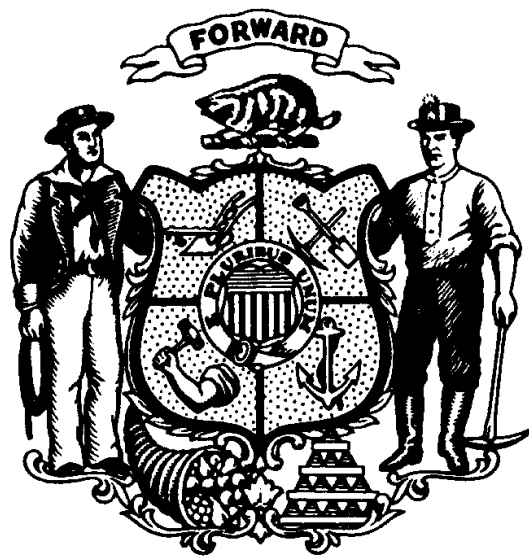


WISCONSIN ADMINISTRATIVE REGISTER

No. 506



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Suite 800, 131 West Wilson Street, Madison, Wisconsin 53703-3233

(608) 266-2011 • Fax (608) 264-6978

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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Department of 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 7, 1998

Hearing Date: February 26, 1998

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

(Building & Heating, etc., Chs. Comm/ILHR 50-64)

(Uniform Multifamily Dwellings, Ch. ILHR 66)

Rules adopted revising **chs. Comm 51, ILHR 57 and 66**, relating to commercial buildings and multifamily dwellings.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.02 (15), 101.12, and 101.971 to 101.978, Stats., the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public buildings, including multifamily dwellings. Present requirements include methods for stopping fire in one area of a building from spreading to another area through service openings in walls, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fail under fire testing conditions.

The proposed rule impacts all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire-stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area-separation protection consisting of either a fire-protective membrane or fire-resistive rated construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revisions, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: January 28, 1998

Effective Date: January 28, 1998

Expiration Date: June 27, 1998

Hearing Date: March 11, 1998

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Department of Commerce

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

1. 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: March 31, 1998
Hearing Date: January 13, 1998

2. Rule adopted creating **ch. Comm 110**, relating to the Brownfields Grant Program.

Exemption From Finding of Emergency

On October 14, 1997, 1997 Wis. Act 27 took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the biennium that can be distributed by the Department of Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires the department to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under ch. 227, Stats., and exempts the department from making a finding of

emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration.

Publication Date: December 31, 1997
Effective Date: December 31, 1997
Expiration Date: May 30, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Department of Corrections

1. 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

2. 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 14, 1998
Hearing Date: March 16, 1998
[See Notice this Register]

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 17, 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 employees 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 employees in terms of retirement, insurance and leave provisions. This policy is followed in order to facilitate movement of employees 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 employee equity in benefits. Two of the benefits available to most state employees are sick leave and catastrophic leave. Catastrophic leave programs allow the donation of certain types of unused leave to employees 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 employees is governed by the applicable collective bargaining agreement. Likewise, provisions regarding catastrophic leave are contained in the agreements. For nonrepresented state employees, 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, employees earn sick leave at the identical rate of 4 hours per pay period for full-time employees. Under current agreements, catastrophic leave may be exchanged between employees 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 employees allows exchange of leave only between nonrepresented employees 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 employees. These contracts will increase the sick leave accrual rate for the covered represented employees and expand the exchange of catastrophic leave for represented employees. The sick leave accrual rate will increase from 4 to 5 hours per pay period for full-time employees, starting on the effective date of the contracts. (Sick leave balances for individual employees 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 employees. Leave may also be exchanged across agency lines with the approval of each agency.

Without a change in the administrative rules, nonrepresented employees will not receive the increased sick leave, nor will they have the same broadened opportunities to donate and receive catastrophic leave as represented employees.

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

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

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

Publication Date: October 11, 1997
Effective Date: October 12, 1997
Expiration Date: March 11, 1998
Hearing Date: December 15, 1997

EMERGENCY RULES NOW IN EFFECT (4)

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: May 31, 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: May 31, 1998

- Rules were adopted amending s. **Ins 18.07 (intro.)**, **(5) (a)** and **(5) (br)** and creating s. **Ins 18.07 (5) (bm)**, relating to the creation of a \$2500 deductible alternative to the health insurance risk-sharing plan 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

Statutory authority: ss. 227.24, 601.41 (3), 619.11, 619.14 (5)(a) and (e), 619.17 (2) and 619.146

Statutes interpreted: s. 619.146

January 1, 1998 health insurance risk sharing plan with \$2500 deductible.

This change is mandated by 1997 Wis. Act 27 which created s. 619.146, Stats. This section requires that an alternative major medical expense coverage plan be offered with a \$2500 deductible as described in section 2744 (a) (1) (C) of P.L. 104-191. Under s. 619.146 (2) (a) premium reductions do not apply to this alternative plan. Section 619.146 (2) (b) prescribes how the rates for the alternative plan are to be determined. Since the alternative plan is required by law to be offered by January 1, 1998 this emergency rule sets out the rates for that plan.

Publication Date: December 31, 1997
Effective Date: January 1, 1998
Expiration Date: May 31, 1998

EMERGENCY RULES NOW IN EFFECT (4)

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

- A rule was adopted revising s. **NR 45.10 (3)** and **(4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

- Creates a process for accepting telephone reservations for department camp sites.
- Establishes time frame for making reservations.

Publication Date: December 15, 1997
Effective Date: April 1, 1998
Expiration Date: April 1, 1999

- Rules adopted creating **ch. NR 47, subch. VIII**, relating to the forest fire protection grant program.

Exemption From Finding of Emergency

Under Section 9137 (10x) of 1997 Wis. Act 27, the Department is not required to make a finding of emergency for these rules.

Publication Date: February 16, 1998
Effective Date: February 16, 1998
Expiration Date: July 15, 1998
Hearing Date: March 13, 1998
 [See Notice this Register]

- Rules adopted creating **ch. NR 47, subch. VII**, relating to the private forest landowner grant program.

Exemption From Finding of Emergency

Under Section 9137 (10n) of 1997 Wis. Act 27, the Department is not required to make a finding of emergency for these rules.

Publication Date: February 20, 1998
Effective Date: February 20, 1998
Expiration Date: July 19, 1998
Hearing Date: March 13, 1998
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection--Air Pollution Control, Chs. NR 400--)

Rules adopted revising s. **NR 485.04**, relating to emission limitations for motor vehicles.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and that the rule is necessary for the immediate preservation

of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Many 1980 to 1986 model year vehicles cannot reasonably maintain a level of emissions that would comply with the emission limitations scheduled to go into effect on December 1, 1997, under the current rule. In addition, the number of 1990 and older model year vehicles that would need to be repaired in order to comply with these limitations may exceed the number of vehicles the repair industry could effectively repair. Finally, after December 1, 1997, no fast-pass emission limitations will apply to some 1994 and newer model year vehicles. (Fast-pass limitations enable very clean vehicles to pass the I/M program's emission test in less time than the typical test.) Preservation of the public welfare necessitates the adoption of an emergency rule since: (1) the repairs that would need to be done on some 1990 and older model year vehicles attempting to comply with the emission limitations scheduled to go into effect on December 1, 1997, are likely to be costly and ineffective in keeping emissions low, and (2) the absence of fast-pass emission limitations for some newer vehicles would unnecessarily increase the time motorists would need to wait in line at the I/M test stations prior to having their vehicles tested.

