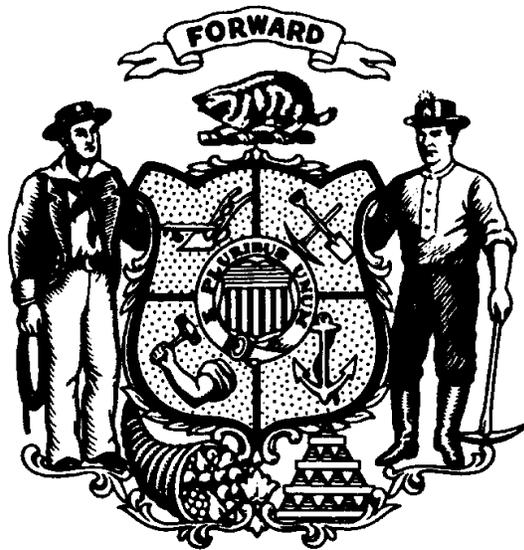


WISCONSIN ADMINISTRATIVE REGISTER

No. 503



Publication Date: November 14, 1997
Effective Date: November 15, 1997

REVISOR OF STATUTES BUREAU
SUITE 800, 131 WEST WILSON STREET
MADISON, WISCONSIN 53703-3233



State of Wisconsin
Revisor of Statutes Bureau

Suite 800, 131 West Wilson Street, Madison, Wisconsin 53703-3233
 (608) 266-2011 • Fax (608) 267-0410

Bruce Munson
 Revisor of Statutes

Gary L. Poulson
 Deputy Revisor of Statutes
 Assistant Revisor-Administrative Code

November 14, 1996

**The 1995-96 Wisconsin Statutes and Annotations can be ordered now
 in bound volumes or on the WisLaw™ CD-ROM**

Prices for the 1995-96 Wisconsin Statutes and Annotations bound volumes have been established and are detailed below:

<i>Hard Cover</i>	<i>Hard Cover</i>	<i>Soft Cover</i>	<i>Soft Cover</i>
<i>With Postage</i>	<i>Without Postage</i>	<i>With Postage</i>	<i>Without Postage</i>
\$107.00	\$101.00	\$96.00	\$91.00

Send orders to Document Sales, 202 S. Thornton Avenue, P.O. Box 7840, Madison, WI 53707-7840, telephone (608) 266-3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to *WI Department of Administration*. Credit card orders using either VISA or Mastercard may be placed by calling 1-800-DOC-SALE. Local customers may call 264-9419 to place an order. Delivery to Document Sales is scheduled to begin in late January, 1997.

WisLaw™, the computer-searchable CD-ROM, includes both the DOS and Windows version of Folio PreViews search and retrieval software. WisLaw™ includes the **Wisconsin Statutes and Annotations, Supreme Court Rules**, and recent **Opinions of the Attorney General**. In addition, the **Wisconsin Acts**, with hypertext links to the affected statutes, are included on WisLaw™.

WisLaw™ is only available by subscription for 12-month periods; the number of CD's to be released in any 12-month period is indeterminate. WisLaw™ End-user license and subscription order forms are available at Document Sales; CD's will only be delivered upon receipt of a signed license and subscription form and full payment. A 12-month subscription plus a license for no more than one simultaneous user costs \$99. A 12-month subscription plus a license for no more than 4 simultaneous users costs \$149. A 12-month subscription plus a license for no more than 10 simultaneous users costs \$199. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

TABLE OF CONTENTS

Emergency Rules Now In Effect.**Pages 4 to 9.**

Commerce:	<u>Financial Resources for Businesses and Communities, Chs. Comm 105 to 128</u> Rules adopted amending s. Comm 108.21, relating to emergency grants under the CDBG program. [FIRST APPEARANCE]
Corrections:	Rules relating to inmate secure work groups. Rules relating to registration and community notification of sex offenders. Rule adopted relating to the inmate complaint review system.
Dentistry:	Rule adopted revising s. DE 2.04, relating to examination requirements for licensed out-of-state dentists. [FIRST APPEARANCE]
Department of Employment Relations:	Rules adopted revising ch. ER 18, relating to sick leave. [FIRST APPEARANCE]
Insurance, Commissioner of:	Rules relating to patients compensation fund. Rules relating to patients compensation fund.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1–</u> Rule relating to notice of receipt of an application to incidentally take an endangered or threatened species. Rules relating to the 1997 migratory game bird season.
Public Defender:	Rule relating to calculation of indigency.
Public Instruction:	Rules relating to teacher certification.
State Fair Park Board:	Rules relating to activities in the Park and bail bond schedule.
Transportation:	Rules relating to transportation of school children.
Veterans Affairs:	Rules adopted revising ch. VA 12, relating to the personal loan program. [FIRST APPEARANCE]
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rule relating to the minimum wage.

Scope Statements.**Pages 10 to 14.**

Agriculture, Trade & Consumer Protection:	Chs. ATCP 10 & 11– Relating to fish farming.
Agriculture, Trade & Consumer Protection:	Ch. ATCP 30 – Relating to atrazine pesticide; use restrictions.
Agriculture, Trade & Consumer Protection:	Chs. ATCP 2, 45 50, and 118 (Jus 2) – Relating to technical rule changes.
Commerce:	Ch. Comm 14 – Relating to fire department dues entitlement and records of fires.
Commerce:	S. Comm 108.21 (1) (f) – Relating to funding emergency grants under the Community Development Block Grant Program.
Health & Family Services:	Ch. HFS 138 – Relating to subsidy of health insurance premiums for people with HIV infection.
Natural Resources:	NR Code – Relating to development rules for the administration of a forest fire protection grant program.
Natural Resources:	Ch. NR 45 – Relating to needs of Parks Automated Camping Reservations and Reporting Systems (PARRS).

Natural Resources:	Ch. NR 487 – Relating to revision of the implementation date for ch. NR 487, Wis. Adm. Code.
Pharmacy Examining Board:	Phar Code – Relating to electronic transmission of prescription orders from prescribers to pharmacies.
Physical Therapists Affiliated Credentialing Board:	PT Code – Relating to examination requirements for applicants whose primary language is not English.
Veterans Affairs:	Ch. VA 12 – Relating to the establishment of underwriting and other criteria necessary for the administration of the personal loan program.
Workforce Development:	SS. DWD 11.195 & 12.25 – Relating to learnfare amendments.

Notices of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse.

Health & Family Services:	Ch. HFS 173 – Relating to licensing of tattooists and tattoo establishments and licensing of body–piercers and body–piercing establishments.
Physical Therapists Affiliated Credentialing Board:	PT Code – Relating to applicants who have graduated from a school of physical therapy, whose primary language is not English, to take and pass three language proficiency examinations.

Page 15.

Notices of Hearings or of Proposed Rules.

Administration:	Hearing to consider revision of ch. Adm 2, relating to use of state buildings and facilities.
Employe Trust Funds:	Hearing to consider revision to s. ETF 41.02, relating to long–term care insurance.
Health & Family Services:	<u>Community Services, Chs. HSS/HFS 30–</u> Hearings to consider revision of ss. HSS 45.05 (11) and HFS 46.06 (11), relating to outdoor play space for children attending daycare centers.
Health & Family Services:	<u>Health, Chs. HSS/HFS 110–</u> Hearings to consider ch. HFS 140, relating to required services by local health departments.
Physical Therapists Affiliated Credentialing Board:	Hearing to consider revision to PT Code relating to examinations and licensing.
Social Workers, Therapists & Counselors:	Hearing to consider revision to chs. SFC 1, 11 & 14, relating to examination requirements, equivalent academic programs and temporary certificates for counselors.

Pages 16 to 25.

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

Corrections:	(CR 97–30) – Ch. DOC 311
Corrections:	(CR 97–69) – Ch. DOC 306
Natural Resources:	(split out from CR 97–57, new CR number has not yet been assigned) – Chs. NR 132 & 182
Natural Resources:	(CR 97–78) – S. NR 101.13 (2)
Natural Resources:	(CR 97–87) – Chs. NR 590, 600 to 690
Public Defender:	(CR 97–124) – S. PD 3.038 (2)
Regulation & Licensing:	(CR 97–101) – Ch. RL 17
Regulation & Licensing:	(CR 97–110) – Chs. RL 80 to 87
Transportation:	(CR 97–62) – Chs. Trans 129 & 503

Page 26.

***Administrative Rules Filed with the Revisor of Statutes
Bureau.***

Page 27.

Natural Resources:	(CR 97–16) – Ch. NR 18
Natural Resources:	(CR 97–21) – NR 500 series.
Natural Resources:	(CR 97–39) – Ch. NR 37
Natural Resources:	(CR 97–40) – Chs. NR 45 & 51
Natural Resources:	(CR 97–58) – Ch. NR 10
Natural Resources:	(CR 97–88) – Ch. NR 10
Transportation:	(CR 97–103) – Ch. Trans 300
Workforce Development:	(CR 96–151) – Chs. ILHR 301 & DWD 301
Workforce Development:	(CR 97–100) – S. DWD 272.14

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

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

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

Finding of Emergency

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

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

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

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

to respond in a timely manner to the needs of the citizens of this state in times of emergency.

Publication Date: October 30, 1997

Effective Date: November 1, 1997

Expiration Date: April 1, 1998

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

Extension Through: December 26, 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
Extension Through: December 28, 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
Hearing Dates: October 15, 16 & 17, 1997

EMERGENCY RULES NOW IN EFFECT

Dentistry Examining Board

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

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats. The Governor vetoed a provision in the budget bill which would have permitted dentists licensed in other states to obtain a license in Wisconsin, despite their not having passed a clinical licensing examination with a periodontal part. In doing so, the Governor requested the board adopt an emergency rule to permit these dentists to obtain licenses in Wisconsin under other reasonable and appropriate methods. The concern for the public health, safety and welfare is that this state's citizens are currently being deprived of necessary dental services from qualified dentists who, themselves,

are experiencing substantial and perhaps unnecessary hardship in becoming licensed in Wisconsin. These rules are put into effect prior to the time they would be effective under routine rulemaking procedures to assure that the public is not deprived of necessary dental services from qualified dental professionals and that adequate safeguards for protecting the health and safety of dental patients are part of the licensing process.

Publication Date: October 18, 1997
Effective Date: October 18, 1997
Expiration Date: March 18, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Employment Relations

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

Finding of Emergency

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

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

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

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

Without a change in the administrative rules, nonrepresented employes will not receive the increased sick leave, nor will they

have the same broadened opportunities to donate and receive catastrophic leave as represented employees.

