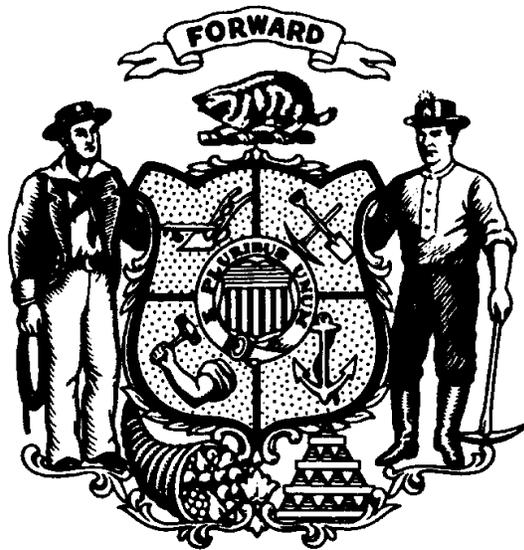


WISCONSIN ADMINISTRATIVE REGISTER

No. 501



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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

Hearing Date: July 29, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

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

Finding of Emergency

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

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

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

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

Publication Date: May 30, 1997

Effective Date: May 30, 1997

Expiration Date: October 28, 1997

Hearing Dates: August 25, 28 & 29, 1997

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

Finding of Emergency

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

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

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Dates: August 27, 28 & 29, 1997

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

Finding of Emergency

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

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

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

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

Publication Date: August 4, 1997
Effective Date: August 4, 1997
Expiration Date: January 2, 1998

EMERGENCY RULES NOW IN EFFECT

Health and Family Services **(Health, Chs. HSS 110--)**

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 employees 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, 1997, 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
Extension Through: October 31, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Commissioner of Insurance

1. 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

2. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees calculation of adding certain physician specialties and UW hospital and clinics residents' fees.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The deputy commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 97-71, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1997. The permanent rule was delayed pending legislative action on Senate Bill 145 which, if passed, will require a lowering of the fund fees originally proposed by the fund's board of governors. Senate Bill 145 may still reach the Senate floor this legislative session but, in all likelihood not before July 1, 1997, when this fee rule must be in effect. Assembly Bill 248, the Assembly bill which mirrors Senate Bill 145, passed the Assembly overwhelmingly.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 15, 1997. Because the provisions of this rule first apply on July 1, 1997, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to the published notice was held on May 30, 1997.

Publication Date: June 20, 1997
Effective Date: June 20, 1997
Expiration Date: November, 18, 1997

3. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1997, adding certain physician specialties to those currently listed in the rule and providing that UW hospital and clinics residents' fees be calculated on a full-time-equivalent basis in the same manner as medical college of Wisconsin resident fees are currently calculated.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

1997 Wis. Act 11 was signed into law on July 14, 1997, but by its terms made effective July 1, 1997. Act 11 increased the required primary limits for health care providers subject to the fund from \$400,000 to \$1,000,000 for each occurrence and from \$1,000,000 to \$3,000,000 for an annual aggregate limit. A prior emergency rule effective June 20, 1997, set fund fees for the current fiscal year beginning July 1, 1997, based on the lower liability limits then in effect. The enactment of Act 11 on July 14, 1997, increasing the primary limits made this emergency rule necessary to reduce fund fees as of July 1, 1997, the effective date of that Act.

The commissioner expects that the revised permanent rule corresponding to this emergency rule, clearinghouse rule No.

97-71, will be filed with the secretary of state in time to take effect November 15, 1997. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 30, 1997.

Publication Date: August 12, 1997
Effective Date: August 12, 1997
Expiration Date: January 10, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

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

Exemption From Finding of Emergency

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

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

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

2. Rules adopted revising **ch. NR 10**, relating to the 1997 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

The foregoing rules are approved and adopted by the Natural Resources Board on August 27, 1997.

Publication Date: September 12, 1997
Effective Date: September 12, 1997
Expiration Date: February 10, 1998

EMERGENCY RULES NOW IN EFFECT

Public Defender

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

Finding of Emergency

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

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

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

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. 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
Extension Through: August 30, 1997

- Rules adopted revising **chs. PI 3 and 4**, relating to teacher certification requirements and certification program requirements.

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.

Proposed permanent rules were submitted to the Wisconsin Legislative Council on May 27, 1997. Most of the modifications made under the proposed permanent and emergency rules clarify, eliminate redundancy, and streamline current requirements to make the provisions under ch. PI 3 and 4 easier to read, understand, and implement. The rules also provide for consistency with other state agency licensure activity.

In order for teachers to apply for or renew specified licenses (license are issued July 1 through June 30) and for universities to have program requirements in place in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Revenue

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
Hearing Date: July 29, 1997

EMERGENCY RULES NOW IN EFFECT

State Fair Park Board

Rules adopted revising **chs. SFP 2 and 7**, relating to regulation of activities at the state fair park and revising bond schedule.

Finding of Emergency

The Wisconsin State Fair Park Board finds that an emergency exists and that the adoption of rules is necessary for the immediate preservation of the public peace, health, safety and welfare of its citizens. The facts constituting this emergency are as follows:

During the annual State Fair, which is scheduled to begin on July 31, 1997, the Wisconsin State Fair Park is host to over 100,000 people per day and millions of dollars in merchandise and property. Initially, chapters SFP 1-7 were designed primarily to protect the property of the State Fair Park.

However, crime patterns at the State Fair Park have changed dramatically since those rules were adopted in 1967. With the increases in attendance and number of events in the intervening years, the number and severity of crimes against State Fair visitors, patrons, and property have necessarily increased. Also, a general rise in gang-related activity at Park events and during skating hours at the Pettit National Ice Center has occurred over the last several years. Consequently, there is a greater need for Park Police Department arrest authority on the Park grounds in order to ensure prosecutorial cooperation by Milwaukee County.

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court system are reluctant to process and charge offenders for relatively minor property-type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee county by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various weapons prohibitions. There is also included provisions to protect the police horses which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family-oriented environment at this year's State Fair and other Park events. It is necessary to use the emergency rule for processing the proposed rule change to Administrative Code, reference to the bail bond schedule, section 5, s. SFP 7.02. Section 5, s. SFP 7.02 is amended to repeal the old bond schedule and recreate the new bond schedule to align the bond code with the corresponding section in the Wisconsin Administrative Code to take effect before the 1997 Wisconsin State Fair begins on July 31, 1997.

The State Fair Park Board has begun the permanent rule process but the normal process will take between 6 and 9 months to complete. It is imperative to have these rules in place by the time of the 1997 State Fair.

These rules are therefore adopted as emergency rules to take effect upon publication in the official state newspaper and filing with

the Secretary of State and the Revisor of Statutes as provided in s. 227.24 (1) (c), Stats.

Publication Date: August 1, 1997
Effective Date: August 1, 1997
Expiration Date: December 30, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

Rules adopted revising **ch. Trans 300**, relating to school buses.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. The amendments are needed to assure that school bus operators can purchase school buses manufactured using the latest in construction technology and providing equal strength and safety. Currently, there are estimated to be 60 buses on order by operators. Without this emergency rule, these buses could not be used in Wisconsin when the school year begins in August 1997. Therefore, schools will start using alternative vehicles (production vans) because of the unavailability of the smaller school buses built to the safer school bus standards.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: August 26, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Economic Support, Chs. DWD 11–59)

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

Extension Through: September 27, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Natural Resources

Subject:

Ch. NR 10 – Relating to changes needed to reflect the changes in 1997 Wis. Act 1 (fee package), pertaining to the hunting of bear.

Description of policy issues:

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

In addition to a few housekeeping changes reflecting wording changes, the Department will be seeking approval to create for the bear hunters the ability to apply as a group for a Class A bear license. (The old harvest permit). 1997 Wis. Act 1, created an exemption to s. 29.245, the shining law, which allows a person to possess a weapon and shine bear after 10:00 p.m. for educational purposes. The Department will determine who is eligible by creating a definition for educational purposes and be asking for permit authority to control who can obtain this authorization to shine bear with a weapon.

The Wisconsin Bear Hunters Association and the Conservation Congress are interested in this issue.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The Department has never provided the opportunity for bear hunters to apply as a group. The bear hunting organization has asked the Department to do so and the Department thinks it is a good idea. The Department will follow the procedures as used for turkey hunting. Until this last legislative change, the Department has not authorized anyone to possess a weapon and shine bear over a bear bait. The legislative intent was to create an exemption for an eco-tourism activity occurring in the north, whereas people hire a person to take them out to photograph bear at night. The exemption to possess a firearm while shining is for self-protection and a guaranteed right in the Constitution.

Statutory authority:

1997 Wis. Act 1

Anticipated time commitment:

The anticipated time commitment is 16 hours and 15 minutes. Two public hearings are proposed to be held in January 1998, one in the north and one in the south.

Natural Resources

Subject:

NR Code – Relating to requesting NRB authority to adopt emergency and permanent rules to implement private forest landowner grant program.

Description of policy issues:

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

The rules will provide guidance for implementing the forestry grant program as authorized in the 97-98 budget bill. Upon enactment, the Statute will authorize grants to private forest landowners to implement forest stewardship management plans that “protect and enhance soil and water quality; endangered, threatened or rare forest communities; the growth and maintenance of the forest; habitat for fish and wildlife, and; the recreational, aesthetic and environmental benefits that the forest land provides.”

Private, non-industrial, forest landowners (totally over 225,000) will benefit from the provisions of this law that provide financial assistance for long-term investments in resource management. Others interested will be private consulting and industrial foresters who work with landowners, private tree and shrub nurseries who provide plant materials, as well as, contractors who implement the practices (i.e. tree planters and installers of erosion and stream protection structures). The County Land & Water Conservation Departments also have an interest, as they will be involved in administering the grants at the local level and providing technical assistance to landowners. The workload of DNR foresters and other resource managers will be impacted, although any additional work is offset by the loss in recent years of federal funds for these purposes.

It is expected that there will be little, if any, opposition to adoption of these rules.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Since the proposed rules implement new legislation, they do not represent a change in policy.

The need for the rules stems from new legislation which will provide state funding for forest management and conservation practices. The rules establish a preference and award system that will be fair and equitable.

Statutory authority:

SS. 23.097 (2), 23.11, 28.07 and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 351 hours. Two public hearings are proposed to be held in November 11, 1997 in Madison and Wausau.

Natural Resources

Subject:

S. NR 485.04 – Relating to revision to Table 1 “Emission Limitations for the Transient Emission Test”. The objective of the proposed rule is to relax the final phase of emission limitations for some groups of older motor vehicles to ensure that the limitations are more closely related to the emission levels which the vehicles are reasonably capable of achieving and maintaining.

Description of policy issues:

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

The policy issues that need to be resolved are:

1) Determining the level of emission limitations that would achieve a balance between reducing ozone-forming emissions and avoiding costly and ineffective repairs on vehicles that exceed the limitations.

2) Determining whether the final phase emission limitations should be phased-in on a longer schedule (beyond December, 1997) to further minimize the risk of costly and ineffective repairs.

Staff from the Departments of Natural Resources and Transportation are currently looking at options and alternatives for resolving these issues. Staff from these two Departments have also discussed the proposed revision with vehicle manufacturers, the vehicle repair industry, environmentalists, technical college personnel. They all support relaxing the final phase of emission limitations for older vehicles.

The groups likely to be impacted or interested in the proposed rule are owners of motor vehicles subject to the emission inspection program and the vehicle repair industry in the seven southeastern Wisconsin counties of the program area (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha counties).

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

The proposed rule will not impose requirements on any previously unregulated source. It will only relax the final phase of emission limitations for some of the motor vehicles already subject to the requirements of the motor vehicle emission inspection program.

Since the current rule requires the final phase of emission limitations to take effect December 1, 1997, an emergency rule is needed to complete the revision by that date. An identical permanent rule will be processed in parallel. Preservation of the public welfare necessitates the adoption of an emergency rule since recent technical information indicates that a large proportion of older vehicles cannot reasonably maintain emissions in compliance with the final phase emission limitations. The repairs which would need to be done on older vehicles attempting to comply with these limitations would often be costly and ineffective in keeping emissions low.

Statutory authority:

SS. 227.11 (2) (a), 285.11 (1) and 285.30 (2), Stats.

Anticipated time commitment:

The anticipated time commitment is 370 hours. One or two public hearings are proposed to be held in December, 1997 in Milwaukee.

Natural Resources

Subject:

Ch. NR 113 – Relating to septage management.

Description of policy issues:

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

The Department seeks modification to the restrictions placed on land application of septage on frozen or snow-covered ground, and other generally minor clerical corrections. Impacted groups include the pumpers who service such systems, wastewater treatment plants, homeowners and environmental groups.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

When revisions to chapter NR 113 became effective January 1, 1997, a provision was included by the Natural Resources Board concerning restrictions on land-applying septage on frozen or snow-covered ground. This provision required the Department to appear before the Board by February, 1998 to request the restrictions be approved or disapproved. The Department staff has listened to the many concerns raised by haulers and others with respect to the lack of alternative disposal options which exist in various parts of the state during winter months. The Department therefore will seek modifications to ch. NR 113, which will set conditions on land application of septage on frozen or snow covered ground, to allow such application, while still providing adequate water quality protection.

Statutory authority:

S. 40 CFR 503.14 (b)

S. 281.48 (4g), Stats.

Federal and state statutes do not contain specific site-management provisions, but require that rules be promulgated to prevent runoff and protect water quality. Federal statutes specifically address frozen or snow covered sites.

Anticipated time commitment:

The anticipated time commitment is 62.5 hours. One public hearing is proposed to be held in March, 1998 in Madison.

Veterinary Examining Board

Subject:

VE Code – Relating to the practice of veterinarians and veterinary technicians.

Description of policy issues:

Objective of the rule:

Clarify and update administrative rules. Recommended changes relate to such issues as form, style, placement, grammar, punctuation, and use of plain language; examination passing scores; and examination reviews. Create a provision to address the Americans With Disabilities Act. Also, repeal outdated provisions in the rules. Replace “animal technician” with “veterinary technician.”

Policy analysis:

The proposed changes focus primarily on the form, placement, clarity, grammar, punctuation, plain language and related issues. Amend several definitions. Clarify how passing scores on examinations are determined. Repeal obsolete provisions. Create a provision to address the Americans With Disabilities Act. Replace “animal technician” with “veterinary technician” to conform with the statutes.

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2), 453.03 and 453.065, Stats.

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

The anticipated time commitment is 20 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.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On September 15, 1997, the Wisconsin Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order amends ch. ATCP 29, relating to pesticide use and control.

Agency Procedure for Promulgation

Public hearings are required. Five hearings will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Agricultural Resource Management is primarily responsible for promulgation of this rule.

