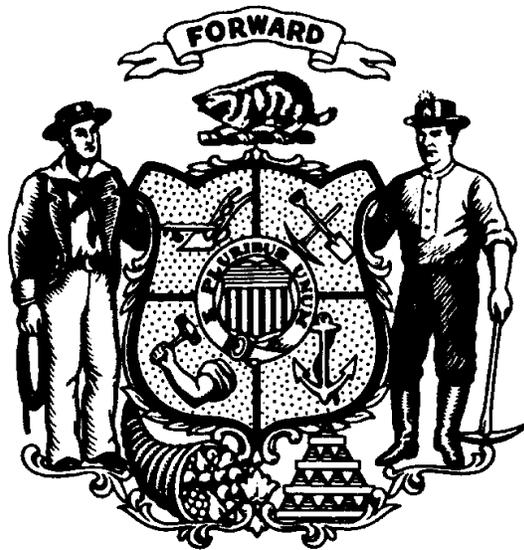


WISCONSIN ADMINISTRATIVE REGISTER

No. 503



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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

(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
Hearing Date: December 15, 1997
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

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

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

Exemption From Finding of Emergency

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

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

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

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

Finding of Emergency

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

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

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

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

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 7 – Relating to explosive materials.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to update the provisions of the Department's administrative rules relating to explosive materials. An advisory council will be formed to review the rules and identify potential rule revisions.

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

The current rules of ch. Comm 7 are based on federal regulations issued by the Bureau of Alcohol, Tobacco and Firearms. The rules cover the manufacture, storage and use of explosive materials, including the regulation of blasting resultants. Because it has been several years since ch. Comm 7 was revised, it is anticipated that the review will result in change proposals to bring the rules into conformance with current national standards. Avoiding this update will result in continuing to have rules that are not consistent with currently recognized national standards and practices.

Statutory authority for the rule:

Section 101.15 (2) (e), 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 Department estimates that it will take approximately 500 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject:

Ch. ILHR 32 – Relating to public employe safety and health.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to update the provisions of the Department's administrative rules relating to occupational safety and health standards for public employes. This update will include adoption by reference of the current applicable federal standards and may include revision of the confined spaces rules.

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

Section 101.055, Stats., requires the Department to provide public sector employes with safety and health protection at least equivalent to that afforded to private sector employes under standards adopted by the federal Occupational Safety and Health Administration (OSHA). Currently, ch. ILHR 32 adopts the 1994 edition of the federal OSHA safety and health standards. The proposed rule would adopt the most recent federal OSHA safety and health standards, including new provisions relating to:

- Scaffolds used in construction,
- Exposure to 13 carcinogens,

- Access to employe records,
- Ionizing radiation, and
- Occupational exposure to methylene chloride.

The alternative of not updating ch. ILHR 32 would result in public employes not being provided with safety and health protection equivalent to that afforded to private sector employes.

Statutory authority for the rule:

Section 101.055 (3), 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 Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Health & Family Services

Subject:

Ch. HFS 89 – Relating to residential care apartment complexes (formerly, Assisted Living Facilities).

Description of policy issues:

Description of objective(s):

To bring ch. HFS 89 into conformity with two changes made in the program statute by 1997 Wis. Act 13, namely, a change in the generic name of these facilities from "assisted living facility" to "residential care apartment complex" and establishment in statute of a definition of "stove" that is different from the definition of stove currently in the rules.

Description of policies:

The policy changes are statutory. The rule changes will simply bring the rules into conformity with the revised statutes.

The effect of the change in the generic name of the facilities is to permit a facility to offer what it calls "assisted living services" and even call itself an "assisted living facility" without necessarily being subject to regulation under ch. HFS 89.

The new statutory definition of "stove," as the term is used in the definition of "residential care apartment complex," which was formerly the definition of "assisted living facility," has displaced the definition of "stove" that is now in the rules. Before 1997 Wis. Act 13 went into effect in September 1997, there was no definition of "stove" in the program statute. Chapter HFS 89 defined "stove" as a cooking appliance consisting of burners and an oven, with the oven permitted to be a separate microwave oven. Section 50.01 (1d), Stats., as amended by Act 13, states that a stove is a cooking device that is either a microwave oven of at least 1,000 watts or consists of burners and an oven.

Statutory authority:

Section 50.034 (2), Stats., as amended by 1997 Wis. Act 13.

Estimated staff time and other resources needed to develop the rules:

10 hours of staff time.

Health & Family Services

Subject:

Ch. HFS 90 – Relating to the birth to 3 program.

Description of policy issues:*Description of objective(s):*

Chapter HFS 90, the Department's rules for administration of the program of early intervention services for children birth to age 3 with developmental needs, needs to be revised to incorporate changes made in Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC 1400, by Public Law 105-17. These changes are related to resolution of disputes between parents and county administrative agencies and the provision of services to children and their families in "natural environments".

Changes in ch. HFS 90 will be:

- 1) Establishment of a state-level process for resolution of disputes between parents and county administrative agencies and
- 2) Improvement in the required documentation that natural environments are being used, to the maximum extent appropriate, as the locations for provision of early intervention services to children.

The federal government requires that these policy changes be in effect on July 1, 1998.

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

Procedural Safeguards. Section HFS 90.12 (5) describes the current process for resolution of parent complaints. It provides for appointment by the county administrative agency of an impartial decisionmaker who is to offer mediation and, if accepted, to identify a mediator or to schedule and conduct a hearing on the complaint.

The rule changes will change the process. There will be a statewide system of mediation. The Department will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services, and will bear the cost of the mediation process. The Department will likely use the mediation system under development by the State Department of Public Instruction for mediation of special education disputes.

For hearings, the Department will likely use the impartial due process hearing procedures developed by the state Department of Public Instruction for appeals under s. 115.81, Stats. The Department will receive notice of a dispute from the county administrative agency and will make use of administrative law judges through the State Department of Administration to schedule and conduct the hearing. The county administrative agency will bear the cost of the hearing process, as it does now.

Natural Environments. The Department is required under federal law to establish policies and procedures to ensure that, to the maximum extent appropriate, early intervention services are provided in "natural environments". Services may be provided in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily in a natural environment. "Natural environment" is defined in s. HFS 90.03 (25) as a setting that is natural or normal for the child's age peers who have no disability. The Department will amend current language in ch. HFS 90 to improve the process for determining settings for early intervention services and for documenting that natural environments are being used.

Statutory authority:

Section 51.44 (5) (a), Stats.

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

Developing the rule changes--16 hours.

Health & Family Services**Subject:**

SS. HFS 172.04 (1m), 175.04 (1m), 178.05 (1m), 195.04 (1m) (a), 196.04 (1m), 197.04 (1m) and 198.04 (1m) - Relating to permit fees for vending of food and beverages, bed and breakfast establishments, restaurants, hotels/motels and tourist rooming houses, campgrounds, and recreational and educational camps.

Description of policy issues:*Description of objective:*

The revenue produced by permit fees provides 100% of the support for the Department's regulation and licensing program for these industries. Fee increases are needed to meet the costs of maintaining the existing program.

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

The Department and agent local government health departments regulate campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department's rules are in chs. HFS 172, 175, 178, 195, 196, 197 and 198, Wis. Adm. Code. None of these facilities may operate without receiving a permit from the Department or an agent local government health department. A permit is evidence that a facility complies with the Department's rules on the date of issuance of the permit. Under the rules, a facility is charged a permit fee which provides support for the regulatory program. The Department by rule raised fees 12% effective July 1, 1994, and 10% effective July 1, 1996. The revenue from permit fees will not be sufficient to fully support the existing staff and technology improvements necessary for the program for fiscal year 1999 and beyond. Policy alternatives to increasing fees include:

a) Allow the appropriation (124) to end in deficit for SFY 99 and future years.

b) Immediately reduce costs associated with the program. (Note: personnel costs represent approximately 70% of the budget. A reduction in staffing would decrease the inspection frequency of facilities beyond the average of approximately once every 18 months.)

c) Re-structure or re-engineer the program long-term to reduce program costs. (Note: the Department has committed to working with agents and the regulated industry to make long-term improvements, including cost reduction, to the program. In addition, the Department is working with the Department of Agriculture, Trade and Consumer Protection to reduce regulatory overlap across the retail food industry. However, these efforts will not be complete in time for the upcoming licensing cycle.)

Statutory authority:

The Department's authority to amend these rules is found in ss. 254.47 (4) and 254.68, Stats.

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

One FTE for 8 hours.

Insurance**Subject:**

S. Ins 4.10 - Relating to the Wisconsin insurance plan.

Description of policy issues:

A statement of the objective of the proposed rule:

The proposed revision to the existing rule is required to update the rule. A complete revision has not been done since 1981.

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

The proposed revision to the rule seeks to update the rule to current terminology and operating procedures of the plan and to incorporate provisions approved by the Office of the Commissioner of Insurance, but not formally incorporated into this rule.

Statutory authority for the rule:

Section 619.01, Stats.

An estimate of the amount of time that state employees will spend to develop the rule and a description of other resources necessary to develop the rule:

40 hours.

Insurance

Subject:

S. Ins 8.07 – Relating to changes in the small group insurance market.

S. Ins 18.05 – Relating to creditable coverage for the Health Insurance Risk-Sharing Plan (HIRSP) program.

Description of policy issues:

A statement of the objective of the proposed rule:

Implement changes to existing small group market rules to comply with changes in state and federal law.

Issue new rules describing creditable coverage requirements for the Health Insurance Risk Sharing Plan as required by state and federal law.

A 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:

Current requirements for small group insurance markets are described in ch. 635, Stats., and ch. Ins 8. 1997 Wis. Act 27 changed the definition of a small group, and changed underwriting restrictions to comply with the Health Insurance Portability and Accountability Act of 1996 (HI PAA). 1997 Wis. Act 27 also eliminated the basic benefit plan described in ch. Ins 8, subch. IV.

Existing individual and group market underwriting and policy renewal requirements are described in ss. Ins 3.13, 3.28, 3.31, 6.51, 6.55, and 6.67. 1997 Wis. Act 27 modified creates new portability and renewability requirements to comply with HIPAA.

Current HIRSP eligibility requirements are described in s. 619.12, Stats., and s. Ins 18.05, Wis. Adm. Code. 1997 Wis. Act 27 changed HIRSP eligibility requirements to make HIRSP an acceptable alternative mechanism under HIPAA and requires the Office of the Commissioner of Insurance to issue rules necessary to implement the changes.

A statement of the statutory authority for the rule:

1997 Wis. Act 27 and s. 601.41 (3), Stats.

An estimate of the amount of time that state employees will spend to develop the rule and a description of other resources necessary to develop the rule:

80—100 hours.

Natural Resources

Subject:

NR Code – Relating to a waiver of slow-no-wake requirement for Lake Tombeau in Walworth County.

Description of policy issues:

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

A public hearing will be held to determine if the request by Lake Benedict and Lake Tombeau Lake Management Districts to modify the slow-no-wake requirement is justified. If it is justified, the Department will proceed with the rulemaking process. If the request is not justified, the Department will deny the request.