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

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

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

Publication Date: October 11, 1997
Effective Date: October 12, 1997
Expiration Date: March 12, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Commissioner of Insurance

- 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

- 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–—)

- 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

- 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
Hearing Date: October 27, 1997

EMERGENCY RULES NOW IN EFFECT

Public Defender

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

Finding of Emergency

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

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

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

EMERGENCY RULES NOW IN EFFECT

Public Instruction

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
Hearing Dates: July 7 & 8, 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

Veterans Affairs

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

Exemption From Finding of Emergency

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

Analysis

By repealing and recreating ch. VA 12, Wis. Adm. Code, the department establishes the underwriting and other criteria necessary for the administration of the personal loan program. The personal loan program was authorized by the legislature and governor

through the amendment of s 45.356, Stats., upon enactment of 1997 Wis. Act 27.

Publication Date: October 17, 1997
Effective Date: October 17, 1997
Expiration Date: March 17, 1998

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Labor Standards, Chs. DWD 270–279)

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

Finding of Emergency

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

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

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

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

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee’s suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state’s employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

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

will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a

germane modification to CR–96–181 on March 31, 1997. It was the Department’s intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

Publication Date: May 31, 1997
Effective Date: May 31, 1997
Expiration Date: October 29, 1997
Hearing Date: August 12, 1997
Extension Through: November 30, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade & Consumer Protection

Subject:

Chs. ATCP 10 and 11 – Relating to fish farming.

Description of policy issues:

Preliminary objectives:

Comply with s. 95.60, Stats., by doing all of the following:

- Establish criteria for importing live fish or fish eggs into Wisconsin.
- Establish a procedure and fee for annual registration of fish farms.
- Establish recordkeeping requirements for persons who operate a fish farm.
- Identify standards for fish farming facilities.
- Specify labeling requirements for farm raised fish sold in commerce.
- Establish fish health standards, and procedures for certifying that the standards are met.
- Specify the qualifications required for a person who is not a veterinarian to issue fish health certificates.
- Specify diseases which affect salmon and establish procedures to assure that salmon and salmon eggs are free of those diseases.

Preliminary policy analysis:

Under s. 95.60, Stats., created by 1997 Wis. Act 27, the Department of Agriculture, Trade and Consumer Protection must promulgate rules related to each of the preliminary objectives identified above. The Department must promulgate those rules in order to comply with the statute.

Policy alternatives:

There is no alternative. The statute requires the Department of Agriculture, Trade and Consumer Protection to address each of the identified objectives by rule.

Statutory authority:

The Department proposes to develop these rules under authority of ss. 93.07 (1) and 95.60, Stats. The rules would interpret s. 95.60, Stats.

Staff time required:

The Department estimates that it will use approximately 1.25 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions, and communicating with affected persons and groups. The Department will assign existing staff to develop this rule.

Agriculture, Trade & Consumer Protection

Subject:

Ch. ATCP 30 – Relating to atrazine pesticides; use restrictions.

Description of policy issues:

Preliminary objectives:

Regulate the use of atrazine herbicides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect groundwater sampling results obtained during the past year. Renumber and reorganize current rule, as necessary.

Preliminary policy analysis:

Under the Wisconsin Groundwater Law, ch. 160, Stats., the Department must regulate the use of pesticides to assure compliance with groundwater standards established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

Under s. 160.25, Stats., the Department must prohibit atrazine uses that result in groundwater contamination levels which violate the DNR enforcement standard. The Department must prohibit atrazine use in the area where the groundwater contamination has occurred unless the Department determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Current rules under ch. ATCP 30 prohibit the use of atrazine in 96 designated areas (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, the Department anticipates identifying additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with the Groundwater Law, the Department must take further action to prohibit or regulate atrazine use in the areas where these wells are located. The Department proposes to amend ch. ATCP 30 to add or repeal prohibition areas or take other appropriate regulatory action in response to the new groundwater findings.

Policy alternatives:

No Change. If the Department takes no action, the current version of the ch. ATCP 30 atrazine rule (promulgated in April, 1998) would continue to apply. However, the Department would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly-discovered contaminated areas, nor would it meet the Department's obligations under the Groundwater Law. Conversely, the Department would be unable to repeal the current restrictions on atrazine use where indicated by groundwater findings.

Statutory authority:

The Department proposes to revise ch. ATCP 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Stats.

Staff time required:

The Department estimates that it will use approximately 0.6 FTE staff to develop this rule. This includes investigation, drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

Agriculture, Trade & Consumer Protection

Subject:

Chs. ATCP 2, 45, 50 and 118 (Jus 2) – Relating to technical rule changes.

Description of policy issues:

Preliminary objectives:

Renumber and make nonsubstantive technical changes to current rules.

Preliminary policy analysis:

The Department proposes to do the following:

- Renumber ch. ATCP 2 (Farm Mediation and Arbitration Program) to ch. ATCP 162, to fit the current organizational structure of the Department. The farm mediation and arbitration program was recently moved to the Department’s Marketing Division. The renumbering will have no substantive effect on the program.

- Renumber ch. ATCP 45 (Sustainable Agriculture Program) as a subchapter of ch. ATCP 161 (Agricultural Development and Market Promotion), to fit the current organizational structure of the Department. The sustainable agriculture program was recently moved to the Department’s Marketing Division, and consolidated with other agricultural grant programs. The renumbering will have no substantive effect on the program.

- Renumber Jus 2 (Notice of Renter Liability; Rental of Passenger Vehicles) to ch. ATCP 118 and make minor amendments. As part of a consolidation of consumer protection programs, 1995 Wis. Act 27 transferred the car renter liability notice law from the Department of Justice to the Department of Agriculture, Trade and Consumer Protection. This rule will implement the consolidation without making any substantive changes in the current rule.

- Update current technical standards incorporated by reference in ch. ATCP 50, Wis. Adm. Code (Soil and Water Resource Management Program). The current rules incorporate technical standards adopted by the Natural Resource Conservation Service of the U.S. Department of Agriculture. This rule will incorporate recent changes in the NRCS standards.

- Make other nonsubstantive technical changes, as necessary.

Policy alternatives:

- **No Change.** If the Department does not make the proposed changes, its rules will not reflect the current organization of the Department and will be technically outdated.

Statutory authority:

The Department proposes these rule modifications under authority of ss. 92.05 (3) (c), 93.07 (1) and 344.576 (3) (c), Stats.

Staff time required:

The Department estimates that it will use approximately .1 FTE staff time to modify this rule. This includes research, drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

Commerce

Ch. Comm 14 – Relating to fire department dues entitlement and records of fires.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to clarify the responsibilities of fire department relative to the fire department dues entitlement program and the fire incidence reporting process.

Proposed rules will be developed to specify the procedures and conditions that fire departments must comply with in order for them to receive their fire dues distribution. For example, a fire department would not be eligible to receive its fire dues distribution if it has not conducted its fire prevention inspections within the proper time window.

Proposed rules will also codify the requirements that fire departments must follow in reporting fire incidents to the Department of Commerce.

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

A. Dues Entitlement.

Existing policies for the fire dues entitlement program follow the mandates in sections 101.14, 101.573 and 101.575 of the Wisconsin Statutes. The proposed rule will codify these policies.

B. Records of Fires.

Existing policies for reporting of fires by fire departments allow the departments to use any one of 3 reporting methods, with the reports to be received by the Department of Commerce by January 15 for the previous year. This rule project will evaluate reporting methods.

Statutory authority for the rule:

- A. Dues Entitlement — Sections 101.14, 101.573 and 101.575, Stats.
- B. Records of Fires — Section 101.141, 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 rule will be developed with the assistance of a citizen advisory Fire Safety Code Council and 2 Task Groups. Time will be spent forming the Council and Task Groups, meeting with the Council and Task Groups, and then drafting and processing 2 rule packages through public hearings and legislative review. An estimate of the time that state employees will spend to develop the rule is as follows:

Research and Council/Task Group meetings time	430 hours
Rule drafting time	80 hours
<u>Rule promulgation time</u>	<u>240 hours</u>
Total	750 hours

Commerce

Subject:

S. Comm 108.21 (1) (f) – Relating to funding emergency grants under the Community Development Block Grant Program.

Description of policy issues:

Description of the objective of the rule:

This rule will allow the Department of Commerce to award emergency grants to communities experiencing a natural disaster or catastrophic event, such as a flood or tornado, using other state or federal grants as a match.

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

Earlier this year, the Department revised the rules related to the Community Development Block Grant Program which take effect on November 1, 1997. The proposed rule will allow the Department to use grants from the Federal Emergency Management Administration (FEMA) and the state Division of Emergency Management (DEM) for emergency projects and respond in a more timely manner to the needs of the citizens of this state in times of an emergency.

Statutory authority for the rule:

SS. 16.54, 560.02 (4), and 560.04 (2) (j), Stats., and 42 USC 5301 to 5319

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

An estimate of the time state employees will spend to develop the rule is as follows:

Rule Drafting Time and Internal Processing Time to Announce a Public Hearing	8 hours
Conducting Public Hearing and Summarizing Comments	10 hours
Preparing Rules in Final Draft Form for Legislative Review	8 hours
Meet with Legislators on Proposed Rule	12 hours
<u>Prepare Rule for Adoption and File Adopted Rule</u>	<u>4 hours</u>
Total	42 hours

Health and Family Services

Subject:

Ch. HFS 138 – Relating to subsidy of health insurance premiums for people with HIV infection.

Description of policy issues:*Description of objectives:*

Chapter HSS 138 is being modified for the purpose of incorporating changes to ss. 252.16 and 252.17, Stats., included in 1997 Wis. Act 27.

Description of policies:

Provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, PL 99–272, require employers to allow certain individuals to continue coverage under group health insurance plans. Under these provisions, certain individuals can maintain their coverage for up to 29 months after leaving work. This group health insurance extension requirement is commonly referred to as the COBRA continuation provision.

The Department of Health and Family Services (DHFS) currently administers a program under ss. 252.16 and 252.17, Stats., that pays the premium costs for COBRA continuation coverage for individuals who have human immunodeficiency virus (HIV) infection and who are unable to continue work due to their illness. To be eligible for the program, an individual must:

- (a) Be a state resident;
- (b) Have a family income that does not exceed 200% of the federal poverty level (FPL);
- (c) Submit to DHFS certification from a physician that the individual has HIV infection and has had employment terminated or hours of work reduced because of an illness or medical condition arising from or related to the HIV infection; and
- (d) Be eligible for continuation coverage.