Publication Date: December 29, 1997

Effective Date: January 1, 1998

Expiration Date: May 31, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted creating **ch. PI 36**, relating to full-time open enrollment.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 27 created an inter-district public school open enrollment program in Wisconsin, beginning in the 1998-99 school year. Pupils in kindergarten to grade 12 may attend public school in a district other than the one in which they reside, if space is available (and subject to certain other limitations). A child may attend a prekindergarten or early childhood program in a nonresident school district if the resident district also offers the program and if the child is eligible for the program in the resident district.

The department is responsible for administering the program, including creating uniform application forms, administering school finance provisions, administering a transportation reimbursement program for low-income parents and collecting data and making reports to the legislature, deciding appeals and conducting outreach to inform parents about the program. Administrative rules are necessary to ensure uniform procedures throughout the state.

Parents must apply to the nonresident school district no earlier than February 2 and no later than February 20, 1998, for attendance in the 1998-99 school year. Therefore, the department is promulgating these emergency rules in order to notify pupils, parents, and school districts of the necessary timelines and requirements to participate in the program in time for the upcoming school year.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: January 17, 1998

Effective Date: January 17, 1998

Expiration Date: June 16, 1998

2. Rules adopted revising **ch. PI 40**, relating to the youth options program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Effective the 1998-99 school year, 1997 Wis. Act 27 renames the postsecondary enrollment options (PSEO) program to be the youth options program. For institutions of higher education (IHEs), the youth options program will operate essentially the same as it did under the PSEO program. However, the program makes several changes to the program as it relates to technical colleges and pupils attending technical colleges as described in the analysis.

The emergency rules make several modifications to ch. PI 40 in order to clarify certain provisions and to comply with statutory language changes made as a result of the Act.

By January 30, school districts must notify pupils of program changes effective in the 1998-99 school year; by March 1, pupils must notify school districts of their intent to participate in the program. Therefore, the department is promulgating these emergency rules in order to notify pupils, school districts, IHEs and technical colleges of the necessary timelines and requirements to participate in the revised youth options program in time for the upcoming school year.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: January 16, 1998

Effective Date: January 16, 1998

Expiration Date: June 15, 1998

EMERGENCY RULES NOW IN EFFECT

Transportation

- Rules adopted creating **ch. Trans 512**, relating to the Transportation Infrastructure Loan Program.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is that federally authorized funds for the Transportation Infrastructure Loan Program will be withdrawn if participating states are unable to meet the requirement to have at least one eligible project authorized for construction on or before April 1, 1998. There is insufficient time to have a permanent rule in place to meet the federal deadline. The state has been authorized \$1.5 million in additional federal funds to capitalize the Transportation Infrastructure Loan Program. Without an emergency rule to implement the program, the state is in jeopardy of losing \$1.5 million in federal assistance.

Publication Date: January 5, 1998

Effective Date: January 5, 1998

Expiration Date: June 4, 1998

Hearing Date: January 15, 1998

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 16, 1998
Hearing Date: January 9, 1998

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Economic Support, Chs. DWD 11 to 59)

Rules were adopted revising **s. DWD 12.25**, relating to amendments to the learnfare program.

Exemption From Finding of Emergency

The Department of Workforce Development promulgates a rule under the "emergency rule" procedure of s. 227.24, Stats., as authorized by section 9126 (5qh) of 1997 Wis. Act 27, which provides:

"Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate rules required under section 49.26 of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 49.26 of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the department of workforce development need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection."

Analysis

Statutory authority for rule: s. 49.26 (1) (gm) 2 and (h) 1
 Statute interpreted by the rule: s. 49.26

This rule implements changes to the learnfare program made by 1997 Wis. Act 27 by amending the existing rules on the learnfare program, s. DWD 12.25, Wis. Adm. Code, as follows:

Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child's parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W-2 agency, the W-2 agency is required to impose a financial penalty unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under learnfare. In addition, good cause for failing to participate in learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court-ordered appearance or temporary incarceration.
- Observance of a religious holiday.
- Death of a relative.
- Family emergency.
- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent's child.
- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child's parent, as determined by the W-2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W-2 participant who is in a community service job (CSJ) or transitional placement and will be imposed as a liability against a W-2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W-2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until exemption or good cause reason is verified.

Publication Date: January 2, 1998
Effective Date: January 2, 1998
Expiration Date: June 1, 1998

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Wage Rates, chs. DWD 290-294)

Rule adopted revising **ch. DWD 290**, relating to prevailing wage rates for state or local public works projects.

Finding of Emergency

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

As explained in more detail in the analysis below, the Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between April 1996 and November 1997 requires that the threshold limits for prevailing wage rate determinations be raised from \$30,000 to \$32,000 for single-trade projects and from \$150,000 to \$160,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/98, a single-trade project costing more than \$30,000 but less than \$32,000, or a multi-trade project costing more than \$150,000 but less than \$160,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added

cost and difficulty of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this potential added cost on local governments and state agencies.

Publication Date: February 13, 1998

Effective Date: February 13, 1998

Expiration Date: July 12, 1998

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade & Consumer Protection

Subject:

Ch. ATCP 34 – Relating to the Chemical and Container Collection Program.

Description of policy issues:

Preliminary objectives:

Update and clarify current ch. ATCP 34 rules to reflect program changes related to funding of county agrichemical waste programs. Revise or eliminate obsolete provisions.

Preliminary policy analysis:

Since 1990 the Department has provided funding for more than 120 county “clean sweep” events resulting in the collection of almost 1,000,000 pounds of waste pesticides and other farm chemicals from more than 6,500 farms. The Department can provide up to \$560,000 per year for grants to counties. Most of these collections have been single day events. In recent years, several counties have chosen to work together to set up regional multi-day collection sites. Beginning in 1998, grants are being provided to three counties and one regional planning commission to operate year long collections at permanent hazardous waste sites. Counties can accept waste agrichemicals from commercial firms, such as dealers and golf courses who cost share disposal charges. These changes allow greater access to proper disposal of waste pesticides reducing the potential for harm to people, property or the environment.

The Department proposes to modify and clarify the existing rule to reflect and facilitate these program changes as follows:

- Clarify contracting arrangements, reporting requirements, reimbursement processes, selection of hazardous waste handling vendors and operating standards for single day events and “permanent” collection sites, including those conducted by regional planning commissions.
- Clarify procedures for grant application and approval.
- Clarify rule to address cost share reimbursement for wastes generated by commercial agricultural businesses.
- Develop provisions to address the voluntary exchange of useable agrichemicals brought in to collection sites
- Repeal obsolete rule provisions.

Policy alternatives:

No Change. If the Department does not change ch. ATCP 34, the current rules will remain in effect in their current form. The current rules will become more outdated and may hamper more efficient, cost effective disposal of agrichemical wastes. This could result in decreased participation and collection of these wastes, increasing the potential for subsequent harm to people, property or the environment.

Statutory authority:

The Department proposes to modify ch. ATCP 34 under authority of ss. 93.07 (1) and 93.55, Stats.

Staff time required:

The Department estimates that it will use approximately 0.2 FTE staff time to modify this rule. This includes research, drafting, preparing related documents, coordinating advisory committee discussions, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

Agriculture, Trade & Consumer Protection

Subject:

Ch. ATCP 60 – Relating to updating dairy farm rules to conform to current national standards and to address emerging milk safety issues.

Description of policy issues:

Preliminary objectives:

Update dairy farm rules to conform to current national standards and address emerging milk safety issues.