Contact People

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

Ned Zuelsdorff
Division of Agricultural Resource Management
Telephone (608) 224-4550

Attorney Jim Matson
(608) 224-5022

Natural Resources

Rule Submittal Date

On September 10, 1997, the Department of Natural Resources submitted a proposed rule [LE-23-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects s. NR 20.13 (2), relating to prohibiting ice fishing shelters on the Fox River in Brown County below the dam at DePere.

Agency Procedure for Promulgation

A public hearing will be held on October 20, 1997.

Contact People

Gary Homuth
Bureau of Law Enforcement
Telephone (608) 266-3244

Natural Resources

Rule Submittal Date

On September 10, 1997, the Department of Natural Resources submitted a proposed rule [FH-26-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects s. NR 24.09, relating to closure of washboard mussel season on Wisconsin-Iowa boundary waters.

Agency Procedure for Promulgation

Public hearings will be held on October 14 and 16, 1997.

Contact People

Karl Scheidegger
Bureau of Fisheries Management & Habitat Protection
Telephone (608) 267-9426

Natural Resources

Rule Submittal Date

On September 10, 1997, the Department of Natural Resources submitted a proposed rule [FH-25-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects s. NR 25.03, relating to minimum catch requirements for the renewal of annual Lake Michigan commercial fishing licenses.

Agency Procedure for Promulgation

Public hearings will be held on October 20 and 23, 1997.

Contact People

Bill Horns
Bureau of Fisheries Management & Habitat Protection
Telephone (608) 266-8782

Natural Resources

Rule Submittal Date

On September 10, 1997, the Department of Natural Resources submitted a proposed rule [WT-24-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects s. NR 102.10 (1m), relating to outstanding resource waters.

Agency Procedure for Promulgation

Public hearings will be held on October 28 and 29, 1997.

Contact People

Ron Martin
Bureau of Watershed Management
Telephone (608) 266-9270

Public Defender

Rule Submittal Date

Pursuant to s. 227.14 (4m), Stats., notice is hereby given that on September 11, 1997, the Office of the State Public Defender submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends s. PD 3.038 (2), relating to the calculation of indigency.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The organizational unit primarily responsible for promulgation of the rule is the SPD's Office of Legal Counsel.

Contact People

Gina Pruski, Deputy Legal Counsel
Telephone (608) 266-6782

Agency Procedure for Promulgation

A public hearing is required.

Contact People

Pamela Haack, Administrative Rules Coordinator
Telephone (608) 266-0495

**Social Workers, Marriage & Family
Therapists and Professional Counselors
Examining Board***Rule Submittal Date*

On September 4, 1997, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

*Analysis**Statutory authority:*

Sections 15.08 (5) (b), 227.11 (2) and 457.03, Stats.

The proposed rule-making order relates to examination requirements and procedures, academic programs equivalent to master's and doctorate degrees in professional counseling, and temporary certificates for professional counselors.

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

► (Reprinted from 09-15-97 Wis. Adm. Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATPC 30, Wis. Adm. Code, relating to the use of atrazine pesticides.

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The Department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **October 8, 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) 224-4505
Wis. Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Dr.
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 **September 15, 1997** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4505) or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearings.

Hearing Information

Five hearings are scheduled:

| <u>Date & Time</u> | <u>Location</u> |
|--|---|
| Sept. 23, 1997 Tuesday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m. | Quality Inn 809 W. Clairemont Ave. EAU CLAIRE, WI |
| Sept. 24, 1997 Wednesday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m. | Holiday Inn U.S. Highway 51 & Northpoint Dr. STEVENS POINT, WI |
| Sept. 25, 1997 Thursday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m. | Holiday Inn 150 Nicolet Rd. APPLETON, WI |
| Sept. 29, 1997 Monday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m. | Super 8 Motel 100 Foundry Dr. RICHLAND CENTER, WI |
| Sept. 30, 1997 Tuesday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m. | DATCP 2811 Agriculture Dr. MADISON, WI |

Written comments will be accepted until **October 8, 1997**.

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

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

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

In order to protect Wisconsin groundwater, the Department has adopted atrazine rules under ch. ATPC 30, Wis. Adm. Code. The current rules restrict the statewide rate at which atrazine pesticides may be applied. The current rules also prohibit the use of atrazine on approximately 1.2 million acres in areas where groundwater contamination attains or exceeds the enforcement standard established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code.

This rule amends the current ch. ATPC 30 rules as follows:

- It prohibits atrazine use on approximately 13,000 additional acres based on new groundwater test data. The rule creates 2 new prohibition areas and enlarges 5 others.
- It establishes conditions which must be met before the Department may repeal or reduce the size of an atrazine prohibition area.

New or Expanded Prohibition Areas

Current rules prohibit the use of atrazine in 96 designated areas. These include large prohibition areas in the lower Wisconsin river valley, Dane County and Columbia County, and smaller prohibition areas throughout the state.

This rule repeals and recreates 5 current prohibition areas to expand those areas, and creates 2 new prohibition areas. The rule includes maps describing each of the new and expanded prohibition areas.

Within a prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATPC 29.151 (2) to (4), Wis. Adm. Code.

Standards for Repealing Prohibition Areas

This rule spells out conditions which must be met before the department may repeal or reduce the size of an atrazine prohibition area. In future annual updates to the atrazine rule, the Department may repeal or reduce the size of prohibition areas in which these conditions are met. This rule does not repeal or reduce the size of any atrazine prohibition area.

Under this rule, the Department must find all of the following before it repeals or reduces the size of a prohibition area:

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

- Tests (if any) conducted at other well sites in the prohibition area, during the same retesting period, reveal no other atrazine concentrations that exceed 50% of the enforcement standard.

- The Department determines, based on credible scientific evidence, that renewed use of atrazine in the prohibition area is not likely to cause a renewed violation of the enforcement standard.

Fiscal Estimate

See Mid-September, 1997 Wis. Adm. Register, page 16.

Initial Regulatory Flexibility Analysis

See Mid–September, 1997 *Wis. Adm. Register*, page 16.

Notice to Dept. of Development

The Department has given notice of this proposed rule to the Wisconsin Department of Development, as required by s. 227.114 (5), Stats.

Draft Environmental Impact Statement

The Department has prepared a draft environmental impact statement (EIS) for proposed 1998 amendments to rules on the use of pesticides containing atrazine. Copies are available from the Department on request and will be available at the public hearings. Comments on the EIS should be directed to:

In care of Jeff Postle
Phone (608) 224-4503
Agricultural Resource Mgmt. Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708

Written comments on the EIS will be accepted until **October 8, 1997**.

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 proposed amendments to chs. ATCP 29 and 30, Wis. Adm. Code, relating to the use and control of pesticides. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. During the first half–hour of each scheduled hearing session, the department will give a presentation on the proposed changes. The department also invites comments on the draft environmental assessment which accompanies the rule. Following the public hearings, the hearing record will remain open until **November 7, 1997** for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling (608) 224–4542. Copies are available for review at public libraries, and will 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 **October 6, 1997** either by writing to Karen Fenster, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224–4542) or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearings.

Hearing Information

Five hearings are scheduled:

| | |
|---|---|
| October 13, 1997 Monday | Holiday Inn, 150 Nicolet Rd. Appleton, WI Daytime session: 1:00 – 5:00 p.m. Evening session: 6:00 – 9:00 p.m. |
| October 14, 1997 Tuesday | Comfort Suites 300 Division St. N. Stevens Point, WI Daytime session: 1:00 – 5:00 p.m. Evening session: 6:00 – 9:00 p.m. |
| October 15, 1997 Wednesday | Quality Inn 809 W. Clairmont Ave. Eau Claire, WI Daytime session: 1:00 – 5:00 p.m. Evening session: 6:00 – 9:00 p.m. |
| October 22, 1997 Wednesday | WDATCP Prairie Oak State Office Bldg. 2811 Agriculture Dr. Madison, WI Daytime session: 1:00 – 5:00 p.m. Evening session: 6:00 – 9:00 p.m. |
| October 23, 1997 Thursday | State Fair Park Youth Center 620 S. 84th St, Gate 5 West Allis, WI Daytime session: 1:00 – 5:00 p.m. Evening session: 6:00 – 10:00 p.m. |

Written comments will be accepted until **November 7, 1997**.

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

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

Statutes Interpreted: ss. 94.67 to 94.71 and ch. 160

This rule reorganizes and clarifies the department's current pesticide rules so they will be easier to read and understand. This rule redrafts the current rules according to current drafting standards. For the most part, this rule does not change the substance of the current rules. In some cases, however, this rule makes substantive changes.

Current Rules

The department administers Wisconsin's pesticide laws under ss. 94.67 to 94.71, Stats. The department licenses pesticide manufacturers, distributors and commercial applicators, and certifies farmers and commercial applicators for competence in using pesticides. The department regulates the distribution, storage, handling and use of pesticides to protect persons, property and the environment.

The department has adopted extensive pesticide rules under chs. ATCP 29 and 30, Wis. Adm. Code. The current rules have been modified many times, and the current organization is becoming unworkable. The department proposes to recodify the current rules in a new, more workable, format.

In recent years, the Legislature has reorganized the licensing of pesticide manufacturers, distributors and applicators. The Legislature has also reduced tax dollar funding for the pesticide program, and has substituted license fee funding. This has created a license and fee structure which is not adequately reflected in the current rules. This rule incorporates current license and fee requirements, including changes proposed in the 1997–99 biennial budget bill. This rule does not change the fees prescribed by the Legislature.

Proposed Reorganization

The department proposes to reorganize ch. ATCP 29 as follows:

| | |
|------------------------------------|----------------------------|
| Chapter ATCP 29 | |
| Pesticide Use and Control | |
| Subch. I Provisions | Definitions and General |
| Subch. II Labeling | Pesticide Registration and |
| Subch. III and Labelers | Pesticide Manufacturers |
| Subch. IV Distributors | Pesticide Dealers and |
| Subch. V Businesses | Commercial Application |
| Subch. VI Applying Pesticides | Individuals Handling or |
| Subch. VII Selling Pesticides | Storing, Transporting and |
| Subch. VIII Disposal and Spills | Pesticide Handling, |
| Subch. IX | Pesticide Use |
| Subch. X Protection | Agricultural Worker |
| Subch. XI Use Authorizations | Special Registrations and |

The department also proposes to consolidate current substance-specific pesticide rules in ch. ATCP 30 as follows:

| | |
|---|-----------------------------|
| Chapter ATCP 30 | |
| Pesticide Product Restrictions | |
| Subch. I | Definitions |
| Subch. II (current ATCP 29.03) | Prohibited Pesticides (from |
| Subch. III Special Use Permit (from current ATCP 29.04) | Pesticides Requiring |
| Subch. IV for Certain Purposes (from current ATCP 29.05) | Pesticides Allowed Only |
| Subch. V Bats (from current s. 94.708, Stats.) | Pesticides Used to Control |
| Subch. VI (from current ATCP 29.171) | Metam Sodium Pesticides |
| Subch. VII (current ATCP 29.17) | Aldicarb Pesticides (from |
| Subch. VIII (current ch. ATCP 30) | Atrazine Pesticides (from |

The department believes that this new organization will make it easier for affected businesses and individuals to identify the rules that apply to them. The new organization also reflects, more clearly, the current structure of the pesticide program.

Technical Drafting Changes

As part of the pesticide rule reorganization, the department has redrafted the current rules to meet current state drafting standards. This changes the appearance, but not the substance, of the rules. The redrafting:

- Simplifies and clarifies rule language.
- Eliminates ambiguities and inconsistencies.
- Incorporates current drafting conventions specified by the Legislative Council Rules Clearinghouse.
- Consolidates related rule provisions under common headings, for ease of reference.
- Spells out current requirements and exemptions in a more direct way.

Proposed Ch. ATCP 29

This rule reorganizes and clarifies current rules under ch. ATCP 29 as follows:

Definitions

Current pesticide rules under ch. ATCP 29 include over 75 definitions. In some cases, it is impossible to understand a substantive rule provision without consulting 3 or 4 “nested” definitions that contain extensive substantive material. This makes it more difficult for the public to read and understand the rules.

This rule removes substantive material from the definitions, and incorporates it in the rules themselves. This rule also deletes definitions that are no longer necessary. Definitions used only in one section of the rule are located in that section for easy reference.

Declaration of Pests

Current rules include a “declaration of pests” under s. 94.69(1), Stats. This rule simplifies the “declaration of pests” but makes no substantive change in that declaration.

Pesticide Registration and Labeling

Under current law, pesticides and pesticide labels must be registered by the federal environmental protection agency. This rule codifies this current requirement, but exempts pesticides that are specifically exempted from registration under the federal act.

Under current law, pesticides must be labeled with certain information including the identity of the responsible manufacturer or labeler. This rule incorporates current labeling requirements without substantive change.

Pesticide Manufacturers and Labelers

Under current law, a pesticide manufacturer or labeler must obtain an annual license and pay license fees. (There are certain exemptions.) This rule:

- Incorporates current license and fee requirements, but modifies them to reflect changes proposed in the 1997–99 biennial budget bill.
- Clarifies current license exemptions.
- Spells out license application procedures.
- Sets deadlines for department action on license applications.

Under current rules, pesticide manufacturers and labelers must keep records and provide information to the department upon request. This rule incorporates the current requirements without substantive change.

This rule clarifies that individual employees of a licensed manufacturer or labeler need not be separately licensed as manufacturers or labelers if they are acting solely in an employment capacity.

Pesticide Dealers and Distributors

Under current law, a dealer or distributor of restricted-use pesticides must be licensed by the department. This rule incorporates the current license requirement without substantive change, but clarifies that the following persons are exempt:

- Individual employees of a license holder who are acting solely in an employment capacity.
- Licensed manufacturers or labelers selling only pesticides which they have labeled.
- Persons who apply all of the restricted-use pesticides which they sell or distribute.

Under current law, a dealer or distributor of restricted-use pesticides must pay annual license fees. This rule incorporates current fee requirements, but modifies them to reflect changes proposed in the 1997–99 biennial budget bill. This rule also spells out license application procedures, and sets deadlines for department action on license applications.

Under current law, a dealer or distributor of restricted-use pesticides must keep records and file annual reports with the department. This rule incorporates these requirements without substantive change.

Under current law, a business selling pesticides of any kind must keep records of the amounts and kinds of pesticides sold. This rule incorporates this requirement without substantive change.

Commercial Application Business; License

Under current law (subject to certain exemptions), a business that does any of the following, either directly or through an employee, must be licensed by the department:

- Uses or directs the use of any pesticide as an independent contractor for hire.

- Uses or directs the use of restricted-use pesticides.

This rule incorporates the current license requirement but clarifies that the following persons are exempt:

- A government entity.

- An individual employee of a license holder who is acting solely in an employment capacity.

- An individual or business applying pesticides as part of a medical treatment provided by a licensed medical practitioner, or as part of a veterinary treatment provided by a licensed veterinary practitioner.