Individuals who are eligible for Medicare are not eligible for the continuation program. DHFS is authorized to pay premiums until the individual's continuation coverage ceases or until the expiration of 29 months after his or her continuation coverage began, whichever occurs first.

Changes to the program made by the 1997–99 biennial budget act include the following:

Coverage for Policies Other than Continuation Coverage. DHFS is directed to pay the premium costs for any health insurance coverage, including individual or group policies and Medicare supplement policies, but not for Medicare replacement policies and long-term care insurance policies. In addition, the revised statutes specify that eligible group and individual health insurance policies will be subsidized, regardless of whether they are single or family plans.

Delete Time Limits of Premium Subsidy Benefits. DHFS is directed to pay premium subsidies for an individual as long as he or she remains eligible for the program and has coverage. This will lift the current 29 month time limit on premium subsidy benefits.

Income Eligibility. The revised statutes expand participation in the program to individuals with income up to 300% of the federal poverty line (FPL) for a family of that size. The current income eligibility standard is 200% of the FPL. The revised statutes direct DHFS to establish a premium contribution schedule for individuals participating in the program in families with income between 200% and 300% of the FPL. In developing the premium contribution schedule, the amended statute directs DHFS to take into consideration both income and family size.

Statutory authority:

Sections 252.16 and 252.17, Stats.

Staff time needed to develop rules:

80 hours.

Natural Resources**Subject:**

NR Code – Relating to developing rules for the administration of a forest fire protection grant program.

Description of policy issues:

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

To codify a fire organizations (Fire Departments/County Fire Associations, etc.) grant administration process. The rules will identify the application process, the eligibility criteria and records required for accountability purposes for the grants.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

The rules are being developed to administer a statutory grant program that is as part of the 97/99 budget. Now with legislative approval, the Department proposes to initiate a new voluntary grant program for those fire organizations (Fire Departments/County Fire Associations, etc.) who have signed Memorandums of Understanding with the DNR to help in the fighting of forest fires. These grants will be for the purchase of various types of equipment that can be used for various types of forest firefighting services.

Statutory authority:

S. 26.145, Stats.

Anticipated time commitment:

The anticipated time commitment is 1,106 hours. Two public hearings shall be held in January, 1998 at Black River Falls and Rhinelander.

Natural Resources**Subject:**

Ch. NR 45 – Relating to needs of Parks Automated Camping Reservations and Reporting Systems (PARRS).

Description of policy issues:

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

In 1995, the Wisconsin Department of Tourism was created. The statutory language that accompanied the creation required the Department of Tourism and the DNR to jointly develop an automated camping reservation system. The governor's budget proposal for FY 97–99 includes proposed funding and statutory changes repealing language that defines current manual system and creates statutory language requiring the DNR to promulgate rules for a new automated system beginning April 1, 1998. The new administrative rules must be approved by the DNR Board within 90 days of the signing of the state budget to meet the timetable for the PARRS installation software development.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The current statute and resulting administrative rules require state parks to use a paper-based, mail-in reservation form that can be submitted beginning January 10th of each year. To automate, the DNR must have the ability to accept telephone and electronic reservations (Worldwide Web). For better customer service and to better meet the tourism industry expectations, the new system would allow customers to make reservations up to 11 months in advance of their arrival rather than the seasonal restriction that currently exists.

Statutory authority:

Chapter 27, sections 30–37 as proposed in Biennial Budget '97–99.

Anticipated time commitment:

The anticipated time commitment is 23.5 hours. Three public information/listening sessions will be held in November, 1997 at Madison, Stevens Point and Eau Claire.

Natural Resources**Subject:**

Ch. NR 487 – Relating to revision of the implementation date for ch. NR 487, Wis. Adm. Code. The objective of the proposed rule is to delay the implementation date of the Clean Fuel Fleet Program from model year (MY) 1998 to model year (MY) 1999 vehicles.

Description of policy issues:

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

The proposed rule revision is in response to U.S. EPA's decision to allow states to delay the implementation of the Clean Fuel Fleet Program by one model year due to non-availability of an adequate model-mix and volume of certified vehicles which meet the Low Emission Vehicle (LEV) tailpipe emission standards. These vehicles are to be acquired by the covered fleets as a certain percentage of their new vehicle acquisitions to comply with the program.

The groups likely to be impacted or interested in the issue are alternative fuel providers and fleet operators with 10 or more vehicles operating in the six southeastern Wisconsin counties covered by this program (Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha).

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 sources. It only delays the implementation of the program by one year.

Statutory authority:

S. 285.30 (2), Stats.

Anticipated time commitment:

The anticipated time commitment is 270 hours. One or two public hearings shall be held in March, 1998 at Milwaukee.

Pharmacy Examining Board

Subject:

Phar Code – Relating to electronic transmission of prescription orders from prescribers to pharmacies.

Description of policy issues:

Objective of the rule:

1997 Wis. Act 27 (the "Act") amended several sections of ch. 450, Stats., to specifically authorize the electronic transmission of prescription orders from prescribers to pharmacies. The objective of the rule is to assure the appropriate use of electronic transmission systems in conveying prescription orders, and to provide guidance to the profession in adopting procedures and systems assuring the validity, accuracy and security of prescription orders received electronically from prescribers.

Policy analysis:

Prior to the Act, ch. 450, Stats., defined a "prescription order" as one which was either written or oral. The statutes did not address the transmission of prescription orders electronically, (e.g., from a computer located in a physician's office to a computer in a pharmacy). The Act now specifically authorizes such orders. The Board currently has specific rules regarding oral and written prescription orders. The electronic transmission of prescription orders gives rise to a need for rules to assure the validity and accuracy of information received via computer. Additionally, the issue of the security of personal information contained in and transferred between computers over the "Internet" is of general concern to the public. The security of computer-based and transmitted information becomes critically important when the data consists of confidential patient health care records, such as prescription orders. It is necessary for the Board to adopt rules to require pharmacists have systems and procedures in place to assure the validity, accuracy and security of electronically-transmitted prescription orders.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

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

20 hours.

Physical Therapists Affiliated Credentialing Board

Subject:

PT Code – Relating to examination requirements for applicants whose primary language is not English.

Description of policy issues:

Objective of the rule:

To amend rules relating to language proficiency examinations.

Policy analysis:

To amend the rules to require that applicants who have graduated from a school of physical therapy whose primary language is not English take and pass three language proficiency examinations:

✓ Test of English as a Foreign Language (TOEFL)

✓ Test of Written English (TWE)

✓ Test of Spoken English (TSE)

Statutory authority:

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

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

2 hours.

Veterans Affairs

Subject:

Ch. VA 12 – Relating to the establishment of underwriting and other criteria necessary for the administration of the personal loan program.

Description of policy issues:

Objective of the rule:

To comply with the directive of 1997 Wis. Act 27, which establishes the personal loan program as a benefit for state veterans. The legislature directed the Department to establish underwriting and other criteria necessary for program administration. The legislature further authorized that the rule be promulgated using the emergency rule procedure, which was accomplished through the publication of recreated ch. VA 12 on October 17, 1997. The Department now seeks to promulgate the rules as permanent rules.

Policy analysis:

Section 45.356, Stats., as amended by 1997 Wis. Act 27, creates the personal loan program. The statutory language provides broad eligibility guidelines and establishes permissible loan purposes. It is necessary to establish underwriting criteria and loan terms in order to administer the program.

Statutory authority:

Sections 45.35 (3) and 45.356, Stats., as amended by 1997 Wis. Act 27.

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

The rule has already been developed and promulgated as an emergency rule under the authority of 1997 Wis. Act 27. Approximately 60 hours have been devoted to developing the rule and an additional 5 hours will be needed to complete the permanent rule promulgation process.

Workforce Development

Subject:

SS. DWD 11.195 and 12.25 – Relating to learnfare amendments.

Description of policy issues:

Description of the objective of the rule:

To implement the changes made to the learnfare statute by the 1997 Wis. Act 27.

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

1997 Wis. Act 27 makes three significant changes to the learnfare statute:

1) The statute has been amended to provide that learnfare school attendance requirements apply to students from 6 to 17 years of age (previously, the school attendance requirements applied to students from 6 to 19 years of age);

2) The attendance requirements are to be enforced through the verification of enrollment rather than verifying daily attendance; and

3) Minor parents, habitual truants and dropouts are now required to participate in case management and may be sanctioned for failing to participate in case management efforts.

This rule is necessary to amend chs. DWD 11 and 12 to reflect the statutory changes and to establish the policies for case management sanctions.

Statutory authority:

Sections 49.26 (1) (gm) 2 and 103.005 (1), Stats.

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

Approximately 40 hours of state employe time will be necessary to develop the rule.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Health & Family Services

Rule Submittal Date

On October 27, 1997, the Wisconsin Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, affecting ch. HFS 173, Wis. Adm. Code, relating to licensing of tattooists and tattoo establishments and licensing of body–piercers and body–piercing establishments.

Analysis

Statutory authority:

SS. 252.23 (4), 252.24 (4) and 252.245 (9), Stats.

Reason for rules, intended effects, requirements:

These rules implement the requirements in ss. 252.23 (4), 252.24 (4) and 252.245 (9), Stats., as created by 1995 Wis. Act 468, that the Department promulgate as rules licensing standards and procedures for tattooists and tattoo establishments and for body piercers and body–piercing establishments, including license fees; standards for the performance of tattooing and body piercing as well as standards for maintenance of the establishments where tattooing and body piercing are done, which will promote safe and adequate care and treatment for patrons and eliminate or greatly reduce the danger of exposure of patrons to communicable disease and infection; and state fees for the Department's costs when local health departments serve as the Department's agents for administration and enforcement of these rules.

The rules cover how to apply for a license; license fees; limitations on who can be given a tattoo or body pierce; physical facilities and their condition; personnel; hygienic practices; equipment; cleaning and sterilization of equipment; temporary establishments; enforcement action and appeals; and establishment of a state fee to be part of the license fee charged by an agent local health department.