Preliminary policy analysis:

Under s. 97.24, Stats., Wisconsin’s grade A dairy farm rules must conform to standards contained in the interstate Pasteurized Milk Ordinance (“PMO”), a model ordinance published by the U. S. Public Health Service, Food and Drug Administration. Failure to conform to the PMO may jeopardize Wisconsin’s ability to ship milk in interstate commerce.

Wisconsin’s rules related to dairy farms were last updated in 1994. The PMO has been amended twice since 1994.

Approximately 80% of Wisconsin’s dairy farms are classified as grade A. Wisconsin’s rules for grade B farms are similar, though not identical, to its rules for grade A farms. The Department proposes to update both its grade A and grade B rules at this time. Key issues include:

- * Update Wisconsin’s rules related to dairy farms to meet PMO requirements and reflect the best current science.
- * Codify current frequencies for Performance-based Farm Inspection.
- * Update requirements for controlling drug residue in milk.
- * Update the dairy farm rules to include changes in technology that affect the way milk is produced and stored on dairy farms.
- * Identify and evaluate emerging food safety concerns related to the production of raw milk.

Policy alternatives:

Maintain current rules as written. This alternative may affect the free movement of milk in interstate commerce. Other states may reject shipments of milk from dairy farms and plants which do not meet the current national requirements for production of milk.

Statutory authority:

The Department proposes to develop rules regulating dairy farms under the authority of ss. 93.07 (1), 97.09 (4), 97.22 (8) and 97.24 (3), Stats. The rule would interpret ss. 97.22 (8) and 97.24 (3), Stats.

Staff time required:

The Department estimates that it will use approximately 0.25 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The Department will assign existing staff to develop this rule.

Agriculture, Trade & Consumer Protection

Subject:

Ch. ATCP 80 – Relating to updating rules related to dairy plants to conform to current national standards and to address emerging food safety issues.

Description of policy issues:

Preliminary objectives:

Update rules related to dairy plants to conform to current national standards and address emerging food safety issues.

Preliminary policy analysis:

Under s. 97.24, Stats., grade A dairy plant rules must conform to standards contained in the interstate Pasteurized Milk Ordinance (“PMO”), a model ordinance published by the U. S. Public Health Service, Food and Drug Administration. Failure to conform to the PMO may jeopardize Wisconsin’s ability to ship milk in interstate commerce.

Wisconsin’s rules related to dairy plants were last updated in 1994. The PMO has been amended twice since 1994. Approximately 90% of the milk produced and processed in Wisconsin is classified as grade A.

Dairy plants producing manufactured dairy products process 85% of the milk in Wisconsin. For rules in Wisconsin to be effective and fair, they need to meet current national standards. The United States Department of Agriculture sets standards for dairy plants participating in its dairy product grading program. These standards have been updated since the last revision to Wisconsin’s dairy plant rules. The Department proposes to update its dairy plant rules at this time. Key issues include:

- Update Wisconsin’s rules related to dairy plants to meet PMO requirements and reflect the best current science.
- Insure that Wisconsin’s dairy plant rules conform with requirements of the United States Department of Agriculture.
- Update the dairy plant rules to include changes in technology that affect the way milk is processed and handled by dairy plants.
- Consider the public health concerns related to transportation of pasteurized dairy products such as ice cream mix.
- Identify and evaluate emerging food safety concerns related to dairy products.

Policy alternatives:

Maintain current rules as written. This alternative may affect the free movement of milk in interstate commerce. Other states may reject shipments of milk from dairy plants which do not meet the current national requirements for production of milk.

Statutory authority:

The Department proposes to develop rules regulating dairy farms under the authority of ss. 93.07 (1), 97.09 (4), 97.20 (4) and 97.24 (3), Stats. The rule would interpret ss. 97.20 (4) and 97.24 (3), Stats.

Staff time required:

The Department estimates that it will use approximately 0.25 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The Department will assign existing staff to develop this rule.

Controlled Substances Board**Subject:**

CSB Code – Relating to classification of the prescription drug, butorphanol, as a schedule IV controlled substance under state law.

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

Effective October 31, 1997, the federal Drug Enforcement Administration (DEA) placed the substance butorphanol, including its salts and optical isomers, into schedule IV of the federal Controlled Substances Act (CSA). The objective of the rule is to bring the treatment of butorphanol into conformity with that at the federal level.

Policy analysis:

Butorphanol is classified as an opioid agonist–antagonist analgesic that is marketed as a prescription drug under the trade name of Stadol[®] for the relief of moderate to severe pain in humans. It is also marketed as a veterinary product under other trade names for use in horses and dogs. Based on scientific and medical evaluations, the DEA determined that butorphanol, whether administered orally, intravenously, or intranasally, had an abuse potential consistent with federal control within schedule IV of the CSA. Reports of abuse and diversion previously had led Canada and seven U.S. states to schedule butorphanol as a controlled substance. The classification of butorphanol as a schedule IV controlled substance under the Uniform Controlled Substances Act, Chapter 961, Stats., will bring this state’s treatment of butorphanol into conformity with that accorded at the federal level.

Statutory authority:

Sections 961.11 and 961.19, 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:

4 hours

Health & Family Services**Subject:**

Ch. HFS 12 – Relating to:

Background information checks on prospective and current operators and employes of facilities, agencies and programs regulated under Department rules that take care of or provide care and treatment for vulnerable persons, and investigation by the Department of reports of neglect or abuse of clients of those facilities, agencies and programs, or misappropriation of their property, and maintenance of a registry of persons for whom such reports have been substantiated.

Description of policy issues:*Description of objectives:*

To uniformly implement ss. 48.685 and 50.065, Stats., as created by Wis. Act 27, across 27 regulatory programs of the Department. Those new statutes:

(1) Prohibit the Department from licensing, certifying or approving a person to operate or continue operating, or to receive funding for, a facility, agency or program that provides services to clients (the statutory term for the children or other vulnerable persons served by a facility, agency or program) if the Department determines through background checks that the applicant or operator has been convicted of a serious crime, has a pending charge against him or her for a serious crime, has abused or neglected an adult under care or misappropriated that person’s property, has abused or neglected a child, or either does not have a current required credential or it is so restricted as to impede the person from providing adequate care; and

(2) Prohibit a Department–licensed, certified or approved facility, agency or program that provides services to vulnerable persons from hiring or employing or contracting with a person to provide those services or, in the case of a facility, from permitting a person not receiving services to reside in the facility, if the entity (the statutory term for a covered facility, agency or program) determines through background checks that the prospective or current employee, contractor or resident has been convicted of a serious crime or there is in that person’s background any other reason for concern indicated under (1) for the safety and well–being of vulnerable persons receiving services from the facility, agency or program.

Also, to implement s. 146.40 (4g) and (4r), Stats., as amended by Act 27, which require the Department to:

1) Review and investigate any report received that a person employed by or under contract to an adult–serving entity (children–serving entities are already covered) has neglected or abused a client or misappropriated a client’s property;

2) Make documented findings of a substantiated allegation or other report;

3) Notify the person named in the report of the Department's intention, pending appeal, if any, by the person, to enter his or her name and the findings in a registry; and

4) Absent an appeal or if the hearing officer finds that an alleged action was performed, enter the person's name and findings in a registry. The significance of being entered in the registry is that under s. 50.065, Stats., as created by Act 27, the person is henceforth barred from operating or working in or for an entity, or residing in a covered facility.