- An individual or business applying pesticides in the laboratory in the course of bona fide laboratory research.

- An individual or business applying germicides, sanitizers or disinfectants.

- An agricultural producer, except that an agricultural producer who does any of the following is not exempt:

- Applies pesticides for a person who is not an agricultural producer.

- Applies pesticides for another agricultural producer for a purpose other than the production of agricultural commodities, or for the purpose of producing pesticide-treated commercial seed or pesticide-treated commercial wood products.

- Applies pesticides, for compensation other than the exchange of goods or services, for more than 3 other agricultural producers in any calendar year.

- Applies pesticides in any calendar year, for compensation other than the exchange of goods or services, to more than 500 acres of land which the applying producer does not own or control.

Under current law, a license holder must pay annual license fees. This rule incorporates current fee requirements, but modifies them to reflect changes proposed in the 1997-99 biennial budget bill. This rule also spells out license application procedures, and sets deadlines for department action on license applications.

Commercial Application Business; Records

Under current rules, a licensed commercial application business must keep a record of pesticide applications which it makes directly or through an employee. This rule modifies current recordkeeping requirements to make them consistent with federal requirements. This rule also clarifies that:

- On the day of the application, the individual who applies the pesticide must make the business record of the application.

- The business must keep the record for at least 2 years. An employee need not keep duplicate copies of an employer's records.

Commercial Application Business; Information to Customers

Under current rules, a licensed commercial application business making a pesticide application for a customer must provide the customer with certain information about that application. This rule incorporates the current requirements without substantive change. Under the current rules, the business must provide the information within 30 days after the application, except that:

- Reentry precautions must be provided before the application is made.

- Information related to residential and landscape applications must be provided at the time of the application.

Veterinary Clinic Applying Pesticides

Under current law (s. 94.702, Stats.), a veterinary clinic applying pesticides must hold a permit from the department. This rule incorporates the current permit requirement without substantive change, and spells out the procedure for obtaining a permit.

Individual Commercial Applicator; License

Under current law, an individual must be licensed by the department if that individual does either of the following:

- Uses or directs the use of any pesticide as an independent contractor for hire, or as an employee of an independent contractor for hire.

- Uses or directs the commercial use of a restricted-use pesticide.

This rule incorporates the current license requirement without substantive change, but clarifies that the following individuals are exempt:

- A licensed health practitioner who uses or directs the use of a pesticide as part of a medical treatment.

- A licensed veterinarian or certified animal technician who uses or directs the use of a pesticide as part of a veterinary treatment.

- A laboratory researcher who uses or directs the use of pesticides only in the laboratory as part of a bona fide laboratory research project.

- An individual who only uses or directs the use of germicides, sanitizers or disinfectants.

- An employee of a licensed commercial application business who applies pesticides only to property owned or operated by that commercial application business, and who applies no restricted-use pesticides.

- An individual who is currently registered with the department as a 30-day "trainee" (see below). A trainee must be directly supervised by a license holder and may not apply restricted-use pesticides.

- An agricultural producer, except that an agricultural producer is not exempt if the producer does any of the following:

- *Applies pesticides for a person who is not an agricultural producer.

- *Applies pesticides for another agricultural producer for a purpose other than the production of agricultural commodities, or for the purpose of producing pesticide-treated commercial seed or pesticide-treated commercial wood products.

- *Applies pesticides, for compensation other than the exchange of goods or services, for more than 3 other agricultural producers in any calendar year.

- *Applies pesticides in any calendar year, for compensation other than the exchange of goods or services, to more than 500 acres of land which the applying producer does not own or control.

Under current law, license holders must pay annual license fees prescribed by statute. This rule incorporates current fee requirements, but modifies them to reflect changes proposed in the 1997-99 biennial budget bill. This rule also spells out license application procedures, and sets deadlines for department action on license applications.

Individual Commercial Applicators; Certification

Under current law, an individual licensed as a commercial applicator (see above) must also be certified for competence. The department may certify a commercial applicator for a period of 5 years in one or more application categories. A commercial applicator may apply pesticides only in those categories in which the applicator is certified.

To be certified in any pesticide use category, a commercial applicator must pass a written closed-book examination which demonstrates general pesticide knowledge, as well as specific knowledge in that pesticide use category.

This rule reformulates the current rules but makes few substantive changes. The rule:

- Clarifies current certification procedures.

- Adds 4 new certification categories (greenhouse and nursery, antifouling paint, sewer root and companion animal).

- Deletes 3 certification categories (public health, regulated pest, and demonstration and research) which are effectively covered by other categories.

- Modifies category descriptions, and clarifies the standards for certification in each category.

- Clarifies that a commercial applicator certified in any category may mix and load pesticides, for application by others, in other categories.

Under this rule, a commercial applicator may be certified in any of the following categories:

- Field and vegetable crop pest control
- Fruit crop pest control
- Livestock and poultry pest control
- Forest pest control
- Turf and landscape pest control
- Greenhouse and nursery pest control (new category)
- Seed treatment pest control
- Aquatic pest control
- Antifouling paint applications (new category)
- Right-of-way pest control
- Industrial, institutional, structural and health-related pest control; general
 - Fumigation; spaces and commodities
 - Sewer root control (new category)
 - Termite control
 - Wood preservation
 - Companion animal pest control (new category)

Under this rule, a certified commercial applicator who wishes to apply pesticides by means of aerial application, chemigation or soil fumigation must obtain a supplementary certification related to that application method. The rule spells out standards for supplementary certification.

Private Applicators; Certification

Under current rules, an agricultural producer must be certified to use restricted-use pesticides. In lieu of being certified as a commercial applicator (see above), a producer may be certified as a private applicator. A private applicator certification does not authorize a producer to engage in activities for which a commercial applicator license and certification are required. Private applicators who complete training and pass an open-book examination are certified for a period of 5 years.

This rule reformulates, but does not substantially alter the current rules. This rule clarifies the distinction between a private applicator and commercial applicator, and clarifies the standards and procedures for certifying private applicators.

Under this rule, a certified private applicator who wishes to apply pesticides by means of aerial application, chemigation or fumigation must obtain a supplementary certification related to that application method. The rule spells out standards for supplementary certification.

Pesticide Mixers and Loaders; Certification

This rule clarifies that the department may license and certify an individual to mix and load pesticides. A certified mixer and loader may mix and load pesticides for application by others in any pesticide use category, but may not apply pesticides in any category. Certification is good for 5 years.

To be certified as a mixer and loader, an individual must pass a written closed-book examination which demonstrates general pesticide knowledge. This rule clarifies the knowledge required of a pesticide mixer and loader.

Trainee Registration

Under current rules, an individual employed by a licensed commercial application business may register with the department as a trainee applicator. A registered trainee may apply pesticides for up to 30 days, without a license or certification, as part of a bona fide

training program that prepares the trainee for licensing and certification. The trainee may not apply restricted-use pesticides, and may apply pesticides only under the direct supervision of a licensed and certified applicator.

This rule incorporates the current trainee registration program without substantive change, except that it requires the trainee's employer to file the trainee registration and certify that applicable conditions are met. This rule also clarifies the conditions and restrictions that apply.

Applicator Records

Under current rules, a commercial applicator must keep a record of pesticide applications. This rule reformulates and makes some substantive changes to the current rule. Under this rule:

- Certified commercial and private applicators must keep a record of each pesticide application for which certification is required. The individual must make the record on the day of the application. An individual need not keep a record of pesticide applications for which the individual is not required to be certified.

- A certified applicator employed by a licensed commercial application business need not retain a duplicate copy of an application record made by the applicator and kept by the employer.

Storing and Transporting Pesticides

This rule consolidates and reformulates current rules related to the safe storage of pesticides, but does not substantially alter those rules. This rule adds provisions related to pesticide transportation and deletes a provision related to "first in, first out" storage of hypochlorite sanitizers. Under this rule, persons storing or transporting pesticides must:

- Store and transport pesticides according to label directions, in a manner that avoids reasonably foreseeable and reasonably preventable hazards to persons, property and the environment.

- Store bulk pesticides according to ch. ATCP 33 (current rule).

- Secure pesticides and pesticide containers against access by children, the general public, domestic animals and wild animals.

- Keep pesticides adequately separated from food, feed and other products so that pesticides will not be mistaken for or contaminate other products.

- Clean pesticide storage areas and transport vehicles before reusing them for other purposes.

- Protect pesticide containers and labels from reasonably foreseeable damage and destruction.

- Inspect pesticide containers when they are removed from shipping containers.

- Refrain from storing or transporting pesticides for sale in visibly broken, defective, unsealed or improperly sealed containers.

Selling Pesticides

Current rules spell out standards for the safe display and sale of pesticides. This rule consolidates and reformulates, but does not substantially alter, the current rules.

This rule deletes a provision related to the department's authority to order pesticides removed from sale, because that authority is adequately set forth in s. 94.71, Stats., and need not be repeated in the rule.

Pesticide Mixing and Loading

Under current rules, pesticide mixing and loading operations conducted at any of the following sites must be conducted over a spill containment surface (there are some exceptions):

- A site located within 100 feet of any well or surface water.

- A site at which more than 1,500 lbs. of pesticide active ingredients are mixed or loaded in any calendar year.

The current rules spell out minimum standards for spill containment surfaces. The current rules also prohibit certain mixing and loading practices that may contaminate the waters of the state. This rule consolidates and reformulates, but does not substantially alter, the current rules.

Pesticide and Container Disposal

Current rules prohibit the disposal of pesticides and pesticide containers in a manner inconsistent with label directions, or in a manner that creates a hazard to persons, property or the environment. Current rules also restrict the reuse of pesticide containers. This rule reformulates, but does not substantially alter, the current rules.

Pesticide Spills

Under current rules, persons who spill pesticides must take prompt action to contain and recover the spill. Current rules also contain provisions related to spill reporting and the storage of spilled material. This rule reformulates, but does not substantially alter, the current rules.

Pesticide Use; General

This rule reformulates, but does not substantially alter, current rules which prohibit any person from:

- Using pesticides in negligent manner, in a manner inconsistent with label directions, or in a manner which the user knows or should know will contaminate the waters of the state.
- Using pesticides in a manner that results in pesticide overspray or significant pesticide drift. This rule exempts, from overspray and drift prohibitions, government mosquito control applications made for public health purposes.
- Harvesting pesticide-treated commodities before the prescribed pre-harvest interval has expired.
- Causing pesticides to contaminate waters of the state. This rule clarifies that the prohibition does not apply to:
 - *Incidental application of pesticides to temporary rain puddles on target application sites.
 - *Unforeseeable pesticide leaching or runoff.
- Selling, furnishing or using defective application equipment that cannot apply pesticides according to label directions. (A person may sell defective equipment if, before the sale, that person specifically discloses the defect in writing.)
- Directing or coercing an employee or contract agent to violate applicable pesticide laws.

Advance Notice of Pesticide Applications

Current rules provide for advance notification of the following pesticide applications:

- Applications of pesticides labeled "Highly Toxic to Bees."
- Aerial applications (see below).
- Commercial applications to residential structures (see below).
- Commercial landscape applications (see below).

This rule consolidates and reformulates these pre-notification requirements, for ease of reference. Except as noted below, this rule does not alter the pre-notification requirements.

Warning Signs at Application Sites

Under current rules, warning signs must be posted in connection with the following pesticide applications:

- Agricultural applications for which the federal environmental protection agency requires worker protection warning signs under 40 CFR 170. (See worker protection requirements below.) Worker protection signs have a special format, and must be removed within 3 days after each application.
- Applications of "dual notice" agricultural pesticides if the application is located within 100 feet of a public road or within 300 feet of a nonagricultural area where people are likely to be present during the restricted entry interval specified on the pesticide label. Current rules prescribe warning sign contents and method of posting. These signs may remain posted indefinitely. Worker protection signs may be substituted, but must be removed within 3 days after each application.
- Applications of nonagricultural pesticides whose labels prescribe restricted entry intervals. Current rules prescribe warning sign contents and posting methods.

- Chemigation applications (see below).
- Commercial applications to residential structures (see below).
- Commercial landscape applications (see below).
- Applications to bulk stored seeds. Bins used to store bulk treated seed must be posted. The current rules prescribe warning sign contents.

This rule consolidates and reformulates current warning sign posting requirements for ease of reference. This rule does not substantially alter the current requirements, except that it no longer requires warning signs for agricultural applications of "dual notice" agricultural pesticides applied within 100 feet of a public road unless the pesticides are applied by means of chemigation. Warning signs are still required if the application is made within 300 feet of other nonagricultural areas where people are likely to be present.

Aerial Applications

Under current rules, aerial applications must comply with applicable regulations of the federal aviation administration and the Wisconsin department of transportation. The person owning or controlling the application site (or that person's agent) must give prior notice to adjacent residents who have made a request during that calendar year. This rule reformulates, but does not substantially alter, the current rules.

Chemigation

Current rules spell out standards for chemigation systems, including engineering standards. Persons using chemigation systems to apply pesticides must have a chemigation operating plan, and must properly monitor chemigation operations. Warning signs must be posted if the chemigation application site is located within 100 feet of a public road or within 300 feet of an area where people are likely to be present. Current rules prescribe warning sign contents and posting methods.

This rule reformulates the current chemigation rules. This rule does not substantially alter the current rules, except that it eliminates the provision requiring a chemigation operator to notify the department before operating a chemigation system at a chemigation site for the first time.

Commercial Applications to Residential Structures

Current rules spell out requirements for commercial applications to residential structures (other than applications of germicides, sanitizers or disinfectants). This rule reformulates, but does not substantially alter, the current rules.

Under this rule, as under current rules, a commercial application business hired to make a residential application must offer to provide the customer with certain information prior to the application. Even if the customer does not request any pre-application information, the commercial application business must provide certain information to the customer after it completes the application.

Under this rule, as under current rules, a business making a residential application must provide information to residents at the time of the application, and must post warning signs if the pesticide label prescribes a restricted entry interval. The rule spells out methods for providing information and posting warning signs.

Commercial Landscape Applications

Current rules define "landscape applications" to include applications to turf areas located in or around residential, public or commercial areas, or to plants located in those turf areas. This rule modifies the current definition to:

- Include applications to certain non-turf areas (ornamental and mulched areas).
- Excludes application within 10 feet of a building that are designed to prevent structural or household pests from entering the building.

Under current rules, a commercial application business hired to make a landscape application must provide the customer with certain information about the application. This rule reformulates, but does not substantially alter, this requirement. The business must provide the information when it completes the application.

Under current rules, a business must post warning signs whenever it makes a landscape application in or around a residential, public or

commercial site. The current rule specifies the form, content and method of posting warning signs. If any person asks for information about the landscape application, the business must offer to provide specified information. This rule reformulates but does not substantially alter the current rules, except that this rule:

- Makes changes in sign contents. Under this rule, every warning sign must specify the date when the warning sign may be removed.

