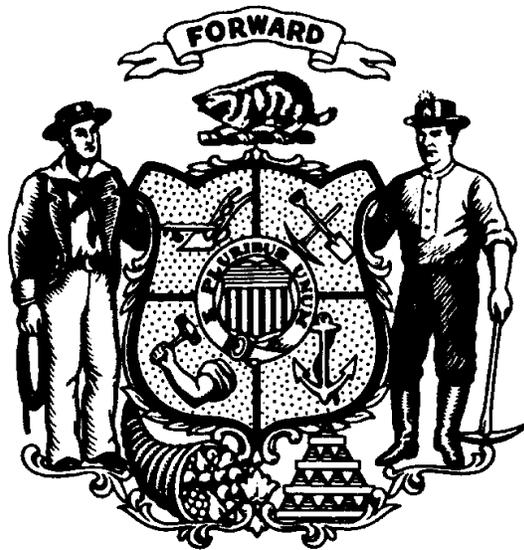


# WISCONSIN ADMINISTRATIVE REGISTER

**No. 504**



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## EMERGENCY RULES NOW IN EFFECT

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*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.*

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### EMERGENCY RULES NOW IN EFFECT

#### **Department of Administration (Gaming Board)**

Rules adopted revising **ch. WGC 13**, relating to the license fees of kennel owners that own and operate kennels at Wisconsin greyhound racetracks.

#### **Finding of Emergency**

Statutory Authority: ss. 16.004(1), 562.02(1) and 562.05(2)

Statutes Interpreted: ss. 562.02(1)(am) and 562.05(2)

The Department of Administration's Division of Gaming finds that an emergency exists and the rule amendments are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

For CY 1998, the Wisconsin racetracks were unable to recruit kennels to operate at the state's three existing racetracks. The 1997 license fee of \$750.00 per kennel is too cost prohibitive to the kennels and therefore they pursue booking agreements in other states. By decreasing the cost to \$350.00 and allowing the license to be valid at all Wisconsin racetracks, the racetracks will be able to attract quality kennels.

As a result of the increased competition for the availability of greyhounds throughout the country, license fees and purse revenues are the only considerations that racetracks have to offer when attempting to recruit kennels. If the racetracks are unsuccessful in recruiting new kennels or maintaining existing kennels, then races or whole performances would have to be canceled due to the lack of greyhounds.

In conjunction with the canceled races or performances and the associated decrease in handle, the revenue generated for the state related to greyhound racing would decrease accordingly.

**Publication Date: December 8, 1997**

**Effective Date: December 8, 1997**

**Expiration Date: May 8, 1998**

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### 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**

**Hearing Date: January 13, 1998**

[See Notice this Register]

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### EMERGENCY RULES NOW IN EFFECT (4)

#### **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:** February 24, 1998

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:** February 26, 1998

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  
**Extension Through:** March 2, 1998

4. Rules adopted revising **chs. DOC 328 and 332**, relating to polygraph examinations for sex offenders.

## Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

The testing program cannot be implemented without rules. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

This order:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.
7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.

9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.

10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.

11. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.

12. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.

13. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.

14. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.

15. Establishes procedures for the collection of lie detector fees.

16. Provides for sanctions for an offender's failure to pay the lie detector fees.

17. Provides the criteria for lie detector fee deferrals.

18. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

The order provides for including the rules for the lie detector program in the same chapter of the Wisconsin Administrative Code, ch. DOC 332, as the rules for registration and community notification of sex offenders, which were published as emergency rules on June 1, 1997.

**Publication Date:** December 15, 1997

**Effective Date:** December 15, 1997

**Expiration Date:** May 15, 1998

## 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

**Hearing Date:** January 7, 1998

## 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 employes.

If the sick leave accrual rate for nonrepresented employes is not increased by this emergency rule, nonrepresented employes 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 employes and agencies: (1) it will create inequitable treatment and morale problems between state employes; (2) it will discourage transfers and promotions by employes 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

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## EMERGENCY RULES NOW IN EFFECT (3)

### Insurance

1. A rule was adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in premium rates for the Health Insurance Risk-Sharing Plan (HIRSP), effective January 1, 1998.

### Exemption From Finding of Emergency

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

### Analysis Prepared by the Office of the Commissioner of Insurance

#### January 1, 1998 Premium Adjustments

The Commissioner of Insurance, based on the recommendations of the Health Insurance Risk-Sharing Plan ("HIRSP") board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles. This rule adjusts the non-subsidized premium rates effective January 1, 1998. This change in rates will result in a reduction of approximately 14.5%, and is mandated by plan financing changes in 1997 Wis. Act 27.

**Publication Date:** November 20, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** May 31, 1998  
**Hearing Date:** December 30, 1997

2. Rules adopted revising **s. Ins 2.14** and amending **s. Ins 2.16 (1) & (3) (a) 2.**, Wis. Adm. Code, relating to life insurance solicitations.

### Finding of Emergency

Effective January 1, 1998 Wisconsin will adopt the National Association of Insurance Commissioners Life Illustrations Model Regulation as s. Ins. 2.17 Wis. Adm. Code. These changes are needed to adapt other rules pertaining to life illustrations to s. Ins. 2.17. These changes must be made by emergency rule to synchronize with s. Ins. 2.17.

The main changes proposed to s. Ins 2.14 include:

- Eliminating the requirement that a policy summary be provided at delivery, if a basic illustration was provided.
- Eliminating the requirement that cost indexes be shown on the policy summary.

- Prohibiting insurers from illustrating anything except guaranteed policy elements on the policy summary, and requiring that values be illustrated for years 1-20 and at least one year between age 60 and 65, or maturity, whichever is earlier.

- Requiring that only guaranteed elements be used in the calculation of cost comparison indexes. As a result, the formulas for calculating the net payment cost index and the surrender cost index have been revised and any reference to the equivalent level annual dividend has been deleted from the rule.

- Requiring that insurers use the latest published version of the NAIC Life Insurance Buyer's Guide.

The main changes proposed to s. Ins 2.16 include:

- Excluding the illustration as defined in s. Ins. 2.17 from the definition of an advertisement.
- Revising the purpose of the rule to indicate that the rule is in addition to, and not a substitute, for s. Ins 2.17.

**Publication Date:** December 10, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** June 1, 1998

3. Rules were adopted amending **s. Ins 18.07 (5) (b)**, published as an emergency rule relating to a decrease in premium rates for the health insurance risk-sharing plan under s. 18.07 (5) (b), and correcting errors in the published rate table.

#### **January 1, 1998 Premium Adjustment Correction**

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (HIRSP) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles. An emergency rule, already promulgated and published, adjusts the non-subsidized premium rates effective January 1, 1998. This emergency amendment corrects 4 errors in the published rate table.

### Exemption From Finding of Emergency

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

**Publication Date:** December 12, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** June 1, 1998

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## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

#### **(Fish, Game, etc., Chs. NR 1---**

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

### Exemption From Finding of Emergency

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

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

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

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## **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

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## **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  
**Hearing Date:** January 9, 1998

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Administration (Gaming Board)*

**Subject:**

SS. WGC 13.05 (3) (a) and 13.15 (4) (c) – Relating to license fees for kennel owners at greyhound racetracks.

**Description of policy issues:**

*Statement of the objective of the proposed rule:*

The Department of Administration proposes to amend s. WGC 13.05 (3) (a), Wis. Adm. Code, reducing the cost of a kennel owner's license fee from \$750 to \$350 and to repeal s. WGC 13.15 (4) (c), requiring a kennel owner to obtain a license for each racetrack in which they own and operate a kennel.

*Description of policy issues:*

The Department of Administration is responsible for setting license fees as provided in s. 562.05 (2), Stats. The kennel owner license fee is reduced to assist the Wisconsin racetracks in recruiting racing kennels to operate in Wisconsin. The current fee is cost prohibitive to the kennels and therefore they decline booking agreements in Wisconsin and pursue booking agreements in other states. Additionally, the kennel owner license was a license that was racetrack specific: most other licenses are valid at all Wisconsin racetracks.

**Statement of the statutory authority for the rule:**

SS. 562.02 (1) and 562.05 (2), Stats.

**Staff time required:**

The Department of Administration estimates 20 – 30 hours to promulgate this rule.

### *Commerce*

**Subject:**

Ch. Comm 110 – Relating to the brownfields grant program.

**Description of policy issues:**

*Description of the objective of the rule:*

The 1997 Wis. Act 27 created s. 560.13, Stats., which authorizes funds to be appropriated by the Department of Commerce to administer a brownfields grant program.

The act specifically requires the Department to promulgate rules:

■ For issuing grants to a person, municipality and local development corporation for brownfields redevelopment and associated remediation activities, if the recipient uses grants for brownfields redevelopment or associated environmental remediation, and if the recipient contributes to the cost of the project.

■ That prescribe the amount of grants that can be awarded, based on a percent of the total grant that is set by statute.

■ That include criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the amount and quality of the recipient's contribution to the project, and innovative proposals for remediation and redevelopment.

*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 brownfields grant program will compliment other brownfield-related initiatives undertaken by the Department.

**Statutory authority for the rule:**

S. 560.13, 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 time estimated to develop the rule is as follows:

Rule drafting and internal processing to announce public hearings	50 hours
Conducting public hearings and summarizing hearing comments	20 hours
Preparing rules in final draft form for legislative review	15 hours
Meet with legislators on subject rules	8 hours
Prepare rule for adoption and file adopted rule	4 hours
<b>Total =</b>	<b>97 hours</b>

### *Commerce*

**Subject:**

Chs. Comm 122 and 128 – Relating to the physician loan assistance program and the health care provider loan assistance program.

**Description of policy issues:**

*Description of the objective of the rule:*

The Department of Commerce proposes to repeal and create chs. Comm 122 and 128, relating to the Physician and Health Care Provider Loan Assistance Programs. The revised rules will:

■ Provide clarification as to what constitutes an “educational loan” and “mental health shortage area.”

■ Establish additional criteria to be used in prioritizing applicants for awards.

■ List the requirements for the application process.

■ Define what constitutes a breach of agreement between the provider and the Department.

■ Establish penalties for breach of agreement, conditions under which penalties might be waived, and conditions under which an agreement might be suspended

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

Under these programs, the Department awards grants of up to \$50,000 for physicians and up to \$25,000 for nurse practitioners, physician assistants, and certified nurse midwives who agree to practice primary care in a medically underserved area of the state. In the 1997 legislative session, the Wisconsin Legislature made changes to both programs designed to improve the ability of the highest need communities to recruit primary care providers to their area. In addition, the statute now includes language which allows for Wisconsin's participation in a federal program that provides matching dollars for state loan repayment programs.

Under the changes made in statute, both the physician and health care provider loan assistance programs now provide the same dollar award over a 3-year period rather than a 5-year period and greater dollar amounts in the first two years of the contract. As a result, there are more significant provider restrictions than there were in the past. These restrictions relate to areas of practice, minimum clinical hours and weeks of practice and, in the case of the federal matching program, requirements as to Medicare assignment and the availability in the clinic of a sliding fee scale for patients who are uninsured. The rules enumerate these and other items that would cause a breach of agreement, and provide for penalties in the event of a breach. Also included are provisions for waivers of penalties and conditions under which a contract may be temporarily suspended.

**Statutory authority for the rule:**

SS. 560.183 (5) (b) 6., 560.184 (5) (b) 6., and 560.02 (4), Stats.

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

The Department estimates that state employes will spend approximately 200 hours developing the proposed rules.

***Medical Examining Board*****Subject:**

Med Code – Relating to clarification of administrative rules relating to physicians, podiatrists, physician assistants, occupational therapists, occupational therapy assistants and respiratory care practitioners.

**Description of policy issues:***Objective of the rule:*

The objective of these revisions is to make the administrative rules more understandable to the public by improving the clarity, grammar, punctuation and use of plain language in the rules. The changes being recommended relate to statutory authority, form, style and placement of provisions, conflicts or duplication of existing rules, adequacy of references to related statutes, rules and forms, and clarity, grammar, punctuation and use of plain language. The rules also include provisions relating to examination reviews, passing scores, cheating on examinations, and issues relating to the safety and welfare of the public. A substantive provision addresses the Americans With Disabilities Act.

*Policy analysis:*

The proposed changes focus primarily on form, style, grammar and punctuation of the existing rules in order to improve readability and eliminate outdated provisions. The changes also update citations referencing statutes which have been renumbered, modified or repealed and deal with examination reviews and dishonest acts by examination candidates. The rules create a provision relating to reasonable accommodations as required under the Americans With Disabilities Act.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 448.40, Stats.

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

40 hours.

***Natural Resources*****Subject:**

Ch. NR 25 – Relating to commercial fishing – outlying waters.

**Description of policy issues:**

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

This rule will implement s. 29.33 (4m) (e), Wis. Stats., as created by section 1105u of 1997 Wis. Act 27, “The department shall establish by rule a harvest limit for alewife on the waters of Green Bay and Lake Michigan.” The rule will also modify regulations pertaining to trawling on Lake Michigan and Green Bay in order to meet the Governor’s direction in his veto message that, “The rule should be designed to prevent additional loss of the important alewife forage base.” The Governor also called for the rule to be presented to the Natural Resources Board (NRB) so that it is effective prior to June 15, 1998, the start of the next commercial smelt trawling season on Green Bay. In order to accomplish this, the rule will be presented to the NRB in May for adoption as both an emergency rule and as an identical permanent order. Public hearings will be held in April. This rule is highly controversial, and the DNR anticipates strong expressions of opinion from commercial trawlers and sport fishing organizations.