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

How the new uniform system for performing background checks will work will be set out in the Department's implementing rules. Sections 48.685 and 50.065, Stats., as created by Act 27, specifically direct the Department to do the following:

(a) Establish by rule a definition of "serious crime." These are to be crimes or acts that are substantially related to the care of a client, including but not limited to crimes or acts involving abuse or neglect of a client. Specific crimes would be in addition to the five crimes specified in ss. 48.685 (5) and 50.065 (5), Stats., as created by Act 27. Commission of any of these crimes would bar the individual from licensure or service provision or from residing in a facility. The Department is to distinguish serious crimes for which a person is not permitted to demonstrate that he or she has been rehabilitated, including the statute-specified crimes, from others for which a person will be permitted to demonstrate that he or she has been rehabilitated.

(b) Establish by rule a list of crimes or acts not included in the definition of "serious crime" but that are substantially related to the care of clients and the commission of which warrants a less stringent response than to bar the individual from licensure or service provision or from residing in a facility. The less stringent measures to be taken in response to these crimes or acts are to be described.

(c) Establish by rule procedures for an individual who is barred from licensure or service provision or from residing in a facility to demonstrate to the Department by clear and convincing evidence that he or she has been rehabilitated and so the employment prohibition may be waived.

(d) Provide a background information form to be completed by any person who applies for issuance or continuation of a license to operate an entity, and a background information form that an entity must every four years require that each person having access to clients and working or to be working in or for the entity or residing or to be residing in the entity, though not a client, must complete.

The Department currently has 27 chapters of administrative rules in effect or that will soon be in effect for regulation of facilities, agencies and programs covered by the uniform background check legislation. The rule chapters and entities covered are the following:

- HFS 34 Mental health emergency service programs
- HFS 38 Treatment foster homes for children
- HFS 40 Mental health day treatment service programs for children
- HSS 45 Family day care centers
- HFS 46 Group day care centers
- HSS 52 Child care institutions
- HSS 54 Child-placing agencies
- HFS 55 Day camps
- HSS 56 Foster homes for children
- HSS 57 Group homes for children
- HSS 59 Shelter care facilities for children
- HFS 61 Community mental disabilities service programs, including AODA programs

HFS 63 Community support programs for chronically mentally ill persons

HSS 82 Certified adult family homes

HFS 83 Community-based residential facilities for adults

HSS 88 Licensed adult family homes

HFS 89 Assisted living facilities (residential care apartment complexes)

HSS 110 Ambulance service providers and emergency medical technicians—basic

HFS 111 Emergency medical technicians—intermediate

HFS 112 Emergency medical technicians—paramedic

HSS 113 EMS first responders certified to perform defibrillation

HFS 124 Hospitals

HFS 127 Rural medical centers (proposed)

HSS 131 Hospices

HFS 132 Nursing homes

HSS 133 Home health agencies

HFS 134 Facilities for the developmentally disabled

Many of these rule chapters include requirements for criminal background checks on applicants for a license, certification or approval and on prospective and current service providers. But not all chapters do, and there is not consistency among those that do on the scope, detail or expression of the requirements. By contrast, ss. 48.685 and 50.065, Stats., as created by Act 27, require thorough background checks for prospective and current operators and service providers of facilities, agencies and programs covered by the legislation and non-client residents of facilities covered by the legislation who have contact with clients.

To ensure compliance with the new uniform requirements for background checks, the Department will draft and adopt a separate chapter of rules, ch. HFS 12, for affected facilities, agencies and programs to follow. Through the same rulemaking order, the Department will repeal or amend, as necessary, provisions in the current rules that will be replaced or otherwise affected by the creation of ch. HFS 12, and will add to each of those 27 chapters a directive that the facilities, agencies or programs comply with ch. HFS 12, in much the same way that a directive is now included in many of those rule chapters that the entities comply with ch. HFS 94 on patient rights and grievance procedures.

Chapter HFS 12 will also include a separate subchapter for the new requirements that a covered facility, agency or program report to the Department all allegations that come to its attention that a staff member or contracted employee abused or neglected a client or misappropriated the property of a client, and that the Department review and investigate each of these allegations and all nonmandated reports of employee abuse, neglect or misappropriation of property received from other interested persons and maintain a registry of persons for whom the allegations were substantiated. Since the new statutory provisions build on the current system under s. 146.40 (4g) and (4r), Stats., and s. HSS 129.11 for handling complaints and allegations of the same forms of misconduct of nurse aides working in hospitals or nursing homes or for hospice programs or home health agencies, the separate subchapter of ch. HFS 12 will be modelled on s. HSS 129.11.

Statutory authority:

Sections 48.685 and 50.065, Stats., as created by 1997 Wis. Act 27, s. 146.40 (4g) and (4r), Stats., as amended by 1997 Wis. Act 27, and s. 227.11 (2) (a), Stats.

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

Estimated 300 hours of staff time from the Department's Bureaus of Regulation and Licensing, Quality Assurance and Public Health and Office of Legal Counsel to develop the rulemaking order.

In addition, client advocates and industry representatives will participate in the review of drafts of the rulemaking order.

Health & Family Services

Subject:

SS. HSS 149.02 (6) and 149.03 (7) (a) – Relating to:

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): standard dates for expiration of vendor authorization and for start of reauthorization.

Description of policy issues:

Description of objective(s):

To change the standard dates on which WIC vendor authorizations expire and must be reauthorized every 2 years so that reauthorization does not take place at the busiest time of year for vendors and local WIC projects.

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

The Department's rules for authorizing and monitoring grocery stores and pharmacies participating as vendors in the WIC program currently provide for expiration of all vendor authorizations on December 31 of even-numbered years, and for the new contract period to begin the next day. The reauthorization process involves completion of lengthy application materials, inclusion of new food lists and retraining of vendors. For vendors and the local WIC projects, going through the reauthorization process at what is for them a very busy time of year is a considerable inconvenience. Therefore the Department has decided to change the standard expiration date for vendor authorizations to October 31 of even-numbered years, with the new contract period to begin November 1 in those years.

Statutory authority:

Section 46.016, Stats., s. 253.06, Stats., as affected by 1997 Wis. Act 27, and s. 227.11 (2) (a), Stats.

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

Estimated hours of staff time - 15 hours.

Natural Resources

Subject:

Ch. NR 10 – Relating to the establishment of the 1998 migratory game bird hunting seasons.

Description of policy issues:

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

The rule changes the basic migratory game bird hunting season rules to comply with changes required by the U.S. Fish and Wildlife Service and suggested by the public during the hearing process.

This action does not represent a change from past policy.

Statutory authority for the rule:

S. 29.174, Stats.

Anticipated time commitment:

The anticipated time commitment is 68 hours. Three public hearings are proposed to be held in August, 1998 at Rhinelander, LaCrosse and the Milwaukee area.

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), 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 NRB (Natural Resources Board) 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 for the rule:

SS. 29.085, 29.33 (1), 29.33 (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 are proposed to be held in April, 1998 at Green Bay and Manitowoc.

Public Instruction

Subject:

S. PI 2.05 (2) (a) – Relating to the criteria used in determining whether a school district is small, medium or large, in order to result in a more equitable representation of the Wisconsin student population on the School District Boundary Appeal Board (SDBAB).

Description of policy issues:

Rationale for proposed rule development:

Chapter 117, Stats., provides authority to local school boards and electors for all decisions regarding school district reorganization, defined as "the consolidation of 2 or more school districts, the dissolution of a school district, the detachment of territory from one school district and its attachment to an adjoining school district or the creation of a school district" in s. 117.03 (5), Stats. Appeals of local decisions may be made by property owners, electors, or school boards to the school district boundary appeal board (SDBAB), a state board that hears and makes binding decisions in land transfer disputes.