- Makes changes related to posting locations. Under this rule, at least one warning sign must be visible from each point at which there is significant potential for human access to the treated area.

- Creates an exception for cemeteries posted with permanent warning signs. This new exception is similar to the current exception for golf courses:

- *The rule specifies the location, form and content of permanent warning signs.

- *Permanent warning signs must state that pesticides are used periodically, and that additional information is available from the golf course superintendent or cemetery grounds manager.

- *The superintendent or grounds manager, if asked for information, must notify the requester that certain information is available and must provide that information upon request.

Under current rules, the department publishes an annual registry of persons requesting advance notice of landscape applications in their immediate area:

- Persons must register annually to be included in the annual registry.

- The department distributes the registry to commercial application businesses that make landscape applications.

- Before a commercial application business makes a landscape application to any site, it must notify registered individuals who are entitled to notice of that application.

- Registered individuals are entitled to advance notice of applications to property on which they reside, to immediately adjacent property, or to property located on the same or immediately adjacent blocks.

This rule reformulates the current landscape registry rules. This rule does not substantially alter the current rules, except that this rule:

- Changes the annual registration deadline from March 1 to January 15. (The department will distribute the registry by March 1.)

- Entitles registered individuals to advance notice of applications to property on which they reside, and to immediately adjacent property, but not to other property located on the same or adjacent blocks.

Finally, this rule modifies the current definition of "landscape application" to include tree and subsoil injections.

Seed Applications

Current rules regulate the planting and use of pesticide-treated seed, and require warning signs on bins used to store pesticide-treated seed. This rule reformulates, but does not substantially alter, the current rules.

Agricultural Worker Protection

The federal environmental protection agency has adopted agricultural worker protection rules under 40 CFR 170. This rule incorporates the federal standards.

Among other things, federal rules require agricultural employers to post worker protection warning signs and give workers notice of pesticide applications. The department's current rules spell out the content, format and method of posting worker protection warning signs, consistent with federal standards. This rule reformulates, but does not substantially alter, the current rules.

Federal rules currently prohibit agricultural workers from reentering a treated area during a restricted entry interval except in an "agricultural emergency." Current rules identify conditions that constitute "agricultural emergencies," and include the state "declaration of emergency" required under federal rules. This rule reformulates, but does not substantially alter, the current rules.

Current rules specify worker and handler training requirements, consistent with federal rules. This rule reformulates, but does not substantially alter, the current rules.

Emergency Use Permits

Under current rules, the department may issue an emergency permit authorizing a pesticide use (otherwise prohibited) which is necessary in an emergency to control a serious disease or pest infestation. Current rules spell out standards and procedures for issuing emergency use permits. This rule reformulates, but does not substantially alter, the current rules.

Experimental Use Permits

Under current rules, the department may issue an experimental use permit authorizing an experimental use of a pesticide that would otherwise be prohibited. Current rules spell out standards and procedures for issuing experimental use permits. This rule reformulates, but does not substantially alter, the current rules.

Registering Pesticides to Meet Special Local Needs

Under current rules, the department may register a pesticide or pesticide use that is not registered by the federal environmental protection agency if use of that pesticide is necessary to meet a special local need in this state. Current rules spell out standards and procedures for issuing special local needs registrations. This rule reformulates, but does not substantially alter, the current rules.

Proposed Ch. ATCP 30

This rule consolidates current substance-specific pesticide rules into ch. ATCP 30 as follows:

Prohibited Pesticides

Current rules under ch. ATCP 29 prohibit the use of certain pesticides such as DDT. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Pesticides Requiring Special Use Permit

Current rules under ch. ATCP 29 prohibit the use of certain pesticides, such as strychnine, without a permit from the department. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Pesticides Allowed Only for Certain Purposes

Current rules under ch. ATCP 29 prohibit the use of certain pesticides except for certain purposes specified in the current rules. The pesticides include chromium, lindane, mercury and daminozide. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Pesticides Used to Control Bats

Section 98.708(4), Stats., prohibits the use of pesticides other than naphthalene to control bats, except under an emergency permit from the pesticide review board. This rule incorporates the statutory prohibition, and requires an emergency permit from the department and the pesticide review board. The rules are incorporated in ch. ATCP 30.

Metam Sodium Pesticides; Use Restrictions

Current rules under ch. ATCP 29 restrict the use of pesticides (mainly soil fumigants) containing metam sodium. The current rules restrict who, how, where, and for what purposes these pesticides may be applied. The current rules also spell out special application precautions, as well as notice, monitoring, reporting and recordkeeping requirements. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Aldicarb Pesticides; Use Restrictions

Current rules under ch. ATCP 29 restrict the use of aldicarb pesticides in order to protect groundwater. This rule moves the aldicarb rules to ch. ATCP 30 but does not change those rules.

Atrazine Pesticides; Use Restrictions

Current rules under ch. ATPC 30 restrict the use of atrazine pesticides in order to protect groundwater. This rule renumbers the atrazine rules within ch. ATPC 30 but does not change those rules.

Fiscal Estimate

This rule reorganizes and clarifies the department's current pesticide rules under chs. ATPC 29 to 31, Wis. Adm. Code, so they will be easier to find and understand. This rule redrafts the current rules according to current drafting standards. For the most part, this rule does not change the substance of the current rules. In some cases, however, this rule makes minor substantive changes.

State Government

The department will administer and enforce this rule with existing state and federal funds. The department is now responsible for monitoring and enforcing the current ATPC 29 posting and landscape registry requirements. Since the same number of landscape application sites will be posted, only with fewer signs, and the number of registrants listed on the landscape registry is not expected to decrease, department resources dedicated to the enforcement and compliance of this requirement should not change. The ATPC 29 changes will be included with other scheduled department outreach programs and mailings. Therefore, the net fiscal impact of this rule change to the department is \$0.

Local Units of Government

The rule does not mandate that local government resources be expended for rule administration or enforcement. Therefore, the rule is not expected to have any fiscal impact on local units of government. The complete fiscal estimate is available upon request.

Initial Regulatory Flexibility Analysis

The department regulates the distribution, storage, handling and use of pesticides to protect persons, property and the environment. Current rules include ATPC 29 and 30. Any business which manufactures, labels, sells, distributes or uses pesticides will be affected by the rule changes.

The proposed rule reorganizes and clarifies the department's current pesticide rules. The department believes that this new organization and clarification will make it easier for affected businesses and individuals to identify and understand the rules that apply to them.

The proposed rule does include substantive changes as described below. These changes will not have an adverse impact on small business. Proposed substantive changes include:

- Modifies pesticide applicator certification by adding 4 new applicator categories while eliminating 3 categories. These changes are being made to address changes in use practices and concerns related to some of the pesticides and practices used.
- Limits commercial applicator trainees to the use of "general-use" pesticides only and requires their employer to certify that all of the training permit restrictions are complied with.
- Simplifies and reduces recordkeeping requirements for commercial pesticide applicators.
- Eliminates the requirement that applicators using certain pesticides post the boundaries of treated areas bordering public roads unless required to do so by the pesticide label. We estimate this change will reduce the number of signs required to be posted by 80% compared to what is currently required. This will result in a cost and time savings for farmers and commercial application businesses. (See Attachment A – available from the department upon request).
- Eliminates the requirement that persons using chemigation systems notify the department prior to chemigating a site for the first time.

The proposal modifies posting requirements for pesticide applications made to landscapes:

- Provides posting provisions for cemeteries similar to those currently provided for golf courses.
- Requires warning signs to specify the date when the warning sign may be removed.
- Establishes a visual site and accessibility basis for determining where warning signs must be posted, reducing the number of signs that must be posted.
- Allows more flexibility in the choice of acceptable materials for warning signs.

These proposed changes should reduce the costs to commercial application businesses by 54%. The number of landscape application warning signs posted by commercial applicators for hire will be reduced by 25% with the reduced posting required for most properties. Costs for signs made from other materials acceptable under the proposed change are available at approximately 50% of the cost of the signs currently made of "rigid material". The cost and time required for an applicator to include the date on signs for the signs removal, is minimal. (See Attachment B available from the department upon request).

The proposal modifies current provisions related to the landscape pesticide registry:

- Changes the annual registration deadline and effective dates of the registry allowing businesses more time to implement notification requirements.
- Reduces the scope of properties subject to notification under the registry from adjacent blocks to immediate adjacent properties.

The overall impact of the proposed changes on small business is expected to reduce costs.

Note: Assumptions used in arriving at the estimated costs to small business are available upon request as Attachment A and B from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4542. Copies will also be available at the public hearings.

Draft Environmental Assessment

The Department has prepared a draft environmental assessment (EA) for proposed 1998 amendments to rules on the use and control of pesticides. Copies are available from the Department on request and will be available at the public hearings. Comments on the EA should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI, 53708 in care of Karen Fenster. Phone 608/224-4542. Written comments on the EA will be accepted until **November 7, 1997**.

Notice of Hearings

Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the department of corrections proposes the following rule relating to the inmate complaint review system.

Hearing Information

October 15, 1997
Wednesday
3:00 P.M.

Secretary's Conference Room
Department of Corrections
149 E. Wilson Street, 3rd Floor
Madison, Wisconsin

October 16, 1997
Thursday
1:00 P.M.

Room 105
State Office Building
718 West Clairemont
Eau Claire, Wisconsin

October 17, 1997
Friday
10:00 A.M.

Room 223
State Office Building
141 Northwest Barstow Street
Waukesha, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

The department provides an administrative process by which inmates may raise grievances concerning rules, living conditions, and staff actions affecting inmates' institution living. This rule updates the department's current rule.

This proposed rule eliminates redundant and confusing language, simplifies and clarifies some language, and uses current terminology.

This rule reflects the statutory requirement that requires inmates to exhaust their administrative remedies before commencing a civil action.

This rule uses the term "significant" to modify the "issues" to establish a more administratively efficient inmate complaint review system. This rule requires the institution complaint examiner to dismiss frivolous complaints. This rule permits inmates to appeal the dismissal of a frivolous complaint to the appropriate reviewing authority. This rule prohibits the corrections complaint examiner from reviewing complaints dismissed as frivolous.

This rule permits the institution complaint examiner to accept late complaints for good cause.

This rule requires the written complaint procedure to be readily available to all inmates. It requires inmates to receive written notification and an oral explanation of the complaint procedures. It requires appropriate provisions to be made for non-English speaking, impaired or handicapped inmates.

This rule limits the number of complaints that an inmate may file to 2 complaints in a calendar week unless the institution complaint examiner finds that good cause exists to allow the inmate to file more than 2 complaints in the calendar week.

This rule expands some time lines by changing calendar days to working days. This rule requires the secretary to make a decision on the complaint within 10 calendar days instead of 5 calendar days. This rule permits the time lines to be extended for cause and upon notice to the inmate or all interested parties involved.

This rule permits persons other than the warden to review and make decisions regarding an inmate complaint.

This rule permits a complaint to be filed directly with the reviewing authority if the institution complaint examiner determines that the normal processing of a complaint would subject the inmate to substantial risk of personal injury or cause other serious and irreparable harm.

This rule removes language that permitted the corrections complaint examiner to order an evidentiary hearing.

This rule prohibits any reprisal against an inmate for participation in the complaint procedure.

This rule requires all records of an inmate complaint to be kept for at least 3 years after disposition of the complaint.

This rule permits the secretary to suspend these rules in an emergency.

Text of Rule

SECTION 1. DOC 310.01 (2) (intro.) and (a) are amended to read:

DOC 310.01 (2) The objectives of the inmate complaint review system are the following:

(a) To allow inmates to raise, in an orderly fashion, questions significant issues regarding rules, living conditions, and staff actions affecting institution living environment.

SECTION 2. DOC 310.01 (2) (b) is renumbered DOC 310.01 (2) (c), and as renumbered, is amended to read:

DOC 310.01 (2) (c) To encourage communication between inmates and staff;.

SECTION 3. DOC 310.01 (2) (b) is created to read:

DOC 310.01 (2) (b) To provide the department an early opportunity to decide the issue before an inmate commences a civil action or special proceeding against a department officer, employe or agent in the officer's, employe's or agent's official or individual capacity.

SECTION 4. DOC 310.01 (2) (c) to (g) are renumbered DOC 310.01 (2) (d) to (h), and as renumbered, are amended to read:

DOC 310.01 (2) (d) To develop inmates' sense of involvement in and respect for the correctional process;.

(e) To explain correctional policy to inmates and staff;.

(f) To afford inmates and staff the opportunity to review correctional policy and gain further insight into the correctional system;.

(g) To correct any errors and deficiencies in correctional policy through questioning and review; ~~and~~.

(h) To allow inmates to raise civil rights grievances.

SECTION 5. DOC 310.015 is renumbered DOC 310.02, and as renumbered, is amended to read:

DOC 310.02 APPLICABILITY. Pursuant to authority vested in the department of corrections under ss. 301.02, 301.03 (2) and 227.11 (2), Stats., the department adopts this chapter which applies to the department and all adult inmates ~~in its legal custody~~ confined in a state correctional facility. It interprets ss. 301.02 and 301.03 (2), Stats.

SECTION 6. DOC 310.02 (intro.) and 310.02 (1) are renumbered DOC 310.03 (intro.) and 310.03 (1).

SECTION 7. DOC 310.02 (2) is renumbered DOC 310.03 (4), and as renumbered, is amended to read:

(4) "Calendar days" means all days including Saturdays, Sundays, and state legal holidays.

SECTION 8. DOC 310.02 (3) is renumbered DOC 310.03 (6), and as renumbered, is amended to read:

DOC 310.03 (6) "CCE" or "corrections complaint examiner" means the ~~person outside employe of~~ the department, who shall be assigned to a subunit that is not within the division of adult institutions, who is designated to investigate complaints appealed to the secretary.

SECTION 9. DOC 310.02 (4) is renumbered DOC 310.03 (7), and as renumbered, is amended to read:

DOC 310.03 (7) "Civil rights grievance" means any inmate complaint relating to an incident affecting the delivery of services to inmates ~~in which it appears an inmate has been discriminated against alleging discrimination~~ on the basis of race, creed, ethnicity, national origin, sex, handicap, age, religion, color, ancestry, sexual orientation or marital status.

SECTION 10. DOC 310.02 (5) is renumbered DOC 310.03 (8), and as renumbered, is amended to read:

DOC 310.03 (8) "Department" means the Wisconsin department of corrections.

SECTION 11. DOC 310.02 (6) is renumbered DOC 310.03 (11), and as renumbered, is amended to read:

DOC 310.03 (11) "~~ICF~~ ICE" or "~~inmate complaint investigator~~" "institution complaint examiner" means the person at each adult correctional institution or designee designated to investigate complaints filed by inmates.

SECTION 12. DOC 310.02 (7) is renumbered DOC 310.03 (12).