This action represents a change from past policy.

The establishment of a harvest limit for alewives is a significant change; however, with added provisions designed to prevent the additional loss of alewives, this rule is designed to retain the Department policy of limiting mortality of alewives in commercial fishing, in order to reserve them for use as food for salmon and trout.

*Explain the facts that necessitate the proposed change:*

This rule is promulgated to fulfill the requirements of s. 29.33 (4m) (e), Stats., as created by 1997 Wis. Act 27, and to meet the related veto message directions by Governor Thompson.

**Statutory authority:**

SS. 29.085, 29.33 (1), (4m) (e), as created by 1997 Wis. Act 27 and 227.11 (2) (a), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 42 hours. Two public hearings will be held in April, 1998, at Green Bay and Manitowoc, Wisconsin.

***Optometry Examining Board*****Subject:**

Opt Code – Relating to credential application and examination requirements for individuals applying for a license to practice optometry.

**Description of policy issues:***Objective of the rule:*

The objective of these revisions is to revise and clarify the credential application procedures and examination requirements for applicants applying for a license to practice optometry.

*Policy analysis:*

Individuals applying for a license to practice optometry are required to pass Parts I, II and certain components of Part III of the examination administered by the National Board of Examiners in Optometry. Until recently, applicants were also required to pass a practical examination administered by the board, because the board did not accept the results of the practical component of Part III of the national examination. As a result, applicants were required to pass two practical examinations, the practical component of Part III and the practical examination given by the board. After further review, the board determined that the practical component of Part III is equivalent to its practical examination. Thereafter, the board discontinued its practical examination and voted to accept the practical component of Part III instead. The proposed revisions to the rules will reflect this change.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2), 440.07 and 449.04, Stats.

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

5 hours.

***Physical Therapists Affiliated Credentialing Board*****Subject:**

PT Code – Relating to temporary licenses to practice physical therapy under supervision.

**Description of policy issues:***Objective of the rule:*

The objective of this revision is to repeal a section that was inadvertently left in a previous rule—making order.

*Policy analysis:*

A recent change in the Physical Therapy National Examination being given on a computerized basis required the Board to promulgate rules regarding temporary licenses. In making those amendments in Clearinghouse Rule 96–52, the Board inadvertently left in s. PT 3.01 (5). The repeal of s. PT 3.01 (5), which states that a temporary license cannot be renewed, is necessary as it conflicts with s. PT 3.01 (4), which says that a temporary license can be renewed for hardship reasons.

**Statutory authority:**

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

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

1 hour.

***Psychology Examining Board*****Subject:**

Psy Code – Relating to clarification of administrative rules relating to psychologists and the private practice of school psychology.

**Description of policy issues:***Objective of the rule:*

The objective of these revisions is to make the administrative rules more understandable to the public by improving the clarity, grammar, punctuation and use of plain language in the rules. The changes being recommended relate to amending form, style, grammar, punctuation; use of plain language to improve readability; statutory authority; conflicts or duplication of existing rules; examination reviews; passing scores; cheating policy; eliminating outdated provisions; updating citations to statutes for accuracy; and issues regarding safety and welfare of the public. A substantive provision addresses the Americans With Disabilities Act.

*Policy analysis:*

The proposed changes focus on form, style, grammar and punctuation of the existing rules in order to improve readability and eliminate outdated provisions. The changes also update citations referencing statutes which have been renumbered, modified or repealed; and deal with examination passing scores, cheating and reviews. The proposals also create a provision relating to reasonable accommodations as required under the Americans With Disabilities Act.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 455.08, Stats.

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

20 hours.

***Public Instruction*****Subject:**

Ch. PI 40 – Relating to administering the youth options program.

**Description of policy issues:***Rationale for proposed rule development:*

1991 Wis. Act 39 created the postsecondary enrollment options (PSEO) program beginning in the 1992–93 school year. The program allowed any public school pupil enrolled in the 11th or 12th grade to enroll in a center or institution within the UW system, a Wisconsin technical college system (WTCS) school or a private, nonprofit institution of higher education (IHE).

Administrative rules, ch. PI 40, were created to administer the program. The rules established general requirements for participating pupils, parents/guardians, school boards, IHE's, transportation reimbursement, appeals, and state superintendent's responsibilities. The provisions relating to IHE's pertained to technical colleges as well.

Effective the 1998–99 school year, 1997 Wis. Act 27 replaces the PSEO program with the youth options program and makes several modifications. For private colleges and the UW system, the youth options program will operate essentially the same as it did under the PSEO program. However, the program differentiates between participation in an institution of higher education (IHE) and a technical college making it necessary to revise the rule as it relates to technical colleges.

*Describe the objective(s) of the proposed rule:*

To modify the current rules under ch. PI 40 relating to technical colleges to provide for clarity and to comply with statutory language changed as a result of 1997 Wis. Act 27.

To review and possibly modify the guidelines used in the determination and awarding of high school credit. This will be done in cooperation with the IHE's.

To describe the requirements of the technical college in ensuring that a pupil's educational program meets the high school graduation requirements under s. 118.33, Stats. This will be done in cooperation with the Wisconsin Technical College System Board.

To eliminate the requirement that a school district offer a course if the school board determined that the number of resident pupils enrolled in a postsecondary course at a postsecondary institution was equal to or greater than the number normally required for the district to offer the course and if the board expected the situation to continue in the next year.

*Describe any existing relevant policies to be included in the administrative rule:*

Most of the provisions which currently pertain to IHE's under the administrative rule will still pertain to technical colleges.

*Describe any new policies to be included in the proposed rule:*

Per 1997 Wis. Act 27, the following provisions will apply to technical colleges:

► Requires a technical college to admit a pupil who meets the requirements or prerequisites of the course for which he or she has applied.

► Requires a technical college to ensure a pupil's educational program meets the high school graduation requirements.

► Allows a technical college to reject the application of a pupil who has not completed the 10th grade, has a record of disciplinary problems, is not in good academic standing, or is a child at risk under s. 118.153, Stats.

► Does not allow a technical college to reject a pupil's application due to lack of space.

► Changes how school boards are to pay a technical college based on the number of credits a pupil takes each semester.

► Requires payment made to technical colleges to be adjusted to reflect the cost of any special services needed for a child with exceptional educational needs.

► Requires a school board to pay for some technical college credits that are comparable to courses offered in the school district if the pupil is attending a technical college for 10 or more credits in a semester.

► Allows a school board to refuse to permit a pupil with exceptional educational needs from attending a technical college if the school board determines that the cost would impose an undue financial burden on the school district.

► Specifies that a school board is not responsible for transporting a pupil to a technical college under this program.

*Describe policy alternatives:*

If rules remain unchanged, they will conflict with current law. Most of the changes being proposed will simply align the rules with the new statutory language.

**Statutory authority:**

SS. 118.37 and 227.11 (2) (a), Stats.

**Estimate the amount of time/staff resources necessary to develop rule:**

The amount of time needed for rule development by Department staff and the amount of other resources necessary is indeterminable. The time needed in creating the rule language, itself, will be minimal; however, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

***Public Service Commission*****Subject:**

S. PSC 112.05 (3) (a) – Relating to construction by electric public utilities and extensions of electric service.

**Description of policy issues:**

*A description of policy issues to be resolved, including groups likely to be impacted or interested in the issues, follows:*

Chapter PSC 112, and specifically, s. PSC 112.05, Wis. Adm. Code, is administered by the Commission. Section PSC 112.05, Wis. Adm. Code, deals with the dollar cost threshold approval requirements a utility must consider in determining whether Commission approval is needed before constructing, installing or placing in operation certain facilities.

Section PSC 112.05 (3), Wis. Adm. Code, would be amended to increase cost thresholds of projects, subject to Commission review, to streamline the regulatory process as well as to respond to the reliability needs of Wisconsin citizens. Many of the project presently subject to review include upgrades or modifications to existing plants or substations. The Commission needs to review a project that does not meet the cost threshold. It could impose its authority under s. 196.49 (3), Stats.

This proposed amendment would impact Wisconsin's electric public utilities.

**Statutory authority:**

SS. 196.02 (3), 196.49 (5) (h) and 227.11 (2), Stats.

**Staff time required:**

The Commission estimates that approximately 20 hours of employee time will be required to develop the proposed revision.

**Regulation & Licensing****Subject:**

RL Code – Relating to electronic transmission of applications for credentials and credential renewals.

**Description of policy issues:***Objective of the rule:*

1997 Wis. Act 27 created s. 440.03 (7m), Stats., to specifically authorize the electronic submission of applications for credentials and credential renewals. The objective of the rule is to establish appropriate procedures for submitting applications by electronic transmission, and to provide guidance in adopting procedures and systems to assure the validity, accuracy and security of applications received electronically.

*Policy analysis:*

The electronic transmission of applications give rise to a need for rules to assure the validity and accuracy of information received via computer. Additionally, the issue of the security of personal information contained in and transferred between computers over the "Internet" is of general concern to the public. It is necessary for the Department to adopt rules to assure the validity, accuracy and security of electronically transmitted information. The rules shall specify procedures for complying with any requirement that a fee be submitted with the application, the identity of the individual transmitting the application, and the material that will be required to accompany the application.

**Statutory authority:**

Section 227.11 (2), Stats., and s. 440.03 (7m), Stats., as created by 1997 Wis. Act 27.

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

20 hours.

**Regulation & Licensing****Subject:**

RL Code – Relating to clarification of administrative rules relating to certification of optometrists to use diagnostic pharmaceutical agents.

**Description of policy issues:***Objective of the rule:*

The objective of these revisions is to make the administrative rules more understandable to the public by improving the clarity, grammar, punctuation and use of plain language in the rules. The changes recommended also relate to statutory authority, conflict with or duplication of existing rules, and the adequacy of references to related statutes, rules and forms.

*Policy analysis:*

The proposed changes focus primarily on statutory authority and adequacy of references.

**Statutory authority:**

Sections 227.11 (2) and 440.03 (1), Stats.

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

5 hours.

**Regulation & Licensing****Subject:**

RL Code – Relating to clarification of administrative rules relating to review denials of applications, notices of intent to deny, pleading and hearings, administrative injunctions, summary suspensions and the impaired professionals procedure.

**Description of policy issues:***Objective of the rule:*

The objective of these revisions is to make the administrative rules more understandable to the public by improving the clarity, grammar, punctuation and use of plain language in the rules. The changes being recommended relate to amending form, style, grammar, punctuation; use of plain language to improve readability; examination reviews; eliminating outdated provisions; updating citations to statutes for accuracy; conflicts or duplication of existing rules; and issues regarding safety and welfare of the public. A substantive provision addresses the Americans With Disabilities Act.

*Policy analysis:*

The proposed changes focus primarily on form, style, grammar and punctuation of the existing rules in order to improve readability, eliminate outdated provisions; and update citations referencing statutes which have been renumbered, modified or repealed. The proposed changes do not alter or modify any current substantive requirements of licensees. The rules create a provision relating to reasonable accommodations as required under the Americans With Disabilities Act.

**Statutory authority:**

Sections 227.11 (2), 440.03 (1) and (1m), Stats.

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

20 hours.

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

SFC Code – Relating to clarification of administrative rules relating to social workers, marriage and family therapists and professional counselors.

**Description of policy issues:***Objective of the rule:*

The objective of these revisions is to make the administrative rules more understandable to the public by improving the clarity, grammar, punctuation and use of plain language in the rules. The changes recommended relate to statutory authority, form, style and placement of provisions, conflicts or duplication of existing rules, the adequacy of references to related statutes, rules and forms, and clarity, grammar, punctuation and use of plain language. The changes also include provisions relating to examination reviews and dishonest acts by examination candidates. A substantive provision addresses the Americans With Disabilities Act.

*Policy analysis:*

The proposed changes focus primarily on form, style, grammar and punctuation of the existing rules in order to improve readability and eliminate outdated provisions. The rules update citations referencing statutes which have been renumbered, modified or repealed. The rules also cover examination issues relating to reviews and dishonest acts by candidates. The changes also create a provision relating to reasonable accommodations as required under the Americans With Disabilities Act.

**Statutory authority:**

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

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

20 hours.

***Transportation*****Subject:**

Ch. Trans 233 – Relating to land subdivision plats abutting state trunk highways and connecting streets.

**Description of policy issues:**

*Description of the objective of the rule:*

Chapter Trans 233, relating to land subdivision plats abutting state trunk highways and connecting streets, is outdated and requires updating. DOT is the statutory reviewing authority for all subdivision plats that abut on state trunk highways or connecting highways, outside of Milwaukee County. DOT is required to establish rules relating to the safety of entrance upon and departure from these highways for the “safety of entrance and departure from the abutting [highways] and for the preservation of the public interest and investment in the [highways].”

*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 present DOT rule was established in 1956 and requires amendments for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. The objective is to recognize state and local economic land use goals in the rule, enhance the effectiveness of the rule, and provide reasonable flexibility and clarity in set back requirements and criteria for variances that do not jeopardize public investments or safety now or in the future.

**Statutory authority for the rule:**

Sections 84.25, 84.29, 84.295, and 86.07, Stats.

Sections 236.12 (2) (a), 236.13 (1) (e), 236.13 (3), Stats.