SDBAB members are appointed by the state superintendent and are to equally represent small, medium, and large-sized districts. This rule change will affect the criteria used in determining whether a school district is small, medium or large, and will result in a more equitable Board representation of the Wisconsin student population.

Describe the objective(s) of the proposed rule:

Twelve (12) school board members, one from each CESA, are appointed by the state superintendent to serve on the SDBAB – four (4) from each of three (3) sizes of districts, small, medium, and large. Currently, size is determined by a district's rank when the total number of school districts is divided into thirds. Twenty of the State's largest districts comprise 37.4 percent of Wisconsin's 1996-97 enrollment, showing that the statistical distribution is substantially skewed toward larger districts. To ensure equitable Board

representation of the educational needs of children residing in urban districts, this proposed rule change would determine a district's size by its rank when the total Wisconsin enrollment is divided into thirds, rather than when the total number of school districts is divided into thirds.

Describe policy alternatives:

Maintain current rule.

Statutory authority:

S. 227.11 (2) (a), Stats.

Estimate of 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 Instruction

Subject:

S. PI 3.03 – Relating to the creation of a new category of licenses for educational professionals, the urban teacher license.

Description of policy issues:

Rationale for proposed rule development:

Milwaukee Public Schools (MPS) has a critical shortage of qualified applicants for teaching positions. The Milwaukee Teacher Education Center (MTEC) has established a long-range plan to recruit, prepare and monitor candidates for teaching in Milwaukee. Although this license will not be required to teach in MPS, creating this license is the first step in a cooperative program between the state and Milwaukee to enhance and improve the quality of teachers in the city.

Describe the objective of the proposed rule:

This rule creates a new category of licenses for educational professionals, the urban teacher license. The Milwaukee Teacher Education Center (MTEC) received funding through the higher education aids board in the biennial budget to support the training of Milwaukee teachers. The new license would be awarded based on program completion. In addition to qualifying for the urban teacher license, any other licenses held by the teacher will be renewed upon successful completion of the MTEC program.

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

The design of the urban teacher license is a new policy that focuses approval of the license on the successful completion of identified competencies rather than on course or credit completion.

Describe policy alternatives:

An alternative would be to expand on an existing license category, such as alternative program teacher, but this would not accomplish the desired result.

Statutory authority:

SS. 115.28 (7) and 227.11 (2) (a), Stats.

Estimate of 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 Instruction

Subject:

Ch. PI 11 – Relating to modifying ch. PI 11 to conform with the Individuals with Disabilities Education Act amendments of 1997 (IDEA 1997) and subch. V of ch. 115, Stats., as amended pending the enactment of 1997 Senate Bill 384.

Description of policy issues:

Rationale for proposed rule development:

The purpose of this rule-making activity is to modify chapter PI 11, Wis. Adm. Code, to conform with the Individuals with Disabilities Education Act amendments of 1997 (IDEA 1997) and subchapter V, of Chapter 115, Stats., as amended pending the enactment of 1997 Senate Bill 384. The state statute represents the most sweeping revision to special education law in this state since 1973. The new statute increases local flexibility and accountability in the design and delivery of special education to respond to local needs. Pursuant to the statutory revision, many of the programming and reporting requirements in current rule will be eliminated in this proposal as the department moves away from rules that impose a single model on every local educational agency.

Further, the new statute significantly revises the procedures relating to the evaluation, development of an individualized education program and placement of children with disabilities. Much of the current rules are in direct conflict with the soon-to-be-enacted statutory process. This proposal eliminates rules that conflict with state or federal law. It also eliminates rules which address areas adequately addressed in state statute or federal statute or regulations in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law. Finally, this proposal makes technical language changes to reflect new statutory provisions.

Describe the objective of the proposed rule:

- ▶ To conform with IDEA 1997 and subchapter V, Chapter 115, Stats.
- ▶ To permit, pursuant to subchapter V, Chapter 115, Stats., a high degree of local flexibility in the design and delivery of special education to reflect local needs.
- ▶ To remove state administrative rules that govern areas addressed in the statute and/or the federal statute/regulations, thus consolidating areas of legal authority and eliminating the potential for conflicting language or interpretation.
- ▶ To make a very complex, legalistic area of the law more accessible.
- ▶ To make technical changes in language to reflect changes in subchapter V, Chapter 115, Stats.

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

For this rules package, the Department will conform state administrative rules to the state statute by eliminating those sections in conflict with IDEA 1997 and state statute.

Sections PI 11.12, "Hearing officers", and PI 11.24, "Related service: physical and occupational therapy" will be technically amended to conform with new state statutory language. No existing policies not already contained in these sections are to be included.

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

No new policies are proposed in this rules revision package. The intent is to bring ch. PI 11 into conformity with state statutory language to delete redundancies and potentially conflicting rules language.

Describe policy alternatives:

Given the extensive public involvement and broad base of support for the statute, no alternative policies would be appropriate at this time. If the current rule is not changed, it will conflict with current state and federal law.

Statutory authority:

Subch. V of chapter 115, Stats.

Estimate of 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.

Transportation

Subject:

Ch. Trans 276 – Relating to the network of highways on which long combination vehicles may operate.

Description of policy issues:

Description of the objective of the rule:

This proposal will amend ch. Trans 276, a rule of the Department of Transportation which establishes a network of highways on which long combination vehicles may operate, by adding two highway segments to the network. The actual segments being proposed are Dodge CTH “B” from STH 26 north of Juneau to STH 33 North of Beaver Dam and Dodge CTH “E” from STH 33 in Horicon to USH 151 in Beaver Dam.

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:

Federal law requires the Department of Transportation to react

within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a written request for the above highway segments from the Wisconsin Motor Carriers Association on behalf of Hanefeld Trucking Company.

Statutory authority for the rule:

S. 348.07 (4), Stats.

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

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Commerce

Rule Submittal Date

On January 15, 1998, the Wisconsin Department of Commerce referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends chs. Comm 51 and ILHR 57 and 66, Wis. Adm. Code, relating to the Commercial Building Code and the Uniform Multifamily Dwelling Code.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled.

Contact Person

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

Sam Rockweiler
Department of Commerce
Telephone (608) 266-0797

Insurance

Rule Submittal Date

On February 5, 1998, the Wisconsin Office of the Commissioner of Insurance referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 149.115 and 601.41 (3), Stats.

Statutes interpreted:

SS. 149.115 and 149.10 (2t) (a), Stats.

The proposed rule creates s. Ins 18.05 (5), relating to aggregating (counting) creditable coverage for the state Health Insurance Risk-Sharing Plan (HIRSP), pursuant to s. 149.10 (2t) (a), Stats.

This change is mandated by 1997 Wis. Act 27 which, among other things, transferred the responsibility of the state Health Insurance Risk-Sharing Plan ("HIRSP") to the Department of Health and Family Services as of January 1, 1998. The HIRSP statutes were renumbered from Chapter 619 to Chapter 149, Stats., and amended in ways that require promulgation of new rules. Responsibility for promulgation of most of these rules was placed with the Department and, in fact, the HIRSP rules, formerly ch. Ins 18, are expected to be transferred to the Department and renumbered ch. HFS 119 on March 1, 1998; however, s. 149.115, Stats., requires the Commissioner, after consultation with the Department, to promulgate rules with respect to the term "creditable coverage" and requires that those rules comply with section 2701 (c) of P.L. 104-191, the federal Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA supercedes portions of state law, is manifested in much of Act 27, and originated the term "creditable coverage". Following

passage of HIPAA, the federal Health and Human Services Administration promulgated their own rules concerning, among other things, methods of counting creditable coverage; therefore, this rule simply incorporates the federal rule to satisfy the legislative mandate that the Commissioner promulgate rules that specify how creditable coverage be aggregated (counted) under HIRSP.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled.

