Modify Section 4.501 to prohibit facilities using Section 3.776 from receiving a special payment rate for significant decreases in licensed beds.
21. Modify Section 5.210 to reference allowable over–the–counter drugs.
22. Amend Section 2.500 as follows to describe what the property payment allowance covers beyond the value of the buildings.
23. Amend Section 1.270 to clarify revenues from invested funds.
24. Modify Section 4.120 to redefine material adjustments for this payment system.
25. Move payment–related parameters from Section 3.000 to Section 5.000.
26. Amend the Methods to renumber certain Sections, specifically 2.600–2.650, 2.800, 3.800, and 3.600.
27. Amend the plan amendment as appropriate to effect any changes necessary related to the above modifications to assure that the intent and the purpose of the above changes are achieved.

Proposed change to take effect January 1, 1998 (advance public notice)

1. Modify Section 5.164 relating to covered services, waivers and variances, and prior authorization to encourage the use of the most cost–effective durable medical equipment for the prevention and treatment of pressure relief sores, pressure sores, and decubiti.

Copies of the Available Proposed Changes

Copies of the available proposed changes may be obtained free of charge by calling or writing as follows:

Phone (608) 267–9595
FAX (608) 266–1096 –– (Attention: Nursing Home Medicaid Payment Plan)

Regular Mail
Attention: Nursing Home Medicaid Payment Plan
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701–0309

E–Mail
JEHLDJ@DHFS.STATE.WI.US (must use caps)

Copies of the available proposed changes will be available for review at the main office of any county department of social services or human services from July 15 through at least September 1.

Since changes will be continuously developed during the public comment period, additional materials will be developed and will be available through the options above or by attending the public meetings. If you request copies of the proposed changes, you will receive a copy of the final changes or the final plan amendment.

Before finalizing the plan amendment, the Department may modify its proposed changes after considering the comments received during the public comment period. The plan amendment will not be submitted to the federal government until after the public comment period and will be effective retroactively to July 1, 1997.

Written Comments

Except for the public meetings, only written comments will be considered. Written comments on the proposed changes may be sent by FAX, E–mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 266–1096. The E–mail address is: JEHLDJ@DHFS.STATE.WI.US (must use caps). Regular mail may be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes, based on comments received.

Public Meetings

There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please *fax* or *write* using the above addresses. The proposed changes may be revised, based on comments received at these forums.

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