The action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Pursuant to s. NR 5.20, the Department is required to hold a public hearing to determine if a rule change is necessary in this situation.

Statutory authority:

S. 30.635, Stats.

Anticipated time commitment:

The anticipated time commitment is 21 hours. One public hearing will be held in December 1997 at Lake Geneva.

Natural Resources

Subject:

Ch. NR 21 – Relating to a re-write of the commercial fishing rules for Wisconsin-Minnesota boundary waters.

Description of policy issues:

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

No policy issues identified. Impacted/interested groups include commercial fishers, district attorneys, judges and wardens.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

The proposed changes will simplify enforcement and adopt changes recommended by courts and prosecutors. Chapter NR 21 will be re-organized and some substantive changes made. For example, closed areas will now use well-recognized boundaries such as highway bridges, rather than sloughs (which change with water levels). Changes are proposed to eliminate unnecessary restrictions which were implemented in the past for nonbiological reasons, such as trespass. Finally, the DNR will eliminate current wording which, in some cases, has an exception where the exception *also has an exception* to the exception.

Statutory authority for the rule:

SS. 29.085, 29.174 and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 88 hours. Hearing(s) will be held in February 1998 along the Mississippi River, to involve commercial fishers.

Natural Resources

Subject:

NR Code – Relating to implementing the new automated license issuance system.

Description of policy issues:

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

The 1997–99 biennial budget requires the Department to promulgate rules regarding the issuance of approvals under the new Automated License Issuance System (ALIS), including both parks vehicle admission receipts and hunting, fishing and trapping approvals. The required rules will address:

- a) Which agents (DNR, county clerks, and retail agents) are authorized to issue which receipts and approvals;
- b) Agent qualifications and requirements;
- c) How annual and daily parks vehicle admission receipts will be affixed;
- d) Licensee signature requirements, if any, for each approval;
- e) Circumstances under which a person may obtain an approval for another person; and
- f) How stamps are to be attached or imprinted on the license.

Rules must be effective in conjunction with the 01–01–99 effective date of the ALIS system. Groups impacted include county clerks and local retail agents who choose to become DNR license sales agents and the public, who purchase parks and fish and game approvals.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Current manual issuance procedures will be replaced by the new automated licensing system. The ALIS rules will:

- Broaden the numbers and types of approvals handled by agents,
- Change how hunting and fishing stamps are used,
- Amend signature requirements on approvals, and
- Define the circumstances under which people may purchase a license on behalf of another individual.

The new administrative rules implementing ALIS will also necessitate a parallel set of revisions to current administrative rules, portions of which will be outdated by the new rule, primarily:

- ▶ Ch. NR 8 (“Minimum Accounting Standards and Procedures for License Transactions”),
- ▶ Ch. NR 10 (“Game and Hunting”),
- ▶ Ch. NR 20 (“Fishing: Inland Waters; Outlying Waters”), and
- ▶ Ch. NR 45 (“State Parks and State Forests Miscellaneous”).

To the extent that other specialized approvals such as ginseng harvest are issued under the automated system, changes will also be required in:

- ▶ Ch. NR 19 (“Miscellaneous Fur, Fish, Game and Outdoor Recreation”),
- ▶ Ch. NR 24 (“Clams”),
- ▶ Ch. NR 28 (“Wild Plants”),

Statutory authority for the rule:

SS. 27.01 (7) (e), 29.09 (3m) and 29.09 (3r), Stats.

Anticipated time commitment:

The anticipated time commitment is 230 hours. Hearing(s) will be held in April 1998 at locations yet to be determined.

Natural Resources

Subject:

Ch. NR 191 – Relating to developing new rules for adding lake classification projects to ch. NR 191, “Lake Protection Grants”.

Description of policy issues:

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

Administrative process, eligibility and project guidance. The recent state budget bill included enabling legislation to create two new categories of grants: Lake Classification Projects and Lake Classification Technical Assistance Projects. The Department is directed to develop rules in order to administer these programs and develop project guidance.

The nature of the amendments will be to establish the administrative procedures similar to those in place for the existing lake grant programs. The legislation specifies that Lake Classification Projects are to be funded at 75% state share, with up to \$50,000 per grant. Under these grants, counties are eligible to classify lakes and implement protection and management programs based on their classification. The Department is also directed to provide guidance on the factors to be used in a lake classification project.

Lake Classification Technical Assistance Projects allow up to \$200,000 per grant to nonprofit corporations to provide technical and educational assistance in lake classification projects. These grants do not have a specified cost-share limit.

Counties, local units of government and lake management organizations, real estate and land development interests, fishing and boating interests are likely to be interested in this issue.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

New enabling legislation requires rules development to administer new grant category.

Statutory authority:

S. 281.69, Stats.

Anticipated time commitment:

The anticipated time commitment is 166 hours. Three public hearings will be held on March 16, 17 and 18, 1998 in Spooner, Rhinelander and Waukesha.

Public Defender

Subject of proposed rule:

Section PD 3.02 (1) – Relating to the cost of retained counsel.

Description of policy issues:

The proposed rule will establish a separate cost of counsel amount for chapter 55 (protective placement) cases. Under the current cost of retained counsel schedule, the cost of counsel for chapter 55 and chapter 51 cases is the same.

A time study conducted by the State Public Defender’s Office revealed that chapter 55 cases are more complicated and time-consuming than chapter 51 cases and, in fact, that chapter 55 cases equate with felony cases. Also, the SPD’s present collections amounts and trial division case weights for chapter 55 cases are the same as those for felony cases. The amendment to s. PD 3.02 (1) will make the cost of counsel amount for chapter 55 cases consistent with felony cases.

Statutory authority for rule:

Section 977.02 (3), Stats.

Anticipated time commitment:

10 hours

Tourism

Subject:

Ch. Tour 1 – Relating to the joint effort marketing program.

Description of policy issues:

Description of the objectives of the rule:

The objective of the rule is to amend ch. Tour 1 to create a new category of funding for destination marketing initiatives that are not necessarily related to an event, but which enlarges the market for the area, to insure that funds are available throughout the fiscal year, and to alter the membership of the group that advises the Department on joint effort marketing applications.

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

The Joint Effort Marketing program provides for grants to non-profit organizations engaged in tourism activities. Grant funds may be used for the development of publicity, the production and media placement of advertising and direct mailings that are part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

The proposal would create a new category of funding for destination marketing that is not tied to an event or promotion, but which is directed at extending the tourism market for the applicant and which has been identified by the Department as an extended market for the state.

The proposal limits the percentage of funding that may be committed during the first 3 quarters of each fiscal year so that funds will be available throughout the fiscal year.

The proposal would alter the makeup of the group that advises the Department on applications submitted under the current Joint Effort Marketing Rules.

The policy alternatives are to limit funding primarily to projects related to events and promotions according to the current rules or to expand the availability of funding to expand funding to marketing directed at extended markets. The rule can either retain the existing makeup of the advisory group or change the composition so that it always reflects a variety of current tourism interests. Finally, the rule can either leave the Department free to commit funds without a time restriction or it can limit the funding that may be committed during the first 3 quarters so that there are funds available throughout the year.

Statutory authority for the rule:

The statutory authority for the rule is s. 41.17 (4) (g), Stats.

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

The Department estimates that it will take approximately 30 hours of staff time on the rule, which includes discussing the rule with the Council on Tourism and interested members of Wisconsin's tourism industry.

Veterans Affairs

Subject:

Chs. VA 2, 3, 4, 9, 11 and 13 – Relating to revising rules applicable to state veterans benefits.

Description of policy issues:

Objective of the rules:

Upon enactment of 1997 Wis. Act 27, the legislature modified various state veterans benefit programs. Specifically, the economic assistance loan program was terminated; the health care aid grant program was reinstated; the primary mortgage housing loan program was amended to permit additional funding through the use of taxable bond proceeds; the retraining grant program was amended to provide grants to veterans who participate in on-the-job training programs; and the Department was authorized to charge fees for transitional housing and other assistance under the veterans assistance program. The proposed rules will permit the Department to fully implement these legislative initiatives.

Policy analysis:

In relation to the defunct economic assistance loan program, the Department will repeal those portions of the administrative code no longer necessary. Provisions relating to the administration of the existing loan portfolio will be retained.

In relation to the health care aid grant program, the Department will identify the requirements relating to the term "certificate of entitlement" as required by the new statutory language. Additionally, references to prior authorization will be deleted. Finally, expenditure limitations regarding retroactivity and specific services will be defined, so that expenditures will be limited to the expenditure authority provided in 1997 Wis. Act 27.

In relation to the primary mortgage housing loan program, the Department must codify certain requirements applicable to the portion of the program funded by tax exempt bond proceeds, so that the requirements are also applicable to loans funded by the newly-authorized taxable bond proceeds. Additionally, code language is needed to define the terms "dependent child" and "creditworthy guarantor," both of which are applicable as a result of the enactment of 1997 Wis. Act 27.

In relation to the retraining grant program, requirements for eligible on-the-job training programs will be identified. This is explicitly required by the amended statutory language.

Finally, in relation to the veterans assistance program, 1997 Wis. Act 27 authorizes the Department to charge fees for services under a fee schedule established by the rules. The proposed rules will implement this directive.

Statutory authority:

Sections 45.35 (3), 45.351 (1j), 45.357 (2), 45.397 (2) (a) and 45.73 (1), Stats.

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

Approximately 40 staff hours.

Workforce Development

Subject:

Ch. DWD 60 – Relating to the business enterprise program.

Description of policy issues:

Description of the objective of the rules:

Federal law provides individuals who are legally blind a preference for operating supervised vending facilities on federal property. Chapter DWD 60 was adopted to establish the state business enterprise program (BEP) to be consistent with the federal program.

BEP trains operators and licenses these individuals to operate vending enterprises. BEP also conducts training and development programs for licensed operators, conducts performance reviews of supervised operators and can suspend or terminate the license of an operator who fails to conduct business in accordance with s. DWD 60.

Federal requirements include consultation with an advisory committee elected by the operators regarding program decisions. BEP decisions are subject to an appeal process and involve review and comment by the operator's committee.

There are also other technical changes in ss. DWD 60.10, DWD 60.12 and in the agreement which were prompted by program experience in the Department of Health and Family Services, but which were tabled, due to the reorganization of state government.

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:

In response to federal requirements for appeals in the vocational rehabilitation program, the BEP operator's committee has recommended that s. DWD 60.05 be revised to give the hearing officer in BEP appeals the same authority as hearing officers in other appeals of DVR decision. This would also provide BEP operators with the same protection given other DVR clients in that the decision of the hearing officer is final unless the Division administrator acts to modify the hearing officer's decision for reasons clearly based on existing law. The proposed revision of s. DWD 60.05 would protect the operator from modification of a hearing officer's decision for reasons outside of reasons specifically required by law.

The changes in ss. DWD 60.10, DWD 60.12 and in the agreement were suggested following technical problems which arose when the Department of Health and Family Services was attempting to correct the behavior and performance of an operator.

Statutory authority:

s. 47.02, Stats., Vocational Rehabilitation

s. 47.03, Stats., Specialized Programs for Handicapped Persons

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

The time estimated to develop and implement the proposed changes is 100 hours.