Contact Person

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

Steve Mueller
Office of the Commissioner of Insurance
Telephone (608) 267-2833
E-mail at smueller@mail.state.wi.us

Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on February 13, 1998.

Analysis

These changes will affect s. Ins 18.07 (5) (bm), Wis. Adm. Code, relating to state Health Insurance Risk-Sharing Plan (HIRSP) with \$2500 deductible mandated by s. 619.146, Stats.

Agency Procedure for Promulgation

A public hearing is required and the date for the public hearing is not yet scheduled.

Contact Person

To obtain a copy of the proposed rule, contact:

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

For additional information, please contact:

Steve Mueller, OCI Legal Unit
Office of the Commissioner of Insurance
Telephone (608) 267-2833
E-mail at smueller@mail.state.wi.us

Natural Resources

Rule Submittal Date:

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. WM-1-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 10, 11 and 45, relating to hunting and trapping.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 13, 1998.

Contact Person

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

Natural Resources*Rule Submittal Date:*

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. WM-2-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 10, 11, 15, 19 and 27, relating to wildlife management housekeeping rules.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 16, 1998.

Contact Person

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

Natural Resources*Rule Submittal Date:*

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. FH-10-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects s. NR 20.16, relating to telephonic reporting by Great Lakes charter captains.

Agency Procedure for Promulgation

A public hearing is required and two public hearings will be held on March 23 and 26, 1998.

Contact Person

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

Natural Resources*Rule Submittal Date:*

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. FH-12-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 20, 21, 23, 25 and 26, relating to recreational and commercial fishing regulations and fish refuges.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 13, 1998.

Contact Person

Tim Simonson
Bureau of Fisheries Management and Habitat Protection
Telephone (608) 266-5222

Natural Resources*Rule Submittal Date:*

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. LE-9-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 21, relating to commercial fishing in Wisconsin-Minnesota boundary waters.

Agency Procedure for Promulgation

A public hearing is required and two public hearings will be held on March 30 and 31, 1998.

Contact Person

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

Natural Resources*Rule Submittal Date:*

On February 12, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. CF-15-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 166, relating to the safe drinking water loan program.

Agency Procedure for Promulgation

A public hearing is required and two public hearings will be held on March 13 and 16, 1998.

Contact Person

Carol Bentzler
Bureau of Community Financial Assistance
Telephone (608) 267-7585

Natural Resources*Rule Submittal Date:*

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. AM-6-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 487, relating to the clean fuel fleet program.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 1, 1998.

Contact Person

Muhammad Islam
Bureau of Air Management
Telephone (608) 266-7718

Natural Resources

Rule Submittal Date:

On February 11, 1998, the Department of Natural Resources submitted a proposed rule [Board Order No. WA-20-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 500, 502, 507, 509, 512, 514, 520, 620 and 680, relating to technical corrections, fee clarifications and incorporation of statutory requirements for solid and hazardous waste management rules.

Agency Procedure for Promulgation

A public hearing is required and three public hearings will be held on March 11, 12 and 17, 1998.

Contact Person

James Walden
Bureau of Waste Management
Telephone (608) 267-7572

Pharmacy Examining Board

Rule Submittal Date

On February 9, 1998, the Pharmacy Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2), 440.08 (3) (b), 450.02 (3) and 961.31, Stats.

The proposed rule-making order relates to pharmacists and pharmacies.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 11, 1998.

Contact Person

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

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

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection ▶ (Reprinted from 02-15-98 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rule changes to chs. ATCP 32, 33 & 35, Wis. Adm. Code, relating to the department's bulk fertilizer & pesticide storage programs and agricultural chemical cleanup program. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule changes. Following the public hearings, the hearing record will remain open until March 19, 1998 for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708, or by calling (608)224-4523. 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 **February 23, 1998** either by writing to Karen Ayers, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708, (608-224-4523), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

Hearing Information

All hearing times are from 1:00 – 5:00 PM and 6:30 – 9:00 PM

The first half hour of both afternoon and evening sessions will be an informational session where department staff will discuss provisions of the proposed rule.

March 3, 1998
Tuesday

Prairie Oaks State Office Bldg.
2811 Agriculture Drive
Madison, WI 53718
Board Room

March 4, 1998
Wednesday

Holiday Inn
150 Nicolet Road
Appleton, WI 54914
Menasha Room

March 5, 1998
Thursday

Quality Inn
809 W. Clairemont Avenue
Eau Claire, WI 54701
Chippewa Valley Room

Analysis by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 94.645(3), 94.69 and 94.73(11)

Statutes interpreted: ss. 94.645, 94.69 and 94.73

This rule updates and amends the department's current rules related to fertilizer bulk storage, pesticide bulk storage, and the agricultural chemical cleanup program.

FERTILIZER BULK STORAGE

The department currently regulates fertilizer bulk storage under ch. ATCP 32, Wis. Adm. Code. The current rules are designed to prevent and contain fertilizer spills that could contaminate groundwater or surface water. This rule clarifies the current rules, and makes nonsubstantive drafting changes. This rule also makes the following substantive changes:

Definitions

This rule modifies current definitions to clarify coverage, and to clarify the responsibilities of storage facility operators. Under this rule:

•A “storage facility” means a place at which bulk fertilizer is held in storage. “Storage facility” does not include a field or other location at which a mobile container is temporarily parked while its fertilizer contents are unloaded for only one person’s use, provided that the person is not a fertilizer manufacturer or distributor.

•An “operator” includes both of the following:

–A person who owns or controls a storage facility. (This does not include a farmer who stores fertilizer solely for his or her own use).

–A fertilizer manufacturer or distributor who contracts with another person (e.g., a farmer) to store bulk fertilizer for the manufacturer or distributor.

Storage Container Security

Under current rules, the operator of a fertilizer storage facility must take security measures to prevent unauthorized access to storage containers. This rule clarifies current security requirements. Under this rule, an operator must secure a storage container by doing at least one of the following whenever the storage facility is unattended:

- Keeping it in a locked building.
- Keeping it in a locked outdoor enclosure. The enclosure must be at least 5 feet tall, and must be free of gaps that would allow unauthorized persons to enter.
- Locking all valves on the storage container.

Sight Gauge Valves

Currently, many fertilizer bulk storage containers have external site gauges that are used to measure the level of liquid fertilizer in the containers. If the sight gauge breaks, liquid fertilizer may spill from the storage container through the broken sight gauge. Under this rule, a storage container with an external site gauge must be equipped with a valve that can stop the flow of liquid to the sight gauge. The operator must close and secure the valve when the sight gauge is not in use.

Measuring Liquid Fertilizer Levels

Under current rules, an operator must measure the amount of liquid fertilizer in a storage container at least weekly, except that the operator may make monthly measurements in April and May if the operator is “regularly” loading or unloading fertilizer from the storage container during those months. Under this rule, the operator must make weekly measurements, except that the operator may make monthly measurements between May 1 and July 31 if the operator is loading or unloading fertilizer from the storage container at least weekly during that period.

Under this rule, as under the current rule, an operator must inspect valves and other appurtenances for leaks at least weekly. The operator must also maintain facilities to minimize the risk of spills, and keep a written record of every inspection, measurement and maintenance operation.