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

Approximately 2 days for each member of a 10–member policy development team, and 4 days for final policy articulation and drafting by two persons. There will be coordination required with interest groups in order to obtain review and comment and establish the appropriate public hearing(s) at convenient locations. Other reviews and approvals will be handled in the normal course of DOT business.

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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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### 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 December 12, 1997, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

The proposed rule affects s. Comm 108.21 (1) (f), Wis. Adm. Code, relating to funding emergency grants under the Community Development block grant program.

##### *Agency Procedure for Promulgation*

A public hearing is required, and will be scheduled at a later date. The organizational unit responsible for the promulgation of the proposed rule is the Division of Economic Development.

##### *Contact Person*

Philip Albert  
Telephone (608) 267-0770

#### **Investment Board**

##### *Rule Submittal Date*

Notice is hereby given that the Investment Board submitted proposed amendments to chs. IB 1 and 2, relating to restrictions on Investment Board employes, to the Wisconsin Legislative Council Rules Clearinghouse on December 5, 1997, pursuant to s. 227.14 (4m), Stats.

##### *Analysis*

The proposed rule changes are promulgated under authority of s. 25.156 (1) and (4), Stats. They are primarily technical modifications that update existing rules of the Investment Board. The existing rules implement a statutory directive in s. 25.156 (4) to establish rules restricting employes' potential personal financial and investment conflicts with the Board's interests and governing the receipt of gifts and favors from firms with which the Board is doing business. The amendments clarify and more specifically describe existing Board procedures and practices, consistent with current investment industry standards as well as provisions of the State Ethics Code in ss. 19.41 to 19.59, Stats., and the Code of Ethics for state employes in ch. ER-MRS 24. They also incorporate into chs. IB 1 and 2 changes that have occurred in the Investment Board's structure and operations, recognizing changes in the Statutes, codes and regulations applicable to the Investment Board, since the rules were originally promulgated in 1983.

##### *Agency Procedure for Promulgation*

The Investment Board intends to promulgate the proposed order without a public hearing, pursuant to s. 227.16 (2) (e), Stats., unless a public hearing is duly requested. The Board's legal staff is primarily responsible for promulgation of the rule-making order.

##### *Contact Person*

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

Keith Johnson, (608) 266-2381  
Assistant General Counsel

#### **Natural Resources**

##### *Rule Submittal Date*

On December 9, 1997, the Wisconsin Department of Natural Resources submitted a proposed rule [WM-30-97] to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

The proposed rule affects ch. NR 10, Wis. Adm. Code, relating to deer hunting in state parks and bonus antlerless deer permits to landowners.

##### *Agency Procedure for Promulgation*

A public hearing is required, and two public hearings are scheduled for January 14 and 15, 1998. The organizational unit responsible for the promulgation of the proposed rule is the Bureau of Wildlife Management.

##### *Contact Person*

Todd Peterson  
Bureau of Wildlife Management  
Telephone (608) 267-2948

#### **Natural Resources**

##### *Rule Submittal Date*

On December 9, 1997, the Wisconsin Department of Natural Resources submitted a proposed rule [FR-4-98] to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

The proposed rule affects ch. NR 47, subch. VIII, Wis. Adm. Code, relating to the private forest landowner grant program.

##### *Agency Procedure for Promulgation*

A public hearing is required, and two public hearings are scheduled for January 12 and 13, 1998. The organizational unit responsible for the promulgation of the proposed rule is the Bureau of Forestry.

##### *Contact Person*

Linda De Paul  
Bureau of Forestry  
Telephone (608) 266-2833

#### **Natural Resources**

##### *Rule Submittal Date*

On December 9, 1997, the Wisconsin Department of Natural Resources submitted a proposed rule [FR-5-98] to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 47, subch. IX, Wis. Adm. Code, relating to the forest fire protection grant program.

**Agency Procedure for Promulgation**

A public hearing is required, and two public hearings are scheduled for January 12 and 13, 1998. The organizational unit responsible for the promulgation of the proposed rule is the Bureau of Forestry.

**Contact Person**

Gene Francisco  
Bureau of Forestry  
Telephone (608) 266-2694

**Tourism****Rule Submittal Date**

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

**Analysis**

The proposed rule affects ch. Tour 1, Wis. Adm. Code, relating to the Joint Effort Marketing program.

**Agency Procedure for Promulgation**

A public hearing is required, and is scheduled for January 14, 1998, at 10:00 a.m. in Meeting Room B, 201 W. Washington Ave., Madison, WI.

**Contact Person**

Dennis Fay, General Counsel  
Telephone (608) 266-6747

**Transportation****Rule Submittal Date**

On December 10, 1997, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. Trans 512, Wis. Adm. Code, relating to the Transportation Infrastructure loan program.

**Agency Procedure for Promulgation**

A public hearing is required, and is scheduled for January 15, 1998. The organizational unit responsible for the promulgation of the proposed rule is the Division of Transportation Investment Management, Bureau of Planning, Economic Development Section.

**Contact Person**

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

**University of Wisconsin System****Rule Submittal Date**

On December 2, 1997, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects s. UWS 18.06, Wis. Adm. Code, relating to conduct on University lands.

**Agency Procedure for Promulgation**

A public hearing is required, and will be held on February 5, 1998 in Madison.

**Contact People**

Patricia A. Brady  
Telephone (608) 262-6497

Judith A. Temby  
Telephone (608) 262-2324

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## NOTICE SECTION

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### Notice of Hearings

#### *Agriculture, Trade & Consumer Protection*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed Department rules related to the regulation of residential rental practices (proposed ch. ATCP 134, Wis. Adm. Code).

#### Written Comments

The hearings will take place at the times and places shown below. The public is invited to attend the hearings and to make comments on the proposed rules. Following the public hearings, the hearing record will remain open until **February 13, 1998**, for the public to submit additional written comments.

#### Copies of Rule

Interested people may obtain a free copy of this rule by contacting:

Division of Trade & Consumer Protection  
Telephone (608) 224-4921  
Wis. Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Dr.  
P.O. Box 8911  
Madison, WI 53708-8911

Copies will also be available at the public hearings.

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **January 7, 1998**, either by writing to Judy Jung, P.O. Box 8911, Madison, WI 53708-8911; calling her at 608/224-4972; or contacting her via the Division's TDD telephone (608/224-5058). Handicap access is available at the hearings.

#### Hearing Information

The Department will hold five hearings as follows:

<b>January 21, 1998</b> <b>Wednesday</b> <b>Commencing at</b> <b>10:00 a.m.</b>	<b>Banquet Room 2</b> <b>1st Floor</b> <b>State Fair Park Youth Ctr.</b> <b>640 S. 84th Street</b> <b>MILWAUKEE, WI</b>
<b>January 23, 1998</b> <b>Friday</b> <b>Commencing at</b> <b>10:00 a.m.</b>	<b>Room 152A</b> <b>Wis. Dist. Office Bldg.</b> <b>200 N. Jefferson St.</b> <b>GREEN BAY, WI</b>
<b>January 28, 1998</b> <b>Wednesday</b> <b>Commencing at</b> <b>10:00 a.m.</b>	<b>Wausau Room</b> <b>3rd Floor</b> <b>Marathon Co. Public Library</b> <b>300 N. 1st Street</b> <b>WAUSAU, WI</b>
<b>January 29, 1998</b> <b>Thursday</b> <b>Commencing at</b> <b>10:00 a.m.</b>	<b>Conference Room</b> <b>1st Floor</b> <b>WDATCP State Office Bldg.</b> <b>3610 Oakwood Hills Pkwy.</b> <b>EAU CLAIRE, WI</b>

**January 30, 1998**  
**Friday**  
**Commencing at**  
**10:00 a.m.**

**Board Room SR-106**  
**Prairie Oak State Office Bldg.**  
**2811 Agriculture Dr.**  
**MADISON, WI**

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

*Statutory authority:* s. 100.20 (2)

*Statute interpreted:* s. 100.20

The Department of Agriculture, Trade and Consumer Protection currently administers landlord-tenant rules under ch. ATCP 134, Wis. Adm. Code. These rules regulate residential rental practices by landlords and affect both tenants and landlords. The Department has not revised or updated the current rules since their creation in 1980. This rule amends the current rules to address new issues which have arisen during the last 17 years and to clarify parts of the rules which landlords and tenants have found to be ambiguous.

#### *Rule coverage:*

This rule clarifies the coverage of the current rules. The current rules apply to the rental of all residential dwelling units in this state, except for the following:

A dwelling unit operated by a public or private institution, if occupancy is incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services. (This rule redrafts, but does not change, the current exemptions.)

A dwelling unit operated by a fraternal or social organization for the benefit of its members. (This rule clarifies that the exemption applies only to dwelling units occupied by members of the organization.)

A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest. (This rule redrafts, but does not change, the current exemption.)

A dwelling unit in a hotel, motel, boarding house, lodging house, or similar premises occupied on a transient basis. (This rule clarifies that the exemption applies to a dwelling unit, other than a student dwelling unit, that is located in a hotel, motel, boarding house, lodging house, dormitory, or similar premises rented for occupancy on a tourist or transient basis.)

A dwelling unit which the landlord provides free of charge. (This rule clarifies that the exemption applies to a dwelling unit which the landlord provides as compensation to an employee operating or maintaining the premises, or which the landlord provides free of charge to any person.)

A dwelling unit located on premises used primarily for agricultural purposes. (This rule clarifies that the exemption applies to a dwelling unit occupied by a tenant engaged in commercial agricultural operations on the premises.)

#### *Pre-rental disclosures and practices:*

##### Rental agreement:

Under current rules, a "rental agreement" means any oral or written agreement for the rental of a dwelling unit. This rule clarifies that a "rental agreement" means an oral or written agreement, for the rental of a specific dwelling unit, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent.

If the landlord and tenant have not yet agreed on the dwelling unit or essential terms of tenancy, the mere approval of a tenant's rental application does not create a "rental agreement" under this rule. A "rental agreement" creates the relationship of landlord and tenant, from which certain rights and responsibilities flow. However, based

on long-standing common law principles, an enforceable "rental agreement," which conveys a tenancy interest in real estate, does not arise until the parties agree on the essential terms of the tenancy, such as the identity of the specific dwelling unit and the amount of rent.

Current rules do not require that a "rental agreement" be in writing. However, under current rules, a landlord must make certain disclosures to a prospective tenant before entering into a "rental agreement."

Misrepresentations to prospective tenants:

This rule prohibits misrepresentations by landlords for the purpose of inducing any person to enter into a rental agreement. Under this rule, no landlord may:

- \* Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.
- \* Misrepresent the amount of rent the tenant must pay.
- \* Fail to disclose, in connection with any representation of rent amount, the existence of any non-rent charges that will increase the total amount payable by the tenant during tenancy.
- \* Engage in "bait and switch" practices by misrepresenting to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

Earnest money deposits: acceptance:

Under current rules, an "earnest money deposit" means a deposit which a rental applicant gives a landlord in return for the option of entering into a rental agreement in the future, or in return for submitting a rental application for the landlord to consider.

Under current rules, before a landlord accepts an "earnest money deposit" from a prospective tenant, the landlord must make certain disclosures related to dwelling unit habitability and utility charges (see later in this notice). This rule clarifies that a landlord may not accept an "earnest money deposit" from a prospective tenant until the landlord identifies the dwelling unit(s) for which the tenant is being considered and complies with the applicable disclosure requirements for each identified dwelling unit.

Earnest money deposits: withholding:

Under this rule, a landlord may withhold monies from a properly accepted earnest money deposit, if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant. Under this rule, as under the current rule, the landlord may withhold monies from the earnest money deposit for actual costs and damages incurred because of the tenant's failure to enter into a rental agreement. The landlord may not withhold monies from the earnest money deposit for "lost rents," unless the landlord makes a reasonable effort to mitigate those losses, as provided under s. 704.29, Stats.

This rule creates a note referring to the Wisconsin court of appeals decision in Pierce v. Norwick, 202 Wis.2d 588 (1996), regarding the award of damage claims when a landlord improperly withheld a security deposit. The principles discussed in that case regarding security deposits may also be applicable to earnest money deposits.

Earnest money deposits: return:

This rule modifies the current rule, which requires a landlord to refund an applicant's earnest money deposit if the landlord rejects the person's rental application. Under this rule, a landlord must refund an applicant's earnest money deposit by the end of the next business day after:

- ☞ The landlord rejects the rental application.
- ☞ The applicant withdraws the rental application before the landlord approves it.
- ☞ The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the earnest money deposit, or by the end of a later date to which the parties agree in writing. The later date may not be more than 7 business days after the landlord accepts the earnest money deposit.

This rule does not change current rules which require that when the landlord enters into a "rental agreement" with a tenant, the landlord must take one of the following actions:

- ☞ Apply the tenant's earnest money deposit, if any, to the rent.
- OR
- ☞ Hold the tenant's earnest money deposit, if any, as a security deposit to secure the tenant's obligations under the rental agreement.
- OR
- ☞ Return the tenant's earnest money deposit, if any, to the tenant.

This rule clarifies that, if a tenant accepts a partial refund of an earnest money deposit, the tenant does not automatically waive any claim he or she may have to a full or greater refund of the deposit.

Security deposits:

Under current rules, a "security deposit" means the total of all payments and deposits given by a tenant to a landlord as security for the performance of the tenant's obligations under the rental agreement. "Security deposit" includes all rent payments the tenant pays in excess of one month's prepaid rent.