SECTION 13. DOC 310.02 (8), (9), and (10) are renumbered DOC 310.03 (16), (18) and (19), and as renumbered, are amended to read:

DOC 310.03 (16) "Secretary" means the head secretary of the department of corrections, or ~~that person's~~ designee.

(18) "~~Superintendent~~" "Warden" means the superintendent warden of the institution at which the complaint was filed, or designee.

(19) "Working days" means all days except Saturdays, Sundays, and state legal holidays.

SECTION 14. DOC 310.025 (title) is renumbered DOC 310.06 (title).

SECTION 15. DOC 310.025 (intro.) is repealed.

SECTION 16. DOC 310.025 (1), (2) (intro.), and (a) are renumbered DOC 310.06 (1), (2) (intro.), and (a), and as renumbered, are amended to read:

DOC 310.06 ORGANIZATION OF INMATE COMPLAINT REVIEW SYSTEM. (1) To use the complaint system, an inmate files a complaint with the ~~inmate~~ institution complaint investigator/examiner (ICI) under s. ~~DOC 310.05~~ ss. DOC 310.09 or 310.10.

(2) The ~~ICI~~ ICE then may do any of the following:

(a) Investigate the complaint under s. DOC ~~310.07~~ 310.11;

SECTION 17. DOC 310.025 (2) (b) and (c) are renumbered DOC 310.06 (2) (d) and (e), and as renumbered, are amended to read:

DOC 310.06 (2) (d) Attempt to resolve the complaint under s. DOC ~~310.07~~ (5) 310.11 (7);

(e) Recommend a decision to the ~~superintendent~~ appropriate reviewing authority under s. DOC ~~310.07~~ (3) 310.11 (3).

SECTION 18. DOC 310.025 (3) to (5) are renumbered DOC 310.06 (3) to (5), and as renumbered, are amended to read:

DOC 310.06 (3) The ~~superintendent~~ appropriate reviewing authority, after studying the ICI's report, renders ~~makes~~ a decision under s. DOC ~~310.08~~ 310.12.

(4) An inmate may appeal an adverse decision to the corrections complaint examiner (~~CCE~~) under s. DOC ~~310.09~~ (1) 310.13.

(5) The ~~corrections complaint examiner~~ CCE then investigates and makes a recommendation to the secretary under s. DOC ~~310.09~~ (4) 310.13 (8).

SECTION 19. DOC 310.025 (6) and (7) are repealed.

SECTION 20. DOC 310.03 (title), (1), (2), (3), and (4) are renumbered DOC 310.07 (title), (1), (2), (3) and (4), and as renumbered, are amended to read:

DOC 310.07 INMATE COMPLAINT REVIEW SYSTEM. (1) To effectuate ~~achieve~~ the purpose and objectives of s. DOC 310.01, the department shall maintain an inmate complaint review system (ICRS) in the adult correctional institutions.

(2) Each ~~superintendent~~ warden shall appoint an inmate institution complaint investigator (ICI) ~~examiner to implement the complaint review system whose primary responsibility shall be complaint investigation. In some institutions the superintendent~~ The warden may designate an ~~any~~ employe to function as ICI ICE in addition to other duties. ~~Complaint investigation shall be the primary responsibility of this person.~~

(3) The ~~ICI~~ ICE shall be provided with office space and clerical support required to implement the ICRS.

(4) In investigating a complaint, the ~~ICI~~ ICE shall have access to ~~institution~~ staff, inmates, and any institution or department records ~~pertaining pertinent~~ to that investigation ~~not otherwise protected by rule or statute.~~

SECTION 21. DOC 310.03 (2) and (3) are created to read:

DOC 310.03 (2) "Administrator" means an administrator, division of adult institutions, department of corrections, or designee.

(3) "Appropriate reviewing authority" means the warden, bureau director, administrator or designee who is authorized to review and decide an inmate complaint.

SECTION 22. DOC 310.03 (5) is repealed.

SECTION 23. DOC 310.03 (5), (9), (10), (13) to (15), and (17) are created to read:

DOC 310.03 (5) "Calendar week" means Sunday through Saturday.

(9) "Director" means a director of a bureau, department of corrections, or designee.

(10) "Emergency" means any situation determined by the secretary to affect the security or orderly administration of the institution or the security, safety, or health of staff.

(13) "Malicious injury" means injury to the department or a person as the result of hatred, ill will, revenge, or as the result of intent to insult or injure.

(14) "Persons working in the inmate complaint review system or ICRS" include the secretary, deputy secretary, CCE, ICE support staff, staff who assist an inmate to reduce the complaint to writing, clerical staff who input ICRS data and other staff who by the nature of their jobs have contact with inmate complaints.

(15) "Reprisal" means any action or threat of action against anyone for their good faith participation in the complaint procedure.

(17) "Significant issue" means a serious or important defect or omission.

SECTION 24. DOC 310.04 (title), (1), and (2) are renumbered DOC 310.08 (title), (1), and (2), and as renumbered, are amended to read:

DOC 310.08 SCOPE OF COMPLAINT REVIEW SYSTEM. (1) The inmate complaint review system (~~ICRS~~) may be used by an inmate acting individually or by a group of inmates acting collectively.

(2) The ICRS may be used to ~~seek a change of any institutional policy or practice~~ raise significant issues regarding rules, living conditions, and staff actions affecting institution environment, except any of the following:

SECTION 25. DOC 310.04 (2) (a) is repealed.

SECTION 26. DOC 310.04 (2) (b) is renumbered DOC 310.08 (2) (b).

SECTION 27. DOC 310.04 (2) (c) to (e) are renumbered DOC 310.08 (2) (c) to (e), and as renumbered, are amended to read:

DOC 310.08 (2) (c) A decision of the parole commission ~~acting in any capacity;~~

(d) The denial of a request for an authorized leave as provided in ch. DOC 326; ~~or~~

(e) A decision on a challenge to an inmate record;

SECTION 28. DOC 310.04 (3) (intro.) is renumbered DOC 310.08 (3), and as renumbered, is amended to read:

DOC 310.08 (3) ~~After exhausting the appeal in DOC 302.19, 303.75 or 303.76, The~~ the ICRS may be used to challenge the procedure used by the adjustment committee or hearing officer, by a program review committee, or by any decision maker acting on a request for authorized leave. ~~If a complaint challenging the procedure used by the adjustment committee or hearing officer is affirmed, the decisionmaker shall:~~

SECTION 29. DOC 310.04 (3) (a) to (d) are repealed.

SECTION 30. DOC 310.04 (5) is renumbered DOC 310.08 (5), and as renumbered, is amended to read:

DOC 310.08 (5) Civil rights complaints may be filed in the ICRS in accordance with the procedures set forth in this chapter. The ~~ICI~~ ICE at the institution level and CCE at the appeals level may request assistance from the department's affirmative action/civil rights compliance officer to investigate or resolve a civil rights complaint.

SECTION 31. DOC 310.04 is created to read:

DOC 310.04 EXHAUSTION OF ADMINISTRATIVE REMEDIES. Before an inmate may commence a civil action or special proceedings against any officer, employe or agent of the department in the officer's, employe's or agent's official or individual capacity for acts or omissions committed while carrying out that person's duties as an officer, employe or agent or while acting within the scope of the person's office, the inmate is required to file a complaint under ss. DOC 310.09 or 310.10, receive a decision on the complaint under s. DOC 310.13, have an adverse decision reviewed under s. DOC 310.14, and be advised of the secretary's decision under s. DOC 310.14. With respect to procedures used by the adjustment committee or hearing officer in a prison disciplinary action under ch. 303, an inmate shall appeal to the warden under s. 303.76 and file an inmate complaint under s. 310.08 (3) in order to exhaust administrative remedies.

SECTION 32. DOC 310.05 (title) is renumbered DOC 310.09 (title).

SECTION 33. DOC 310.05 (1) is renumbered DOC 310.09 (1), and as renumbered, is amended to read:

DOC 310.09 FILING OF COMPLAINTS. (1) A complaint, whether filed by an individual or a group of inmates, shall be written on forms supplied for that purpose and shall be signed by the inmate or by all members of the group filing the complaint. Unsigned complaints or complaints with foul language will not be accepted.

SECTION 34. DOC 310.05 (2) is renumbered DOC 310.09 (3), and as renumbered, is amended to read:

DOC 310.09 (3) A complaint shall be filed within 14 calendar days after the occurrence giving rise to the complaint, except that the inmate institution complaint investigator (ICI) examiner may accept a late complaint for good cause.

SECTION 35. DOC 310.05 (3) is renumbered DOC 310.09 (4), and as renumbered, is amended to read:

DOC 310.09 (4) Impaired, handicapped or illiterate inmates may not be excluded from full participation in the ICRS. If an inmate is unable to write a complaint, the ICI ICE or other staff shall reduce the complaint to writing and shall read it to the inmate. When the inmate is satisfied with the complaint, the inmate should shall sign it if able, or mark it with the inmate's mark, if able. An inmate can may also receive assistance from another inmate in preparing a complaint.

SECTION 36. DOC 310.05 (4) is renumbered DOC 310.09 (2), and as renumbered, is amended to read:

DOC 310.09 (2) The institution shall provide a supply of complaint forms and make the forms readily available to inmates.

SECTION 37. DOC 310.05 (5) and (6) are renumbered DOC 310.09 (5) and (6), and as renumbered, are amended to read:

DOC 310.09 (5) A signed complaint may be filed by depositing it in a locked box in the living unit designated for complaints or by placing it in a sealed envelope marked for delivery to the office of the ICI ICE via institution mail.

(6) An inmate may file any number of no more than 2 complaints in any given calendar week, unless the ICE determines in the ICE's discretion that good cause exists to allow the inmate to file more than 2 complaints in the calendar week. However, the ICI ICE shall exercise discretion in determining the order in which subsequent complaints from an inmate will be processed within the time limits of this section and in keeping with priorities set by s. DOC 310.07 (3) whether to assign individual complaint numbers or to batch complaints of similar content filed by one inmate. Health and personal safety issues shall be excluded from this section and shall be dealt with in the manner provided by s. DOC 310.11 (3).

SECTION 38. DOC 310.05 is created to read:

DOC 310.05 COMMUNICATION OF PROCEDURES. The written complaint procedure shall be readily available to all inmates. Upon arrival at an institution, each inmate shall receive written notification and an oral explanation of the procedure, including how to file at the institution. The inmate shall be given the opportunity to ask and have questions answered orally. Appropriate provisions shall be made for non-English speaking, impaired or handicapped inmates.

SECTION 39. DOC 310.06 (title) and 310.06 (1) are renumbered DOC 310.10 (title) and 310.10 (1).

SECTION 40. DOC 310.06 (2) is renumbered DOC 310.10 (2), and as renumbered, is amended to read:

DOC 310.10 (2) Inmates having a complaint in common may file as a group by using one complaint form and affixing the signatures of all complainants to the form. All complainants shall sign the form. Alternatively, each may file individually but ask that the complaints be considered together. In either event, the The group shall designate a spokesperson or, if none is designated, the first name signed on the complaint filed shall be deemed the spokesperson for the group. A group complaint counts as a complaint under DOC 310.09 (6).

SECTION 41. DOC 310.06 (2) (b) and (c) are created to read:

DOC 310.06 (2) (b) Reject a complaint in accordance with provisions of this chapter;

(c) Dismiss a complaint in accordance with provisions of this chapter;

SECTION 42. DOC 310.06 (3) and (4) are repealed.

SECTION 43. DOC 310.06 (5) and DOC 310.06 (6) are renumbered DOC 310.10 (4) and DOC 310.10 (5), and as renumbered, are amended to read:

DOC 310.10 (4) The ICI warden shall determine if decisions or acknowledgments shall be communicated individually issued to all parties to a group complaint or, if individual notice is administratively infeasible, may elect to post decisions or acknowledgments of receipt of appeals posted in a place accessible to the group.

(5) Group complaints filed in accordance with this section shall not be deemed considered a group petition within the meaning of s. DOC 303.20 and shall not subject the complainants to discipline under that section.

SECTION 44. DOC 310.06 (6) is created to read:

DOC 310.06 (6) The secretary shall review the CCE's report, make a decision under s. DOC 310.14, and ensure implementation under DOC 310.15.

SECTION 45. DOC 310.07 (title) is renumbered DOC 310.11 (title).

SECTION 46. DOC 310.07 (1) to (3) are renumbered DOC 310.11 (1) to (3), and as renumbered, are amended to read:

DOC 310.11 PROCESSING COMPLAINTS AT THE INSTITUTION LEVEL. (1) Unless the inmate institution complaint investigator (ICI) examiner is absent, at least once each working day the ICE shall collect all complaints deposited in any complaint box in the institution. The superintendent warden shall proceed under s. DOC 310.03 (5) 310.07 (2) in the event of an absence of the ICI ICE for longer than 2 working days. Only Except as provided in this section, only the ICI ICE shall have access to the complaint boxes, which shall be provided with locks.

(2) No complaint may include more than one issue. Each complaint shall be assigned a file number for purposes of identification, and classification code and the date of the receipt shall be noted dated for purposes of identification. Each complaint shall be reviewed and acknowledged in writing by the ICI ICE within 3 5 calendar working days of the date of receipt. Complaints dealing with health or personal safety shall be given priority.

(3) The ICI ICE shall employ use discretion in deciding the investigatory method best suited to determine the facts, including personal interviews, telephone calls, and document and correspondence review except that the investigation of complaints under 310.08(3) shall be limited to the record. This may include personal interviews, telephone calls, and document and correspondence review. Complaints dealing with health or personal safety shall be given priority. The ICI shall forward a report and recommendation to the superintendent within 15 calendar days from the date of the acknowledgment for decision in accordance with s. DOC 310.08. The complainant may waive the time limits for up to an additional 30 calendar days to allow completion of an investigation. The report shall include those items required by subs. (5) and (6), when applicable. The inmate may waive time limits if the additional time will result in resolution of the complaint.

SECTION 47. DOC 310.07 (4) to (8) are renumbered DOC 310.11 (6) to (10), and as renumbered, are amended to read:

DOC 310.11 (6) Staff must shall respond in writing, if requested, to an inquiry by an ICI ICE investigating a complaint.

(7) The ICI ICE shall may attempt to informally resolve the complaint, which may include directing the inmate to discuss the issue with an appropriate institution staff member prior to investigating the complaint, at the institution level. If resolution attempts are successful, the ICI ICE shall record the results in writing and have the complainant sign the report indicating the complainant's acceptance of the resolution. This resolution shall then be forwarded to the superintendent for a decision under s. DOC 310.08 appropriate reviewing authority.

(8) If an inmate is transferred to another institution after a complaint is filed but before a superintendent the appropriate

reviewing authority renders a decision, the ~~ICI ICE~~ shall determine if the complaint is moot because of the transfer and, if so, shall notify the inmate. If the issue still must be decided, the ~~ICI ICE~~ at the institution where the complaint originated shall investigate and make a recommendation to the ~~superintendent~~ appropriate reviewing authority.