Workforce Development

Subject:

Ch. DWD 65 – Relating to order of selection for vocational rehabilitation services.

Description of policy issues:

Description of the objective of the rules:

This rule establishes criteria and procedures for the state-federal vocational rehabilitation program for an order of selection based on functional limitations. The order of selection criteria are designed to ensure that individuals with more severe disabilities are served before individuals with less severe disabilities.

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

Section DWD 65.07 (2) requires that a vocational rehabilitation supervisor countersignature the vocational rehabilitation counselor (VRC) decision as to the category to which best describes the functional limitations of an applicant.

The Division is proposing a plan for increased delegation of authority to VRC's, based on ongoing performance reviews to allow VRC's to sign certifications for eligibility, order of selection, services requests and other vocational rehabilitation program documents, which include the identification of the order of selection category.

Section DWD 65.07 (2) is proposed for elimination as part of the implementation of the decision to delegate authority for this program decision to specific VRC's.

Other minor technical changes are also proposed to conform this rule to language in federal regulations.

Statutory authority:

The State of Wisconsin operates the vocational rehabilitation program under authority of s. 47.02, Stats. This section of the statutes provides for the state program to follow federal requirements as a condition of receiving federal matching funds authorized under the Rehabilitation Act of 1973, as amended, 29 USC 701, et seq.

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

If the proposed change is approved, the estimated time to develop this rule, implement the proposed delegation and train affected staff in their responsibilities is 100 hours.

Workforce Development

Subject:

Ch. DWD 75 – Relating to appeal procedures for people applying for or receiving vocational rehabilitation (VR).

Description of policy issues:

Description of the objective of the rule:

This chapter establishes procedures for appeals in the state–federal vocational rehabilitation (VR) program. The vocational rehabilitation program provides services directed towards appropriate employment for eligible individuals with disabilities.

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:

This rule was recently adopted to comply with the language in the federal VR Act. Now selected changes are required to comply with the specific language in the federal regulations. Federal regulations were recently published for the VR Act of 1973 as amended through 1996. Selected language changes are now needed to comply with the new regulations, including:

- [1] Changes in the way some response timeline days are counted;
- [2] Changes in the state plan sections related to this rule;
- [3] Revise rule to conform to changes in federal language and clarify timelines.

Statutory authority:

SS. 47.02 and 227.11 (2) (a), Stats.

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

25 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Commerce

Rule Submittal Date

On November 7, 1997, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. ILHR 20–25, Wis. Adm. Code, relating to the Uniform Dwelling Code.

Agency Procedure for Promulgation

A public hearing is required. The agency unit responsible for the promulgation of the rule order is the Safety and Buildings Division of the Department of Commerce.

Contact Person

Duane Hubeler, Secretary
Telephone (608) 266–1390

Dentistry Examining Board

Rule Submittal Date

On November 14, 1997, the Dentistry Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b), 227.11 (2), 447.02 (1) (e) and 447.04 (1) (b)

The proposed rule-making order relates to examination requirements for applicants licensed as dentists in other states.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for January 7, 1998 at 9:00 a.m. in Room 179A, 1400 East Washington Ave., Madison, WI.

Contact Person

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

Employment Relations

Rule Submittal Date

On November 11, 1997, the Department of Employment Relations submitted a proposed administrative rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

Statutory authority:

The proposed rule amends ss. ER 18.02 (2) (b) 6., (3) (c) 3., and (5) (c), 18.03 (2) (a), 18.15 (1) (c), (2), (3) and (4) (a) 3., and creates ss. ER 18.02 (5) (bm), 18.03 (6) and (7) and 18.15 (4m), relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employees and catastrophic leave.

Agency Procedure for Promulgation

A public hearing is required, and will be held from 11:30 A.M. to 1:00 P.M. on Monday, December 15, 1997 in the Monona Room, Department of Employment Relations, 137 East Wilson Street, Madison, Wisconsin.

The Division of Classification and Compensation in the Department of Employment Relations is responsible for developing this rule.

Contact Person

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

Bob Van Hoesen
Division of Administrative Services
Telephone (608) 267–1003

Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on November 10, 1997.

Analysis

These changes will affect s. Ins 3.53, Wis. Adm. Code, relating to HIV testing procedures.

Agency Procedure for Promulgation

The date for the public hearing is December 19, 1997.

Contact Person

To obtain a copy of the proposed rule, contact:

Meg Gunderson
OCI Central Files
Telephone (608) 266–0110

For additional information, please contact:

Stephen Mueller
OCI Legal Unit
Telephone (608) 267–2833
e-mail at smueller@mail.state.wi.us

Natural Resources

Rule Submittal Date

On November 17, 1997, the Wisconsin Department of Natural Resources submitted a proposed rule [LE–8–98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 5, Wis. Adm. Code, relating to slow–no–wake speed restriction on Tombeau Lake, Walworth County.

Agency Procedure for Promulgation

A public hearing is scheduled for December 15, 1997.

Contact Person

Bill Engfer
Bureau of Law Enforcement
Telephone (608) 266-0859

Natural Resources**Rule Submittal Date**

On November 12, 1997, the Wisconsin Department of Natural Resources submitted a proposed rule [LE-28-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ss. NR 10.001 and 10.102, Wis. Adm. Code, relating to changing the bear kill and pursuit language to Class A and Class B hunting licenses.

Agency Procedure for Promulgation

A public hearing is scheduled for December 11, 1997.

Contact Person

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

Natural Resources**Rule Submittal Date**

On November 12, 1997, the Wisconsin Department of Natural Resources submitted a proposed rule [SS-33-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 149, Wis. Adm. Code, relating to laboratory certification and registration.

Agency Procedure for Promulgation

A public hearing is scheduled for December 11, 12 and 15, 1997.

Contact Person

Jeff Ripp
Bureau of Integrated Science Services
Telephone (608) 266-2745

Transportation**Rule Submittal Date**

On November 11, 1997, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of "double bottoms" (and certain other vehicles) on specified highways.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for December 12, 1997. The agency unit responsible for the promulgation of the rule order is the Division of Transportation Infrastructure Development/ Bureau of Highway Operations.

Contact Person

Julie A. Johnson, Paralegal
Telephone (608) 266-8810

Transportation**Rule Submittal Date**

On November 13, 1997, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Trans 302, Wis. Adm. Code, relating to vehicle marking.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for December 17, 1997. The organizational unit responsible for the promulgation of the rule order is the Division of State Patrol, Bureau of Field Services and Training.

Contact Person

Julie A. Johnson, Paralegal
Telephone (608) 266-8810

NOTICE SECTION

Notice of Public Hearings

Commerce (Uniform Dwelling Code, Chs. ILHR 20-25)

Notice is given that pursuant to ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats., the Department of Commerce proposes to hold public hearings to consider the revision of chs. ILHR 20-25, Wis. Adm. Code, relating to the Uniform Dwelling Code.

Hearing Information

<p>December 12, 1997 Friday 11:00 a.m.</p>	<p>Eau Claire Rm. 105, State Office Bldg. 718 W. Clairemont Ave.</p>
<p>December 15, 1997 Monday 10:30 a.m.</p>	<p>Waukesha Rm. 120 State Office Bldg. 141 N.W. Barstow Street</p>
<p>December 17, 1997 Wednesday 11:00 a.m.</p>	<p>Green Bay Rm. 152A State Office Bldg. 200 N. Jefferson St.</p>
<p>December 18, 1997 Thursday 10:30 a.m.</p>	<p>Stevens Point Rm. B Portage Co. Courthouse 1516 Church Street</p>
<p>December 19, 1997 Friday 10:30 a.m.</p>	<p>Madison Rm. 324 WHEDA Bldg. 201 W. Washington Ave.</p>

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety and Buildings, P.O. Box 2689, Madison, Wisconsin 53701, by calling (608) 261-6546 (Voice) or (608) 264-8777 (TTY), or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **January 7, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Duane Hubeler, at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-1390 or Teletypewriter (TTY) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Proposed Rules

Statutory Authority: ss. 101.63 (1) and (1m), 101.64 (1) and (6), 101.72, 101.73 (1m) and 101.74

Statutes Interpreted: ss. 101.60, 101.615, 101.62, 101.651, 101.66, 101.70, 101.76, and 101.761

Under ss. 101.63, 101.64 (1) and (6), 101.72, 101.73 (1m) and 101.74 (1), Stats., the Department of Commerce has the responsibility of adopting rules to establish standards for the construction of 1- and 2-family dwellings. The first edition of chapter ILHR 22 was effective December 22, 1978; chapters ILHR 20, 21, 23 through 25 were first effective June 1, 1980. The last update to the energy efficiency requirements in chapter 22 was in 1989. The last general update to the rest of the code was in 1995.

Section ILHR 21.02 is revised to require mechanical attachment of most roof framing using clips and prohibiting toe-nailing as a means of permanent fastening.

Section ILHR 21.03 is amended to remove the exemption for casement windows from the clear opening requirement for egress windows.

Sections ILHR 21.042 and 21.045 are amended to have handrail heights and railing spacings consistent throughout the code for stairs, ramps and ladders.

Section ILHR 21.05 (5) has been revised to require safety glazing in certain stairway and bathroom configurations.

Section ILHR 21.08 (5) has been amended to address fire separation for multiple, detached dwellings on a single property and the new issue of adjacent, zero-lot-line dwellings. Also, the joints in gypsum drywall, used to form the fire separation between a dwelling and an attached garage, are required to be taped or otherwise sealed.

Section ILHR 21.08 (6) reduces the fire separation requirements between duplex units for consistency.

Section ILHR 21.17 has been amended to no longer require a sump pump or discharge piping to be installed in all cases. A complete drain tile system is still required in municipalities that have such ordinances. However, a municipal ordinance may not require drain tile if an onsite inspection shows no saturation above the bottom of the footing.

Section ILHR 21.22 (9) is amended to require bridging on floor joists made of 2X10 and 2X12 sawn lumber.

Chapter ILHR 22

The proposed rule changes include a complete repeal and recreation of ch. ILHR 22, relating to energy conservation.

Some of the new provisions are taken from the 1995 Model Energy Code, (MEC). The impetus to use model code requirements came from three areas, federal law, state law, and Safety and Buildings Division policy.

The federal Energy Policy Act, EPACT, of October 1992 requires states to review their present codes. Each state is required to certify to the Secretary of the U.S. Department Of Energy, that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such state to revise their residential building code provisions to meet or exceed the MEC.

State laws, ss. 101.63 (1) and 101.73 (1) require the department to establish energy conservation standards for dwellings based on costs and benefits to homeowners and appropriate national standards.

The Safety & Building Division's strategic plan includes using model codes, such as the MEC for the following reasons: 1) To take advantage of economy of scale in the development of the code and compliance tools such as software, 2) To allow all staff and customers to use training and certification materials developed from the national standards, 3) To provide more opportunities for Wisconsin businesses and more choices for consumers and, 4) To benefit from general uniformity across the states.