This rule clarifies, by note, that a landlord is not prohibited from collecting more than one month's prepaid rent; however, if the landlord holds any rent prepayment in excess of one month's prepaid rent, when the tenant surrenders the premises the landlord must treat that excess prepaid rent as a "security deposit." (See later in this notice.)

Check-in procedures: pre-existing damages:

Under current rules, a landlord must do both of the following before accepting a security deposit from a tenant:

- ☞ Inform the tenant that the tenant has 7 days after the start of the tenancy to inspect the dwelling unit and notify the landlord of any pre-existing damages or defects.
- ☞ Give the tenant a list of damages charged to the previous tenant's security deposit.

This rule modifies the current rules. Under this rule, before a landlord accepts a security deposit or converts an earnest money deposit to a security deposit, the landlord must notify the tenant in writing that the tenant may do any of the following by a specified deadline date, which is not less than 7 days after the start of the tenancy:

- Inspect the dwelling unit and notify the landlord of any preexisting damages or defects.
- Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request in writing.

Under this rule, if a tenant requests a list of damages charged to the previous tenant's security deposit, the landlord must provide that list within 30 days, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may identify all the listed damages or defects the landlord has repaired, if that is the case. Under this rule, the landlord is not required to disclose the previous tenant's identity or the amounts the landlord withheld from the previous tenant's security deposit.

Landlord identification:

Under current rules, a landlord (other than the resident owner of a structure containing four or fewer dwelling units) must disclose both of the following at or before the time the landlord and tenant enter into a rental agreement:

- ☞ The name and address of the person responsible for managing and maintaining the dwelling unit.
- ☞ The name and address of the property owner, or a person authorized to accept service of legal process on behalf of the property owner.

Under current rules, the landlord must give the tenant an updated disclosure whenever this information changes. This rule clarifies that the landlord must mail or deliver the updated disclosure to the tenant within 10 calendar days after the change occurs.

Dwelling unit condition and utility charges: disclosures:

This rule clarifies current rental disclosure requirements. Under current rules, a landlord must disclose the following conditions, if

they exist, before entering into a rental agreement or accepting an earnest money deposit or security deposit from the prospective tenant:

- ◆ Any uncorrected housing code violations affecting the dwelling unit. (This rule makes no change.)
- ◆ The dwelling unit lacks hot and cold running water. (This rule clarifies the provision to say hot or cold running water.)
- ◆ The dwelling unit lacks plumbing facilities in good operating condition. (This rule clarifies, but makes no substantive change.)
- ◆ The dwelling unit lacks sewage disposal facilities in good operating condition. (This rule clarifies, but makes no substantive change.)
- ◆ The heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature of 67°F (19°C) during all seasons of the year in which the dwelling unit may be occupied. (This rule clarifies that, for purposes of this disclosure, the temperature in living areas is measured at the center of the room, midway between the floor and ceiling.)
- ◆ The dwelling unit does not have electricity, or the electrical system is not in safe operating condition. (This rule makes no change.)
- ◆ Any structural or other conditions in the dwelling unit which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises, other than negligent use or abuse. (This rule makes no change.)
- ◆ Whether heat, water and electricity are included in the rent or billed separately. If dwelling units do not have separately metered heat, water and electricity, the landlord must also disclose the basis on which he or she will allocate the utility charges. (This rule makes no change.)

#### Nonstandard rental provisions:

Current rules identify certain rental provisions which a landlord may not incorporate into a rental agreement as boilerplate “form provisions,” because of their potential unfairness to tenants. If a landlord uses “form provisions” at all, the landlord and prospective tenant must separately negotiate each provision and each provision must be included in a separate written document entitled, “NONSTANDARD RENTAL PROVISIONS.” This rule clarifies the procedure which the landlord and tenant may use to separately negotiate nonstandard rental provisions.

This rule prohibits the use of the following provisions in a rental agreement, unless they are included in a separate written document entitled, “NONSTANDARD RENTAL PROVISIONS.”

- Any agreement expanding the landlord’s usual rights of entry to the tenant’s dwelling unit (see later in this notice).
- Any agreement expanding the usual reasons for which a landlord may withhold monies from the tenant’s security deposit (see later in this notice).
- Any lien agreement giving the landlord a lien on the tenant’s personal property to secure performance of the tenant’s obligations under the rental agreement (see later in this notice).

If the landlord wants to include any of the above provisions in the rental agreement, the landlord must discuss each “nonstandard rental provision” with the prospective tenant. If the tenant signs or initials a “nonstandard rental provision,” then there is a presumption that the landlord discussed each provision with the tenant and the tenant agreed.

#### *Practices during tenancy:*

##### Receipts for cash rent payments:

Under current rules, a landlord must give a tenant an immediate receipt for any cash deposit, such as an earnest money or security deposit, paid by the tenant. Under this rule, a landlord must also give a tenant an immediate receipt for any cash payment of rent, stating the nature and amount of the payment. The landlord is not required to give a receipt for a rent payment made by check.

##### Fit and habitable premises:

Under current rules, a landlord may not use a boilerplate “form provision” in a rental agreement to secure the tenant’s waiver of any statutory or other legal obligation which the landlord has to provide fit and habitable premises or to maintain the premises during tenancy. This rule strengthens the current provision, by prohibiting any rental provision that purports to waive those legal obligations.

##### Unauthorized entry:

With certain exceptions, current rules limit the reasons for which a landlord may enter a tenant’s dwelling unit. The current rules also require prior notice of entry (normally 12 hours prior notice) and prohibit entry except at reasonable times.

This rule clarifies the current rules. With certain exceptions, this rule prohibits a landlord from doing either of the following:

⊗ Entering a dwelling unit during tenancy, except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05 (2), Stats. A landlord may enter for the amount of time reasonably required to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.

⊗ Entering a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice, unless the tenant, upon being notified of the proposed entry, consents to a shorter time period.

These entry restrictions do not apply in any of the following circumstances:

- ✕ The tenant, knowing the proposed time of entry, requests or consents in advance to the entry.
- ✕ A health or safety emergency exists.
- ✕ The tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.

Under current rules, a tenant may agree to a nonstandard rental provision (other than a boilerplate “form provision”) which authorizes the landlord to enter a tenant’s dwelling unit under circumstances not authorized above. This rule clarifies that:

✎ Any nonstandard provisions must be contained in a separate written document entitled, “NONSTANDARD RENTAL PROVISIONS” (see earlier in notice).

✎ The landlord must specifically identify and discuss the nonstandard rental provisions with the tenant, and provide a copy of the nonstandard provisions to the tenant.

✎ If the tenant signs or initials the nonstandard rental provisions, there is a presumption that the landlord specifically identified and discussed each provision with the tenant and the tenant agreed to the provisions.

This rule creates a new provision that no landlord may enter a tenant’s dwelling unit during tenancy without first announcing the entry to persons who may be present in the dwelling unit (such as by knocking on the door or ringing the doorbell). The landlord must also identify himself or herself upon request.

##### Late rent fees and penalties:

This rule prohibits a landlord from charging a late rent fee or late rent penalty, except as specifically provided in a written rental agreement. Before charging a late rent fee or late rent penalty, the landlord must first apply all rent prepayments received from the tenant to offset the amount of rent owed by the tenant. A landlord may not charge a tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

##### *Returning security deposits:*

##### Deadline for returning security deposit:

Under current rules, a landlord must return or account for a tenant’s security deposit within 21 days after the tenant “surrenders” the premises to the landlord. This rule clarifies that a tenant is deemed to “surrender” the premises on the last day of tenancy specified under the rental agreement, except that:

- If the tenant gives the landlord a written notice that the tenant has vacated before the last day of tenancy specified in the rental agreement, “surrender” occurs when the landlord receives the written notice that the tenant has vacated.

► If the tenant vacates the premises after the last day of tenancy specified in the rental agreement, “surrender” occurs when the landlord learns that the tenant has vacated.

► If the tenant is evicted, “surrender” occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

Security deposit return or accounting:

Under current rules, a landlord must return the full amount of a tenant’s security deposit within 21 days after a tenant “surrenders” the rental premises, less any amounts properly withheld by the landlord (see later in this notice). The landlord must provide the tenant with a written statement accounting for all amounts withheld.

Under current rules, the landlord must return the security deposit in person, or by mail to the tenant’s last known address. If the tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant’s last known address.

Under this rule, if a landlord returns a security deposit in the form of a check, draft or money order, the landlord must make the check, draft or money order payable to all tenants who are parties to the rental agreement, unless otherwise authorized in writing by the tenants.

Reasons for withholding security deposit:

Under current rules, a landlord may withhold money from a tenant’s security deposit only for the following reasons:

§→ Tenant damage, waste or neglect of the premises.

§→ Unpaid rent for which the tenant is legally responsible, subject to the landlord’s duty to mitigate under s. 704.29, Stats.

§→ Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

§→ Payment for direct utility service provided by a government-owned utility, to the extent the landlord becomes liable for the tenant’s nonpayment.

§→ Unpaid mobile home parking fees which a local unit of government has charged to the tenant under s. 66.058 (3), Stats., to the extent that the landlord becomes liable for the tenant’s nonpayment.

§→ Other reasons specified in a rental provision which the landlord and tenant negotiated separately as a “NONSTANDARD RENTAL PROVISIONS” agreement. (See earlier in notice.)

This rule clarifies that any rental provision that expands a landlord’s authority to withhold a security deposit must be negotiated in the following manner:

■ The nonstandard provisions, if any, must be contained in a separate written document entitled “NONSTANDARD RENTAL PROVISIONS” (see earlier in notice).

■ The landlord must specifically identify and discuss the nonstandard rental provisions with the tenant, and provide a copy to the tenant.

■ If the tenant signs or initials the nonstandard rental provisions, it is presumed that the landlord has specifically identified and discussed the provisions with the tenant, and that the tenant has agreed to the provisions.

Neither this rule nor the current rules authorize a landlord to withhold money from a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

Failure to return or properly account for security deposit:

This rule clarifies that, merely by accepting a partial refund of an earnest money deposit, a tenant does not automatically waive any claim he or she may have to a larger refund.

This rule creates a note referring to the appellate court decision in Pierce v. Norwick, 202 Wis.2d 588 (1996), regarding the award of damage claims for failure to comply with rules related to security deposits.

Eviction and related issues:

Confiscating personal property:

Under current rules, a landlord may not confiscate a tenant’s personal property, or prevent a tenant from taking possession of the tenant’s personal property, except as authorized by s. 704.05 (5), Stats., or a lien agreement with the tenant. The lien agreement may not be created by a boilerplate “form provision” in the rental agreement, but must be separately negotiated with the tenant. This rule clarifies the method by which the landlord and tenant must negotiate a lien agreement:

⊙ A lien agreement, if any, must be contained in a separate written document entitled “NONSTANDARD RENTAL PROVISIONS” (see earlier in this notice).

⊙ The landlord must specifically identify and discuss the lien agreement with the tenant, and must give the tenant a copy.

⊙ If the tenant signs or initials the lien agreement, it is presumed that the landlord has specifically identified and discussed it with the tenant, and that the tenant has agreed to it.

Self-help eviction:

Current law, ch. 799, Stats., affords landlords a prompt judicial procedure for evicting tenants. This procedure was enacted, in part, to discourage self-help evictions by landlords.

Current rules prohibit rental agreements which purport to authorize self-help eviction. This rule prohibits self-help eviction. Under this rule, a landlord may not exclude, forcibly evict or constructively evict a tenant other than by the judicial eviction procedure provided under ch. 799, Stats.

**Fiscal Estimate**

*Assumptions used in arriving at fiscal estimate:*

The proposed amendments will modify the current ch. ATCP 134 rules to make it easier for landlords and tenants to understand its requirements. The amendments also update the rule to reflect practical experience and to clarify language.

The proposed regulations affect enforcement activities in which the Trade and Consumer Protection Division’s staff already engage; therefore, the Department estimates no fiscal effect.

Since municipalities are not responsible for enforcing ch. ATCP 134, there should be no fiscal effect on them, as the amendments impose no additional responsibilities.

The Department already handles complaints from tenants about problems with rental transactions. The Department assumes that the number of complaints about this subject will not increase due to this change in the law. The Department also assumes that this law will assist Department staff by providing clearer language that will enhance staff efficiency in dealing with these problems. The adoption of the proposed rule revisions will have no state or local fiscal effect.

**Initial Regulatory Flexibility Analysis**

*Proposed ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices)*

The Department’s proposed rules will have an impact on most landlords who lease residential dwelling units. Many of these landlords are small businesses, as defined by s. 227.114 (1) (a), Stats.

The current rules regulate residential rental practices by landlords under ch. ATCP 134, Wis. Adm. Code. This rule, developed in consultation with an ad hoc advisory committee that included landlord and tenant representatives, clarifies and simplifies the current rules. This rule will assist landlords in complying with ch. ATCP 134, and should decrease the number of legal conflicts between landlords and tenants.

This rule clarifies how it regulates business practices and simplifies the procedures landlords must follow to comply with the rules. The revisions do not create additional financial burdens; therefore, they will not adversely affect small business.

The Department anticipates a period of education and information to assist landlords and tenants in learning the new revisions.