(9) If an inmate is transferred after an incident but before filing a complaint, the inmate shall file the complaint at the ~~receiving~~ currently assigned institution. The ~~ICI ICE~~ there shall ~~send forward~~ the complaint to the ~~ICI ICE~~ at the ~~transferring appropriate~~ institution for investigation and decision.

(10) ~~In any event, the~~ The ICI ICE shall note the persons interviewed and the documents or records used as basis to support the decision or which were relied on in reaching a decision.

SECTION 48. DOC 310.08 (title), (1) and (2) are repealed.

SECTION 49. DOC 310.08 (2) (a) and (f) are created to read:

DOC 310.08 (2) (a) The subject matter of a conduct report that has not been resolved through the disciplinary process in accordance with ch. DOC 303;

(f) A denial of an open records request.

SECTION 50. DOC 310.08 (4), (a) to (c) are created to read:

DOC 310.08 (4) Complaints filed in the following areas shall be directed as follows to the following appropriate reviewing authority:

(a) Health care and psychiatric issues shall be directed to the director of the bureau of health services.

(b) Badger state industries and farm issues shall be directed to the director of the bureau of correctional enterprises.

(c) The reviewing authority for all other complaints is the warden, unless another authority is designated by the secretary.

SECTION 51. DOC 310.09 (title), (1) and (2) are renumbered DOC 310.13 (title), (1) and (2), and as renumbered, are amended to read:

DOC 310.13 REVIEW BY CORRECTIONS COMPLAINT EXAMINER. (1) A complainant ~~affected by a superintendent's~~ dissatisfied with a decision may, within 5 calendar days after receipt of the decision, appeal that decision by filing a written request for review with the corrections complaint examiner ~~(CCE)~~.

(2) Appeals shall be sent to the CCE in a sealed envelope that ~~department employees~~ only the CCE or CCE support staff may not open or inspect.

SECTION 52. DOC 310.09 (3) is renumbered DOC 310.13 (3).

SECTION 53. DOC 310.09 (4) is renumbered DOC 310.13 (5), and as renumbered, is amended to read:

DOC 310.13 (5) The CCE shall, within 5 ~~calendar~~ working days after receiving an appeal, ~~review and~~ acknowledge receipt of the appeal. ~~Appeals dealing with health and personal safety shall be given priority attention.~~ Within 5 ~~calendar~~ working days of a request by the CCE, the ~~inmate institution~~ complaint investigator ~~examiner~~ shall provide the CCE with copies of the complaint, the ~~ICI's~~ ICE's investigation report and associated documentation and the ~~superintendent's~~ appropriate reviewing authority's decision. Appeals dealing with health or personal safety shall be given priority.

SECTION 54. DOC 310.09 (5) and (6) are renumbered DOC 310.13 (6) and (7).

SECTION 55. DOC 310.09 (7), (8), and (9) are repealed.

SECTION 56. DOC 310.09 (10) and (11) are renumbered DOC 310.13 (8) and 310.13 (9), and as renumbered, are amended to read:

DOC 310.13 (8) Unless extended for cause and upon notice, the CCE shall recommend a decision to the secretary within 37 ~~calendar~~ working days of receipt of the complaint. Should the CCE fail to make a recommendation within the prescribed time, the ~~superintendent's~~ appropriate reviewing authority's decision shall be affirmed. The inmate shall be notified of all decisions in writing.

(9) A complainant may waive time limits ~~if doing so may result in a favorable decision by the secretary rather than an affirmation of the superintendent's decision under sub. (10).~~

SECTION 57. DOC 310.10 (title) is renumbered DOC 310.14 (title).

SECTION 58. DOC 310.10 (1) and 310.10 (2) are renumbered DOC 310.14 (1) and 310.14 (2), and as renumbered, are amended to read:

DOC 310.14 SECRETARY'S DECISION. (1) The corrections complaint examiner's (CCE's) written recommendation, along with a copy of the institution complaint file, shall be delivered to the secretary who shall make a decision based on the record within ~~5~~ 10 ~~calendar~~ working days following receipt of the recommendation. The secretary may ~~take an additional 5 calendar days to make that extend the time for making a decision if there is for cause and the secretary notifies upon notice to all interested parties.~~

(2) The secretary may do any of the following:

SECTION 59. DOC 310.10 (2) (a) is renumbered DOC 310.14 (2) (a).

SECTION 60. DOC 310.10 (2) (b) and (c) are renumbered 310.14 (2) (b) and (c), and as renumbered, are amended to read:

DOC 310.14 (b) Adopt the recommendation of the CCE with modifications; ~~or~~

(c) Reject the recommendation of the CCE and decide;

SECTION 61. DOC 310.10 (3) is renumbered DOC 310.14 (3).

SECTION 62. DOC 310.10 (3) is created to read:

(3) The CCE shall issue a receipt to the spokesperson acknowledging the complaint.

SECTION 63. DOC 310.11 (4), (5) and (11) are created to read:

(4) The ICE may reject a complaint that the ICE determines to be frivolous. A complaint rejected because the ICE has determined it to be frivolous may be appealed only to the appropriate reviewing authority. The ICE may determine the complaint frivolous if the ICE finds one of the following:

(a) The inmate submitted the complaint solely for the purpose of harassing or causing malicious injury to the department or one or more of its employees, agents, independent contractors, or any other person.

(b) The complaint does not raise a significant issue regarding rules, living conditions, or staff actions affecting institution environment.

(c) The complaint presents only an abstract question.

(5) If an ICE determines that normal processing of a complaint would subject the inmate to substantial risk of personal injury or cause other serious and irreparable harm, the ICE shall refer the complaint to the appropriate reviewing authority.

(11) Unless extended for cause and upon notice to the inmate, the ICE shall send a report and recommendation to the appropriate reviewing authority within 15 working days from the date of acknowledgment for decision in accordance with s. DOC 310.12. The complainant may waive the time limits in writing to allow completion of an investigation or resolution of the complaint.

SECTION 64. DOC 310.12 (title) is renumbered DOC 310.15 (title).

SECTION 65. DOC 310.12 (1) is repealed.

SECTION 66. DOC 310.12 (2), (3) and (4) are renumbered DOC 310.15 (3), (4), and (5), and as renumbered, are amended to read:

(3) Within 30 ~~calendar~~ working days after issuance of the secretary's decision, the administrator ~~of the department's division of adult institutions~~ shall notify all affected parties of decisions that affect more than one institution.

(4) If an affirmed complaint has not been implemented at any level within 30 ~~calendar~~ working days after a decision to affirm, the complainant may directly inform the secretary appointing authority ~~by mail in writing~~ of the failure to implement the decision. ~~The secretary shall investigate and take all steps necessary to ensure implementation.~~

(5) If a the decision on a complaint requires a change in an administrative rule, the decision maker shall initiate making the change in the rule making.

SECTION 67. DOC 310.12 (title), (1), (2), and (3) are created to read:

DOC 310.12 APPROPRIATE REVIEWING AUTHORITY DECISION. (1) The institution complaint examiner's written recommendation, along with a copy of the institution complaint file, shall be delivered to the appropriate reviewing authority who shall make a decision based on the record within 5 working days following receipt of the recommendation unless extended for cause and upon notice to all interested parties.

(2) The appropriate reviewing authority may do any of the following:

- (a) Dismiss the complaint.
- (b) Dismiss the complaint with modifications.
- (c) Affirm the complaint.
- (d) Affirm the complaint with modifications.

(e) Return the recommendation to the ICE for further investigation.

(3) If the complainant does not receive the decision within 23 working days of the ICE's receipt of the complaint, the complaint shall be considered dismissed and may be appealed immediately.

SECTION 68. DOC 310.13 (title) is renumbered DOC 310.16 (title).

SECTION 69. DOC 310.13 (1) and (2) are renumbered DOC 310.16 (1) and (2), and as renumbered, are amended to read:

DOC 310.16 CONFIDENTIALITY. (1) Except as otherwise provided in this section, complaints filed with the inmate complaint review system (ICRS) shall be confidential. Persons working in the ICRS shall respect the confidential nature of the work. The identity of complainants and the nature of the complaint shall be revealed only to the extent ~~necessary~~ reasonable and appropriate for thorough investigation and implementation of the remedy.

(2) Confidentiality of complaints may be waived by the ~~superintendent~~ warden if the security, safety, or health of the institution, staff or inmates is involved.

SECTION 70. DOC 310.13 (3) and (4) are renumbered DOC 310.16 (3) and (4).

SECTION 71. DOC 310.13 (4) is created to read:

DOC 310.13 (4) The CCE may not review a complaint rejected under s. DOC 310.11 (4).

SECTION 72. DOC 310.13 (5) and (6) are renumbered DOC 310.16 (5) and (6), and as renumbered, are amended to read:

DOC 310.16 (5) A complainant may waive confidentiality in writing or make public any aspect of a complaint at any time. If the complaint contains a false statement meeting the requirements of s. DOC 303.271, making that false statement public constitutes the offense of lying about staff.

(6) ~~No sanction may be applied against an inmate for filing a complaint may be subjected to reprisal for using or participating in the ICRS. An inmate shall be entitled to pursue, through the ICRS, a complaint that a reprisal has occurred.~~

SECTION 73. DOC 310.13 (7) is repealed.

SECTION 74. DOC 310.14 (title) is renumbered DOC 310.17 (title).

SECTION 75. DOC 310.14 (1) and (2) are renumbered DOC 310.17 (1) and (2), and as renumbered, are amended to read:

DOC 310.17 REPORTS. (1) The ~~inmate-institution~~ inmate-institution complaint investigator (~~ICI~~) examiner shall submit quarterly reports to the secretary and CCE to indicate the number and type of complaints processed and the disposition of the complaints.

(2) The CCE shall file an annual report with the ~~attorney general~~ attorney general and the secretary. This report shall include all of the following:

SECTION 76. DOC 310.14 (2) (a) to (d) are renumbered DOC 310.17 (2) (a) to (d).

SECTION 77. DOC 310.14 (2) (d) is created to read:

DOC 310.14 (2) (d) Return the recommendation to the CCE for further investigation.

SECTION 78. DOC 310.14 (3) is repealed.

SECTION 79. DOC 310.15 (1) and (2) are created to read:

DOC 310.15 IMPLEMENTATION OF AFFIRMED COMPLAINT. (1) An affirmed decision shall be implemented within 30 working days from date of decision.

(2) Inmates shall be notified in writing of affirmed decisions requiring change in institution programs of operations affecting the general inmate population.

SECTION 80. DOC 310.18 and DOC 310.19 are created to read:

DOC 310.18 PRESERVATION OF RECORDS. All records related to an inmate complaint shall be kept according to department policy and procedures. The department shall keep all records for at least 3 years following disposition of the complaint.

DOC 310.19 SUSPENSION OF PROVISIONS OF THIS CHAPTER. The secretary may suspend any provision of this chapter in an emergency. The suspension may apply to one or more institutions.

Note: DOC 310.01 paragraph 2, sentence 3 is amended as follows:

Issues and policies that need to be reexamined periodically will be brought to the attention of the administration, and a forum is provided for resolution of ~~issues~~ questions without prolonged debate.

Paragraph 2, sentences 4 and 5 are created to read:

Paragraph (a) allows inmates to raise issues which are significant. Although the department encourages the use of the complaint system, the system can not function efficiently when large numbers of insignificant and frivolous complaints are filed.

Paragraphs 3 and 4 are deleted.

Paragraph 5, sentence 3 is deleted.

Paragraphs 6 to 9 are deleted.

Paragraph 4 is created to read:

Furthermore, a system encouraging involvement is likely to eliminate the use of unacceptable and destructive methods for raising grievances.

Note: DOC 310.02 is repealed.

Note: DOC 310.03 is renumbered DOC 310.07 and amended as follows:

Delete paragraphs 1 to 3.

Amend paragraph 4 as follows:

Because timeliness is important in handling complaints, the ~~superintendent~~ warden is authorized under DOC 310.07 (2) to designate an acting ~~ICI~~ ICE in the absence of the appointed ~~investigator~~ examiner.

Note: DOC 310.04 is renumbered DOC 310.08 and amended as follows:

Paragraph 3, sentence 4 is amended as follows:

Second, the nature of the issue may make investigation difficult or may require expertise that is beyond the ~~ICI~~ ICE and the CCE.

Delete paragraph 4, sentence 2.

Note: DOC 310.05 is renumbered DOC 310.09 and amended as follows:

Delete paragraph 2, sentence 1.

Amend paragraph 3, sentence 1 as follows:

Subsection ~~(2)~~ (3) underscores the importance of filing a complaint as soon as it is apparent that no other acceptable method of resolution is possible.

Amend paragraph 3, sentence 2 as follows:

The ~~ICI~~ ICE is given discretion, however, to accept old complaints if ~~he or she~~ the ICE believes it is still possible to adequately determine the facts needed to make a recommendation.

Amend paragraph 3, sentence 3 as follows:

Promptness in filing a complaint is required ~~to ensure~~ for a thorough investigation of the facts.

Amend paragraph 4, sentence 1 as follows:

The number of complaints one person can file ~~should not~~ may be limited, ~~except that the ICRS may become overburdened~~ because

of multiple complaints from one individual distractions take away time from valid complaints.

Paragraph 4, sentence 2 is repealed and recreated to read:

The ICE may assign individual complaint numbers or batch complaints of similar content filed by one inmate.

Note: DOC 310.06 is renumbered 310.10.

Paragraph 1, sentence 1, is amended as follows:

Complaints arising from living and working conditions or the application of a rule to a segment of the institution population may be shared by a number of persons ~~in contrast to a complaint that affects only one inmate.~~

Paragraphs 2 and 3 are repealed.

Paragraph 4, sentence 1 is amended to read:

~~Since the~~ The department is ~~encouraging~~ encourages the use of the complaint system to deal with frustrations and irritations of institution life, prohibiting group complaints would be inappropriate.

Note: DOC 310.07 is renumbered DOC 310.11 and is amended as follows:

Paragraph 1, sentence 1 is amended as follows:

DOC ~~310.07~~ 310.11 establishes the procedure for processing complaints and authorizes priority handling of complaints dealing with health or personal safety.

Paragraph 1, create sentences 3 through 6 as follows:

Experience has shown some inmate complaints to be frivolous. For example, a complaint which alleges that an inmate had creamy peanut butter rather than chunky peanut butter. These complaints serve to distract attention away from the more important issues. DOC 310.11 (4) requires the ICE to reject frivolous complaints as defined in this section.

Delete paragraph 2.

Paragraph 3, sentence 1, amend as follows:

Informal resolution of a complaint is not only authorized, but also encouraged when possible.