The department held public hearings in October and November of 1994 to ask for comments on whether the UDC should be revised to meet or exceed the provisions of the 1992 MEC. The department received comments both in favor of and against using MEC. The

UDC council recommended formation of an advisory sub-committee to study the issue and develop a proposal to revise Chapter ILHR 22 of the UDC.

The subcommittee decided to review the 1995 MEC and choose portions to incorporate into the Wisconsin code. The subcommittee developed a draft proposal which was then reviewed and revised by the full UDC Council.

The proposed Chapter ILHR 22 is divided into the following seven subchapters: Purpose, Scope and Application; Materials and Equipment; Definitions; Design Criteria; Heating and Air Conditioning Equipment and Systems; Dwelling Envelope Design; and Design by Systems Analysis and Design of Dwellings Utilizing Renewable Energy Sources.

Chapter 22, Subchapter I

Subchapter I—Purpose, Scope and Application has only editorial changes.

Chapter 22, Subchapter II

The proposed Subchapter II—Materials and Equipment, includes three sections: s. ILHR 22.03 Identification, s. ILHR 22.04 Maintenance Information and s. ILHR 22.05 Fenestration Product Rating Certification and Labeling.

Section ILHR 22.03 requires batt or board insulation to have a thermal resistance identification mark applied by the manufacturer or that the insulation installer provide a signed and dated certification as to the R-value. Blown or sprayed insulation is required to be installed with depth markers. These changes are to make it easier for owners and inspectors to verify the installed insulation levels.

Section ILHR 22.04 requires the maintenance instructions for installed equipment to be provided to the owner.

In the past, window performance was not evaluated by consistent methods and manufacturer's claims could not be compared to each other or to the code. There is a new national standard and certification program developed by the National Fenestration Rating Council (NFRC). **S. ILHR 22.05** gives two options for determining window performance. It specifies that U-values of windows, doors and skylights must be determined in accordance with the NFRC procedures for determining fenestration product thermal properties by an accredited laboratory, and labeled and certified by the manufacturer. As an alternative, U-values may be taken from the default table given in the code.

Chapter 22, Subchapter III

Subchapter III—Definitions was created to put all definitions relating to energy efficiency into Chapter ILHR 22. Some definitions in the current s. ILHR 20.07 that apply to energy conservation are also added to the proposed definitions in this subchapter.

Chapter 22, Subchapter IV

Subchapter IV—Design Criteria, contains two sections, ILHR 22.07 Indoor and Outdoor Temperatures and ILHR 22.08 Ventilation and Moisture Control.

Section ILHR 22.07 Indoor and Outdoor Temperatures, specifies the indoor and outdoor temperatures used to determine the total dwelling heat loss or gain or for selecting the size of the heating or cooling equipment and remains unchanged from the current code.

Section ILHR 22.08 Ventilation and Moisture Control, specifies what ventilation must be provided in attics and crawl spaces and requires the outdoor termination of clothes dryer vents. These provisions are the same as in the current code.

Chapter 22, Subchapter V

Subchapter V—Heating and Air Conditioning Equipment and Systems has proposed sections, ILHR 22.09 through ILHR 22.19. These sections specify requirements for calculation of system heating and cooling loads; equipment sizing limits; equipment controls and duct and pipe insulation.

New provisions in Subchapter V include requirements for a maximum of 0.5 air changes per hour allowance in infiltration in

equipment sizing calculations, use of ASHRAE Fundamentals guidelines in equipment sizing calculations, supplementary heater controls for heat pumps, controls and dampers for mechanical ventilation, and operation ranges for humidistats and thermostats. Heating pipes in unheated spaces and all cooling pipes in uncooled spaces are required to be insulated to R4, rather than the current requirement for one inch of insulation, which was vague. Duct insulation remains at R5.

Chapter 22, Subchapter VI

Subchapter VI—Dwelling Envelope Design, has requirements for vapor retarders, insulation levels for the assemblies that make up the thermal envelope, air leakage for windows and doors, thermal performance calculations, and recessed lighting fixtures in insulated ceilings in sections ILHR 22.20 through ILHR 22.32.

In s. **ILHR 22.22**, vapor retarder materials are required to have a consistent one perm rating for both electrically and nonelectrically heated homes. The requirements are written to be more performance based and would allow a vapor retarder to be installed between the basement wall and interior basement wall insulation. A vapor retarder is still required to be placed under basement and slab-on-grade floors.

The proposed insulation requirements for walls, attics, floors and foundations were based on the MEC, with some modifications. The MEC insulation levels were analyzed using Wisconsin climate and construction costs in a life cycle cost analysis. Insulation levels that were more stringent than those that gave the lowest life cycle cost were reduced to that level. This way the insulation levels are cost effective for the home owner.

Thermal envelope requirements for electrically-heated dwellings remain unchanged unless they were less stringent than those for non-electrically-heated dwellings. In those cases, the requirements for electrically-heated dwellings were made equivalent to those for non-electrically-heated.

Under the proposed rules, the maximum overall thermal transmittance (U-value) for a non-electrically-heated home with a fully insulated basement is 27% lower than under the current code. The proposed rules also give an automatic credit for furnaces that exceed the minimum national efficiency standards. When a 90% efficient furnace is installed, the maximum overall thermal transmittance (U-value) for a home with a fully insulated basement is 14% lower than under the current code.

In the current code, the design standards for non-electrically heated and electrically heated homes are handled in separate subchapters. The proposed requirements of s. **ILHR 22.21** combine them and have the same format of application for both types, which will simplify code application and enforcement.

Since steel stud framing is becoming more popular, s. **ILHR 22.23** contains proposed code language for metal studs. There is an equation for recalculating the U-value using a series-parallel heat flow path procedure, to correct for parallel path thermal bridging.

In s. **ILHR 22.30**, the air leakage limits for windows and doors are updated to current national standards.

In s. **ILHR 22.31**, the proposed rules include updated default framing factors for wall construction to be used when the actual percent of framing is not calculated. The new wall framing factors from the 1993 ASHRAE Handbook of Fundamentals are 22% and 25% for 24 and 16 inch stud spacing, respectively. The framing factors were updated to more realistically account for all the sills, plates, headers, etc. that make up walls. Some framing factors used in the past considered only the studs and underestimated the impact of the framing on the insulation value of the whole wall assembly.

In s. **ILHR 22.32**, the proposed rules require recessed light fixtures that are installed in insulated assemblies to be protected from insulation contact and to be sealed or enclosed to reduce air leakage. Warm, moist air passing through these fixtures is a frequent cause of condensation and moisture damage.

Chapter 22, Subchapter VII

Subchapter VII—Design By Systems Analysis and Design of Dwellings Utilizing Renewable Energy Sources, has been expanded

to give more direction for the energy analysis that is done under this section. Similar to the current code, this subchapter would be used only to demonstrate that a proposed design is equivalent to a design that meets all of the code's prescriptive standards. It allows trade-offs between energy using systems and gives credit for renewable energy sources. The analysis can be simple for limited trade-offs or can be more complex for trade-offs that effect several energy using systems.

The UDC energy worksheet has been updated to reflect the new envelope requirements. A new simpler prescriptive method is included. Designers can simply choose from a number of prescriptive package options. With this method calculations are minimized. The prescriptive packages automatically give credit for the installation of high efficiency furnaces.

The appendix includes default tables of U-values for various insulated assemblies. These tables will further reduce the need for calculations.

Section ILHR 23.02 (3) is amended to clarify the amount of makeup air needed for balancing and to clarify how range hoods are balanced.

Section ILHR 23.08 (5) is amended to require duct construction to be in accordance with a national standard.

The proposed rules were developed after consultation with the Uniform Dwelling Code Advisory Subcommittee and the Uniform Dwelling Code Council. The current memberships of the Subcommittee and Council are given below.

UNIFORM DWELLING CODE ENERGY SUB-COMMITTEE

Oscar Bloch, Public Service Commission
*Joseph Chudnow, Contractor-Private
Ross DePaola, Wisconsin Environmental Decade
John Griebler, Building Inspectors
Len Linzmeier, Housing Manufacturers
Charles Madden, Architect-Private
Mary Meunier, Wisconsin Energy Bureau
*Dave Crocker, served as a substitute for Joseph Chudnow

UNIFORM DWELLING CODE COUNCIL

James Cauley, Public
Mike Check, Contractors-Private
Dennis Dorn, Material Suppliers
Reimar Frank, Architects
John Griebler, Building Inspectors
Howard Gyax, Building Inspectors
Len Linzmeier, Chairman Housing Manufacturers
Garry L. Nelson, Material Suppliers
William Roehr, Labor
Randolph Thelen, Contractor-Private
Brian Walter, Building Inspectors
Frank Weeks, Housing Manufacturers
Paul Welnak, Labor
Christine Wilson, Building Inspector

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the

Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Margaret Slusser
Division of Safety & Buildings
Department of Commerce
P.O. Box 7969
Madison, WI 53707
Telephone (608) 261-6546
or TTY (608) 264-8777

Written comments will be accepted until **Wednesday, January 7, 1998**.

Fiscal Estimate

The Uniform Dwelling Code has been in effect since 1980. There are no new regulation schemes contained in these proposed changes. Although there is a time lag or learning curve involved in any administrative rule change, we do not expect revenues to be affected.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

All one- and two-family dwellings constructed in the state are required to comply with these rules. Contractors, tradespeople, material suppliers, and other small businesses have been affected by these rules since their inception. The current package of changes should have very little additional impact.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

There are no additional reporting or bookkeeping procedures required as a result of these rules.

Insulation contractors are required to add markers to attics to show the thickness of installed insulation. This is already standard practice for many installers.

3. Types of professional skills necessary for compliance with the rules.

There are no additional skills necessary to comply with these rules.

Notice of Hearing Employment Relations

Notice is hereby given that pursuant to s. 230.04 (5), Stats., and interpreting s. 230.04 (1), Stats., the Department of Employment Relations will hold a public hearing at the time and place shown below to consider the creation of permanent rules relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employees and catastrophic leave. The hearing will also cover emergency rules promulgated on the same subject. The emergency rules became effective **October 12, 1997**.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 15, 1997 Monday 11:30 A.M. to 1:00 P.M.	Monona Room (Lower Level) Dept. of Empl. Relations 137 East Wilson St. MADISON, WI

The hearing site is accessible to people with disabilities. If you need an interpreter, materials in alternate format or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the hearing.

Written Comments

Written comments on the rules may be sent to the contact person by **Tuesday, December 16, 1997**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by Dept. of Employment Relations

Section 230.35 (2), Stats., provides that sick leave for state employees shall be regulated by the administrative rules of the Secretary of the Department of Employment Relations. Rules governing sick leave are located in s. ER 18.03, Wis. Adm. Code.

Section ER 18.03 (2) provides that sick leave credits accrue at the rate of .05 hour for each hour in pay status, not to exceed 4 hours in any biweekly pay period. An employe working full time (i.e. 80 hours in a biweekly pay period) would thus earn 104 hours of sick leave in one year, or 13 days.

This rule increases the accrual rate for sick leave from .05 hour to .0625 hour for each hour in pay status, not to exceed 5 hours in any biweekly pay period. The annual earning rate for a full-time employe would increase to 16.25 days per year.