## Notice of Public Hearing

### *Department of Commerce (Financial Resources for Businesses and Communities, Chs. Comm 105 – 128)*

Notice is given that pursuant to ss. 16.54, 560.02 (4) and 560.04 (2)(j), Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of ch. Comm 108, Wis. Adm. Code, relating to funding of emergency grants under the Community Development Block Grant Program.

### Hearing Information

January 13, 1998  
Tuesday  
9:00 a.m.

Madison  
Room 3C, Third Floor  
201 W. Washington Ave.

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Community Development, 5th Floor, 201 W. Washington Ave., Madison, WI 53707, by calling (608) 267-3895 or at the appointed time and place the hearing is 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 hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **January 20, 1998**, to inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitted comments will not receive individual responses.

The hearing site is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-3080 or Telecommunication Device for the Deaf (TDD) 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 Rules

Statutory Authority: ss. 16.54, 560.02(4) and 560.04(2)(j)

Statutes Interpreted: 42 USC 5301 to 5319

Pursuant to section 560.02(4), Stats., the Department of Commerce has the authority to administer the federal CDBG funds awarded to the State of Wisconsin under 42 USC 5301 to 5319. Under applicable federal law, Commerce is authorized to award CDBG funds to any town, village or city with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant program, and to any county other than an urban county as defined by the United States Department of Housing and Urban Development ("HUD"). Historically, Commerce's rules have authorized eligible communities to use ODEG funds for public facilities projects, public facilities projects to promote economic development, economic development projects, and emergency situations caused by natural disasters and other catastrophic events. Recent amendments to the applicable federal regulations authorize the use of CDBG funding for additional purposes including the prevention and elimination of slum and blight.

Section 560.04(2)(j), Stats., also gives Commerce the authority to adopt this order. This order amends ch. Comm 108, subch. VI of the Wisconsin Administrative Code, relating to emergency grants under the CDBG program. This order is made to assist and strengthen local, regional and state economic and community development in dealing with emergencies.

Under the revised rules that take effect on November 1, 1997, Commerce will not be allowed to award emergency grants to local

governments experiencing a natural disaster or catastrophic event using other state or federal grant funds as match. Omitting the following language from section Comm 108.21(1)(f), Wisconsin Administrative Code, "other than grants from the federal or state government, is necessary so that Commerce will be able to respond to local community needs in times of distress, to do so in a timely manner, and to preserve the public peace, health, safety, and welfare of the community and its citizens.

### Fiscal Estimate

This order will not have a fiscal effect on Commerce because it does not change Commerce's workload or the total amount of CDBG funding available to fund projects under the economic development, public facilities, public facilities for economic development and emergency grant programs. The total amount of funds available to local governments under the community development block grant program is not changed by this order because all federal funds and program income are and will be distributed as block grant funding to local governments.

### Contact Person

Dennis W. Kozich  
Chief Legal Counsel  
Department of Commerce  
(608) 266-3203

### Initial Regulatory Flexibility Analysis

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

The Department estimates that 95% of the grants administered under this code and applied for by communities ultimately reach small businesses in one form or another.

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

Federal and state rules require that eligible government units be responsible for administrative, underwriting, recordkeeping, reporting, auditing, close-out, payment, and reimbursement related to the grant. Small businesses must have general accounting and bookkeeping skills.

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

No other professional skill, other than general business accounting and bookkeeping skills are required.

## Notice of Proposed Rule

### *Investment Board*

Notice is hereby given that pursuant to s. 25.156 (1) and (4), Stats., and interpreting s. 25.156 (4), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Investment Board will adopt the following rule changes substantially as proposed in this notice, without public hearing unless, within 30 days after publication of this notice on **January 1, 1998**, the Investment Board is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rules.

### Analysis Prepared by Investment Board

The proposed amendments to ch. IB 1 are promulgated under authority of s. 25.156 (1) and (4), Stats. They clarify and update existing rules in ch. IB 1. Those rules implement the directive in s. 25.156 (4), Stats., that the Investment Board establish rules restricting employees' potential personal financial and investment conflicts with the Board's interests and governing the receipt of gifts and favors from firms with which the Board is doing business.

The proposed rule changes more specifically:

■ Describe existing Investment Board procedures which are intended to avoid conflicts of interest between personal investments of Board employees and agency investment activities;

- Prohibit receipt of gifts or favors which would provide an improper personal benefit to an employee;
- Protect confidential information; and
- Govern service of employees on outside boards of directors.

The amendments clean up wording to incorporate Board interpretations of the existing rules in a manner that is consistent with current investment industry standards as well as provisions of the State Ethics Code in ss. 19.41 to 19.59, Stats., and the Code of Ethics for state employees in ch. ER-MRS 24. An acknowledgement that federal law and professional codes of conduct may apply to personal investments of Board employees, (e.g., restrictions on insider trading and frontrunning) is inserted in the rule.

The proposed order also reflects evolution of the Investment Board's structure and operations, as well as related changes in the law since ch. IB 1 was promulgated in 1983.

- The chief investment officer (created by 1995 Wis. Act 274) is included as a potential approval authority for employee personal investment transactions;
- The recent creation of limited liability companies and partnerships as a form of business entity is reflected;
- Use of reporting forms for personal investments and for receipt of third-party expense reimbursements is acknowledged;
- The transfer of most Board positions to the unclassified civil service by 1987 Wis. Act 399 is recognized; and
- Application of the Open Records Law as determinative of what information is considered confidential at the Board is acknowledged.

The current reference in s. IB 1.06 to prohibitions on dual state employment by full-time employees is deleted as superfluous, because the prohibition is already set forth in s. 16.417, Stats. A cross-reference change is also made in s. IB 2.02 (5) to reflect the creation of s. 25.15, Stats., by 1983 Wis. Act 27 as the Investment Board's primary standard of fiduciary responsibility.

## Text of Rule

**SECTION 1.** IB 1.02 (2) is amended to read:

IB 1.02 (2) "Confidential information" means any information that is ~~created by and within~~ held by the board and is not available for public inspection ~~or, any information received by the board from another person under a pledge of confidentiality and which is not for sale by the provider to others and is not available for public inspection.~~

**SECTION 2.** IB 1.02 (3), (4) and (5) are renumbered IB 1.02 (4), (5) and (6) and amended to read:

IB 1.02 (4) "Employee" means the executive director, executive assistant and all full and part-time ~~classified~~ persons including investment directors hired to work for the board and paid by a state of Wisconsin payroll check. Members of the board are not employees for the purposes of these rules.

(5) "Executive director" means the person appointed by the members of the board as executive director under s. 25.156 (2), Stats., or in his or her absence or disability, the person appointed as assistant executive director under s. 25.156 (3), Stats.

(6) "Family" means an employee's spouse and any other person related by blood, adoption, or marriage to an employee of the board who where such other person is living in the same personal residence as the employee and either receives, directly or indirectly, more than one-half of his or her support from the employee or from whom the employee receives, directly or indirectly, more than one-half of his or her support.

**SECTION 3.** IB 1.02 (3) is created to read:

IB 1.02 (3) "Chief investment officer" means the person appointed by the executive director as chief investment officer under s. 25.16 (2), Stats.

**SECTION 4.** IB 1.02 (6) is renumbered IB 1.02 (7).

**SECTION 5.** IB 1.02 (7), (8), (9), (10), and (11) are renumbered IB 1.02 (8), (9), (10), (11), and (12) and amended to read:

IB 1.02 (8) "Financial interest" means any direct or indirect equity or debt interest and includes any form of stock, a security convertible

into stock, a right, option or warrant to purchase stock, a derivative instrument, any form of debt instrument, a limited partnership interest, a partner's interest in a partnership, a membership in an association or joint venture, an interest in a limited liability company or partnership, or the interest of a sole proprietor, but excludes mortgages on an employee's home or other residence and other consumer loans.

(9) "Firm" means a corporation, partnership, association, joint venture, ~~or limited liability company or partnership~~, sole proprietor, or other business entity.

(10) "Gift" means the giving of real or personal property or services, including a payment, advance, loan, forbearance, the promise of future employment, or any other item having value ~~by one person~~ to an employee of the board or a member of the family of an employee without the exchange of fair value or the expectation of a similar gift or favor in return, but does not include expressions of sympathy or similar de minimus items not intended to influence the employee's judgment, nor does it include compensation, fees, expenses, or payments received for the benefit of the board under s. IB 1.03 (2).

(11) "Indirectly" or "indirect" means the purchase of or holding a financial interest in the name of another, including a member of the employee's family, or through the use of a nominee or brokers account, but does not include underlying holdings of a registered investment company in which an employee has an interest.

(12) "Investment" ~~means~~ includes the purchase and holding of stocks, bonds, evidences of indebtedness whether or not collateralized, mortgages or real estate or any interest therein, including but not limited to options and futures, and derivative or convertible instruments, for the purpose of providing the purchaser with income, capital gain or any other form of a return on the invested money but does not include any savings account, certificate of deposit, domestic government or agency security, shares or units of a registered investment company, purchase of a personal residence or recreational residence or, personal possessions such as furniture, fixtures, jewelry, appliances or motor vehicles.

**SECTION 6.** IB 1.02 (12), (13), and (14) are renumbered IB 1.02 (13), (14), and (15).

**SECTION 7.** IB 1.02 (15) is renumbered IB 1.02 (16) and amended to read:

(16) "Services" ~~means either~~ includes the offering of professional services, advice, counsel, evaluation, or analysis of relating to property, investments or companies to invest in or portfolios of investments or other board activities, for remuneration either through commissions ~~or underwriting~~, fees or concessions or the offering of a market for any type of security or interest in a security, including but not limited to futures or options and other derivative or convertible instruments, traded either on a formal exchange or otherwise.

**SECTION 8.** IB 1.03 is amended to read:

**IB 1.03 Gifts or favors.** (1) An employee or a member of an employee's family may not during the period the employee is employed by the board directly or indirectly knowingly accept or retain any personal gift or favor from any person representing a firm currently providing services to the board ~~or a company or institution~~ in which the board is holding an investment or where a written proposal for an investment or provision of services has been sent made to the ~~members of the board~~.

(2) This section does not ~~apply to prohibit acceptance of~~ conference fee payments, meals, travel expense, accommodations or social functions furnished to an employee attending any duly authorized conference, meeting ~~or~~, due diligence investigation or similar event which provides the board with information required to investigate, analyze or protect an investment or proposed investment or any other financial interest of the board nor does it apply to ~~promotional or other minor items that are used and retained at the offices received at and accrue to the benefit of~~ the board.

**SECTION 9.** IB 1.03 (3) and (4) are created to read:

IB 1.03 (3) Any payments or items which are accepted by an employee under sub. (2) shall be reported in accordance with procedures that may be established by the executive director.

**Note:** Reporting forms may be obtained from the Executive Director of the Investment Board.

(4) The board may contribute items received from third parties which cannot be used to its benefit to charities, or may contribute funds to charities raised through sale of such items which may not practicably be directly contributed.

**SECTION 10.** IB 1.04 (3) is amended to read:

IB 1.04 (3) This section does not ~~apply to prohibit holding or acquisition of a financial interest in a corporation which owns stock in a firm providing services to the board if the net income provided by to the firm from providing services to the board is less than 10% of the annual net income of the corporation owning the stock firm.~~

**SECTION 11.** IB 1.05 (title) and 1.05 are amended to read:

**IB 1.05 Personal investments by employees of the board.** (1)

Employees may not ~~directly or indirectly~~ purchase or hold any stock or convertible bond being sold as a new issue at the time it is offered to the public for the first time. An employe may purchase and own a stock or convertible bond which was offered to the public for the first time if the employe purchases it after it is publicly traded.

(2) An employe may purchase, ~~hold and, or~~ sell any other investment provided only if the investment is being purchased, held or sold by the board prior to the time of purchase or sale by the employe, the employe discloses in writing to obtains advance written approval from the executive director the purchase or sale, and either states . The executive director may delegate authority to approve employe personal investment transactions to the chief investment officer, assistant executive director, legal counsel, or an investment director. The employe must confirm that the purchase or sale is not based upon confidential information confidential to of the board, or receives permission from the executive director. Permission for the purchase or sale based upon the executive director finding that the purchase or sale may be granted if the purchase or sale is not found to be in conflict with the board's purchase, sale or holding interests or applicable legal and professional codes and regulations.

**SECTION 12.** IB 1.05 (3) is created to read:

IB 1.05 (3) Procedures for preclearance and monitoring of employe personal investments may be established by the executive director.

**Note:** Personal investment approval request forms may be obtained from the Executive Director of the Investment Board.

**SECTION 13.** IB 1.06 is repealed.

**SECTION 14.** IB 1.08 (1) (intro), (2) (intro) and (b), (3) and (4) are amended to read:

IB 1.08 (1) An employe of the board may serve in any position, including a directorship, of a non-profit ~~corporation firm~~, fraternal organization, or religious organization provided:

(2) An employe of the board may serve as a director of any for-profit ~~corporation, company, association, or joint venture firm~~ and receive and retain any remuneration provided:

(2) (b) The ~~companies' executive director determines that the firm's~~ bonds, stock or debt are not likely to become the subject of investments which the board would purchase and,

(3) An employe of the board may serve as a director of a ~~corporation, company or joint venture firm~~ in which the board has an investment only when the board approves such service in advance and any remuneration received by the employe is paid to the board.