Paragraph 3, sentences 2 and 3 are deleted.

Paragraph 3, sentences 4 and 5 are amended as follows:

This practice can do much to remove misunderstandings and relieve the tensions from which the complaint developed. Experience with the complaint procedure in Wisconsin has shown that ~~more than one third~~ many of the complaints filed are resolved informally.

Paragraph 5, sentence 1 is amended as follows:

Because inmates are frequently transferred within the Wisconsin correctional system, subs. ~~(6)~~ (8) and ~~(7)~~ (9) provide a method for dealing with complaints arising just before or at the time of the transfer.

Note: DOC 310.08 is renumbered DOC 310.12.

Paragraph 1, sentence 1 is amended as follows:

This section requires the ~~superintendent's~~ appropriate reviewing authority's written decision to be rendered within ~~23-calendar~~ working days of the date the complaint is filed.

Paragraph 1, sentences 3 through 5 are deleted.

Paragraph 1, sentence 3 is created to read:

Experience in the ICRS has shown that timeliness is one of the most important factors in the process.

Note: DOC 310.09 is renumbered DOC 310.13.

Paragraph 1, sentence 1 is amended to read:

DOC ~~310.09~~ 310.13 ~~sets out~~ defines the procedure for appealing a ~~superintendent's~~ an adverse decision to the CCE.

Paragraph 1, sentences 3 and 4 are deleted.

Paragraph 2, sentence 1 is amended to read:

Appeal to the CCE provides another element deemed essential to a ~~valid~~ credible complaint system, namely, a review by someone outside the ~~correctional agency~~ division of adult institutions chain of command.

Paragraph 2, sentences 2 and 3 are deleted.

Paragraph 2, sentence 2 is created to read:

Appeals dealing with health or personal safety are to be given priority over other complaints.

Note: DOC 310.12 is renumbered DOC 310.15.

Paragraph 3, sentence 1 is deleted.

Paragraph 3, sentence 2 is amended to read:

Subsection ~~(3)~~ (4) ~~modifies this to state~~ states that the complainant may notify the secretary of failure to implement a decision.

Paragraph 3, sentence 3 is amended to read:

~~This is proper because the~~ The secretary, ~~rather than the CCE,~~ is in a position to ensure that a decision is implemented promptly.

Note: DOC 310.13 is renumbered DOC 310.16.

Paragraph 1, sentence 1 is amended to read:

If the ICRS is to ~~have~~ maintain integrity and the confidence of the inmates, complaints entered must be treated confidentially and, with certain limited exceptions, no sanctions can result from use of the system.

Paragraph 1, sentence 4 is amended to read:

~~The complaint system~~ ICRS is an appropriate forum for resolving these issues, but because complaints often identify a staff member as the perceived perpetrator of some injustice, the complainant must be protected from retribution or penalty for legitimate use of the system.

Paragraph 1, sentence 6 is deleted.

Paragraph 2, sentence 1 is amended to read:

The nature of some complaints is such that a meaningful investigation cannot be made without revealing the identity of the complainant, but this should be done only when necessary reasonable and appropriate.

Paragraph 2, sentence 2 is amended to read:

Confidentiality can be waived if it can be shown that the security or the orderly administration of the institution, or the security of ~~the institution, safety, or health of staff,~~ or inmates is involved.

Paragraph 3, sentences 1 through 3 are amended to read:

This is not to say that inmates are free to make threatening or false statements about staff, knowing they are false and with the intent to harm the staff, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the ~~complaint system~~ ICRS. This rule does not ~~insulate inmates from~~ prohibit disciplinary action for the illegitimate use, or rather abuse, of the ~~complaint system~~ ICRS.

Paragraph 4 is deleted.

Paragraph 5, sentence 1 is amended to read:

The ~~ICI~~ ICE must use discretion in revealing only enough information about the nature of the complaint to allow for a thorough investigation.

Paragraph 6, sentence 2 is amended to read:

However, if an inmate makes a false accusation pursuant to s. DOC 303.271, revealing that false accusation to persons outside the complaint system may subject the inmate to disciplinary action.

Note: DOC 310.14 is deleted.

Note: DOC 310.19 is created to read:

Experience has shown that there are rare situations when it is necessary to suspend these rules. DOC 310.19 permits the secretary to suspend these rules in an emergency. The rules define an emergency.

This rule shall take effect on the first day of the month following publication in the Wis. Adm. Register as provided in s. 227.22(2)(intro.), Stats.

Fiscal Estimate

The Wisconsin Department of Justice will no longer be providing support for the Inmate Complaint Review System (ICRS). As a result, changes in DOC 310 will eliminate the requirement that the

"corrections complaint examiner" (CCE) be a person outside the Department. The rule will require that the CCE be assigned to a subunit that is not within the Division of Adult Institutions. This function will be assigned by the Department of Corrections (DOC).

Under the current rule and system DOJ has had 2.5 FTE – the 1.0 FTE examiner, a 1.0 FTE investigator and 0.5 FTE program assistant – to support ICRS. DOC also had a 1.0 FTE investigator working on ICRS.

DOC will be able to devote a 0.5 FTE program assistant to ICRS but will have to absorb the workload of the CCE and the DOJ investigator with existing staff. There is currently a backlog of complaints. If the backlog is not reduced, the State may face an increased risk of legal challenges.

A change in language in DOC 310.01 (2) (a) from "questions" to "significant issues" is intended to reduce the number of frivolous inmate complaints, which may reduce caseload and costs. The limit of two complaints by an inmate in a week may also reduce caseload and costs. The reductions cannot be determined. The caseload reductions may, however, be offset by inmate appeals of examiner decisions that complaints were frivolous.

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 **October 21, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Higher Educational Aids Board

Notice is hereby given that, pursuant to s. 39.41 (8), 1993-94 Stats., and s. 227.11 (2), Stats., the Higher Educational Aids Board will hold a public hearing to consider the repeal and recreation of ch. HEA 9, Wis. Adm. Code, relating to the Academic Excellence Scholarship Program.

Hearing Information

The public hearing will be held:

| | |
|---|--|
| October 17, 1997 Friday Beginning at 9:00 A.M. | Governor's Conference Room 115 East State Capitol Madison, WI |
|---|--|

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Higher Educational Aids Board

The 1989-91 Wis. Act 31 created s. 39.41, Stats., which provides for scholarships to high school seniors with the highest cumulative grade point average in their class. The Wisconsin Higher Educational Aids Board (HEAB) administers this scholarship program under s. 39.41, Stats. and ch. HEA 9.

As of August 18, 1997, ch. HEA 9 addressed only issues relating to Academic Excellence Scholarship (AES) recipients after their selection. HEAB is proposing to repeal and recreate ch. HEA 9 at this time in order to put in place rules addressing issues relating to the selection process itself.

This rule-making order describes the requirements made of students, high schools, school districts, and the Higher Educational Aids Board in the selection of scholarship recipients and in the disbursement of scholarships.

Contact Person

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

Jane Hojan-Clark, (608) 264-6181
Division Administrator
Higher Educational Aids Board
P.O. Box 7885
Madison, WI 53707-7885

If you are hearing- or visually-impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you therefore require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above.

Written comments on the proposed rules should be received at the above address no later than **October 24, 1997** and will receive the same consideration as testimony presented at the hearing.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

These rules will affect high school seniors, high schools, school districts and the Higher Educational Aids Board. They will not directly affect small businesses as "small businesses" are defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Medical Examining Board

Notice is hereby given that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats., and interpreting s. 448.01 (11), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Med 10.02 (2) (zb), relating to dispensing or prescribing of controlled substances for the treatment of obesity.

Hearing Information

| | |
|---|--|
| October 22, 1997 Wednesday 9:15 a.m. | Room 179A 1400 E. Washington Ave. MADISON, WI |
|---|--|

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Department of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **November 7, 1997** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1)

Statute interpreted: s. 448.01 (11)

In this proposed rule-making order, the Medical Examining Board establishes standards for prescribing of controlled substances for treatment of obesity. The rule would revise the definition of unprofessional conduct to include prescribing or dispensing anorectic drugs, Schedules II through V, for the purpose of weight reduction or control in the treatment of obesity unless certain conditions are met.

Current rules require that all prescribing meet the minimum standard of competence in that such prescribing must not be an unjustified risk to the health of the patient, and that when controlled substances are involved, that it be within the scope of legitimate medical practice. Recently, some practitioners have opened weight loss "clinics" which require patients to purchase prescription drugs from the clinic itself, and thus provide a profit for each prescription written. A national chain of weight loss businesses not owned by licensed health care providers has begun hiring physicians to write prescriptions for weight loss drugs to customers of the business.

Enforcement of existing rules is quite cumbersome, in that for each and every case, a physician expert witness must be hired by the Department of Regulation and Licensing to review the case and testify that the accused practitioner's prescribing was either not within a legitimate physician-patient relationship, or was so incompetent or negligent that it did not meet the standards of the profession.

The Board deems that the suggested rule is necessary to protect the public from inappropriate prescribing while still providing physicians with the ability to exercise reasonable medical judgment for the benefit of their patients.

Text of Rule

SECTION 1. Med 10.02 (2) (zb) is created to read:

Med 10.02 (2) (zb) Prescribing, ordering, dispensing, administering, supplying, selling or giving any anorectic drug designated as a schedule II, III, IV or V controlled substance for the purpose of weight reduction or control in the treatment of obesity unless each of the following conditions are met:

1. The patient's body mass index, weight in kilograms divided by height in meters squared, is greater than 25.
2. A comprehensive history, physical examination, and interpreted electrocardiogram are performed and recorded at the time of initiation of treatment for obesity by the prescribing physician.
3. A diet and exercise program for weight loss is prescribed and recorded.
4. The patient is weighed at least once a month, at which time a recording is made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy.
5. No more than a 30 day supply of drugs is prescribed or dispensed at any one time.
6. No such drugs are prescribed or dispensed for more than 90 days unless the patient:
 - a. Has a recorded weight loss of at least 12 pounds in the first 90 days of therapy.
 - b. Has continued progress toward achieving or maintaining a target weight.
 - c. Has no significant adverse effects from the prescribed program.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Dept. of Regulation & Licensing
1400 E. Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.174 (2) (a), 29.283 (1) and 227.11 (2) (a), Stats., interpreting s. 29.174 (2), Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 20.13 (2) (a) and the creation of s. NR 20.13 (2) (c), Wis. Adm. Code, relating to ice fishing shelters.

Agency Analysis

The proposed rule will prohibit the placement and use of permanent ice fishing shelters on the Fox River in Brown County from the DePere dam downstream to the river's junction with the Bay of Green Bay. Ice fishers would be able to utilize portable or temporary shelters provided the structure or enclosure is completely removed from the ice when it is not in active use.

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 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

Notice is hereby given that the hearing will be held on:

October 20, 1997
Monday
at 3:00 p.m.

Room 604
Green Bay City Hall
100 N. Jefferson St.
Green Bay, 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 Gary Homuth at (608) 266-3244 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule must be received no later than **November 2, 1997**, and may be submitted to:

Mr. Gary Homuth
Bureau of Law Enforcement
P.O. Box 7921
Madison, WI 53707

Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE-23-97] and fiscal estimate may be obtained from Mr. Homuth.

Fiscal Estimate

Summary of Bill:

This proposal prohibits the placement of permanent ice fishing shelters (shanties) on the Fox River in Brown County from the dam at DePere downstream to the mouth of the river at the bay of Green Bay.

Fiscal Impact:

This proposal will carry a cost in communicating this new rule change to the public through news releases and changes in the regulation pamphlets. There may be some law enforcement effort related to individuals who fail to remove their fish shanties each day. These costs will be offset through the elimination of current workload, due to shanties falling through the ice, and littering violations. The Department can carry out the provisions of this proposal within the current appropriation.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.085, 29.38 (8) (a) and (e) and 227.11 (2) (a), Stats., interpreting ss. 29.085 and 29.38 (1) and (8), Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 24.09 (1) (a) and (2), Wis. Adm. Code, relating to the commercial harvest of washboard mussels.

Agency Analysis

The proposed rule will close the commercial harvest of washboard mussels from Wisconsin-Iowa boundary waters of the Mississippi River. Harvest was closed on June 1, 1987 in the Wisconsin-Minnesota boundary waters.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. *Types of small businesses affected:* Licensed commercial clambers.
- b. *Description of reporting and bookkeeping procedures required:* No new procedures.
- c. *Description of professional skills required:* No new skills.

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:

October 14, 1997
Tuesday
at 5:00 p.m.

Basement Conference Room
Prairie City Bank
300 E. Blackhawk Ave.
Prairie du Chien

October 16, 1997
Thursday
at 5:00 p.m.

Auditorium
La Crosse Co. Courthouse
400 N. 4th Street
La Crosse, 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 Karl Scheidegger at (608) 267-9426 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule must be received no later than **October 24, 1997** and may be submitted to:

Mr. Karl Scheidegger
Bureau of Fisheries Management & Habitat Protection
P.O. Box 7921
Madison, WI 53707

Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FH-26-97] and fiscal estimate may be obtained from Mr. Scheidegger.

Fiscal Estimate

No fiscal effect is anticipated from the promulgation of this rule.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a), Stats., interpreting ss. 29.085, 29.174 (2) (a) and 29.33 (1), Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of s. NR 25.03 (2) (b) 3. and the creation of s. NR 25.03 (2) (b) 4. and 5., Wis. Adm. Code, relating to minimum catch requirements for the renewal of annual Lake Michigan commercial fishing licenses.

Agency Analysis

Under current rules, the minimum catch requirement is fixed for each commercial fishing zone. Under the proposed rule, the minimum catch requirement will be computed annually to reflect changes in the fishery. A specific provision will be made for years when commercial quotas are cut.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. *Types of small businesses affected:* Lake Michigan commercial fishers.
- b. *Description of reporting and bookkeeping procedures required:* No new procedures.
- c. *Description of professional skills required:* No new skills.

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:

| | |
|--|--|
| October 20, 1997 Monday at 5:00 p.m. | Room 604 Green Bay City Hall 100 N. Jefferson St. Green Bay |
| October 23, 1997 Thursday at 5:00 p.m. | Room 141 DNR Southeast Region Hdqrs. 2300 M. L. King, Jr. Dr. Milwaukee |

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 William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule must be received no later than **November 3, 1997** and may be submitted to:

Mr. William Horns
Bureau of Fisheries Management & Habitat Protection
P.O. Box 7921
Madison, WI 53707

Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH-25-97] and fiscal estimate may be obtained from Mr. Horns.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearings

Natural Resources

(Environmental Protection--General, Chs. NR 100--)

Notice is hereby given that pursuant to ss. 227.11 (2) (a) and 281.15, Stats., interpreting s. 281.15, Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 102.10 (1m), Wis. Adm. Code, relating to designating four flowages as outstanding resource waters.