Forms

HFS 173.04 (1) (a) Application for establishment license (not yet developed)

HFS 173.04 (2) (a) Application for practitioner license (not yet developed)

Agency Procedure for Promulgation

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

Contact Person

David Cammilleri
Division of Health
Telephone (608) 267–3242

Physical Therapists Affiliated Credentialing Board

Rule Submittal Date

On October 21, 1997, the Physical Therapists Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

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

The proposed rule–making order relates to applicants who have graduated from a school of physical therapy, whose primary language is not English, to take and pass three language proficiency examinations.

Agency Procedure for Promulgation

A public hearing is required.

Contact Person

Pamela Haack
Administrative Rules Coordinator
Telephone (608) 266–0495

NOTICE SECTION

Notice of Public Hearing

Administration

Notice is hereby given that pursuant to ss. 16.004 (1), 16.846 (1) (a) and 227.11 (2) (a), Stats., and interpreting ss. 16.84 and 16.846, Stats., the Department of Administration will hold a public hearing at the time and place indicated below, to consider the repeal and recreation of rules relating to the use of state buildings and facilities.

Hearing Information

The public hearing will be held:

<u>Date & Time</u>	<u>Location</u>
December 1, 1997 Monday at 9:00 a.m.	Room 225 NW State Capitol Bldg. MADISON, WI

This hearing site is accessible to people with disabilities.

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are also urged to submit facts, opinions and arguments in writing as well. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to:

Donna Sorenson
Dept. of Administration
P.O. Box 7864
Madison, WI 53707–7864

Written comments must be received by **December 11, 1997**, to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Administration

Statutory authority: Sections 16.004 (1), 16.846 (1) (a) and 227.11

Statutes interpreted: Sections 16.84 and 16.846

The Department proposes repealing and recreating chapter Adm 2 to update rule language and to incorporate legislative changes contained in 1995 Wis. Act 174, concerning the use, care and preservation of property under the Department's control.

Text of Rule

SECTION 1. Adm 2 is repealed and recreated to read:

Chapter Adm 2

USE OF STATE BUILDINGS AND FACILITIES

Adm 2.01 Managing authority. The managing authority, as defined in s. 16.845 (2) (b), Stats., of the state office buildings and facilities shall be the department as provided in s. 16.84 (1), Stats. The department, when lessee, shall be the managing authority of properties leased or rented by the state of Wisconsin.

Adm 2.02 Designation of state office buildings and facilities. (1) The following buildings and facilities are hereby designated as state office buildings and facilities for the purpose of use management under this chapter:

(a) State capitol building, except those rooms reserved by the legislature.

(b) State capitol park.

(c) Any other buildings and facilities currently owned and hereafter constructed, purchased, or acquired by the state including lands and structures acquired for site development, when said buildings, facilities, and lands are under the managing authority of the department.

(2) Real properties leased or rented by the state of Wisconsin with the department as lessee and agent are hereby designated as state office buildings and facilities for the purpose of use management under this chapter. Law enforcement services may be provided for state agencies at such facilities by an agreement with the department.

(3) The executive residence and grounds, 99 Cambridge Road, Village of Maple Bluff, Madison, Wisconsin, is hereby designated as a state building for the purpose of use management under this chapter. The prime use of this building and grounds is as a private residence for the governor of Wisconsin and the managing authority shall permit only public utilization which does not encroach upon the privacy of a residence, and shall permit any utilization only with the consent of the governor.

Adm 2.03 Definitions. In this chapter:

(1) "Closed building" means the building is not open to public access and access must be gained by key, access card, electronic means or by a representative of the department.

(2) "Commercial enterprise" includes any effort directed at personal or corporate gain, or any sales or solicitation to sell.

(3) "Department" means the department of administration.

(4) "Graphic or artistic material" includes all items introduced to inform, educate, advertise, promote, identify, or decorate.

(5) "Permit" means written permission from the department specifying that a function or act will be authorized at a given location, date, and time in accordance with s. 16.845, Stats.

(6) "Political activity" includes activities of partisan and nonpartisan candidates, political organizations and political parties.

(7) "Tenant agency" includes all boards, commissions, departments or bodies connected with state government, housed in a state office building or facility, or in property leased or rented by the department.

Adm 2.04 Public meetings and events. (1) The department, as managing authority of the state office buildings and facilities, may permit buildings and facilities to be used by any governmental body or official, or any nonprofit, fraternal, religious, or veterans' organization for the purpose of governmental business, public meetings for the free discussion of public questions, or for activities of a broad public purpose if the use:

(a) Does not interfere with the prime use of the building or facility.

(b) Does not unduly burden the managing authority.

(c) Is not a hazard to the safety of the public or state employees nor detrimental to the building or facility.

(d) Does not expose the state to the likelihood of expenses or damages which cannot be recovered.

(e) Is appropriate to the physical context of the building or facility.

(2) An applicant for the use of buildings and facilities shall complete a written application to the department at least 72 hours in advance of the anticipated utilization of the building or facility. In the event of a conflict of requests by 2 or more organizations, the department shall have full discretion when permitting use of state office buildings and facilities.

(3) An applicant for the use of buildings and facilities shall be liable to the state for any injury to the state's property, for any expense

arising out of the use, and for such sums as the department may charge for the use as provided in s. 16.845 (1), Stats.

(4) An applicant may charge a reasonable admission fee to the public, subject to the approval and pursuant to the conditions established by the department.

(5) The department and the applicant may not discriminate against any individual on the basis of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record in the utilization of state office buildings and facilities for government business, public meetings for free discussion of public questions, or for civic activities.

(6) The utilization of state office buildings and facilities by an organization shall not imply endorsement or approval by the state of Wisconsin or the department, nor the extension of special privilege. Likewise, the refusal by the department to permit use of a state office building or facility shall not be interpreted as disapproval or censure of any organization, but shall be for any violations of the conditions set forth in sub. (1) (a) to (e).

(7) The granting of permission to use a state office building or facility does not obligate the department to furnish the applicant any service or utilities, or render any support with personnel, equipment, or supplies. The department may furnish assistance and may charge for any expense arising out of the use of a building or facility. The department may inspect any equipment or apparatus brought in for a public meeting, event or activity, and to limit or prohibit the use of any items which might affect safety or the normal operation of the building.

(8) (a) The department shall grant a permit to any organization filing a written request to hold a ceremony in the state capitol building or on the state capitol park grounds on veterans day, November 11, for the purpose of commemorating the end of hostilities in the nation's wars. If more than one organization applies for a permit, requests submitted by veterans' organization identified in ch. 188, or s. 15.497, Stats., shall be given preference. If more than one veterans' organization applies for a permit, the requests shall be processed and the permits granted in the order in which they were received. Notwithstanding any provision of this subsection, the Madison veterans council shall have first priority if it applies for a permit.

(b) The permit shall be issued for any period requested, including business hours, but not to exceed 2 hours. No 2 veterans organizations may be granted permits for the same time period except for organizations conducting joint ceremonies.

(c) A ceremony under this section may include a band or an orchestra, but may not include the discharge of firearms inside the state capitol building.

Note: An application for use of state office buildings and facilities may be obtained from the Department of Administration, State Capitol Police, P.O. Box 7864, Madison, Wisconsin 53707.

Adm 2.05 Personal and commercial solicitation. (1) No person or organization may solicit contributions for charitable or nonprofit organizations within the state office buildings and facilities, upon the grounds thereof, or within state capitol park without express written approval of the department.

(2) No person or organization may solicit to sell or consummate sale of any merchandise or service within the state office buildings and facilities, upon the grounds thereof, or within state capitol park without the express written approval of the department.

Adm 2.06 Handbills and other literature. (1) No handbills, literature, promotional materials or devices which advertise, promote or identify a commercial enterprise may be distributed within or on the grounds of the state office buildings and facilities or on the grounds of state capitol park without the express written authority of the department. The department may enforce the size, advertising message and location for distribution of permitted materials.

(2) No person may litter in any state building or facility, or on state grounds by the distribution of handbills, literature, promotional materials or devices. Regulation of conduct in respect to littering shall be under the provision of s. 16.84 (2), Stats., and the respective anti-litter ordinances of the municipalities in which state office buildings and facilities are located.

(3) If the department approves a request to distribute handbills, literature or promotional materials on or in buildings and facilities managed or leased by the department, the department shall designate the time and location for the distribution.

Adm 2.07 Exterior and interior displays and decorations. (1) **FLAGS.** The United States flag and the flag of the state of Wisconsin shall be the only flags flown, hung, or displayed from any state office building or facility, except as the governor may direct.

(2) **DISPLAYS AND DECORATIONS.** No displays, signs, banners, placards, decorations or graphic or artistic material may be erected, attached, mounted or displayed within or on the building or the grounds of any state office building or facility without the express written authority of the department. Any graphic or artistic material advertising, promoting, or identifying a commercial enterprise or a political activity is prohibited except as indicated in sub. (4). Any unauthorized material shall be removed and disposed of by the department. The department may set reasonable time limits on permitted activities.

(3) **UNAUTHORIZED MATERIAL.** The use of stickers, labels, cellophane pressure sensitive tape, screws, nails or any other mounting technique adversely affecting the structural or decorative integrity of a state office building or facility is prohibited. Where there has been a violation, the material will be immediately removed and the cost of restoration may be charged to the person or agency responsible.

(4) **DEPARTMENT APPROVAL.** Commercial organizations sponsoring a non-profit event may be acknowledged during that event with permission of the department. The department may specify the size and location of any display, sign, banner or graphic and artistic material, as indicated in sub. (2).

Adm 2.08 Introduction of equipment and hazards. (1) To provide a placement of employment that is safe for employees and frequenters thereof, pursuant to s. 101.11, Stats., the department shall have the right to confiscate and dispose of any hazard to the life, health, safety or welfare of state employees or the public. The department shall have the right to correct or eliminate any hazardous situation arising out of any action by a tenant agency or individual and to charge the tenant agency or individual for costs incurred to correct or eliminate any hazardous situation or practice by a tenant agency. These hazards include, but are not limited to, the following:

(a) Supplies, goods or materials stored in the public corridors of the buildings and facilities managed or leased by the department.

(b) Any equipment, apparatus or machines which fail to comply with the state administrative code and local fire code, unless exempted. All equipment shall be approved by the department prior to delivery and installation.

(c) Any personal property introduced into buildings and facilities managed or leased by the department if the operation of said property is dependent upon the electrical or other utility service of the building, without prior express written approval of the department. The department shall not be liable for any personal property located within buildings and grounds controlled by the department regardless of whether the property is or is not permitted.

(d) Holiday trees or holiday decorations introduced in buildings and facilities managed or leased by the department without the approval of the department.