(4) If an employe is serving as a director at the time an investment in that ~~company, corporation or joint venture firm~~ is submitted as a proposed investment to the board, such service shall immediately be brought to the attention of the board and the employe shall immediately disassociate himself or herself from the investment analysis and the decision making process. If the board subsequently invests in the company and the employe elects to continue as a director, then during the time the board holds any investment in that company, the employe shall pay any remuneration received during that period to the board. At such time as the board no longer holds any investment in the company, the employe may again receive and retain any remuneration.

**SECTION 15.** IB 1.09 (1) is amended to read:

IB 1.09 (1) No employe of the board may release confidential or privileged information without ~~the written approval of the executive director or the board's legal counsel.~~

**SECTION 16.** IB 2.02 (5) is amended to read:

IB 2.02 (5) In addition to sub. (4), it shall be determined whether the investment is a prudent investment under ~~ch. 881, Stats., s. 25.15, Stats.,~~ or other applicable standards unless the statutes governing the fund specifically state that the investment board is relieved of any obligation of prudent investing or may invest a part of the fund in the specific type of investment.

## **Fiscal Estimate**

The proposed rule changes merely clarify and update existing rules and are not expected to have any state or local fiscal impact.

## **Initial Regulatory Flexibility Analysis**

The proposed rule changes will not affect small businesses.

## **Contact Person**

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

Keith Johnson, Assistant General Counsel  
Telephone (608) 266-2381  
State Investment Board  
121 E. Wilson Street  
Madison, WI 53707-7842

## **Notice of Hearings**

### **Natural Resources (Fish, Game, etc., Chs. NR 1-)**

Notice is hereby given that pursuant to ss. 29.1075, 29.557(3) and 227.11(2)(a), Stats., interpreting ss. 29.1075, 29.557 and 29.174(2), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to expanding deer hunting in five state parks and establishing a rule on awarding free bonus permits to eligible landowners. Specific changes in the proposed rule include:

- An early bow season for Rock Island state park, commencing on October 15 and continuing through the Sunday preceding the opening of the regular 9-day gun deer season.

- Muzzleloader only seasons for Yellowstone, Rib Mountain and Brunet Island state parks commencing on the Saturday preceding the Thanksgiving holiday and continuing for 16 days.

- A muzzleloader only season concurrent with the statewide 7-day muzzleloader only season at Rock island and Harrington Beach state parks.

- Late bow season at Yellowstone, Rib Mountain, Harrington and Brunet Island state parks commencing on the Saturday following the close of the statewide 9-day gun deer season and ending December 31.

- A free antlerless deer permit to qualified landowners. Eligible resident farm owners will receive one free bonus permit for each one they purchase in under subscribed deer management units.

## **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.

## Hearing Information

January 14, 1998  
Wednesday  
9:00 a.m.

Room 511, GEF#2  
101 S. Webster St.  
Madison

January 15, 1998  
Thursday  
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 William Mytton at (608) 266-2194 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 Mytton, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **January 16, 1998**. Written comments will have the same weight and effect as oral statements presented at the public hearings. A copy of the rule can be obtained from Mr. Mytton.

## Fiscal Estimate

License for the hunters would be administered through the current Hunters Choice program. The utilization of this existing program will be at no additional costs in time or funds.

There may have to be additional time spent by biologists and law enforcement to administer this hunt, but this should be minimal. All parks are currently staffed during hunting periods and no additional staff needs during hunt periods are anticipated. Approximately \$400.00 will be needed for signs and 20 hours of LTE time at \$10.00/hr. for a total of \$200.00.

Since the free antlerless deer permit provision related only to those units that are already under-subscribed for bonus permits, there is no anticipated fiscal impact of providing these permits.

## Notice of Hearing

### *Natural Resources (Fish, Game, etc., Chs. NR 1--)*

Notice is hereby given that pursuant to ss. 27.01(11)(b), 227.11(2)(a) and 227.24, Stats., interpreting s. 27.01(1)(a), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. PR-32-97(E). The emergency rule will take effect on April 1, 1998. The emergency rule repeals and recreates s. NR 45.10(3) and (4), Wis. Adm. Code, relating to reservations on state parks and forests. The rules implement the Parks Automated Reservation and Reporting System (PARRS) which was created in 1997 Wis. Act 27 (the budget bill). Under the emergency rule, the reservation system will allow reservation requests to be processed up to 11 months before a customer wanted to occupy a site. Customers will call one toll-free number or access one web site to make a reservation anytime within the reservation window rather than having to contact each park individually.

## Hearing Information

January 12, 1998  
Monday  
2:00 p.m.

Room 611B, GEF#2  
101 S. 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 Kimberly Currie at (608) 264-6035 with specific information on your request at least 10 days before the date of the scheduled hearing.

## Written Comments

Written comments on the emergency rule may be submitted to Ms. Kimberly Currie, Bureau of Parks and Recreation, P.O. Box 7921, Madison, WI 53707 no later than **January 16, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Ms. Currie.

## Fiscal Estimate

The proposals are changes to ch. NR 45 which deals with the operations of a reservation system. The 1995-97 biennial budget created the Department of Tourism and instructed the Department of Tourism and the Department of Natural Resources to jointly develop an automated camping reservation system. The target date for the implementation of this new system is April 1, 1998. Timing is tight because the current budget includes both the spending authority and the statutes necessary to allow for the implementation of the automated camping reservation system. The timing on this is further complicated by the fact the the current statutes and rules must remain in place in January, 1998, to handle the 20,000 anticipated camping reservation requests expected under our current reservation system. The statutes/rules/procedures must change in April, 1998 to allow existing reservations to seamlessly match new reservations expected to use the PARRS system. With nearly 85,000 reservation applications processes in 1997, more than 90,000 total reservations are projected for 1998. The PARRS system is expected to incorporate changes requested by our customers, address the needs of the tourism industry, and streamline operations at out parks and forests.

Fiscal Impact. The revenue and expenditure impacts of the proposed system were included as part of the 1997 Wis. Act 27 biennial budget. Therefore, these rules have no fiscal effect.

## Notice of Hearings

### *Natural Resources (Fish, Game, etc, Chs. NR 1--)*

Notice is hereby given that pursuant to ss. 23.097(2), 23.11, 28.07 and 227.11(2)(a), Stats., interpreting s. 23.097(1) and 28.07, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 47, subch. VIII, Wis. Adm. Code, relating to the private forest landowner grant program. The proposed rule implements the legislative language contained in 1997 Wis. Act. 27 establishing a forestry assistance grant program for private forest landowners. The proposed rules also detail the components approved land practices and the payment of grants to landowners. The proposed rule establishes criteria for awarding grants and procedures for administering grants that share the cost of implementing forestry practices with the landowners.

## 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.

## Hearing Information

**January 12, 1998**  
**Monday**  
**1:00 p.m.**

**Conference Room**  
**DNR Office**  
**910 Hwy. 54 East**  
**Black River Falls**

**January 13, 1998**  
**Tuesday**  
**1:00 p.m.**

**Conference Room**  
**DNR Office**  
**107 Sutliff Avenue**  
**Rhineland**

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 Linda DePaul at (608) 266-2388 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 Ms. Linda DePaul, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than **January 13, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from the Bureau of Forestry by calling (608) 267-9495.

## Fiscal Estimate

The amendment to ch. NR 47 establishes provisions for administering cost sharing grants to private forest landowners who carry out approved forestry practices on their lands. Program was created in the 1997-99 budget bill.

The program is funded from a biennial appropriation, s. 20.370 (5)(ar), for \$1,000,000.

Intent is to contract with Farm Services agency or Wisconsin Land and Water Conservation Association to process applications, and paperwork track sign ups and provided financial management. They will up to 10%\$, or \$100,000 of the appropriation annual to provide these services.

DNR staff costs are associated with program implementation and development. Recent changes in workload (loss and reduction of similar federal programs) will provide the offset in time needed for program delivery.

Since the funding for this program was provided for in Wis. Act 27, the 1997-99 budget bill, there is no fiscal effect of these rules.

## Notice of Hearings

### *Natural Resources* *(Fish, Game, etc, Chs. NR 1-)*

Notice is hereby given that pursuant to ss. 26.145, 23.11, 28.07 and 227.11(2)(a), Stats., interpreting s. 26.145, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 47, subch. IX, Wis. Adm. Code, relating to the forest fire protection grant program. The proposed rule will implement the Forest Fire Protection Grant Program which was authorized under 1997 Wis. Act 27. This proposed rule provides the objectives and administrative mechanisms to establish and operate this new program. Funded at \$525,000 per year for the 1998-99 biennium, this program is a cooperative effort with local fire departments to prevent and suppress forest fires in Wisconsin. Rural fire departments

play a key role in assisting the Department in the control of forest fires. With the financial assistance available under this program, these departments can make major improvements in their capacity to effectively suppress forest fires.

As this program is targeted to forest fire protection, grants are limited to fire departments who enter into forest fire suppression agreements with the Department and county or regional associations of fire departments whose primary purpose and activities support forest fire suppression. The rule describes and defines who is eligible for grant funding, the process for applying for a grant, the criteria used to rate and select applications to be funded and the process for payment and completion of each grant.

## 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.

## Hearing Information

**January 12, 1998**  
**Monday**  
**12:00 noon**

**Conference Room**  
**DNR Office**  
**910 Hwy 54 East**  
**Black River Falls**

**January 13, 1998**  
**Tuesday**  
**12:00 noon**

**Conference Room**  
**DNR Office**  
**107 Sutliff Avenue**  
**Rhineland**

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 Bob Egan at (608) 266-5890 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. Bob Egan, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707 no later than **January 13, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Egan.

## Fiscal Estimate

This rule implements the Forest Fire Protection Grant Program which was authorized under s. 917, 1997 Wis. Act 27, Stats., and recently signed into law by the Governor. The proposed rule provides objectives and administrative mechanisms to establish and operate this new program. Funded at a level of \$525,000 per year during the 1998-99 biennium, these grants support a cooperative effort with local fire departments to prevent and suppress forest fires in Wisconsin.

Grants are available to fire departments who enter into a forest fire suppression agreement with the Department and to county or regional associations of fire departments who's primary purpose and activities support forest fire suppression. The grant funding authorization for this program expires at the end of the biennium.

Fiscal Impact. None. Funds provided under the budget bill - 1997 Wis. Act 27.

## Notice of Hearing

### Natural Resources (Environmental Protection—Air Pollution Control, Chs. NR 400—)

Notice is hereby given that pursuant to ss. 227.11 (2)(a), 227.24, 285.11(1) and 285.30(2), Stats., interpreting ss. 285.11(6) and 285.30(2), Stats., the Department of Natural Resources will hold a public hearing on emergency rule revisions to Tables 1 and 3 of s. NR 485.04, Wis. Adm. Code, relating to emission limitations for motor vehicles. These limitations are used in the state's motor vehicle emission inspection and maintenance (I/M) program, which is operating in seven southeastern Wisconsin counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha).

Under the current rule, the final phase of motor vehicle emission limitations was scheduled to go into effect on December 1, 1997. Less restrictive limitations were in effect through November 30, 1997. The emergency rule relaxes the current rule's final phase of motor vehicle emission limitations for the 1990 and older model year vehicles subject to the I/M program. Also, the emergency rule adds a new set of fast-pass emission limitations which apply to some model year 1994 and newer vehicles. The emergency rule goes into effect on January 1, 1998.

The Department of Natural Resources is also processing permanent rule revisions which have the same scope as the emergency rule. The Department of Natural Resources held public hearings on the proposed permanent rule on November 11 and 12, 1997, and written comments were accepted through November 24, 1997.

### Hearing Information

January 14, 1998  
Wednesday  
1:00 p.m.

Room 140  
Dept. of Natural Resources  
Southeast Region Office  
2300 N. Dr. Martin Luther King Jr. Dr.  
Milwaukee, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Christopher Bovee at (608) 266-5542 with specific information on your request at least 10 days before the date of the scheduled hearing.

A copy of emergency rule No. AM-29-97E and its fiscal estimate may be obtained from:

Proposed Rules  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707  
Phone (608) 266-7718  
FAX: (608) 267-0560

### Fiscal Estimate

#### Assumptions Used in Arriving at Fiscal Estimate

The final phase of the motor vehicle emission limitations ("final cutpoints") in ch. NR 485, Wis. Adm. Code, is currently scheduled to go into effect on December 1, 1997. These cutpoints are used in the state's motor vehicle emission inspection and maintenance (I/M) program, which is operating in seven southeastern Wisconsin counties. Currently, less restrictive cutpoints are in effect through November 30, 1997. The proposed emergency rule will relax the final cutpoints for 1990 and older model year vehicles. This rule is being proposed because recent technical information indicates that many older vehicles cannot reasonably maintain a level of emissions which would comply with the final cutpoints in the current rule. The proposed emergency rule will also add a new set of fast-pass cutpoints to ch. NR 485.

The Department is also processing a permanent rule (rule number AM-29-97) which includes the proposed emergency rule changes. The fiscal estimate for this permanent rule has been prepared and is dated October 7, 1997.

**FISCAL IMPACT** – Since the proposed emergency rule changes are part of the above-mentioned proposed permanent rule, the fiscal impacts of the proposed emergency rule have already been addressed in the fiscal estimate for the proposed permanent rule. The only fiscal impact identified in that fiscal estimate is changes in the repair costs for the vehicles failing the I/M program's emissions test. Repair costs for state and local governments would increase in comparison with current repair costs, but would decrease in comparison with (future) repair costs under the current rule after the final cutpoints take effect on December 1, 1997. The following table presents the estimated repair cost increases (relative to current repair costs) under the current rule and the proposed permanent rule. (This table was included in the fiscal estimate for the proposed permanent rule.) Since these fiscal impacts have already been addressed in the permanent rule's fiscal estimate, this fiscal estimate indicates that the proposed emergency rule has "No State Fiscal Effect" and "No local government costs".