Under the provisions of the emergency rule, on the effective date of the rule, the sick leave balances of active state employes would be adjusted to apply the higher accrual rate to hours worked between July 6, 1997 and the effective date of the rule change. Similar adjustments would be made to the sick leave balances of employes who retired or were laid off during that time period. Employes who began an unpaid leave of absence during that time period would have their sick leave balance adjusted when they returned to work.

The Department's authority to promulgate the rules regarding catastrophic leave is found in s. 230.04 (5), Stats. The rules implement the powers and duties of the Secretary under ss. 230.04 (1) and 230.35 (2r), Stats. Section 230.35 (2r), Stats., allows the Secretary to establish by rule a catastrophic leave program.

Current rules regarding catastrophic leave are found in s. ER 18.15, Wis. Adm. Code. Current rules allow a donor to donate leave credits only to nonrepresented employes within the same employing unit, except that donations may be made to recipients in different employing units in the same agency with the approval of the appointing authority. Similarly, a recipient may receive credits only from other nonrepresented employes within the same employing unit. This rule would allow a donor to donate leave to, and allow a recipient to receive leave from, any eligible classified employe — nonrepresented or represented — within the same agency. Leave may also be exchanged with any eligible classified employe in another agency with the approval of each affected agency.

The rule makes several technical changes in chapter ER 18 to reflect correct cross-references and newly-added provisions to the statutes.

Text of Proposed Rule

SECTION 1. ER 18.02 (2) (b) 6. is amended to read:

ER 18.02 (2) (b) 6. Was a career executive employe or employed under s. 20.923 (4), (4m), (8) or (9), Stats., who left the service and returned to state employment as a career executive or in any such enumerated position regardless of the duration of absence as provided under s. 230.35 (1m) (f), Stats. This applies to all persons who are career executive employes or employes in positions enumerated in s. 20.923 (4), (4m), (8) or (9), Stats., on or after July 1, 1973.

SECTION 2. ER 18.02 (3) (c) 3. is amended to read:

ER 18.02 (3) (c) 3. Full-time, full year career executives and certain executive salary schedule employes. Annual leave for career executives, as provided under ch. ER-MRS 30, and persons included under s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9), Stats., employes in positions authorized under s. 230.08 (2) (e), Stats., and employes appointed to a position designated as an attorney position in which the employe is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26, Stats., shall be based upon accumulated continuous service and earned at the rate shown in the following table:

SECTION 3. ER 18.02 (5) (bm) is created to read:

ER 18.02 (5) (bm) Pursuant to s. 230.35 (1p) (c), Stats., employes who earn annual leave at less than the rate of 160 hours per year and who have accumulated, at any time during the employe's continuous state service, a minimum of 520 hours of sick leave may elect to

receive up to 40 hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave or both. An election under this paragraph shall be made in the year in which the annual leave is earned.

SECTION 4. ER 18.02 (5) (c) is amended to read:

ER 18.02 (5) (c) The number of hours available for use under pars. (a) ~~and (b)~~ and (bm) shall be prorated at the pertinent annual leave rate or rates for employes who work less than 2088 hours during the calendar year.

SECTION 5. ER 18.03 (2) (a) is amended to read:

ER 18.03 (2) ACCRUAL OF SICK LEAVE. (a) Sick leave credit shall accrue at the rate of ~~.05~~ .0625 hour for each hour in pay status, not to exceed 4 5 hours in any biweekly pay period.

SECTION 6. ER 18.03 (6) and (7) are created to read:

ER 18.03 (6) ADJUSTMENT TO SICK LEAVE BALANCE OF EMPLOYES ON UNPAID LEAVE OF ABSENCE. Employes who began an unpaid leave of absence on or after July 6, 1997 and before October 12, 1997 shall have their sick leave balances recomputed, upon their return to a position covered by this section, at the rate of .0625 for each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position covered by this section during that time period. Any additional sick leave credits will be credited to the employe's sick leave balance and are available for prospective use only.

(7) ADJUSTMENT TO SICK LEAVE BALANCE. The sick leave balances of all employes in pay status on October 12, 1997 and former employes who retired or were laid off from a position during the period from July 6, 1997 to October 12, 1997 shall be recomputed at the rate of .0625 for each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position covered by this section during that time period. Any additional sick leave credits will be credited to the employe's sick leave balance and are available for prospective use only, except that former employes who retired or were laid off after July 6, 1997 and before the October 12, 1997 may use the additional sick leave credits for the payment of health insurance premiums in the same manner as any sick leave credits that were available to them for that purpose at the time of retirement or layoff.

SECTION 7. ER 18.15 (1) (c) is amended to read:

ER 18.15 (1) (c) "Employe" means any person who receives remuneration for services rendered to the state under an employer-employe relationship in the classified service, except limited term employes ~~and employes covered by a collective bargaining agreement under subch. V of ch. 111, Stats.~~

SECTION 8. ER 18.15 (2) and (3) are amended to read:

ER 18.15 (2) DETERMINING RECIPIENT ELIGIBILITY. To be an eligible recipient, an employe shall satisfy ~~all of the following conditions in either par. (a) or (b):~~

(a) Be an eligible recipient under a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., or;

(b) Satisfy all of the following conditions:

(a) 1. Complete the first 6 months of an original probationary period in a permanent position or 6 months in a project position.

(b) 2. Be on approved unpaid leave due to a catastrophic need of the employe or an immediate family member. The unpaid leave may be taken in noncontinuous increments.

(c) 3. Anticipate an approved unpaid leave of at least 160 hours duration. The 160 hours shall be prorated for seasonal, sessional, school year, and part-time employes.

(d) 4. Provide medical certification of the catastrophic need if required by the appointing authority.

(e) 5. Use all available sick leave credits earned under ss. 36.30 and 230.35 (2), Stats.

(f) 6. Have a leave balance of no more than 16 hours of combined accrued annual leave, including sabbatical or termination leave, and holiday credits.

(g) 7. May not be receiving other salary replacement income.

(h) 8. Be approved as an eligible recipient by the appointing authority or a designee.

(3) DETERMINING DONOR ELIGIBILITY. To be an eligible donor, an employe shall satisfy ~~all of the following conditions in either par. (a) or (b):~~

(a) Be an eligible donor under a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., or.

(b) Satisfy all of the following conditions:

(a) 1. Complete the first 6 months of an original probationary period in a permanent position or 6 months in a project position.

(b) 2. Have at least one year of continuous service.

SECTION 9. ER 18.15 (4) (a) 3. is amended to read:

ER 18.15 (4) (a) 3. A donor may donate leave credits only to recipients within the same ~~employing unit~~ agency, except that donations may be made to recipients in different ~~employing units in the same agency~~ agencies with the approval of the ~~donor's~~ donor's appointing authority and the recipient's appointing authority.

SECTION 10. ER 18.15 (4m) is created to read:

ER 18.15 (4m) If an employe is covered by a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., the provisions of the applicable collective bargaining agreement shall determine eligibility, limitations on the receipt, donation and usage of leave and other conditions of catastrophic leave as they apply to that employe.

Fiscal Estimate

The fiscal impact of additional sick leave for employes can be expressed in several ways:

1. There is the "cost" to the state of providing leave with pay to employes for time during which no work is required to be performed. However, this would not be a direct or increased cost to the state.

2. In addition, when an employe is on sick leave, a state agency may incur increased costs if it must pay overtime or utilize replacement staff to perform the work of the absent employe. This cost can be calculated only if data is available regarding the number of employes taking leave, the duration of the leave and the job functions and pay level of the employes on leave. Insufficient data exists to calculate this cost.

3. Accumulated sick leave credits for eligible employes who are retiring or eligible to receive a retirement annuity may be converted at the employe's final hourly salary and used to purchase post-retirement health insurance. An increase in the sick leave accrual rate may lead to additional sick leave hours being converted under these programs. The costs of these programs are funded as percentages of payroll charges against state agency budgets. Until an actuarial study is conducted based on the higher accrual rate, it is impossible to determine the fiscal impact of any additional converted sick leave credits.

The fiscal effect of the changes in catastrophic leave is indeterminable because it is impossible to identify how many employes will actually apply for this benefit. However, since the rules are only allowing broader transfer of leave credits between employes, the cost of the rule is expected to be negligible.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Contact Person

Bob Van Hoesen, (608) 267-1003
Dept. of Employment Relations
137 East Wilson St.
Madison, WI 53707

Notice of Proposed Rules

Financial Institutions Division of Securities

Notice is hereby given that pursuant to ss. 551.63 (1), 552.13 (2) and 553.58 (1), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Financial Institutions, Division of Securities will adopt the following rule repeals, relating to Division photocopying charges, without public hearing unless, within 30 days after publication of this notice on **December 1, 1997**, the Division of Securities is petitioned for a public hearing by 25 natural persons who will be affected by the rule repeals, a municipality which will be affected by the rule repeals, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule repeals.

Analysis Prepared by the Dept. of Financial Institutions, Division of Securities

Statutory authority: ss. 551.63 (1), 552.13 (2) and 553.58 (1)

The objective of the proposed rule-making is to repeal the Division's existing rules prescribing photocopying charges because the Department of Financial Institutions is establishing a Department-wide photocopying fee policy applicable to all Divisions of the Department. The Division has had existing rules in place for several years under the securities, take-over and franchise laws [in ss. DFI-Sec 7.01 (6), 27.01 (5) and 35.01 (4)] providing for photocopying fees at a rate of \$.25 per page for the first 10 pages and \$.10 per page thereafter. Because of the recent reorganization whereby the Division became part of the Department of Financial Institutions (which has several other constituent Divisions), it is appropriate to repeal the Division's photocopying fee rules because DFI is establishing a single, Department-wide photocopying fee of \$.25 per page that is applicable to all DFI Divisions.

Text of Rules

SECTION 1. DFI-Sec 7.01 (6) is repealed.

SECTION 2. DFI-Sec 27.01 (5) is repealed.

SECTION 3. DFI-Sec 35.01 (4) is repealed.

Fiscal Estimate

The fiscal effect of this rule proposal will be an estimated increase of Division annual fee revenue of approximately \$1500 per year, based on the Division's photocopying fee revenues for the past fiscal year (totaling approximately \$2500). A copy of a full fiscal estimate may be obtained upon request to:

Division of Securities
Dept. of Financial Institutions
345 West Washington Ave., 4th Floor
P.O. Box 1768
Madison, WI 53703

Initial Regulatory Flexibility Analysis

These rule repeals only affect small businesses in the context of making photocopies at the Division of Securities offices and, as such, will not have a significant impact that would warrant different treatment for small businesses under this rule proposal.