(e) Parked bicycles as defined in s. 340.01 (5), Stats., mopeds as defined in s. 340.01 (29m), Stats., motor bicycles as defined in s. 340.01 (30), Stats., and motorcycles as defined in s. 340.01 (32), Stats., on or in buildings and facilities managed or leased by the department, except in designated parking stalls or bicycle racks. State-owned two- and three-wheeled cycles are exempt from the provisions of this section.

(f) The introduction or use of equipment that causes interference to electrical and mechanical systems in buildings and facilities managed or leased by the department, or creates a condition in violation of state administrative code. Violators may be responsible for all costs incurred by the department for any violations.

(2) A tenant agency shall not allow materials to accumulate in buildings and facilities managed or leased by the department in such a way as to create a hazard or to interfere with the efficient operation or maintenance of ventilation or other building systems.

Adm 2.09 Leasehold improvements. A tenant shall not make leasehold improvements nor introduce window treatments, floor coverings or private property in a building or facility managed or leased by the department without the express written approval of the managing authority. Leasehold improvements include, but are not limited to, structural changes or modifications, systems furniture work stations, or additions and changes in lighting, heating, ventilation, telephone systems and data networks. Title to approved leasehold improvements shall remain with the managing authority regardless of the source of funds. Window treatments and floor coverings include, but are not limited to, drapes, blinds, rugs and carpeting. Private personal property includes furniture and other furnishings not owned by the state. Contractors hired by tenant agencies to install or maintain leasehold improvements shall be approved by the managing authority and shall report each day to the managing authority prior to starting work.

Adm 2.10 Furniture and other furnishings. Furniture and other furnishings purchased from building project funds or department appropriations shall remain an asset of the building under the direction of the managing authority. When a tenant agency moves, it may take only those items of furniture and equipment purchased from its agency funds.

Adm 2.11 Confiscation of materials. Property confiscated by the department for violation of this chapter shall be stored by the managing authority until the owner provides proof of ownership.

Adm 2.12 Concessions. (1) The establishment of concession stands and the granting of vending franchises in buildings and facilities managed or leased by the department rest with the business enterprise program for blind persons, division of vocational rehabilitation, department of workforce development, as specified in s. 47.03, Stats. No other concession stands or vending machines may be operated in the state office buildings and facilities.

(2) The business enterprise program for blind persons, division of vocational rehabilitation, department of workforce development, shall be tendered the opportunity to establish concession stands and vending franchises under s. 47.03 (5) and (7), Stats., in buildings and facilities leased or rented by the department when the lease permits the activity and a need is apparent. If the business enterprise program for blind persons declines the option, the department may negotiate a vending machine franchise with profits, if any, deposited in the general fund.

Adm 2.13 Building use during closed periods. (1) The buildings and facilities managed or leased by the department shall be used by state employes for the purpose of state work. Employes, vendors on state contract, and the public who use the buildings and facilities after those buildings are locked and secured by the managing authority, shall have express written permission of the managing authority.

(2) The tenant agency shall be responsible for any costs incurred by the department due to the actions of employes, visitors and vendors permitted into buildings and facilities managed or leased by the department by employes of tenant agencies when the buildings and facilities are closed.

Adm 2.14 Rules of conduct. (1) The following definitions shall apply under this section:

(a) "Alcoholic beverage" has the meaning given in s. 125.02 (1), Stats.

(b) "Cannabis" means the resin extracted from any part of the plant *Cannabis Sativa L.*, or any other nonfibrous extract from any part of the plant containing delta-9-tetrahydrocannabinol.

(c) "Casually possess" means the possession of not more than 28 grams of cannabis or 112 grams of marijuana.

(d) "Drug paraphernalia" means all equipment, products and materials of any kinds as defined in s. 961.571, Stats.

(e) "Handout" means food, clothing, money or other item of value donated to a person.

(f) "Marijuana" means all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include cannabis or any other compound,

manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or coke, or the sterilized seed of the plant which is incapable of germination.

(g) "Panhandle" means to beg for money.

(h) "Practitioner" means all of the following:

1. A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

2. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(i) "Prostitution" means the solicitation for or acceptance of payment for sexual services.

(j) "Public place" means a place which is in public ownership or a place to which the public has access, as distinguished from a private place.

(2) Pursuant to s. 16.846, Stats., whoever does any of the following shall be subject to a forfeiture of not more than \$500:

(a) Without a permit, possesses an open container which contains an alcoholic beverage on the grounds or in public places of those buildings and facilities managed or leased by the department.

(b) Without a permit, consumes alcoholic beverages on the grounds or in those buildings and facilities managed or leased by the department.

(c) Smokes a cigarette, a pipe or a cigar in any area which is not designated by sign as a smoking area in those buildings and facilities managed or leased by the department.

(d) Without authorization, enters private offices or nonpublic areas in those buildings and facilities managed or leased by the department.

(e) Without the express written approval of the department, uses a public address system or sound amplification system in those buildings and facilities managed or leased by the department.

(f) Fails to comply with any existing noise ordinances of the communities in which those buildings and facilities managed or leased by the department are located unless specified by the department. The department shall first notify the party responsible for the sound amplification equipment or public address system to reduce the level to the prescribed decibel level.

(g) Fails or refuses to return access devices pursuant to s. Adm 2.15.

(h) With the intent to annoy another, makes a telephone call from or to a telephone located in those buildings and facilities managed or leased by the department or on state properties surrounding those buildings, whether or not conversation ensues.

(i) Procures or attempts to procure a handout from another person in a manner or under circumstances manifesting an express or implied threat of coercion. Among the circumstances which may be considered in determining whether such purpose is manifested are any of the following:

1. The person is a known panhandler.

2. The person repeatedly and in a threatening fashion beckons to, stops or attempts to stop passersby.

3. The person engages passersby in threatening conversation.

4. The person utilizes threatening bodily gestures.

The violator's conduct must demonstrate a specific intent to induce, solicit or procure goods or money from another person by threat or coercion. No arrest shall be made for a violation of this subsection unless the arresting officer first affords the person an opportunity to explain their conduct.

(j) Brings a live animal into those buildings and facilities managed or leased by the department, with the exception of dogs used to assist physically disabled individuals or with the express written permission of the department.

(k) Engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under

circumstances where the conduct tends to cause or provoke a disturbance in public places or private areas in those buildings and facilities managed or leased by the department, or on state properties surrounding those buildings.

(l) For the owner or keeper of any animal, permits the same to run at large in those buildings and facilities managed or leased by the department, or on state properties surrounding those buildings. Animals shall be deemed at large unless under the control of a person or restrained by means of a chain, rope or cord of sufficient strength and of a length not to exceed six feet to control the action of the animal. The department may prohibit animals at certain public events upon notification to the public.

(m) Without a permit, operates devices such as skateboards, coasters, roller–skates, sleds, toboggans or other similar devices, in those buildings and facilities managed or leased by the department, or on state properties surrounding those buildings.

(n) Loiters in or near any thoroughfare or public place in a manner and under circumstances for the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested are the following:

1. The person is a known prostitute or panderer.
2. The person repeatedly beckons to, stops, or attempts to stop or engages male or female passersby in conversation.
3. The person repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gestures.

The violator's conduct must be such to demonstrate a specific intent to induce, entice, solicit or procure another to commit an act of prostitution. No arrest shall be made for a violation of this subsection unless the arresting officer affords the person an opportunity to explain their conduct.

(o) Urinates or defecates in areas that are not officially identified for that purpose in buildings or facilities managed or leased by the department, or on properties surrounding those buildings.

(p) Enters a locked building or facility managed or leased by the department, or on the grounds surrounding the executive residence, without the approval of the department or the tenant agency.

(q) Scales or attempts to scale exterior walls of those buildings and facilities managed or leased by the department.

(r) Casually possess marijuana or cannabis in a public place unless the marijuana or cannabis was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of their professional practice.

(s) Uses or possesses with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

(t) Builds a fire or burns materials in buildings and facilities managed or leased by the department or the grounds that surround them without the express permission of the department.

(u) Willfully, maliciously or wantonly defaces, injures or destroys any public or private property of another in buildings and facilities managed or leased by the department or on the grounds that surround them.

(v) Without approval of the department, conducts a picket, rally, parade or demonstration in those buildings and facilities managed or leased by the department or on properties surrounding those buildings. In order to preserve the order which is necessary for the enjoyment of freedom by occupants of the buildings and facilities, and in order to prevent activities which physically obstruct access to department lands and buildings or prevent the state from carrying on its instructional, research, public service, or administrative functions, any picketing, rally, parade, demonstration, other assembly, or congregation of spectators to the activity may be declared unlawful if its participants:

1. Intentionally gather, or intentionally remain assembled outside any building or facility managed or leased by the department in any numbers, in any proximity to each other, or in any fashion as

to physically hinder entrance to, exit from, or normal use of the building.

2. Intentionally congregate or assemble within any building or facility managed or leased by the department in any fashion as to obstruct or seriously impair state–sponsored or state–authorized activities.

3. Enter the private office of any state employe, unless invited by the authorized occupant of that office, and then not in excess of the number of visitors designated or invited by the person.

4. Obstruct or seriously impair passage through corridors, stairways, doorways, building entrances, fire exits, and reception areas leading to offices in buildings and facilities managed or leased by the department.

5. Enter or occupy any building or facility managed or leased by the department, without authorization from the person in immediate charge of any room in the building, or by a person designated to approve requests for the use of rooms for meetings.

6. Assemble immediately outside rooms in any building or facility managed or leased by the department at times when they are normally in use for state business.

7. Bring signs supported by standards or sticks into a building or facility managed or leased by the department.

8. Intentionally create a volume of noise that unreasonably interferes with department–sponsored or authorized activities.

9. Intentionally employ force or violence, or intentionally threaten the immediate use of force or violence, against state employes or officials when in buildings or facilities managed or leased by the department.

a. In this section “intentionally” means that the participant or spectator knew, or reasonably should have known, that the participant's or spectator's conduct by itself or in conjunction with the conduct of others would have the prohibited effect.

b. The department may designate a state official or officials who shall have primary authority to implement this paragraph. The official shall prescribe limitations for any picketing, rally, parade, demonstration or other assembly in order to meet the requirements of this paragraph. When informed of any picketing, rally, parade, demonstration, or other assembly, the department official or designee may proceed immediately to the site to determine if there is compliance with this paragraph. If the official prescribes limitations, and those limitations are not observed by the assembly, the official may then declare the assembly unlawful. Any declaration of illegality or prescription of limitations shall be effective and binding upon the participants in the assembly, unless and until modified or reversed.

c. Any participant or spectator within the group constituting an unlawful assembly, who intentionally fails or refuses to withdraw from the assembly after it has been declared unlawful, shall be subject to the penalties identified in sub. (2) (intro.).