		Dec-97 to Nov-98	Dec-98 to Nov-99	Dec-99 to Nov-00
All State Government	Current Rule	\$10,000 (8%)	\$9,000 (7%)	\$6,500 (5%)
	Proposed Permanent Rule	\$4,000 (3%)	\$5,000 (4%)	\$5,000 (4%)
DNR	Current Rule	\$2,000 (8%)	\$2,000 (7%)	\$1,500 (5%)
	Proposed Permanent Rule	\$800 (3%)	\$1,000 (4%)	\$1,000 (4%)
All Local Governments	Current Rule	\$40,000 (8%)	\$35,000 (7%)	\$25,000 (5%)
	Proposed Permanent Rule	\$15,000 (3%)	\$20,000 (4%)	\$20,000 (4%)

#### Notes:

1. The current annual repair costs are estimated to be \$6,500 for all state government (\$1,500 for DNR) and \$25,000 for all local governments. The current failure rate for government vehicles is approximately 5%.

2. The cost estimates assume an average repair cost of \$180 for a vehicle failing the emissions test and assume that the number of vehicles tested per year is 700 for all state government (150 for DNR) and 2,800 for all local governments. No fuel efficiency improvements from the repairs are assumed, so the cost estimate likely overestimate actual costs.

## Notice of Hearing

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

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

## Hearing Information

January 14, 1998  
Wednesday  
2:00 p.m.

Room 180  
1400 E. Washington Ave.  
MADISON, WI

*(This hearing was originally scheduled for December 10, 1997)*

## Written Comments

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

Office of Administrative Rules  
Dept. of Regulation & Licensing  
P.O. Box 8935  
Madison, Wisconsin 53708

Written comments must be received by **January 28, 1998** to be included in the record of rule-making proceedings.

## Analysis Prepared by the Dept. of Regulation & Licensing

*Statutes authorizing promulgation:* ss. 15.08 (5) (b), 227.11 (2) and 457.03

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

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

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

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

Sections SFC 14.01 (2) (intro.) and 14.02 (2) are being amended to specify the minimum number of credits candidates must have to fulfill the requirements for the professional counselor educational equivalency. The rules require that the candidate have at least 3 credit semester hours or 4 quarter hours academic credit in a supervised counseling practicum, a counseling theory course and 6 of the 8 professional counselor topic areas. The Professional Counselors Section believes that courses with less than the aforementioned hours do not contain the academic depth requirement necessary to grasp the concepts of professional counseling education. Current rule does not specify the minimum number of course hours.

## Text of Rule

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

**SECTION 2.** SFC 11.035 is created to read:

**SFC 11.035 Temporary certificate.** The section may issue a temporary certificate permitting the use of the title "professional counselor" to an individual who pays the fee under s. 440.05 (6), Stats., and who meets all the qualifications for the certificate except for passing the required examination. The temporary certificate shall be valid for a period of 9 months from the date of issue of the temporary certificate, or release of the examination scores from the

next available examination after the date of the application for the temporary certificate, whichever is earlier. The temporary certificate expires upon notification of failure of the examination or expiration of the 9 month period. The temporary certificate may not be renewed.

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

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

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

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

## Fiscal Estimate

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

## Initial Regulatory Flexibility Analysis

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

## Copies of Rule and Contact Person

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

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

## Notice of Hearing

### Tourism

Notice is hereby given that pursuant to s. 41.17 (4) (g), Stats., the Wisconsin Department of Tourism will hold a hearing at the time and place shown below to consider a proposed order to amend ss. Tour 1.02 (2m) and (4), 1.03 (1) and (3) (a), (d) and (e) and (4) and 1.05 (1) and to create ss. Tour 1.02 (6) (f) and 1.03 (3) (g) and (3r), relating to the joint effort marketing program.

## Hearing Information

January 14, 1998  
Wednesday  
10:00 a.m.

Meeting Room 2B  
Dept. of Tourism  
201 W. Washington Ave.  
MADISON, WI

## Written Comments

Written comments on the proposed rules may be sent to the contact person by **Tuesday, January 26, 1998**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

## Analysis Prepared by the Dept. of Tourism

Section 41.17, Stats., creates a joint effort marketing program and s. 41.17 (4) (g), Stats., authorizes the Department to adopt rules required to administer the program. The 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 current rules authorize funding for projects that relate to tourism events and promotions. An example of an event might be a town festival. An example of a promotion might be the advertising of discounted entry and accommodation fees within an area for a limited period of time intended to attract tourists to a destination during shoulder or off season. The proposed rule creates a new category of funding described as destination marketing. Destination marketing, as contained in the proposed rule, is advertising that is not necessarily connected to an event or promotion, but:

- Which advertises a region of the state to a market that is identified in the statewide marketing plan as regional or extended regional;

- Which advertises a region of the state to potential meeting and convention or motorcoach visitors.

To be eligible for funding, the advertising must also be intended to attract tourists during a time that has not traditionally attracted substantial tourism to the area, and the proposal must be from an applicant representing a region made up of three or more municipalities. In addition to publicity, advertising and direct mail, funding under this category may also be used to pay for certain expenses related to attendance at sports shows. Funding under this category is limited to 25% of Joint Effort Marketing Funds each fiscal year, unless the limit is waived by the secretary, and to no more than \$20,000 per application nor more than \$5,000 per municipality represented in an application.

The proposed rule requires that the Department disperse funding across the entire fiscal year by limiting the percentage of Joint Effort Marketing funds that may be expended in the first, second and third quarters of a fiscal year and by limiting funding for the destination marketing category a September funding round of not more than \$60,000 and an April funding round of the remainder of funds available for destination marketing during the fiscal year. This limit may be waived by the Secretary if the waiver allows for the funding of a project that will have a substantial impact upon the state's tourism economy.

Finally, the proposed rule alters the makeup of the group that reviews applications and makes funding recommendations to the Department to a group selected by the Council on Tourism.

## Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.14, Stats., the proposed rule will have minimal impact on small businesses. The initial regulatory flexibility analysis as required by s. 227.17 (3) (f), Stats., is as follows:

1. *Type of small business affected by the rule:* None.
2. *The proposed reporting, bookkeeping and other procedures required for compliance with the rule:* None.
3. *The types of professional skills necessary for compliance with the rule:* None.

## Fiscal Estimate

The proposed rule has no fiscal effect.

## Contact Person

For additional information about or copies of the proposed rules contact:

Dennis Fay, General Counsel, (608) 266-6747  
Wis. Dept. of Tourism  
P. O. Box 7976  
Madison, WI 53707-7976

## Text of Rule

Pursuant to the authority vested in the Department of Tourism by s. 41.17 (4) (g), Stats., and interpreting s. 41.17, Stats., the Department hereby amends and creates rules as follows:

**SECTION 1.** Tour 1.02 (2m) and (4) are amended to read:

Tour 1.02 (2m) "Eligible advertising" means advertising that will appear outside of the local area where the project will occur ~~and that either will use a medium that has not been used outside of the local area to publicize the project or advertising that will appear in a market area where the project has not previously been publicized.~~

(4) ~~"Marketing joint effort marketing committee" means the group selected by the council under s. 41.12 (1), Stats., to recommend a statewide marketing strategy to review joint effort marketing applications.~~

**SECTION 2.** Tour 1.02 (6) (f) is created to read:

Tour 1.02 (6) (f) The project involves the placement of advertising in a geographic area identified in the statewide marketing strategy as regional or extended regional, or involves the attraction of meeting and convention or motorcoach business. For a project under this paragraph to receive funding it must also have the following features:

1. The advertising must be placed during a time that the applicant evidences has not traditionally received substantial numbers of tourists in the area.
2. The project proposed in the application must serve an area that includes not less than 3 municipalities.

**SECTION 3.** Tour 1.03 (1) and (3) (a), (d) and (e) are amended to read:

Tour 1.03 (1) Grant funds received by an eligible applicant may only be used for those project costs related to the development of publicity and the production and media placement of advertising and direct mail campaigns, except that for projects described under s. Tour 1.02 (6) (f), grant funds may also be used for booth space, standard booth equipment, photographs and material shipment expenses related to attendance at sports shows.

(3) (a) For projects described in s. Tour 1.02 (6) (a) to (d), no more than 7% of the joint effort marketing fiscal year budget. For a project described in s. Tour 1.02 (6) (f) no more than \$5,000 for each municipality served by the project and no more than a total of \$20,000.

(d) For projects described in s. Tour 1.02 (6) (a) to (d), and (f) no more than 50% of the eligible advertising expenses for the second year a project receives funds under this chapter.

(e) For a project described in s. Tour 1.02 (6) (a) or (f), no more than 25% of the eligible advertising expenses for the third year a project receives funds under this chapter.

**SECTION 4.** Tour 1.03 (3) (g) is created to read:

Tour 1.03 (3) (g) For projects described in s. Tour 1.02 (6) (f), the department may grant no more than 25% of the funding granted under this chapter during each fiscal year unless the secretary determines that there is insufficient demand for funds under the other grant categories contained in this chapter.

**SECTION 5.** Tour 1.03 (3r) is created to read:

Tour 1.03 (3r) During each fiscal year, the department may grant up to 35% of joint effort marketing funds available for projects described in s. Tour 1.02 (6) (a) to (e) by September 30, up to 70% by December 31 and up to 90% by March 31 except that the secretary may waive the limits contained in this subsection for a project likely to have a substantial impact upon the state's tourism economy. The department may grant up to \$60,000 of the joint effort marketing

funds available for projects described under s. Tour 1.02 (6) (f) in September and the remainder in April of each fiscal year.

**SECTION 6.** Tour 1.03 (4) is amended to read:

Tour 1.03 (4) A project described in s. Tour 1.02 (6) (a) or (f), may receive up to 3 years of funding, and the 3 years are not required to be consecutive. A project described in s. Tour 1.02 (6) (d), may receive up to 2 consecutive years of funding. A recipient of funding for a project described in s. Tour 1.02 (6) (d) may apply for another project under s. Tour 1.02 (6) (d) no earlier than the third fiscal year following the fiscal year during which funding was granted. Projects described in s. Tour (6) (b) and (c) are limited to one year of funding unless the department determines that a second year of funding is necessary because severe weather, some other natural event or act of God had a substantial negative impact upon the prior year operation of the event. For each year of funding requested, an application shall be submitted and a determination made as provided under this chapter.

**SECTION 7.** Tour 1.05 (1) is amended to read:

Tour 1.05 (1) ~~A group consisting of the The joint effort marketing committee members, department staff and a representative of the department's advertising agency shall review all applications and make funding recommendations to the department.~~

## Notice of Hearing

### *Department of Transportation*

Notice is hereby given that pursuant to s. 85.52, Stats., as created by 1997 Wis. Act 27, and interpreting s. 85.52(4), Stats., the Department of Transportation will hold a public hearing in **Room 901A of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 15th day of January, 1998, at 1:30 PM**, to consider the creation of ch. Trans 512, Wis. Adm. Code, relating to the Transportation Infrastructure Loan Program.

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

The public record on this proposed rule making will be held open until **January 20, 1998**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Dennis Leong, Chief, Bureau of Planning, Economic Planning and Development Section, Division of Transportation Investment Management, Room 901, P. O. Box 7913, Madison, WI 53707-7913.

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

### **Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: s. 85.52 as created by 1997 Wis. Act 27

STATUTES INTERPRETED: s. 85.52(4)

General Summary of Proposed Rule. 1997 Wis. Act 27 enacted legislation for the implementation of a Transportation Infrastructure Loan Program to parallel the State Infrastructure Banks (SIBs), a pilot program authorized by Congress as a means to provide innovative uses of federal transportation funds to assist and enable states to expand and expedite transportation projects. A SIB acts like a bank and serves as a financial umbrella under which a variety of innovative finance techniques can be implemented. Similar to a bank, a SIB needs equity capital to get started, and equity capital is provided by federal highway and transit funds and matched with state funds. Once capitalized, the SIB will offer a range of possible loans and credit options—i.e., low-interest loans, loan guarantees, subsidies, etc.—used to finance transportation infrastructure and capital improvements.

Fiscally constrained transportation budgets have forced DOT to explore all possible funds to help supplement current transportation

revenues. The SIB program was one funding mechanism available to explore and apply for additional revenues. SIBs provide one mechanism to help accelerate projects and provide improvements that will strengthen and enhance the local economy of Wisconsin communities. Wisconsin applied and was accepted into the SIB pilot program. Wisconsin was allocated \$1.5 million to initially capitalize its bank. The state will provide an additional \$375,000 as part of the SIB matching requirements.

This rule making will create ch. Trans 512 to provide the policies, procedures and screening criteria used to evaluate applicants for the Transportation Infrastructure Loan Program. The rule will specify who is eligible to participate in the program, and will set forth the types of transportation infrastructure and capital improvements allowable in the program.