Contact Person

For additional information, or if there are questions concerning the rule proposal, contact:

Randall E. Schumann, (608) 266-3414
Legal Counsel for the Division
Division of Securities
Dept. of Financial Institutions
345 West Washington Ave., 4th Floor
P.O. Box 1768
Madison, WI 53703

Notice of Proposed Rules

Health & Family Services

*(Management Technology, etc.,
Chs. HFS 1--)*

*(Community Services,
Chs. HFS/HSS 30--)*

(Health, Chs. HFS/HSS 110--)

Notice is hereby given that pursuant to s. 46.106 (4), 1983-84 Stats., s. 46.80 (5) (c), 1991-92 Stats., and ss. 227.11 (2) and 250.04 (7), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health and Family Services will repeal ch. HFS 10, Wis. Adm. Code, relating to hearings on relief from institutional charges, ch. HFS 67, Wis. Adm. Code, relating to a low-income standard for allocating state nutrition and senior volunteer funds, and ch. HSS 118, Wis. Adm. Code, relating to maintaining the confidentiality of personal facts included in medical information obtained by Department staff in the conduct of official business. The rules will be repealed as herein proposed, without public hearing, unless a petition for a hearing is received by the Department within 30 days after publication of this notice on **November 30, 1997**.

A petition for a hearing will be accepted by the Department if signed by 25 persons who will be affected by the proposed repeal of rules, the representative of a municipality that will be affected by the proposed repeal of rules or the representative of an association which represents a farm, labor, business or professional group that will be affected by the proposed repeal of rules.

Contact Person

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

Paul Menge, (608) 266-5602
Office of Legal Counsel
Dept. of Health & Family Services
P.O. Box 7850
Madison, WI 53707-7850

Analysis Prepared by the Dept. of Health & Family Services

The Department through this rulemaking order is repealing three chapters of administrative rules for which there is no longer rulemaking authority or that no longer serve a purpose.

Chapter HFS 10 states how a county or the state may apply for relief and how the Department is to conduct a hearing on that application when the county or state believes that it is improperly charged for the cost of a person's care at a mental institution or child care institution ("charitable or curative facility," according to s. 46.106, 1983-84 Stats.) operated by the Department or by a county. The specific statute relating to these hearings, s. 46.106 (4), 1983-84 Stats., and the rules date from a time when the charge for institutional care of persons at public charge was based on legal settlement. All of s. 46.106, 1983-84 Stats., was repealed in 1985. Even before then, in consequence of establishment of the Chapter 51 system of community mental disability boards in the early 1970's, there were no new charges based on legal settlement and therefore no new legal settlement disputes. The rules were renumbered in 1982. At that time it was found that they were still needed because there were still some old cases that had not been resolved. There are no more old cases that have not been resolved.

Chapter HFS 67 was created in 1982 to establish a low-income standard for allocating state supplemental funds to counties and tribal governing bodies providing meals in connection with the nutrition program for the elderly under s. 46.80 (5), Stats., and to counties and tribal governing bodies operating a non-federally funded senior companion or retired senior volunteer project authorized by s. 46.85, Stats. Section 46.80 (5) (c), 1991-92 Stats., directed the Department to define by rule the standard of "low income" that it uses in the subsection. That rulemaking requirement was repealed by 1993 Wis.

Act 16. The same session law also amended s. 46.80 (2m) (a) 2. and (5) (a), Stats., to provide for allocation of the funds (by then limited to a state supplement to the federal congregate nutrition projects under 42 USC 3030e) on the basis of formulas developed by the Department for distribution of funds received under the federal nutrition program for the elderly, and those formulas were specifically exempted from having to be promulgated as rules.

Chapter HSS 118 dates under a different number from 1950. It was issued by the State Board of Health at a time when there were no statutes to protect the confidentiality of personally identifiable information included in health records obtained by Board staff in the conduct of official business. Subsequently, numerous health information confidentiality statutes were enacted. Nevertheless, until recently, those statutes tended to relate to records of particular programs or to focus on records held by or obtained from health care providers. Those statutes, however, did not explicitly protect some research situations in which a Board/Department health researcher obtained health information directly from an individual rather than from the individual's health care provider. For this reason, ch. HSS 118 had continued usefulness in protecting Division of Health research data supplied directly by individuals. When the public health statutes were updated and renumbered by 1993 Wis. Act 27, effective January 1, 1994, s. 250.04 (3) (b) 3., Stats., was created to provide explicit statutory protection for personally identifiable information included in health questionnaires and surveys. Chapter HSS 118 is therefore obsolete.

Text of Rule

SECTION 1. Chapter HFS 10 is repealed.

SECTION 2. Chapter HFS 67 is repealed.

SECTION 3. Chapter HSS 118 is repealed.

Fiscal Estimate

This order repeals three chapters of obsolete administrative rules. For two of the rule chapters, the Department no longer has rulemaking authority. For the other rule chapter, statutes have been enacted that supersede the rules.

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

Initial Regulatory Flexibility Analysis

The repeal of chs. HFS 10, HFS 67 and HSS 118 will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Chapter HFS 10 originally applied to the Department and counties. Chapter HFS 67 originally applied directly to the Department, counties and tribal governing bodies. Chapter HSS 118 originally applied directly to the Department. All three chapters are now obsolete.

Notice of Hearings

Health & Family Services

(Health, Chs. HFS/HSS 110--)

Notice is hereby given that pursuant to ss. 252.23 (4), 252.24 (4) and 252.245 (9), Stats., the Department of Health and Family Services will hold public hearings to consider the creation of ch. HFS 173, Wis. Adm. Code, relating to regulation of tattooists and tattoo establishments and regulation of body piercers and body-piercing establishments.

Hearing Information

The public hearings will be held:

Date & Time	Location
December 11, 1997 Thursday From 1 p.m. to 3 p.m.	Room 260 Municipal Building 215 M. L. King, Jr. Blvd. MADISON, WI

January 12, 1998
Monday
From 1 p.m.
to 3 p.m.

Room 248
West Conference Room
Marathon Co. Health Dept.
1200 Lakeview Dr.
WAUSAU, WI

January 14, 1998
Wednesday
From 1 p.m.
to 3 p.m.

Auditorium
City Administrative Bldg.
400 N. 4th Street
LACROSSE, WI

January 16, 1998
Friday
From 1 p.m.
to 3 p.m.

Auditorium
Northwest Health Ctr.
7630 W. Mill Rd.
MILWAUKEE, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

A recent session law, 1995 Wis. Act 468, effective October 1, 1996, created ss. 252.23, 252.24 and 252.245, Stats., to provide for the regulation of tattooing and body piercing. The new statutes prohibit anyone from doing tattooing or body piercing or representing self as a tattooist or body piercer or using or assuming the title tattooist or body piercer without being licensed by the Department. The Department is directed to provide uniform, statewide licensing and regulation of tattooists and tattoo establishments and uniform statewide licensing and regulation of body piercers and body piercing establishments, and for these purposes to promulgate as rules licensing standards and procedures as well as standards for the performance of tattooing and body piercing and for maintenance of the establishments where these are done, which will promote safe and adequate care and treatment of individuals receiving tattooing or body piercing and eliminate or greatly reduce the danger of exposing these individuals to communicable disease or infection.

These are the Department's rules. The rules cover application for a license, annual licensing fees, pre-licensure inspection, conditions for serving patrons, patron records, physical facilities, personnel, hygienic practices, equipment, cleaning and sterilization of equipment before re-use, preparation of the skin before a procedure is begun, special requirements for temporary establishments, and enforcement provisions.

The fees established by this order do not apply to facilities regulated by local health departments granted agent status under s. 252.245, Stats. License fees for those establishments are established by the agent local health departments, pursuant to s. 252.245 (4), Stats. However, this order provides that, as permitted by s. 252.245 (9), Stats., amounts which are 20% of the Department's fees are to be considered "state fees" to be collected for the Department by agent local health departments to pay for the Department's costs in establishing and maintaining the licensing standards and monitoring and training agent local health department staff.

Contact Person

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

David Cammilleri, (608) 267-3242 or,
if you are hearing impaired, (608) 266-1511 (TDD)
Environmental Epidemiology & Prevention Section
Division of Health
P.O. Box 309
Madison WI 53701-0309

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 **January 21, 1998**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

These rules will not affect the expenditures or revenues of state government or local governments. The costs to the Department and to agent local health departments for administration of these new regulatory programs were taken into consideration by the Legislature when 1995 Wis. Act 468, which created ss. 252.23 and 252.24, Stats., was enacted. Sections 252.23 (4) (a) and 252.24 (4) (a), Stats., direct the Department to provide in these rules for fees to offset the costs of licensure by the Department, and s. 252.245 (4), Stats., directs agent local health departments to establish their own license fees which are to cover both their own reasonable costs plus a fee established by the Department to cover state costs when agent local health departments do the licensing.

Initial Regulatory Flexibility Analysis

These rules implement ss. 252.23 and 252.24, Stats., which require the licensure of tattoo, body-piercing and combination tattoo and body-piercing establishments and, separately, anyone who does tattooing or body-piercing. Most of the estimated 125 tattoo, body-piercing or combination tattoo and body-piercing establishments in the state are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

The rules require:

- Application for a license;
- Payment of a licensee fee;
- Prior inspection by the Department or its agent of new establishments and temporary establishments;
- The prominent display of the license in the establishment;
- Notification of the Department or its agent and submission of a new application when there is a change of operators;
- Obtaining the informed, written consent of a patron on a Department form before a procedure is begun;
- Maintenance of a record on each patron and retention of it for at least 2 years after the procedure is completed; and
- Compliance with standards for:
 - the physical facility and environment of an establishment,
 - personnel,
 - hygienic practices,
 - equipment,
 - cleaning and sterilization of equipment and
 - preparation and care of the site of a procedure.

The rules also impose limitations on who can be served, and permit an authorized employe or agent of the Department to enter an establishment at any time to determine if the establishment and practitioners are in compliance with the rules.

The rules and their enforcement are intended to help protect the health and safety of patrons of tattoo and body-piercing establishments. No new skills are required for compliance with the rules beyond the skills that operators and practitioners can be expected to already have.

Notice of Hearing

Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached

proposed rulemaking order affecting s. Ins 3.53, Wis. Adm. Code, relating to HIV testing procedures.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 19, 1997 Friday 10:00 a.m.	Room 187, OCI 121 E. Wilson St. MADISON, WI

Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to:

Stephen Mueller, OCI
P.O. Box 7873
Madison, WI 53707

Summary of Proposed Rule & Fiscal Estimate

For a summary of the rule see the following analysis. There will be no state or local government fiscal effect.

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41(3) and 631.90 (3) (a)

Statute interpreted: s. 631.90 (3) (a)

This proposed rule amendment adheres to the legislative mandate that insurers may employ tests for HIV that have been designated by the state epidemiologist as reliable. The current rule is based upon a report from the state epidemiologist dated August 1990 which limited use to FDA licensed blood tests. This amended rule recognizes the January 1997 report by the state epidemiologist which expands the endorsed tests to include specimen samples in addition to blood.

Initial Regulatory Flexibility Analysis

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

a. Types of small businesses affected:

Insurance agents and agencies

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required; however, insurers may decide to require some additional measures.

c. Description of professional skills required:

None beyond those currently required; however, insurers may decide to require additional training in sample collection.