(w) Possesses fireworks, as defined in s. 167.10 (1), Stats., on state property without authorization from the department.

(x) Without consent, intentionally takes, carries away, uses, transfers, conceals, or retains possession of another person's property valued at \$100 or less.

(y) Knowingly gives false information to a state police or a security officer, with the intent to mislead the officer in the performance of their duty.

(z) Camps in buildings and facilities managed or leased by the department, or on the grounds that surround them, without the express written approval of the department. No person may place or erect any facility or structure in or on the buildings, facilities or grounds which surround them.

(za) Parks or stores a bicycle in buildings, on sidewalks or driveways, or in motor vehicle parking spaces. Bicycles shall be parked in areas designated for that purpose or in bicycle racks so as not to obstruct free passage of vehicles and pedestrians.

(zb) Dumps any waste, trash, debris, rubbish, earth or other fill, at any buildings or facilities managed or leased by the department, or in a department collection device without authorization from the department unless the material was collected at the building or facility. This paragraph does not restrict the proper disposal of incidental litter.

(zc) Removes any shrubs, vegetation, wood, timber, rocks, stone, earth, signs, fences, or other materials from buildings and facilities managed or leased by the department, unless authorized by the department.

(zd) Engages in conduct otherwise prohibited by this chapter without the express written approval of the department.

Adm 2.15 Access devices. (1) No person may, without written authorization from the department, duplicate keys, electronic building access cards, or other similar access devices to buildings or facilities managed or leased by the department.

(2) Access devices in the possession of unauthorized persons shall be returned to the department.

(3) Upon termination of employment with the state, an employe shall return to the department all access devices issued to the employe by the department.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

Fiscal Estimate

There is no fiscal effect.

Contact Person

Donna Sorenson, (608) 266–2887
Department of Administration
101 E. Wilson St., 10th Floor
P.O. Box 7864
Madison, WI 53707–7864

Notice of Public Hearing

Employe Trust Funds

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule to repeal s. ETF 41.02 (4); to renumber s. ETF 41.02 (5) (intro.) (a), (b), and (c); and to create s. ETF 41.02 (5) (a) 4. and (b), relating to long–term care insurance in accordance with the provisions of s. 227.16 (1), Stats.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 15, 1997 Monday 9:00 a.m.	Room 2B Dept. of Employee Trust Funds 801 W. Badger Rd. MADISON, WI

Written Comments

The Department will hold the public record on this proposed rule open until **4:30 p.m. on Friday, December 19**, to permit the submission of written comments from people unable to attend the public hearing in person or who wish to supplement testimony offered at the hearing.

All written comments should be addressed to:

Phyllis Fuller
Dept. of Employee Trust Funds
801 W. Badger Rd.
Madison, Wisconsin 53707–7931

Analysis Prepared by the Dept. of Employee Trust Funds

Statutory authority for rule: ss. 40.03 (2) (ig) and (6) (h) and 40.55 (1)

General summary of rule:

The rule provides standards for optional long–term care policies that an insurer may offer to state employes and annuitants under s. 40.55, Stats. The objective of the rule modification is to provide an additional option for inflation protection that an insurer may offer. The proposed rule change builds on the current automatic inflation protection. The inflation protection offering is increased which allows the insured the option to purchase additional inflation protection as it relates to the increased cost of long–term care services. The proposed rule also allows greater flexibility to insurers who may be interested in offering different types of inflation protection benefits.

Fiscal Estimate

The Department estimates that the proposed rule change will have no fiscal impact on the state or any local government employer.

Initial Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Copies of Rule and Contact Person

Copies of this rule are available without cost by making a request to:

Dept. of Employee Trust Funds
Telephone (608) 266–6465
P.O. Box 7931
Madison, WI 53707

For questions about this rulemaking, please call Phyllis Fuller, Policy Specialist, (608) 266–6465.

Text of Rule

SECTION 1. Repeal s. ETF 41.02 (4).

SECTION 2. Renumber s. ETF 41.02 (5) (intro.), (a), (b) and (c) to read as follows:

(5) INFLATION PROTECTION. (a) Each policy shall provide for one of the following:

(a)1. Any insured not receiving benefit payments may purchase additional coverage during an annual enrollment period established by the board in an amount not less than \$10 per day at the price then in effect for the insured's age group.

(b)2. Benefits shall increase automatically to minimum of 10% per year for 10 years.

(e)3. Benefits shall be payable as a percentage of the cost of care.

SECTION 3. Create s. ETF 41.02 (5) (a) 4. to read as follows:

4. The policy shall increase daily benefits and any benefits remaining toward the policy's maximum benefit level at a rate not less than five percent compounded annually, and shall guarantee the insured the right, without evidence of insurability or health status, to periodically increase daily and remaining lifetime maximum benefit levels by an amount not less than the difference between the annually compounded five percent and an inflation index as specified in the policy and approved by the department.

SECTION 4. Create s. ETF 41.02 (5) (b) to read as follows:

(5) (b) For purposes of subd. 4., the insurer shall offer the insured the opportunity to secure additional coverage at least once every three years. If the offered increase in a daily benefit would be less than \$10, the policy may include language that extends the period beyond three years. If the insured declines an offer for additional coverage, the insurer may not offer the additional benefit during that period. If the insured rejects three consecutive offers for additional coverage, the insurer is not required to make further offers.

Notice of Public Hearings

Health & Family Services

(Community Services, Chs. HFS 20—)

Notice is hereby given that pursuant to s. 48.67, Stats., and section 5 of 1995 Wis. Act 439, the Department of Health and Family Services will hold public hearings to consider the repeal and recreation of ss. HSS 45.05 (11) and HFS 46.06 (11), Wis. Adm. Code, relating to outdoor play space for children attending day care centers.

Hearing Information

The public hearings will be held:

<u>Date & Time</u>	<u>Location</u>
December 1, 1997 Monday Beginning at 1:00 p.m.	Room 38 (basement; take elevator) Marathon County Dept. of Social Services 400 E. Thomas St. WAUSAU, WI
December 4, 1997 Thursday Beginning at 1:00 p.m.	Room B45 (lower level; take elevator) State Office Bldg. 819 N. 6th Street MILWAUKEE, WI
December 5, 1997 Friday Beginning at 1:00 p.m.	Room 550 (inside conference room) State Office Building 1 W. Wilson St. MADISON, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

Among requirements for operation of a family or group day care center for children under the Department's rules is that a center in operation more than 3 hours a day (a group center) or where a child is in care for more than 3 hours a day (a family center) must include daily outdoor activities in its program "except during inclement weather or when not advisable for health reasons" (s. HFS 46.07 (1) (e) 4.). The rules now provide that the location of the required outdoor activities be on the premises of the center. This is expressly stated in the group center rules and is implicit in the family center rules where the requirements for outdoor play space are included in the section relating to the home.

Section 5 of 1995 Wis. Act 439 directed the Department to promulgate rules that establish a procedure under which an applicant for a license to operate a day care center which would have outdoor play space off the premises of the center may obtain an exemption from the current rules for outdoor play space that include a requirement that the outdoor play space be on the center's premises. The rules for an exemption are to include requirements that the applicant must meet to obtain the exemption. These are the rules.

The rules provide that a request for an exemption include a plan for outdoor play space. That plan is to identify and describe the location of the outdoor play space; provide for adequate supervision of the children; explain the arrangements made to ensure that the toileting and diapering needs of the children will be met; and affirm the center's compliance with requirements for the size and safety of the off-premises outdoor play area. If the off-premises play space is reached by walking, all children under 3 years of age must be transported to it in wheeled vehicles. The plan is subject to approval by the Department.

Contact Person

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

Patricia Franke, (414) 548-8696
FAX (414) 521-5293
State Office Building
141 NW Barstow
Waukesha, WI

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

Written comments on the proposed rules received at the above address no later than **December 12, 1997**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

Most family and group day care centers for children are required under the Department's rules to include daily outdoor activities for children in their programs. The current rules explicitly require (group centers) or imply a requirement (family centers) that a center's outdoor play space be located on the center's premises. These rule amendments implement s. 5 of 1995 Wis. Act 439 which directs the Department to grant an exemption from the current outdoor play space requirements, including the requirement that the space be on the premises of the center, if a center asks for an exemption in writing and submits a plan for off-premises outdoor play space that meets the Department's approval. The rule amendments include the criteria for plan approval.

These rule amendments will not affect the expenditures or revenues of state government or local governments. Some centers with off-premises play space are currently approved pursuant to the Department's authority under ss. HSS 45.01 (3) or HFS 46.02 (2) to grant an exception to a rule requirement; however, there will likely be applications and plans submitted from several more centers once these rule amendments take effect, which will increase staff workload. Any increase in staff workload will be due to the directive included in s. 5 of 1995 Wis. Act 439, rather than to the rule amendments.

Local governments do not license family or group day care centers.

Initial Regulatory Flexibility Analysis

Almost all of the 2665 licensed family day care centers in the state are small businesses, as "small business" is defined in s. 227.114 (1) (a), Stats., as are about 700 of the 2269 licensed group day care centers in the state.

The rule changes permit use of off-premises outdoor play space with the approval of the Department. The changes will affect only centers that do not have on-premises outdoor play space. A center or planned center lacking on-premises play space will no longer apply to the Department for an exception to the requirement that the play space be on the premises of the center. Instead, a center wanting to use off-premises play space will ask the Department for an exemption from the on-premises requirement and submit to the Department with the written request for an exemption a plan, for the Department's approval, that provides assurances that the conditions set out in the rules for use of off-premises play space have been met and will be met.

No new professional skills are required for day care centers to comply with the rule changes.

Notice of Public Hearings

Health & Family Services

(Health, Chs. HFS 110—)

Notice is hereby given that pursuant to ss. 250.04 (7), 250.06 (1), 251.06 (3) (e) and 251.20, Stats., the Department of Health and Family Services will hold public hearings to consider the repeal and recreation of ch. HFS 139, Wis. Adm. Code, relating to qualifications of public health professionals employed by local health departments, and the creation of ch. HFS 140, relating to required services of local health departments.