Fertilizer Mixing and Loading; Spill Containment Surface

Under current rules, an operator must mix and load liquid bulk fertilizer over a spill containment surface that is adequate to catch and contain fertilizer spills. Under this rule, beginning on January 1, 2000, an operator must also mix and load nonliquid bulk fertilizer over a spill containment surface. This rule clarifies, but does not substantially alter, current requirements for spill containment surfaces.

Under this rule, an operator must recover fertilizer spilled onto a spill containment surface to maintain the effective capacity of that surface. Containers used to hold recovered spills must be kept within a secondary containment structure. Recovered fertilizer spills may not be kept underground.

Secondary Containment Structures

Under current rules, fertilizer bulk storage containers must be enclosed in a secondary containment structure that will effectively contain spills from the storage containers. The current rules establish design and construction standards for secondary containment structures. This rule clarifies, but does not substantially alter, the current standards.

Under this rule, if a secondary containment structure includes a soil or bentonite clay liner, the operator must recompact or reconstruct the liner at least once every 15 years. An operator is not required to remove a storage container having a capacity of 50,000 gallons or more before recompacting or reconstructing the secondary containment structure that encloses that container.

The current rules exempt certain storage containers from secondary containment requirements. This rule modifies the current exemptions. Under this rule, secondary containment is not required for the following storage containers:

- A mobile storage container held for less than 15 days at a storage facility that has a spill containment surface complying with this rule.
- An empty and cleaned mini–bulk container.
- An empty rail car.

Underground Storage Prohibited

Current rules prohibit an operator from storing liquid bulk fertilizer underground, except in stainless steel or other approved containers. This rule prohibits all underground storage, regardless of the type of container used. This rule does not prohibit an operator from temporarily collecting fertilizer spills or rinsate in an underground catch basin that forms part of a spill containment surface required under this rule.

Inventory Reconciliation

Under current rules, a storage facility operator must perform semi–annual inventory reconciliations to discover unexplained inventory losses that may indicate spills. This rule requires annual, rather than semi–annual, inventory reconciliations. By August 15 of each year, an operator must complete an inventory reconciliation for the preceding one year period beginning July 1 and ending June 30.

Waivers

Under current rules, the department may waive compliance with a rule provision if compliance is not technically feasible and the operator takes alternative measures that provide substantially similar protection for the waters of the state. Under this rule, the department may waive compliance with a rule provision if an operator takes alternative measures that provide substantially similar protection, regardless of whether it is technically feasible for the operator to comply with the rule provision.

PESTICIDE BULK STORAGE

The department currently regulates pesticide bulk storage facilities under ch. ATPC 33, Wis. Adm. Code. The current rules are designed to prevent and contain pesticide spills that could contaminate groundwater or surface water. This rule clarifies the current rules, and makes nonsubstantive drafting changes. This rule also makes the following substantive changes:

Definitions

This rule modifies current definitions to clarify coverage, and to clarify the responsibilities of storage facility operators. Under this rule:

- A “storage facility” means a place at which bulk pesticide is held in storage. “Storage facility” does not include a field or other location at which a mobile container is temporarily parked while its pesticide contents are unloaded for only one person’s use, provided that the person is not a pesticide manufacturer or distributor.
- An “operator” includes both of the following:
 - A person who owns or controls a storage facility. (This does not include a farmer who stores pesticide solely for his or her own use).
 - A pesticide manufacturer or distributor who contracts with another person (e.g., a farmer) to store bulk pesticide for the manufacturer or distributor.

Storage Container Security

Under current rules, the operator of a pesticide storage facility must take security measures to prevent unauthorized access to storage containers. This rule clarifies current security requirements. Under this rule, an operator must do all of the following whenever a storage facility is unattended:

- Keep valves on outdoor storage containers locked.
- Keep valves on outdoor storage containers locked.

Storing Recovered Pesticide Spills

Under current rules, an operator must mix and load bulk pesticides over a spill containment surface that is adequate to contain pesticide spills. This rule clarifies, but does not change, the current standards for spill containment facilities. Under this rule, an operator must recover pesticides spilled onto a spill containment surface. Containers used to hold recovered pesticide spills must be kept within a secondary containment structure. Recovered pesticide spills may not be kept underground.

Secondary Containment Structures

Under current rules, pesticide bulk storage containers must be enclosed in a secondary containment structure that will effectively contain spills from the storage containers. The current rules establish design and construction standards for secondary containment structures. This rule does not substantially alter the current standards, except that it no longer allows earthen secondary containment structures for bulk pesticides. The current rules exempt certain storage containers from secondary containment requirements. This rule modifies the current exemptions. Under this rule, secondary containment is not required for the following storage containers:

- A mobile storage container held for less than 15 days at a storage facility that has a spill containment surface that complies with this rule.
- A triple-rinsed mini-bulk container.
- An empty rail car.

Inventory Reconciliation

Under current rules, an operator must perform a monthly inventory reconciliations to discover unexplained inventory losses that may indicate pesticide spills. This rule requires annual, rather than monthly, inventory reconciliations. By October 30 of each year, an operator must complete an inventory reconciliation for the preceding one year period beginning October 1 and ending September 30.

Waivers

Under current rules, the department may waive compliance with a rule provision if compliance is not technically feasible and the operator takes alternative measures that provide substantially similar protection for the waters of the state. Under this rule, the department may waive compliance with a rule provision if an operator takes alternative measures that provide substantially similar protection, regardless of whether it is technically feasible for the operator to comply with the rule provision.

AGRICULTURAL CHEMICAL CLEANUP PROGRAM

The department currently administers an agricultural chemical cleanup program under s. 94.73, Stats. Under the current program, the department may order a “responsible person” to take corrective action to clean up environmental contamination resulting from the discharge of an agricultural chemical. The department may also reimburse a “responsible person” for certain corrective action costs. A “responsible person” includes a person who owns or controls a discharged agricultural chemical, a person who causes a discharge, or a person on whose property a discharge occurs.

The department has adopted rules under ch. ATPC 35, Wis. Adm. Code, to govern the agricultural chemical cleanup program. This rule modifies current rules as follows:

- It incorporates program changes made by 1997 Wis. Act 27 (biennial budget act).
- It changes cost reimbursement standards and procedures.
- It streamlines program operations, based on experience to date.
- It corrects cross-references to renumbered statutes and rules.
- It makes nonsubstantive organizational and drafting changes.

Definitions

This rule clarifies definitions under the current rules, and makes them consistent with 1997 Wis. Act 27.

Discharge Site

Current rules limit the amount of cleanup cost reimbursement which the department can pay per “discharge.” 1997 Wis. Act 27 changed this reimbursement cap, and reformulated it as a limit per “discharge site.” This rule modifies the current definition of “discharge site.” Under this rule, a “discharge site” includes all contiguous land owned by the responsible person, regardless of who that person is. A reimbursement application must include an accurate description of the “discharge site” so the department can keep track of the total reimbursement paid for that site.

Landspreading Agricultural Chemicals Recovered from a Discharge Site

Currently, under s. 94.73(2)(d), Stats., the department may authorize a responsible person to “landspread” soil or water, removed from a discharge site, that contains agricultural chemicals. Landspreading is a method of destroying or recycling many discharged fertilizers and pesticides.

Under this rule, a responsible person wishing to “landspread” soil or water containing spilled agricultural chemicals must obtain a permit from the department. (The responsible person must also obtain a pollution discharge elimination system permit from the department of natural resources, if required under ch. 283, Stats.) The application must include all of the following:

- The name of the applicant.
- The source and quantity of soil or water that will be spread on land.
- The kinds and amounts of agricultural chemicals present in the soil or water.
- The proposed application rate for each agricultural chemical.
- The locations where the soil or water will be spread on land.
- Other relevant information which the department may require.