Agency Analysis

Based on the criteria for classifying waters as outstanding resource waters, the Department is proposing to add the St. Croix Flowage in Douglas County, the Gile Flowage in Iron County, the Willow Flowage in Oneida County and the Caldron Falls Flowage in Marinette County to the list of outstanding resource waters.

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.

Hearings

Notice is hereby further given that the hearings will be held on:

| | |
|--|---|
| October 28, 1997 Tuesday at 2:00 p.m. | Council Chambers City Hall 1407 Hammond Ave. Superior |
| October 28, 1997 Tuesday at 7:00 p.m. | County Board Room Iron Co. Courthouse 300 Taconite St. Hurley |
| October 29, 1997 Wednesday at 10:00 a.m. | Conference Room #1 DNR Northern Region Hdqrs. 107 Sutliff Ave. Rhineland |
| October 29, 1997 Wednesday at 7:00 p.m. | County Board Room Marinette Co. Courthouse 1926 Hall Ave. Marinette |

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 Ron Martin at (608) 266-9270 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule must be received no later than **November 10, 1997** and may be submitted to:

Mr. Ron Martin
Bureau of Watershed Management
P.O. Box 7921
Madison, WI 53707

Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WT-24-97] and fiscal estimate may be obtained from Mr. Martin.

Fiscal Estimate

There is no fiscal effect anticipated from the promulgation of this rule.

Notice of Hearing

Public Defender

Notice is hereby given that pursuant to s. 977.02 (2m) and (3), Stats., and interpreting s. 977.07, Stats., the Office of the State Public Defender will hold a public hearing at **315 North Henry Street, 2nd Floor, in the city of Madison, Wisconsin, on the 27th day of October, 1997, from 9:00 a.m. to 11:00 a.m.** to consider a proposed rule related to the calculation of indigency. Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis

Statutory authority: s. 977.02 (2m) and (3)

Statute interpreted: s. 977.07

The proposed rule establishes the criteria to be used when determining whether a Wisconsin works (W-2) participant qualifies for public defender representation. Specifically, PD 3.038 (2) is amended to state that if a person's only income is from a W-2 employment position under ss. 49.148 (1) (a), (b), or (c), Stats., or

from the W-2 benefits provided under s. 49.148 (1m), Stats., that person shall be determined indigent. It should be noted that if a W-2 participant is engaged in unsubsidized employment, as defined in s. 49.147 (1), Stats., eligibility would be governed by the criteria set forth in ss. PD 3.02, PD 3.03, and PD 3.038 (1).

In addition, the references to AFDC, relief of needy Indian persons, and general relief have been deleted from the rule and a reference to relief as defined in s. 49.01 (3), Stats., has been added to the rule.

Finally, it should be noted that although the reference to AFDC is deleted under the proposed rule, persons who continue to receive AFDC until March 1, 1998, as provided under s. 49.19 (20), Stats., will be determined indigent pursuant to the rule's provision "any other similar public needs-based financial assistance program."

Text of Rule

SECTION 1. PD 3.038 (2) is amended to read:

PD 3.038 (2) If a person's only income is ~~aid to families with dependent children under s. 49.19 (11) (a)1., Stats., relief of needy Indian persons under s. 49.046, Stats., from one or more of the following sources, that person shall be determined indigent: a Wisconsin works employment position under ss. 49.148 (1) (a), (b), or (c), Stats., Wisconsin works benefits under s. 49.148 (1m), Stats., supplemental security income for the aged, blind, and disabled under 42 USC 1381-1383c, relief as defined in s. 49.01 (3), Stats., or a any other similar federal or state public needs-based financial assistance program, or general relief as defined in s. 49.01 (5m), Stats., that person shall be determined indigent.~~

Initial Regulatory Flexibility Analysis

This rule would not have a regulatory effect on small businesses.

Fiscal Estimate

In essence, the amendment to PD 3.038 (2) is technical in nature because it replaces language related to AFDC with language related to W-2. Based on the following, the SPD does not expect much of a fiscal effect as a result of the rule's amendment:

First, the SPD represented persons who received AFDC. Because W-2 replaces AFDC, the number of W-2 participants the SPD will represent should be similar to the number of AFDC recipients previously represented by the SPD. Also, the number of AFDC recipients represented by the SPD has decreased over the years, primarily because the SPD no longer represents CHIPS parents. Therefore, the SPD expects that the number of W-2 participants it will represent will likewise be small.

Contact Person

For a copy of the proposed rule, or if you have questions, please contact Gina Pruski, Deputy Legal Counsel, 315 North Henry Street, Madison, WI 53703-3018; (608) 266-6782.

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by **October 27, 1997**.

*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 (CR 96-172):

Chs. Comm 18 and ILHR 51, 52, 66, 69 and 70 – Relating to barrier-free design requirements for public buildings and places of employment.

Corrections (CR 97-30):

Ch. DOC 311 – Relating to the placement of inmates in observation status for mental or medical health reasons.

Corrections (CR 97-92):

Ch. DOC 332 – Relating to sex offender registration and community notification.

Corrections (CR 97-95):

Ch. DOC 304 – Relating to the inmate secure work program.

Natural Resources (CR 97-016):

Ch. NR 18 – Relating to falconry.

Natural Resources (CR 97-21):

Chs. NR 500 and 502 and ss. NR 503.10, 506.095, 506.18, 507.02 and 516.04 – Relating to solid waste management.

Natural Resources (CR 97-39):

S. NR 37.04 – Relating to timber cutting on lands adjacent to the Lower Wisconsin State Riverway.

Natural Resources (CR 97-40):

Ch. NR 45 and s. NR 51.91 – Relating to regulating public use of state parks, forest and other public lands and waters under the Department's jurisdiction.

Natural Resources (CR 97-41):

SS. NR 400.02 and 406.04 and ch. NR 407 – Relating to the air permit program.

Natural Resources (CR 97-58):

S. NR 10.12 (11) – Relating to harvest information program.

Natural Resources (CR 97-88):

SS. NR 10.001, 10.01 and 10.125 – Relating to the 1997 migratory game bird season.

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.

Financial Institutions—Credit Unions (CR 97-49):

An order affecting ch. CU 54 (ch. DFI-CU 54), relating to real estate mortgage loans in credit unions.

Effective 11-01-97.

Financial Institutions—Credit Unions (CR 97-50):

An order repealing ch. CU 55 (ch. DFI-CU 55), relating to credit union check cashing, money orders, and traveler's checks.

Effective 11-01-97.

Financial Institutions—Credit Unions (CR 97-51):

An order repealing ch. CU 57 and creating ch. DFI-CU 57, relating to retention of credit union books and records.

Effective 11-01-97.

Financial Institutions—Credit Unions (CR 97-52):

An order affecting ch. CU 70 (ch. DFI-CU 70), relating to retention of credit union books and records.

Effective 11-01-97.

Educational Approval Board (CR 97-35):

An order affecting chs. EAB 1, 4, 5, 6, 7, 8, 9 and 10, relating to approving and licensing schools and programs, setting fees, advertising, setting bond levels, defining tuition refund policy and procedures, outlining complaint procedures, mandating records retention and all matters related to oversight of approved postsecondary educational institutions.

Effective 12-01-97.

Insurance, Commissioner of (CR 97-76):

An order repealing and recreating s. Ins 18.07 (5) (bg), relating to an increase in 1997-98 premium rates for the Health Insurance Risk-Sharing Plan (HIRSP).

Effective 11-01-97.

Transportation (CR 97-60):

An order amending ss. Trans 206.02 (1) and 206.03 (12) (c) 3, relating to the local roads improvement program.

Effective 11-01-97.

Transportation (CR 97-64):

An order affecting ch. Trans 305, relating to standards for vehicle equipment.

Effective 11-01-97.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **September 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.

Corrections (CR 96-92):

An order repealing and recreating ch. DOC 326, relating to leave for qualified inmates.

Effective 10-01-97.

Corrections (CR 96-163):

An order creating s. DOC 313.025, relating to the definition of a "prison industry" pursuant to s. 227.11 (2) (a), Stats.

Effective 10-01-97.

Corrections (CR 96-176):

An order affecting ch. DOC 324, relating to the inmate work and study release program.

Effective 10-01-97.

Insurance, Commissioner of (CR 97-9):

An order creating s. Ins 2.17, relating to life insurance illustrations.

Effective 01-01-98.

Natural Resources (CR 96-188):

An order affecting ss. NR 120.02, 120.14 and 120.18, relating to the nonpoint source pollution abatement program.

Effective 10-01-97.

Natural Resources (CR 97-3):

An order affecting ss. NR 400.03, 406.04, 439.07 and 460 Appendix N and chs. NR 407 and 463, relating to federal emission standards for chromium electroplating and chromium anodizing operations.

Effective 10-01-97.

Nursing Home Administrator Examining Board

(CR 97-42):

An order affecting chs. NHA 1 to 6, relating to the licensure of nursing home administrators.

Effective 10-01-97.

Optometry Examining Board (CR 97-22):

An order affecting chs. Opt 1, 3, 4, 5, 6 and 7, relating to applications, examinations and continuing education requirements, and to standards of professional conduct of optometrists.

Effective 10-01-97.

Public Service Commission (CR 97-10):

An order repealing and recreating ch. PSC 114, relating to revisions of the state electrical code, volume 1, concerning electric safety.

Effective 10-01-97.

Regulation & Licensing (CR 97-25):

An order affecting chs. RL 100, 101, 102, 103, 104, 105, 110, 111, 112, 113, 114, 115 and 116, relating to amateur and professional boxing.

Effective 10-01-97.

Revenue (CR 96-79):

An order affecting ch. Tax 18, relating to assessment of agricultural land beginning in 1998.

Effective 10-01-97.

Revenue (CR 97-46):

An order amending s. Tax 11.66 (2) (intro.) and (5), relating to telecommunications services.

Effective 10-01-97.

Revenue (CR 97-53):

An order repealing ch. ATCP 53 and creating ch. Tax 53, relating to changing the agency acronym to reflect the program transfer from the Department of Agriculture, Trade and Consumer Protection to the Department of Revenue, and to increase plat review fees to cover all of the current costs of activities and services provided by the Department of Revenue under ss. 70.27 and 236.12, Stats.

Effective 10-01-97.

Transportation (CR 97-63):

An order amending s. Trans 276.07 (8), (11), (16) and (17), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Effective 10-01-97.

Workforce Development (CR 96-181):

An order affecting ss. DWD 272.01 and 272.03, relating to the minimum wage.

Effective 10-01-97.

Workforce Development (CR 97-23):

An order 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.

Effective 10-01-97.

Workforce Development (CR 97-33):

An order affecting chs. DWD 290 and ILHR 290, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Effective 10-01-97.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Corrections (CR 96–92)

Ch. DOC 326 – Leave for qualified inmates.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

2. Corrections (CR 96–163)

S. DOC 313.025 – Definition of prison industry.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule will have no effect on small businesses.

Summary of Comments:

No comments were reported.

3. Corrections (CR 96–176)

Ch. DOC 324 – Work and study release program.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

4. Insurance (CR 97–9)

S. Ins 2.17 – Life insurance illustrations.

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

5. Natural Resources (CR 96–188)

Ch. NR 120 – Nonpoint source pollution abatement program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rule was reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

6. Natural Resources (CR 97–3)

NR 406, 407, 460 and 463 – Federal emission standards for chromium electroplating and chromium anodizing operations.

Summary of Final Regulatory Flexibility Analysis:

The federal MACT emission standard for chromium electroplating and chromium anodizing tanks does affect small businesses and the proposed rule provides the general monitoring, recordkeeping and reporting requirements for these standards. However, since the proposed rule simply mirrors the federal requirements, it will not further impact small businesses except that, upon delegation, small businesses would work with the Department rather than U.S. EPA.

Summary of Comments by Legislative Review Committees:

The rule was reviewed by the Assembly Environment Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

7. Nursing Home Administrator Examining Board (CR 97–42)

NHA Code – Licensure of nursing home administrators.

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.

8. Optometry Examining Board (CR 97–22)

Opt Code – Applications, examinations and continuing education requirements and to standards of professional conduct of optometrists.

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.

9. Public Service Commission (CR 97–10)

Ch. PSC 114 – Revisions of the state electrical code, volume 1, concerning electric safety.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

10. Regulation & Licensing (CR 97–25)

RL Code – Amateur and professional boxing.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have a minor economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats. Proposed rules were reviewed by the department's Small Business Review Advisory Committee and the committee only made on suggestion. It pertained to fouls, as described above.

The authority granted to the department to assess professional clubs for the reasonable costs incurred by the department in providing a ringside physician and a referee for a professional show could increase some professional clubs' costs of putting on a show by a couple hundred dollars. Promoters now directly pay these boxing officials; however, the amount is left to the discretion of the promoter. Since the new federal law will prohibit professional clubs from paying boxing officials, the department plans to contract with boxing officials and pay them a standard amount for all shows in the state. The proposed rule is permissive.

The fees for licensing seconds who assist boxers at professional shows would probably not exceed \$110 per year. Seconds, not professional clubs, would pay this license fee.

Summary of Comments:

No comments were reported.

11. Revenue (CR 97–46)

S. Tax 11.66 – Telecommunication services.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

12. Revenue (CR 96–79)

Ch. Tax 18 – Assessment of agricultural land beginning in 1998.

Summary of Final Regulatory Flexibility Analysis:

This rule order is not expected to directly affect small business and, therefore, under s. 227.114 (8) (b), Stats., a regulatory flexibility analysis is not required.

Summary of Comments:

No comments were reported.

13. Revenue (CR 97–53)

Ch. Tax 53 – Review of plats.

Summary of Final Regulatory Flexibility Analysis:

No regulatory flexibility analysis is required because the proposed rule does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

14. Transportation (CR 97–63)

S. Trans 276.07 – Allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

Summary of Final Regulatory Flexibility Analysis:

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Summary of Comments:

No comments were reported.

15. Workforce Development (CR 96–181)

Ch. DWD 272 – Minimum wage.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule changes the minimum wage rates paid by any business with employees who receive the minimum wage, but it does not impose any new requirements upon employers.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Labor, Transportation and Financial Institutions. There were no comments.

16. Workforce Development (CR 97–23)

S. DWD 56.08 – Administration of child care funds and required co-payments.

Summary of Final Regulatory Flexibility Analysis:

The rule will have little or no direct impact on small child care businesses.

Summary of Comments of Legislative Standing Committees:

There were no comments.

17. Workforce Development (CR 97-33)

Ch. DWD 290 – Prevailing wage rates for state or local public works projects.

Summary of Final Regulatory Flexibility Analysis:

This rule changes some procedures under the prevailing wage program and implements a wage survey that is provided for by statute. The records involved are wage and hour records for employes, which employers are already required to keep.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Labor, Transportation and Financial Institutions.

Senate Committee: No action taken.

Assembly Committee: No action taken.

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