Contact Person

A copy of the full text of the proposed rule and fiscal estimate may be obtained from:

Meg Gunderson, at (608) 266-0110
Services Section
Office of the Commissioner of Insurance
121 East Wilson St.
P.O. Box 7873
Madison, WI 53707-7873

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 30.635 and 227.11(2)(a), Stats., interpreting s. 30.635, Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 5.21(3), Wis. Adm. Code, relating to waiver of the slow-no-wake speed restriction on Tombeau lake, Walworth county. The Department received a petition dated July 14, 1997 from the Lake Benedict/Lake Tombeau Lake Management District for the waiver. Section 30.635, Stats., provides that on lakes 50 acres or less having public access, motorboats may not be operated in excess of slow-no-wake speed, Tombeau lake is 35 acres. The proposed rule would waive the slow-no-wake speed restriction on Tombeau lake.

Hearing Information

December 15, 1997 Monday at 5:00 p.m.	Bloomfield Town Hall 1100 Town Hall Road, Pell Lake, WI
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Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Engfer at (608) 266-0859 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. William Engfer, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than **December 31, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Engfer.

Fiscal Estimate

Summary of Bill. This proposal is in response to a petition from citizens to waive the slow no wake speed restriction on lake Tombeau. Wisconsin Statutes provides that on lakes 50 acres or less having public access, motorboats may not be operated in excess of slow no wake speed. The proposed rule would allow motorboats on Lake Tombeau for high speed boating and waterskiing.

Fiscal Impact. This proposal would neither increase or decrease enforcement on the lake. The department can carry out this rule within its current appropriation.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.174(2)(a), 29.1085(2)(br)1. and 3. and 227.11(2)(a), Stats., interpreting s. 29.174(2) (a), Stats., the Department of Natural Resources proposes to revise ss. NR 10.001 and 10.102, Wis. Adm. Code, relating to changing the bear kill and pursuit language to Class A and Class B hunting licenses.

An exemption to the shining bear statutes created in 1997 Wis. Act. 1 now authorizes a person, for educational purposes, to shine a bear while in possession of a weapon. This rule will define what these educational purposes will be and require a permit for this activity. The majority of the bear pursuit language in current administrative code was adopted in ch. 29, Stats. This rule will repeal the current bear pursuit language and create an additional prohibition for handling of dogs used for tracking or trailing bear without a license. Act 1 also changed the bear hunting and pursuit permits to Class A and Class B bear hunting licenses. Those changes are also reflected in this rule.

Group application procedures for bear hunters are proposed to include up to 4 hunters who may apply as a group to harvest bear.

Hearing Information

December 11, 1997
Thursday
at 6:00 p.m.

Room D101
North Central Voc. Tech. School
1000 Campus Drive,
Wausau

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Gary Homuth at (608) 266-3244 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Gary Homuth, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than **December 16, 1997**. Written comments will have the same weight and effect as oral statements at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Homuth.

Fiscal Estimate

Summary of Bill. This proposal is prompted by recent changes in statute. The statutes redefined the two types of bear hunting approvals as Class A and Class B bear hunting licenses. The statutes created an exemption to shining law so that a person may shine bear while in possession of a firearm if authorized by the department and done for educational purposes. This administrative rule modifies all references to bear harvest permit and bear pursuit permit and replaces them with appropriate references to Class A or Class B bear hunting license. It also defines the meaning of "educational purposes" for interpreting the shining statute. In addition, the proposal allows bear hunters to apply for a Class A license as a group.

Fiscal Impact. This proposal neither increases or decreases department work effort. It is primarily updating the administrative code to reflect new statutory changes. Group applications for bear hunters would be a new feature in the application process. The group application is a feature in application process of other department licenses. The change will cause re-programming of the computer software used to select Class A bear hunting licensees. This is a one time event. The department can carry it out within its current appropriation.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice of Hearings

Natural Resources (Environmental Protection— General, Chs. NR 100—)

Notice is hereby given that pursuant to ss. 299.11 and 227.11(2)(a), Stats., interpreting s. 299.11, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 149, Wis. Adm. Code, relating to laboratory certification and registration. The proposed rules will update analytical methods incorporated by reference, clarify requirements pertaining to applications for certification, annual renewal and reference samples, create new tests and test categories, revise the fee formula used to determine annual certification and registration fees an correct other errors in the code. The proposed revisions to the fee formula will reduce the cost of registration while increasing the cost of certification. The formula allows the program to set fees commensurate with the legislatively approved spending authority. The fee formula revisions is intended to bring the amount of revenue collected from each type (e.g., certified or registered) of laboratory in line with the workload, and is not intended to affect the basic functioning of the formula. The rule also adds new tests to the certification program because other department regulations require that monitoring information for these compounds be submitted by a certified or registered laboratory.

Hearing Information

December 11, 1997
Thursday
at 1:00 p.m.

Room 2560
Eau Claire Co. Courthouse
721 Oxford
Eau Claire

December 12, 1997
Friday
at 1:00 p.m.

Room 404
Oshkosh City Hall
215 Church Ave.
Oshkosh

December 15, 1997
Monday
at 10:00 a.m.

Room 027, GEF #2
101 South Webster St.
Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jeff Ripp at (608) 267-0579 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Jeff Ripp, Bureau of Integrated Science Services, P.O. Box 7921, Madison, WI 53707 no later than **December 20, 1997**. Written comments will have the same weight and effect as oral statements presented at the public hearings.

A copy of the proposed rule and fiscal estimate may be obtained from Mr. Ripp.

Fiscal Estimate

SUMMARY OF BILL – Chapter NR 149, Wis. Adm. Code, establishes requirements for laboratories participating in the laboratory certification and registration program. The proposed amendments to Ch. NR 149 are not anticipated to have a fiscal effect because they are mainly routine revisions to clarify requirements already existing in the code, update the code for consistency with federal regulations and add tests to existing test categories. Also included in the proposed amendments is a slight modification to the fee formula. Under s.299.11, Stats., the department is authorized to recover the cost of administering the program through fees charged to labs. The revision to the fee formula will create two separate base fees; one for certified labs and one for registered labs. The proposal also increases the cost of reciprocity certification for out-of-state labs and decreases the cost of certification for some small public health drinking water labs.

FISCAL IMPACT – The laboratory certification and registration program has two components. Larger, certified laboratories are audited by Central Office staff. Small registered facilities, mostly municipal wastewater treatment plant labs and industrial labs are audited by Regional staff. The department performed a workload analysis to determine if the fees charged to the registered labs and certified labs were commensurate with the work effort and service provided to each type of lab. Based upon the analysis, the department found that the small registered facilities contributed approximately 38% of the program's revenue while accounting for only 30% of the program's costs. The department is proposing amendments to the code that will bring the cost of registration down for these labs. The revenue loss from these laboratories will be made up by charging slightly higher fees to the certified laboratories through a higher base fee. Since the fees for certification and registration are determined by a formula that sets the maximum amount collected equal to the approved spending authority, the fee change will have no net fiscal impact on the state. The proposal shifts the cost burden from the registered labs to the certified labs. Based on fee projections for FY 1999, the proposed changes will allow the department to hold the cost of registration about equal to the current fiscal year value, while the cost of certification will increase by about \$175 for each lab. Overall, the department estimates that it will collect revenue totalling \$475,000, equal to the approved spending authority.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses.

a. Types of small businesses affected: Small in-state and out-of-state commercial laboratories

b. Description of reporting and bookkeeping procedures required: No new reporting or bookkeeping requirements as a part of this rule revision.

c. Description of professional skills required: In general, laboratory quality control personnel should hold a degree in a chemical or biological field and have several years of laboratory experience. Analysts and technicians need to have a firm understanding of the chemical principles of the tests they perform as well as working technical knowledge in the operation and maintenance of laboratory equipment. Laboratory professionals must be familiar with the concept of quality control in an analytical laboratory.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice of Hearing

Transportation

Notice is hereby given that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., and interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the time and place indicated below, to consider the amendment of ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 12, 1997 Friday 10:00 A.M.	Committee Room Dodge County Hwy. Dept. 211 East Center St. JUNEAU, WI

The hearing location is accessible to people with disabilities.

Written Comments and Contact Person

The public record on this proposed rulemaking will be held open until close of business, **December 17, 1997**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Mark Morrison
Traffic & Safety Engineer, Room 601
Dept. of Transportation
P. O. Box 7916
Madison, WI 53707-7916

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 85.16 (1) and 348.07 (4)

Statute interpreted: s. 348.07 (4)

General Summary of Proposed Rule. This proposed rule amends s. Trans 276.07 (15) and (31), Wis. Adm. Code, to add three segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments that this proposed rule adds to the designated highway system are:

Hwy.	From	To
STH 73	STH 19 in Marshall	USH 151 S.W. of Columbus
Dodge Co. "G"	STH 19 W. of Hubbleton	STH 33 in Beaver Dam
Dodge Co. "J"	STH 16/60 N. of Reeseville	STH 26 W. of Clyman

Note: The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07(2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

Note: 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006 (b) of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this proposed rule will be to extend the provisions of ss. 348.07 (2) (f), (fm), (gm) and (gr), and 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin-to-rear axle distance does not exceed 43 feet. This distance is measured from the

kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

Initial Regulatory Flexibility Analysis

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

Copies of Rule

Copies of the proposed rule may be obtained upon request, without cost, by writing to:

State Traffic Engineer
Telephone (608) 266-1675
P. O. Box 7916
Madison, WI 53707

For questions about this rulemaking, please call Mark Morrison, Traffic & Safety Engineer, at (608) 266-1675. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Transportation

Notice is hereby given that pursuant to s. 194.43, Stats., and interpreting ss. 194.09 and 348.185, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below, to consider the amendment of ch. Trans 302, Wis. Adm. Code, relating to vehicle marking.

Hearing Information

The public hearing will be held:

<u>Date & Time</u>	<u>Location</u>
December 17, 1997 Wednesday 9:30 A.M.	Room 551 Hill Farms State Trans. Bldg. 4802 Sheboygan Ave. MADISON, WI

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

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

Written Comments and Contact Person

The public record on this proposed rulemaking will be held open until close of business on **Friday, December 19, 1997**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Lt. Tim Carnahan
Division of State Patrol, Room 551
Dept. of Transportation
P. O. Box 7912
Madison, WI 53707-7912

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: s. 194.43

Statutes interpreted: ss. 194.09 and 348.185

General Summary of Proposed Rule. The Division of State Patrol is aware that the current rule regulating vehicle markings is outdated and confusing to the motor carrier industry as well as to law enforcement officers. Many of the current terms and requirements found in the current rule are no longer relevant. The proposed rule changes will eliminate obsolete language currently found in the rule and also reflect current requirements found in the federal regulations. The Division does not intend to change the current requirements or introduce new regulations in the area of vehicle markings.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized American Indian tribes or bands.

Initial Regulatory Flexibility Analysis

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

Copies of Rule

Copies of the proposed rule may be obtained upon request, without cost, by writing to:

Frieda Andreas, (608) 266-6936
Division of State Patrol, Room 551
P. O. Box 7912
Madison, WI 53707-7912

Alternate formats of the proposed rule will be provided to individuals at their request.

*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.

Agriculture, Trade & Consumer Protection (CR 97-86):

SS. ATCP 42.01 and 42.04 – Relating to commercial feed.