Hearing Information

The public hearings will be held:

<u>Date & Time</u>	<u>Location</u>
December 1, 1997 Monday From 10:00 a.m. to 12:00 p.m.	Council Chambers Greenfield City Hall 7325 W. Forest Home Ave. GREENFIELD, WI
December 2, 1997 Tuesday From 11:00 a.m. to 1:30 p.m.	Lincoln Co. Health Dept. Health & Human Services Bldg. 607 N. Sales Street MERRILL, WI
December 8, 1997 Monday From 11:00 a.m. at 1:30 p.m.	Room 152A (1st floor conference room) State Office Building 200 North Jefferson St. GREEN BAY, WI
December 11, 1997 Thursday From 10:00 a.m. at 12:00 p.m.	Room 2550 Eau Claire Co. Courthouse 720 Second Ave. EAU CLAIRE, WI
January 7, 1998 Wednesday From 12:00 p.m. to 2:00 p.m.	Room 794 (conference room) Hill Farms State Office Bldg. 4802 Sheboygan Ave. MADISON, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

Chapter HFS 139, Qualifications

This order updates the Department's rules on qualifications of certain professional employes of local health departments, in particular to make necessary changes following revision of the public health statutes by 1993 Wis. Act 27. Among the changes made by Act 27 was to create s. 251.06, Stats., on qualifications of local health officers. Previously qualifications for local health officers had been set out in the Department's rules. The revised rules reference the qualifications in s. 251.06, Stats., but add that, for a Level I local health department with more than one full-time employe, the local health officer, who is otherwise required to be "at least" a bachelor's degree registered nurse, may instead meet the qualifications for the local health officer of a Level II or III local health department provided the local department also employs a full-time public health nurse qualified under s. HFS 139.07 (1) or (2).

A type of professional for which qualifications are included in the current ch. HFS 139 but not in the revised rules is a public health professional who directs environmental health programs. This management-level professional is not specifically mentioned in statute and the Department has decided not to continue specifying qualifications in rules. That person would, of course, at minimum, have to meet the qualifications of a public health sanitarian provided that he or she is the program supervisor of one or more public health sanitarians and not only the administrative supervisor of public health sanitarians. In a small department, the health officer or public health

nurse may supervise the public health sanitarian. In that case, the supervisor would have to be qualified as a public health sanitarian only if expected to do the work of a public health sanitarian or to direct the work of a public health sanitarian.

Chapter HFS 140, Required Services

This order identifies the services that are to be provided by local health departments. A local health department, as defined in s. 250.01 (4), Stats., is usually a city, county or city-county department, but could also be a village or town health department, a multiple county health department or part of a county human services department under s. 46.23, Stats. At the beginning of 1997, there were at most 104 local health departments in the state.

Under ch. 251, Stats., every county in Wisconsin except Milwaukee County must have a county health department. A county health department is to serve all areas of the county not served by a city health department established before January 1, 1994, or by a town or village health department. A county health department may take the form of a city-county health department or a multiple-county health department. In Milwaukee County, each city and village is to have its own local health department except that a city or village may contract for services with the local health department of another city or village in the county. Every area of the state, then, and all people living in the state or visiting Wisconsin or traveling through the state are served, at times directly but more often indirectly, by local public health agencies working cooperatively with the Department's Division of Health to maintain a statewide system of resources and services directed at protecting the public's health.

Section 251.20, Stats., directs the Department to promulgate rules that specify required services for each of three levels of local health departments. Actually, for Level I local health departments, s. 251.05 (2) (a), Stats., already states that they are to provide at least services for surveillance, investigation, control and prevention of communicable diseases, prevention of other disease, health promotion and human health hazard control, and ss. 250.06 (1) and 251.04 (8), Stats., require all local health departments to have a generalized public health nursing program. And s. 251.05 (2) (b) and (c), Stats., state that Level II and Level III local health departments are to provide at least the services that Level I departments are to provide and additional services that the Department specifies by rule which, according to s. 251.20 (2) and (3), Stats., are to include, for Level II departments, services that address at least one objective from each of seven sections of the Department's 1990 publication, *Healthier People in Wisconsin: A Public Health Agenda for the Year 2000* and, for Level III departments, services that address at least 3 objectives from each of those seven sections in that publication. There are 320 total objectives included in those sections of *Healthier People in Wisconsin*.

The rules state that a Level I local health department must:

- 1) Operate a general public health nursing program;
- 2) Act to prevent and control communicable disease, including carrying out all duties imposed—
 - On local health departments by ch. HFS 144, relating to immunization of students, and
 - On local health officers by ch. HSS 145, relating to control of communicable diseases;
- 3) Provide services directed at preventing other diseases;
- 4) Provide services to promote health;
- 5) Act to abate or remove human health hazards; and
- 6) Report incidents of environmental contamination to the Department and provide any services as may be required by the Department by rule to prevent the future incidence of occupational disease, environmental disease or exposure to human health hazards.

A Level II local health department is to provide those services, provide services that address at least 7 objectives set out in *Healthier People in Wisconsin*, and serve as the Department's agent in issuing licenses to and making investigations and inspections of tattoo and body-piercing establishments. A Level III local health department is one that will provide all services required of a Level I local health department, provide services that address at least 21 objectives set out in *Healthier People in Wisconsin*, serve as the Department's agent in

issuing licenses to and making investigations and inspections of tattoo and body–piercing establishments, and serve also as the Department's agent in issuing permits to and making investigations and inspections of various recreational, lodging and food service establishments. The rules conclude with a process for the state health officer to designate the level of a local health department.

Copies of Rule and Contact Person

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

Margaret Schmelzer, (608) 266–0877 or,
if you are hearing–impaired, (608) 266–1511
Bureau of Public Health, Room 233
1414 East Washington Ave.
Madison, Wisconsin 53703–3044

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

Written comments on the proposed rules received at the above address no later than **January 9, 1998**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

Chapter HFS 139. Qualifications

This order updates the Department's rules on qualifications of certain professional employes of local health departments to reference qualifications of local health officers which 1993 Wis. Act 27 created in statute; to delete a section on qualifications of public health professionals who direct environmental health programs; and to delete time–limited provisions no longer in force that related to the qualifications of some public health nurses and directors of public health nursing programs.

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

Chapter HFS 140. Required Services

These rules identify the services to be provided by 3 levels of local health departments and establish a process by which the Department will designate levels of local health departments.

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

Section 251.20, Stats., directs the Department to promulgate rules that specify the services that all local health departments are to provide and additional services to be provided by Level II and Level III local health departments.

A local health department only needs to be a Level I department. Designation as a Level II or III department is optional. The services that the rules specify be provided by Level I departments are all services that by statute (ss. 250.06 (1), 251.05 (2) (a), 251.06 (3) (f), 252.03 (1) and (2), 254.59) or rule (chs. HFS 144, HFS 145) are already required. The rules elaborate some on the statutory services but without fiscal consequence. In the case of a Level II or III department, the additional required services set out in the rules are the same as those identified in, respectively, s. 251.20 (2) or (3), Stats., or are services that the local department voluntarily assumes under agreement with the Department to serve as the Department's agent for enforcement of the Department's environmental sanitation rules.

Initial Regulatory Flexibility Analysis

These rules apply to the Department, to local governments that operate health departments, to local boards of health that govern health departments, to local health departments, and to persons

applying for appointment as or who are employed as a local health officer, public health sanitarian, public health nurse or director of a general public health nursing program with a local health department. The rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Public Hearing

Physical Therapists Affiliated Credentialing Board

Notice is hereby given that pursuant to authority vested in the Physical Therapists Affiliated Credentialing Board in ss. 15.08 (5) (b), 15.085 (5) (b), 227.11 (2) and 448.53 (2), Stats., and interpreting ss. 448.53, 448.54, 448.55, 448.56 (1) and 448.57, Stats., the Physical Therapists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. PT 1.03 (1) (b), 8.03, 8.04 and 8.05 (1); to renumber s. PT 8.05 (2) (intro.), (a) and (b); to amend ss. PT 1.01, 1.03 (2) and (3) (intro.), 2.01 (6) (a), 2.02, 3.01 (2), 4.01 (1) (e), 6.01, 7.02 (6), ch. PT 8 (title), 8.01, 8.02 (title), 8.02 and 8.05 (title); to repeal and recreate s. PT 2.01 (6) (b) and (c); and to create a Note following s. PT 1.03 (1) (c), relating to application requirements, examinations, temporary licenses, unprofessional conduct and biennial license renewals of physical therapists.

Hearing Information

The public hearing will be held:

<u>Date & Time</u>	<u>Location</u>
December 2, 1997 Tuesday 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
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **December 15, 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), 15.085 (5) (b), 227.11 (2) and 448.53 (2)

Statutes interpreted: ss. 448.53, 448.54, 448.55, 448.56 (1) and 448.57

In this proposed rule–making order, the Physical Therapists Affiliated Credentialing Board is making amendments which relate to statutory authority, clarity, form and use of plain language. A note is created following s. PT 1.03 (1) (c), indicating where lists of approved schools may be obtained. Section PT 2.01 (6) is amended to reflect that to pass an examination the applicant shall receive a score determined by the Board to represent minimum competence to practice after consultation with subject matter experts, rather than indicating a specific score, which may change, and would require additional changes in the rule. Section PT 2.02 is amended to reflect that a violation of the examination rules of conduct would be cause for withholding the applicant's grade and for an ultimate finding, after hearing, that the applicant has failed the examination. Section PT 6.01 is amended to clarify that a written referral is not required for services "excepted" under s. 448.56 (1), Stats., or for services

provided by individuals exempt under s. 448.52, Stats. Section PT 7.02 (6) is clarified to include a change of name permitted under s. 786.36, Stats.

Text of Rule

SECTION 1. PT 1.01 is amended to read:

PT 1.01 Authority and purpose. The rules in chs. PT 1 to 8 are adopted by the physical therapists affiliated credentialing board pursuant to the authority delegated by s. 15.085 (5) (b), Stats., and govern the issuance of licenses to practice physical therapy under s. 448.53, Stats., the referral for physical therapy services under s. 448.56, Stats., unprofessional conduct under s. 448.57, Stats., and biennial license renewal under s. 440.08, Stats.

SECTION 2. PT 1.03 (1) (b) is repealed.