### **Fiscal Effect**

The Department estimates that there will be a fiscal impact on the liabilities or revenues for a county, city, village, town, Amtrak (as defined in s. 85.061(1)), a railroad (as defined in s. 85.01(5), a private nonprofit organization that is an eligible applicant under s. 85.22(2)(am), or a transit commission created under s. 59.58(2) or 66.943. The Transportation Infrastructure Loan Program provides low interest loans to these governments and eligible participants for the construction of local transportation infrastructure or other capital improvement projects. Upon completion of the transportation improvement, participants are required to repay the loan in full to the Department including any accrued interest.

### **Initial Regulatory Flexibility Analysis**

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

### **Copies of Proposed Rule**

Copies of the proposed rule may be obtained upon request, without cost, by writing to Dennis Leong, Chief, Economic Planning and Development Section, Bureau of Planning, Division of Transportation Investment Management, P. O. Box 7913, or by calling (608) 266-9910. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

## Notice of Hearing

### *University of Wisconsin System*

Notice is hereby given that pursuant to ss. 36.11 (1) (c) and 227.16, Stats., the Board of Regents of the University of Wisconsin System will hold a public hearing at the time and place indicated below to consider revisions to s. UWS 18.06, Wis. Adm. Code, relating to conduct on university lands.

### **Hearing Information**

February 5, 1998  
Thursday  
12:30 p.m.

Room 1820 Van Hise Hall  
1220 Linden Drive  
MADISON, WI

### **Analysis Prepared by UW System**

Under s. 36.11 (1) (c), Stats., the Board of Regents is authorized to promulgate rules governing conduct on University lands. The proposed revisions to s. UWS 18.06, Wis. Adm. Code, amend and expand the existing rules of the Board of Regents in this area. The Board's rules are enforced through the citation process established under s. 778.25, Stats. The use of the citation process allows individuals committing offenses on University lands to be treated in a manner similar to municipal ordinance violators.

The last major revisions to the rules were completed in 1991. The currently proposed revisions would consolidate some existing provisions, amend others to create consistency with state criminal statutes and municipal ordinances that have been modified since 1991, and create new provisions to address current law enforcement problems.

#### *Summary of rules:*

The proposed modifications include the consolidation of certain fire safety provisions and the creation of new prohibitions on use of

fires in university facilities, negligent use of burning materials, and tampering with fire safety equipment. The general prohibition on camping has been clarified, and the dollar values that define the offenses of petty theft and the issue of worthless checks have been revised to reflect current statutory limits. New provisions have been proposed to prohibit the possession of drug paraphernalia, resisting or obstructing police officers, abuses of telephones, assaultive behavior, the operation of motor vehicles off roadways, misuse of parking permits, damage to computers and related equipment, abuse of computer communication equipment, deposit of human waste, curfew violations by minors, conduct at athletic events and theft of library materials.

The inclusion of these new provisions and related changes in the rules will allow University police to process violations of the Board's rules in a manner parallel to the process provided for violation of similar municipal ordinances. Enforcement will occur through the citation process under s. 778.25, Stats.

### **Fiscal Estimate**

The proposed rules have no fiscal effect. They have no effect on small businesses.

### **Copies of the Rules**

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

Secretary of the Board of Regents  
University of Wisconsin System  
1860 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

### **Contact People**

Patricia A. Brady, (608) 262-6497  
1744 Van Hise Hall  
1220 Linden Drive  
Madison, WI

Judith A. Temby, (608) 262-2324  
1860 Van Hise Hall  
1220 Linden Drive  
Madison, WI

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*NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF  
EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.*

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

**Administration** (CR 97-82):

Ch. Adm 1- Relating to parking on state-controlled property.

**Agriculture, Trade & Consumer Protection**

(CR 97-113):

Ch. ATCP 30 - Relating to atrazine use restrictions.

**Natural Resources** (CR 96-169):

S. NR 27.07 - Relating to notice of receipt of an application to incidentally take an endangered or threatened species.

**Natural Resources** (CR 97-120):

S. NR 102.10 (1m) - Relating to waters classified as outstanding resource waters.

**Natural Resources** (CR 97-121):

S. NR 24.09 (1) (a) and (2) (as affected by CR 96-189) - Relating to commercial clamming on the Wisconsin-Iowa boundary waters.

**Natural Resources** (CR 97-122):

S. NR 25.03 (2) (b) - Relating to relicensing Lake Michigan commercial fishers.

**Transportation** (CR 97-116):

S. Trans 261.155 - Relating to multiple trip mobile home permits.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

**Agriculture, Trade & Consumer Protection (CR 97-38):**

An order affecting ss. ATCP 70.03, 71.02, 74.08, 75.015 and 80.04, relating to food and dairy license fees.

Effective 02-01-98.

**Commerce (CR 97-96):**

An order affecting chs. Comm 2, 5 and 18, relating to the inspection of elevators and mechanical lifting devices.

Part effective 01-01-98.

Part effective 02-01-98.

**Public Defender (CR 97-124):**

An order affecting s. PD 3.038 (2), relating to the calculation of indigency.

Effective 02-01-98.

**Transportation (CR 97-62):**

An order affecting chs. Trans 129 and 503, relating to the waiver of the motorcycle skills test and to required attendance of motorcycle rider courses and motorcycle instruction permit issuance.

Effective 02-01-98.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the **December 31, 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.*

**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.

Part effective 01-01-98.

**Commerce (CR 97-26):**

An order repealing and recreating ch. Comm 113, relating to the annual allocation of volume cap for calendar year 1998.

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.

**Commerce (CR 97-96):**

An order affecting chs. Comm 2, 5 and 18, relating to inspection of elevators and mechanical lifting devices.

Part 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 97-16):**

An order affecting ch. NR 18, relating to falconry.

Effective 01-01-98.

**Natural Resources (CR 97-21):**

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

Effective 01-01-98.

**Natural Resources (CR 97-39):**

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

Effective 01-01-98.

**Natural Resources (CR 97-40):**

An order affecting ch. NR 45 and s. NR 51.91, relating to regulating public use of state parks, forest and other public lands and waters under the Department's jurisdiction.

Effective 01-01-98.

**Natural Resources (CR 97-41):**

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

Effective 01-01-98.

**Natural Resources (CR 97-58):**

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

Effective 01-01-98.

**Natural Resources (CR 97-88):**

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

Effective 01-01-98.

**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 97-103):**

An order affecting ch. Trans 300, relating to the transportation of schoolchildren.

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.

**Workforce Development (CR 96-151):**

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

Effective 01-01-98.

**Workforce Development (CR 97-23):**

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

Part effective 01-01-98.

**Workforce Development (CR 97-112):**

An order amending s. DWD 80.02, relating to reports from insured employers, self-insured employers and insurance carriers.

Effective 01-01-98.

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Department of Commerce (CR 96–172)

Chs. Comm 18, ILHR 51, 52, 66, 69 and 70 – Barrier-free Design.

Summary of Final Regulatory Flexibility Analysis:

1. The proposed rules will permit limited-use elevators and wheelchair platform lifts to be used as an acceptable method of vertical circulation in certain types of new buildings. Based on the occupancy of the building and if the building is 2 stories or less in height with a gross area greater than 20,000 square feet, these methods of vertical access could be used in lieu of an elevator.

2. Existing buildings that are being changed from a non-commercial use to a commercial use will be required to comply with the ch. ILHR 69 requirements only when the building change in use involves alteration or remodeling as defined in the ch. ILHR 69.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

### 2. Department of Commerce (CR 97–26)

Ch. Comm 113 – Annual Allocation of Volume Cap on Tax-Exempt Private Activity Bonds for 1998.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule is not expected to have any impact on small businesses except for businesses located within the state that desire to obtain the economic benefit of industrial revenue bond financing using the volume cap allocated by the Department of Commerce. The Small Business Ombudsman attended the public hearing and provided written testimony in support of the rule and indicated that the rule would not negatively impact small business. No comments were received from small business.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Housing and the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

### 3. Department of Commerce (CR 97–80)

Ch. Comm 27 – Piers for New Manufactured Homes.

Summary of Final Regulatory Flexibility Analysis:

Section 101.92 (1m), Stats., as created by 1995 Wis. Act 362, directs the Department to promulgate rules prescribing minimum installation standards for pier installation of new manufactured homes. The proposed rules of Clearinghouse Rule No. 97–80 are minimum requirements to meet the directive of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Housing and the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

### 4. Department of Commerce (CR 97–96)

Chs. Comm 2, 5 and 18 – Inspection of elevators and mechanical lifting devices.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will allow people in small or large business who are certified as an American Society of Mechanical Engineers (ASME) Qualified Elevator Inspector to qualify as a Department certified inspector. If these certified people perform elevator inspections under the direction of the Department, the procedures for filing of inspection reports and invoicing will be the same for everyone.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Small Business and Economic Development and the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

### 5. Natural Resources (CR 96–189)

Ch. NR 24 – Commercial Clamming on the Wisconsin-Minnesota and Wisconsin-Iowa Boundary Waters and Clamming on all Waters.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule package will directly affect the licensed commercial clammer. It may also indirectly affect the clam buyer and other businesses associated with commercial clamming. No additional compliance or reporting requirements will be imposed as a result of the rule changes. No new skills will be needed to comply with the proposed rule.

Summary of Comments:

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

**6. Natural Resources (CR 97-16)**

Ch. NR 18 – Falconry.

Summary of Final Regulatory Flexibility Analysis:

A small business analysis is not necessary as the proposed rule does not alter the actions of small businesses.

Summary of Comments:

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

**7. Natural Resources (CR 97-21)**

Ch. NR 538 – Solid waste management–benefit reuse of industrial byproducts.

Summary of Final Regulatory Flexibility Analysis:

The Department believes that the proposed rule will have a positive economic impact on some small businesses. Specifically, those generators of industrial byproducts as well as brokers and end–users which are considered small businesses will benefit from these rules. However, these rules may have a greater beneficial impact on the larger generators and end users because of economies of scale.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Environmental Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

**8. Natural Resources (CR 97-39)**

Ch. NR 37 – Timber cutting on lands adjacent to the Lower St. Croix State River.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not relate small businesses; therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

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

**9. Natural Resources (CR 97-40)**

Ch. NR 45 – Regulating public use of state parks, forests and other public lands and waters under the department’s jurisdiction.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules regulate individuals visiting state lands; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Tourism and Recreation Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

**10. Natural Resources (CR 97-41)**

Chs. NR 400, 406 and 407 – Air permit program.

Summary of Final Regulatory Flexibility Analysis:

For the most part, these rules codify federal requirements. The Department does not have the ability to adopt less stringent requirements than the federal requirements. The proposed rule will have an economic impact on small grain storage facilities and small grain processing facilities. Some painting, coating or graphic arts facilities affected by the rule may also be considered small businesses. The proposed rule creates both construction and operation permit exemptions for small businesses including grain storage and processing facilities. The proposed rule also revises construction permit rules to allow additional operations flexibility for rock crushing facilities. Small businesses will need to keep records to qualify for permits exemptions.

Summary of Comments by Legislative Review Committees:

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

**11. Natural Resources (CR 97-58)**

Ch. NR 10 – Harvest information program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules regulate individual hunters; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Tourism and Recreation Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

**12. Natural Resources (CR 97-88)**

Ch. NR 10 – 1997 migratory game bird season.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules regulate individual hunters; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Tourism and recreation Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

**13. Psychology Examining Board (CR 97-85)**

S. Psy 4.02 – Continuing education.

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.

**14. Revenue (CR 97-94)**

S. Tax 11.15 – Wisconsin sales and use tax as it applies to containers.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**15. Transportation (CR 97-103)**

Ch. Trans 300 – Transportation of school children.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**16. Transportation (CR 97-108)**

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

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**17. Workforce Development (CR 96-151)**

Ch. DWD 301 – Migrant Labor Code.

Summary of Final Regulatory Flexibility Analysis:

The Department received comments from employers of migrant workers that fee increases in the proposed rule were too large and that the revised penalty enforcement policy was too complex. The final draft rule responds to these comments with smaller fee increases and a simplified enforcement policy.

Summary of Comments:

No comments were received.

**18. Workforce Development (CR 97-23)**

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

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**19. Workforce Development (CR 97-112)**

S. DWD 80.02 – Reports.

Summary of Final Regulatory Flexibility Analysis:

Generally, the bill relaxes reporting requirements relating to worker's compensation claims for employers.

Summary of Comments:

No comments were received.

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## *EXECUTIVE ORDERS*

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

**Executive Order 322.** 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 Assistant Chief Gregory Quinn of the Village of Westfield Volunteer Fire Department.

**Executive Order 323.** Relating to a Proclamation that the Flag of United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for those Brave Americans Who Lost Their Lives as a Result of the Attack on Pearl Harbor.

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## *PUBLIC NOTICE*

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### **Public Notice**

*Dept. of Financial Institutions  
Division of Savings Institutions*

### **Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts**

Under s. 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow.

Section 13.052 (5) (am) 2, Stats., directs the Department of Financial Institutions, Division of Savings Institutions to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Department of Financial Institutions, Division of Savings Institutions, has calculated the interest rate required to be paid on escrow accounts under s. 138.052 (5), Stats, to be 2.83% per year. This interest rate shall remain in effect until the first day of the first month following publication of a new interest rate in the Wisconsin Administrative Register.

The interest rate of 2.83% per year applies to escrow accounts required for residential mortgage loans originated on or after January 1, 1997, and to escrow accounts required for residential mortgage loans originated after January 31, 1983, and before January 1, 1997, which do not specify an interest rate in the loan agreement.

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