Health & Family Services (CR 93-188):

SS. HSS 157.16 (2) (a) and 157.165 – Relating to enforcement standards and preventive action limits for radioactive substances in groundwater.

Natural Resources (CR 96-113):

SS. NR 103.02, 103.08, 299.05 and 504.04 – Relating to water quality standards for wetlands; water quality certification; and landfill location, performance and design criteria.

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.

Commerce (CR 96-172):

An order affecting chs. ILHR 51, 54, 55, 56, 66, 69 and 70 and Comm 18, relating to the design and construction of public buildings and places of employment to provide accessibility for people with disabilities.

Effective 01-01-98.

Commerce (CR 97-80):

An order affecting ch. Comm 27, relating to piers for new manufactured homes.

Effective 01-01-98.

Natural Resources (CR 96-189):

An order affecting ss. NR 24.09 and 24.10, relating to commercial clamming on the Wisconsin-Minnesota and Wisconsin-Iowa boundary waters and clamming on all waters.

Effective 01-01-98.

Natural Resources (CR 97-41):

An order affecting chs. NR 400, 406 and 407 and s. NR 439.03, relating to the air permit program.

Effective 01-01-98.

Psychology Examining Board (CR 97-85):

An order affecting s. Psy 4.02 (4) (c) and (6), relating to continuing education.

Effective 01-01-98.

Revenue (CR 97-94):

An order affecting s. Tax 11.15, relating to the Wisconsin sales and use tax as it applies to containers.

Effective 01-01-98.

Transportation (CR 97-108):

An order amending s. Trans 276.07 (8), (10), (13), (15) and (16), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Effective 01-01-98.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the November 30, 1997 Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

Accounting Examining Board (CR 97-70):

An order creating s. Accy 7.035, relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after December 31, 2000.

Effective 12-01-97.

Chiropractic Examining Board (CR 95-59):

An order affecting ss. Chir 6.015 and 6.02, relating to advertising.

Effective 12-01-97.

Corrections (CR 96-180):

An order affecting ss. DOC 308.01, 308.03 and 308.04, relating to the administrative confinement of inmates.

Effective 12-01-97.

Corrections (CR 96-184):

An order affecting ss. DOC 309.24, 309.37, 309.38 and 309.39, relating to food, hygiene, and living quarters for inmates.

Effective 12-01-97.

Dietitians Affiliated Credentialing Board (CR 97-61):

An order affecting ss. DI 2.01, 2.02, 2.03, 2.04, 3.01 and 4.01, relating to certification of dietitians.

Effective 12-01-97.

Financial Institutions--Savings Banks (CR 97-28):

An order affecting s. DFI-SB 3.08, relating to the definition of "primary liquid assets" in the liquidity rule for savings banks.

Effective 12-01-97.

Insurance (CR 97-71):

An order affecting ss. Ins 17.01 and 17.28, 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 (FTE) basis in the same manner as medical college of Wisconsin resident fees are currently calculated.

Effective 12-01-97.

Law Enforcement Standards Board (CR 96-118):

An order affecting chs. LES 1 to 6, relating to training and employment standards for law enforcement, tribal law enforcement, jail and secure detention officers and to administration of training.

Effective 12-01-97.

Public Instruction (CR 97-81):

An order affecting chs. PI 3 and 4 and s. PI 8.01, relating to teacher certification requirements and certification program requirements.

Effective 12-01-97.

Public Service Commission (CR 95-62):

An order repealing and recreating ch. PSC 168, relating to establishing new and revised rules for the certification and regulation of alternative telecommunications utility (ATU) resellers and providers of operator services, also known as alternative operator services (AOS).

Effective 12-01-97.

Regulation & Licensing (CR 97-48):

An order affecting chs. RL 30 to 35, relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

Effective 12-01-97.

Transportation (CR 97-6):

An order affecting chs. Trans 253 and 259 and s. Trans 255.06 (6), relating to overweight permits.

Effective 12-01-97.

Transportation (CR 97-34):

An order creating ch. Trans 177, relating to motor carriers.

Effective 12-01-97.

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.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Accounting Examining Board (CR 97-70)

S. Accy 7.035 – Education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after December 31, 2000.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

2. Chiropractic Examining Board (CR 95-59)

S. Chir 6.015 – Advertising.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

3. Corrections (CR 96-180)

Ch. DOC 308 – Administrative confinement of inmates.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

4. Corrections (CR 96-184)

Ch. DOC 309 – Food, hygiene, and living quarters for inmates.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

5. Dietitians Affiliated Credentialing Board (CR 97-61)

Chs. DI 2, 3 & 4 – Certification as dietitians.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

6. Department of Financial Institutions-Savings Banks (CR 97-28)

Ch. DFI-SB 3 – Primary liquid assets.

Summary of Final Regulatory Flexibility Analysis:

This rule will impose on all savings banks, — including savings banks covered by the definition of “small business” under s. 227.114 (1) (a), Stats., — with the requirement of maintaining sufficient liquidity to meet cash demands. Exempting small businesses from this rule would be contrary to this objective and not in the best interests of the public.

Summary of Comments:

No comments were reported.

7. Insurance (CR 97-71)

Ch. Ins 17 – Annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1997.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

8. Law Enforcement Standards Board (CR 96-118)

Chs. LES 1 through 6 – Establishing minimum standards of recruitment and training for tribal law enforcement and secure detention.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules do not apply to small business and therefore they do not affect on small business.

Summary of Comments:

No comments were reported.

9. Public Instruction (CR 97-81)

Chs. PI 3, 4 and 8 – Teacher certification requirements, certification program requirements, and Standard (L).

Summary of Final Regulatory Flexibility Analysis:

These rules will have no impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

10. Public Service Commission (CR 95-62)

Ch. PSC 168 – Certification and regulation of telecommunications resellers and providers of alternative operator services.

Summary of Final Regulatory Flexibility Analysis:

These rules may have an incidental effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. A small number of ATU resellers may also qualify as small businesses. The commission has considered the methods in s. 227.114 (2), Stats., and, specifically, the comments of the Telecommunications Resellers Association (TRA) and Wisconsin State Telecommunications Association (WSTA) for reducing the impact of the rules on resellers and small telecommunications utilities. The commission finds that any less stringent rules would be contrary to the statutory objectives which are the basis for the rules. For resellers specifically, the commission has removed automatic termination of certification for failure to file a Notice of Intent to Renew. The rules adopt a process that seeks compliance with a minimum of cost and procedural steps. The Commission is unable to honor a request of the WSTA for a level playing field that includes telecommunications carriers. By reason of s. 196.499, Stats., such carrier are not subject to most of the provisions of ch. 196, Stats., that the STA would have the Commission use to regulate carrier reselling.

Summary of Comments:

No comments were reported.

11. Regulation & Licensing (CR 97-48)

Chs. RL 30 through 35 – Credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

12. Transportation (CR 97-6)

Chs. Trans 253, 255 & 259 – Overweight permits.

Summary of Final Regulatory Flexibility Analysis:

No regulatory flexibility analysis was prepared since the proposed rule will have no adverse effect on small business beyond any effect imposed by 1995 Wis. Act 347, 1995 Wis. Act 163, and 1993 Wis. Act 439.

Summary of Comments:

No comments were reported.

13. Transportation (CR 97-34)

Ch. Trans 177 – Motor carriers.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

14. Workforce Development (CR 97-100)

S. DWD 272.14 – Minimum Wage-Displacement.

Summary of Final Regulatory Flexibility Analysis:

This rule adds a provision to the rules relating to the minimum wage to provide that an employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage. (The opportunity wage rate, \$4.25 per hour, may be paid to an employee who is under 20 years of age and in his or her first 90 days of employment with each new employer.)

Summary of Comments of Legislative Standing Committees:

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

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 319. Relating to the Creation of the Wisconsin International Trade Council.

Executive Order 320. Relating to a Special Election for the Forty-Second Assembly District.

Executive Order 321. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Reverend John P. Raynor, S.J., the Late President of Marquette University.

PUBLIC NOTICE

Public Notice *Financial Institutions* *Securities, Division of*

Order Concerning Broker-Dealers, Investment Advisers, Broker-Dealer Agents and Investment Adviser Representatives Using the Internet for General Dissemination of Information on Products and Services

Whereas the Division of Securities, Department of Financial Institutions is charged with the administration of Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law (the "Law") and section DFI-Sec 1.01, et. seq. of the Rules of the Division of Securities promulgated under the Law;

Whereas, section 551.63 (1) of the Law provides, in part, that "[t]he Division may make, amend and rescind any . . . orders that are necessary to carry out this chapter . . . ;"

Whereas section 551.31 (1) of the Law provides that "It is unlawful for any person to transact business in this state as a broker-dealer or agent unless so licensed under this chapter, except as provided in sub. (1m);"

Whereas, section 551.31 (3) of the Law provides that "It is unlawful for any person to transact business in this state as an investment adviser unless so licensed or licensed as a broker-dealer under this chapter, except that a person whose only clients in this state are persons specified in s. 551.23 (8) (a) to (f) may transact business without a license . . . ;"

Whereas the Division acknowledges that the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives to advertise and otherwise disseminate information on products and services to prospective customers and clients;

Whereas the Division also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications");

Whereas the Division further acknowledges that in certain instances, by distributing information on available products and services through Internet Communications available to persons in this state, broker-dealers, investment advisers, their broker-dealer agents and their investment adviser representatives could be construed as "transacting business" for purposes of s. 551.31 (1) and (3) of the Law so as to require licensure in such capacity in this state, inasmuch as the Internet Communications would be received in this state regardless of the intent of the person originating such communications; and

Whereas the Division finds that the issuance of this Order is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the Policy and provisions of the Law,

Now, therefore, pursuant to s. 551.63 (1) of the Law, it is hereby ordered as follows:

1. Broker-dealers, investment advisers, broker-dealer agents (hereinafter "BD agents") and investment adviser representatives (hereinafter "IA reps") who use the Internet (as defined above) to distribute information on available products and services through "Internet Communications" (as defined above) shall not be deemed to be "transacting business" in this state for purposes of s. 551.31 (1) and (3) of the Law based solely on that fact if the following conditions are observed:
 - A. The Internet Communication contains a legend in which it is clearly stated that
 - (1) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, or excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensure requirements, as may be; and
 - (2) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion from licensure;
 - B. The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, the broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from licensure. Nothing in this paragraph shall be construed to relieve a state-licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities licensing requirement in this state;
 - C. The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation in this state over the Internet, but is limited to the dissemination of general information on products and services; and
 - D. In the case of a BD agent or IA rep:
 - (1) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;
 - (2) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;
 - (3) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

- (4) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser;
2. The position expressed in this Order extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;
 3. Nothing in this Order shall be construed to affect the activities of any broker-dealers, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended; and
 4. This Order shall remain in effect unless and until subsequently amended or rescinded.

Copies of the Order

Copies of the Order are available free of charge by writing to:

Division of Securities
Dept. of Financial Institutions
P.O. Box 1768
Madison, WI 53701

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