SECTION 3. A note following s. PT 1.03 (1) (c) is created to read:

Note: A list of approved schools is available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 4. PT 1.03 (2) and (3) (intro.) are amended to read:

PT 1.03 (2) If an applicant is a graduate of a school of physical therapy not approved by the board, the board shall determine whether the applicant's educational training is equivalent to that specified in ~~par. sub. (1) (c)~~. In lieu of its own evaluations, the board may use evaluations prepared by the university of Wisconsin–Madison. The cost of an evaluation shall be paid by the applicant.

(3) The board may waive the requirement under ~~par. sub. (1) (c)~~ for an applicant who establishes, to the satisfaction of the board, all of the following:

SECTION 5. PT 2.01 (6) (a) is amended to read:

PT 2.01 (6) (a) The score required to pass each written physical therapy examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession and on the reliability of the examination. The passing grade shall be established prior to giving the examination. ~~The passing grade for the FSBPT examination shall be designated by a grade of 75.~~

SECTION 6. PT 2.01 (6) (b) and (c) are repealed and recreated to read:

PT 2.01 (6) (b) The board accepts the recommendation of the federation of state boards of physical therapy for the passing score on the national physical therapy examination.

(c) To pass the examination on the statutes and rules examination, the applicant shall receive a score determined by the board to represent minimum competence to practice after consultation with subject matter experts who have received a representative sample of the examination questions and available candidate performance statistics.

SECTION 7. PT 2.02 is amended to read:

PT 2.02 Conduct of examinations. At the start of the examinations, applicants shall be provided with the rules of conduct to be followed during the course of the examinations. Any violation of these rules of conduct by any applicant will may be cause for the board to ~~terminate the examination of the applicant and to exclude the applicant from continuing the examinations, and will also be cause for the board designee withhold the applicant's grade and to find after a hearing that the applicant has failed the examinations examination.~~

SECTION 8. PT 3.01 (2) is amended to read:

PT 3.01 (2) The required fees specified in s. 440.05 (6), Stats., shall accompany the application for a temporary license to practice under supervision.

SECTION 9. PT 4.01 (1) (e) is amended to read:

PT 4.01 (1) (e) The required fees specified in s. 440.05 (6), Stats.

SECTION 10. PT 6.01 is amended to read:

PT 6.01 Referrals. A written referral is not required for services excepted under s. 448.56 (1), Stats. In addition, a written referral is

not required to provide the following services: conditioning, injury prevention and application of biomechanics, and treatment of musculoskeletal injuries with the exception of acute fractures soft tissue avulsions where other medical interventions may be indicated, related to the work, home, leisure, recreational and educational environments.

SECTION 11. PT 7.02 (6) is amended to read:

PT 7.02 (6) Engaging or attempting to engage in practice under any license under any given name or surname other than that under which originally licensed or registered to practice in this or any other state. This subsection does not apply to a change of name resulting from marriage, or divorce, or order by a court of record a name change permitted under s. 786.36, Stats.

SECTION 12. Chapter PT 8 (title) is amended to read:

Chapter PT 8

BIENNIAL REGISTRATION LICENSE RENEWAL

SECTION 13. PT 8.01, 8.02 (title) and 8.02 are amended to read:

PT 8.01 Authority and purpose. The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 and 448.53, Stats., and govern biennial registration renewal of licensees of the board.

PT 8.02 Renewal required; method of renewal. Each licensee shall register renew his or her license biennially with the ~~board~~ board department. On or before October 1 of each odd-numbered year the ~~board department~~ shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for registration renewal. Each licensee shall complete the application form and return it with the required fee to the ~~board office department~~ board office department prior to the next succeeding November 1. The board shall notify the licensee within 30 business days of receipt of a completed registration renewal form whether the application for registration renewal is approved or denied.

SECTION 14. PT 8.03 and 8.04 are repealed.

SECTION 15. PT 8.05 (title) is amended to read:

PT 8.05 Requirements for reinstatement.

SECTION 16. PT 8.05 (1) is repealed.

SECTION 17. PT 8.05 (2) (intro.), (a) and (b) are renumbered s. PT 8.05 (intro.), (1) and (2).

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 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Public Hearing

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

Notice is hereby given that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss. 15.08 (5) (b), 227.11 (2) and 457.03, Stats., and interpreting ss. 457.12 (2), 457.14 and 457.16, Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to repeal s. SFC 1.05 (2) and (4); to amend ss. SFC 14.01 (2) (intro.) and 14.02 (2); and to create s. SFC 11.035, relating to examination requirements and procedures, academic programs equivalent to master's and doctorate degrees in professional counseling, and temporary certificates for professional counselors.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 10, 1997 Wednesday 10:00 a.m.	Room 180 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 and Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **December 26, 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 457.03

Statutes interpreted: ss. 457.12 (2), 457.14 and 457.16

In this proposed rule-making order, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors repeals administrative rules relating to examination requirements and procedures, creates a temporary certificate issued to professional counselor applicants and amends the rules to specify the minimum credit hours for each required course for professional counselors.

Section SFC 1.05 (2) and (4) are being repealed to delete the requirement of submitting a photograph to sit for the examination and the provision that the section chairperson or a proctor may announce examination protocol. Candidates now take computer-adapted examinations and receive their instruction via computer.

Section SFC 11.035 is being created to allow professional counselor applicants who meet the appropriate educational and experience requirements to receive a temporary certificate. The certificate allows the certificate holder to use the title "professional counselor" prior to taking the examination. The temporary certificate expires upon notification of failure of the examination or expiration of the 9 month period, whichever comes first.

Sections SFC 14.01 (2) (intro.) and 14.02 (2) are being amended to specify the minimum number of credits candidates must have to

fulfill the requirements for the professional counselor educational equivalency. The rules require that the candidate have at least 3 credit semester hours or 4 quarter hours academic credit in a supervised counseling practicum, a counseling theory course and 6 of the 8 professional counselor topic areas. The Professional Counselors Section believes that courses with less than the aforementioned hours do not contain the academic depth requirement necessary to grasp the concepts of professional counseling education. Current rule does not specify the minimum number of course hours.

Text of Rule

SECTION 1. SFC 1.05 (2) and (4) are repealed.

SECTION 2. SFC 11.035 is created to read:

SFC 11.035 Temporary certificate. The section may issue a temporary certificate permitting the use of the title "professional counselor" to an individual who pays the fee under s. 440.05 (6), Stats., and who meets all the qualifications for the certificate except for passing the required examination. The temporary certificate shall be valid for a period of 9 months from the date of issue of the temporary certificate, or release of the examination scores from the next available examination after the date of the application for the temporary certificate, whichever is earlier. The temporary certificate expires upon notification of failure of the examination or expiration of the 9 month period. The temporary certificate may not be renewed.

SECTION 3. SFC 14.01 (2) (intro.) is amended to read:

SFC 14.01 (2) The course work included successful completion of at least 3 semester hours or 4 quarter hours academic credit in a supervised counseling practicum, and a counseling theory course, and at least one course of at least 3 semester hours or 4 quarter hours academic credit in at least 6 of the following 8 topic areas, and the course work included a total of at least 42 semester hours or 63 quarter hours of academic credit in counseling related courses distributed among at least 6 of the following 8 topic areas:

SECTION 4. SFC 14.02 (2) is amended to read:

SFC 14.02 (2) The course work included successful completion of at least 3 semester hours or 4 quarter hours academic credit in a supervised counseling practicum, and a counseling theory course, and at least one course of at least 3 semester hours or 4 quarter hours academic credit in each of the 8 topic areas defined in s. SFC 12.01 (2), and the course work included at least 48 semester hours of 72 quarter hours of academic credit distributed among those 8 counseling related topic areas.

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 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

*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.

Corrections (CR 97–30):

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

Corrections (CR 97–69):

Ch. DOC 306 – Relating to security procedures at correctional institutions.

Natural Resources (split out from CR 97–57)

[New CR number is yet to be assigned]:

Chs. NR 132 and 182 – Relating to regulation of metallic mineral mining.

Natural Resources (CR 97–78):

S. NR 101.13 (2) – Relating to the wastewater fee program.

Natural Resources (CR 97–87):

Chs. NR 590 and 600 to 690 – Relating to solid and hazardous waste management.

Public Defender (CR 97–124):

S. PD 3.038 (2) – Relating to the calculation of indigency.

Regulation & Licensing (CR 97–101):

SS. RL 17.02, 17.03 and 17.12 – Relating to the employment of personal assistants by real estate salespeople and broker–employees.

Regulation & Licensing (CR 97–110):

Chs. RL 80 to 87 – Relating to the regulation of certified and licensed appraisers.

Transportation (CR 97–62):

Chs. Trans 129 and 503 – Relating to the waiver of the motorcycle skills test and to required attendance of motorcycle rider courses and motorcycle instruction permit issuance.

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.

Natural Resources (CR 97–16):

An order affecting ch. NR 18, relating to falconry.
Effective 01–01–98.

Natural Resources (CR 97–21):

An order affecting chs. NR 500, 502, 506 and 538 and
ss. NR 503.10, 507.02 and 516.04, relating to solid waste
management.
Effective 01–01–98.

Natural Resources (CR 97–39):

An order affecting ss. NR 37.04 and 37.05, relating to timber
cutting on lands adjacent to the Lower Wisconsin State
Riverway.
Effective 01–01–98.

Natural Resources (CR 97–40):

An order affecting 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.
Effective 01–01–98.

Natural Resources (CR 97–58):

An order creating s. NR 10.12 (11), relating to the Harvest
Information Program.
Effective 01–01–98.

Natural Resources (CR 97–88):

An order creating ss. NR 10.001, 10.01 and 10.125, relating
to the 1997 migratory game bird season.
Effective 01–01–98.

Transportation (CR 97–103):

An order affecting ch. Trans 300, relating to the
transportation of schoolchildren.
Effective 01–01–98.

Workforce Development (CR 96–151):

An order affecting chs. ILHR 301 and DWD 301, relating to
fee changes, penalty fee assessments and corrective
amendments to the migrant labor code.
Effective 01–01–98.

Workforce Development (CR 97–100):

An order creating s. DWD 272.14, relating to the
displacement of employes and the minimum wage.
Effective 12–01–97.

THE STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOCUMENT SALES UNIT
P.O. BOX 7840
MADISON, WISCONSIN 53707-7840

First Class
U.S. POSTAGE PAID
Madison, Wisconsin
Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

DATED MATERIAL. PLEASE DO NOT DELAY!