Under this rule, the department may approve landspreading which applies agricultural chemicals at rates that are comparable to those used in normal agronomic practice. The department must grant or deny a permit within 30 days after the department receives a complete permit application. The department may specify permit conditions, including any requirements under chs. 94, 281 to 285, and 289 to 299, Stats.

Within 30 days after a permit holder landspreads soil or water under a department permit, the permit holder must provide the department with documentation showing that:

- The landspreading was authorized by the owner of the land on which the landspreading occurred.
- The landowner was informed of the kinds and amounts of agricultural chemicals applied, and agreed to take account of those applications when considering the need for and amount of future applications of agricultural chemicals to the same land.

Reimbursement Application Forms

Under current rules, a responsible person seeking reimbursement of cleanup costs must submit a reimbursement application to the department. The person must apply on standard forms provided by the department. This rule consolidates application requirements, and clarifies the information that must be included.

Reimbursement Application: When Made

Under this rule, a responsible person may apply for reimbursement of eligible cleanup costs which that person has paid. If an applicant fails to include eligible costs paid to date, the applicant may not include those costs in a subsequent application. A responsible person must file a reimbursement application by October 14, 2000, or within 3 years after that person incurs the cleanup costs, whichever is later.

Reimbursement Application: Identifying the Discharge Site

Under current rules, a reimbursement application must include the “address or location” of the discharge site. Under this rule, the application must include a map showing the discharge site. It must also include an accurate legal description of the land parcel on which the discharge occurred. The legal description must correspond to the legal description last filed with the register of deeds in the county where the parcel is located. Among other things, this will allow the department to track the amount of reimbursement paid per discharge site over time. (1997 Wis. Act 27 specifies a maximum amount payable per discharge site.)

Reimbursement Application: Documenting Cleanup Costs

Under this rule, a responsible person must include all of the following in a reimbursement application (the department will provide forms and examples):

- A summary statement identifying and explaining each cleanup cost. Costs must be allocated to the following categories:

- Soil investigation.
- Soil remediation.
- Laboratory and other analysis.
- Groundwater investigation.
- Groundwater remediation.
- Miscellaneous.

- Invoices or other information documenting the cleanup costs.
- Canceled checks or other information documenting that the applicant has paid the cleanup costs.

- A summary of every contractor's bid or estimate required by this rule (see below).
- A spreadsheet that matches each cost item with the documentation supporting that item.
- A substitute W-9 tax form.
- Other relevant information required by the department.

Reimbursing Equipment Costs

Under current rules, the department may not reimburse a responsible person for the cost of using that person's own equipment as part of a cleanup action (unless the responsible person buys and uses the equipment solely for the cleanup action). Under this rule, the department may reimburse a responsible person for the cost of using that person's own equipment if all of the following apply:

- The responsible person uses the equipment for excavating, trucking or landspreading purposes.
- The equipment is reasonably sized and designed for use in the cleanup.
- The hours (or units) of equipment use are reasonable and necessary for the task performed.
- The use costs are based on a reasonable cost allocation formula.
- The use costs do not exceed lease costs (including operator costs) for equivalent equipment.

Contract Services Defined

Responsible persons often contract with others to perform cleanup operations. This rule defines "contract services" to include all of the following:

- Excavating.
- Trucking.
- Landspreading.
- Waste disposal services.
- Drilling, including at-depth soil sampling and well installation.
- Laboratory services.
- Professional consulting services.
- General contractor services.
- Other services provided by contractors.

Contract Services: Competitive Bids

Under current rules, a responsible person must obtain 3 competitive bids for contract services that cost more than \$500. This rule requires 3 competitive bids for contract services that cost more than \$3,000. The department may require a responsible person to obtain additional bids if the department finds that existing bids are unreasonable. The department may also require a responsible person to explain that person's choice of contractors.

A responsible person is not required to contract with the lowest bidder. However, the department will not reimburse costs exceeding low bid costs for any of the following services:

- Excavating.
- Trucking.
- Landspreading and waste disposal services.
- Drilling, including at-depth soil sampling and well installation.

Costs Exceeding Bids

This rule clarifies that the department may not reimburse contract service costs that exceed the contractor's bid for those services. However, the department may reimburse a responsible person for contract services that were not included in the contractor's initial bid, or for additional hours or units of service beyond those included in the initial bid, if all of the following apply:

- The responsible person obtained at least 3 bids before initially choosing the contractor.
- The contractor bills for the additional services at the same per-unit price at which the contractor agreed to provide equivalent services, if any, in the contractor's initial bid.
- The contractor provides the responsible person with a cost estimate for the additional services before performing those services.
- The responsible person provides the department with the cost estimate for the additional services if the total cost of the additional services exceeds \$1,500. The department may require the responsible person to obtain competitive bids for the additional services if the department finds that the cost estimate is unreasonable.
- The responsible person, after receiving the contractor's cost estimate for the additional services, authorizes the contractor to proceed with those services.
- The cost of the additional services does not exceed the contractor's cost estimate for those services.
- The additional services do not involve the selection, design or installation of active groundwater remediation.

Separate Contractors

This rule clarifies current rules prohibiting “tie-ins” of contract services. Under this rule, no contractor who provides any of the following contract services for an agricultural chemical cleanup may provide any services other than the following:

- Excavating.
- Trucking.
- Landspreading and other waste treatment or disposal services.
- Drilling, including at–depth soil sampling and well installation.

Under this rule, no contractor who provides laboratory services for a cleanup, other than immuno assay services or field testing services using hand–held devices, may provide other contract services related to that cleanup.

Workplan Required

Under current rules, the department may not reimburse cleanup costs over \$20,000 (for non–emergency cleanups initiated on or after August 12, 1993) unless the department approves a workplan before the responsible person starts the cleanup. Under this rule, the department may not reimburse any of the following costs unless the department approves a cleanup workplan:

- Costs over \$7,500 for non–emergency cleanups performed after October 13, 1997.
- Costs over \$20,000 for non–emergency cleanups performed on or after August 12, 1993 but on or before October 13, 1997.

Partial Corrective Action: Reimbursement

Under current rules, a responsible person may seek reimbursement at any of several stages in a cleanup operation. This rule modifies the current rules. Under this rule, a responsible person may apply for reimbursement upon completing any of the following portions of a corrective action:

- An emergency response, if any.
 - A soil investigation approved by the department. If the soil investigation concludes that active soil remediation is necessary, the department must approve an active soil remediation plan before reimbursing the responsible person for the soil investigation.
- The department may not reimburse any cleanup costs unless the responsible person demonstrates, to the department’s satisfaction, that the responsible person is proceeding in a timely manner with the remainder of the cleanup. If the responsible person fails to complete the cleanup, the department may order the responsible person to return any reimbursement paid. The department may withhold reimbursement pending department approval of a workplan for the remainder of the cleanup.

Reimbursement Per Discharge Site

This rule modifies cleanup reimbursement rates to conform with 1997 Wisconsin Act 27. Under this rule the department will reimburse a responsible person, for each discharge site, an amount equal to 80 percent of eligible cleanup costs that are greater than \$3,000 but less than \$400,000. The maximum reimbursement per discharge site, including added interest costs, is \$317,600.

A different reimbursement formula applies in some cases. The department will reimburse a responsible person, for each discharge site, an amount equal to 80 percent of the eligible cleanup costs that are greater than \$7,500 and less than \$400,000 (up to a maximum of \$314,000 including reimbursed interest costs) if any of the following applies at the time the discharge occurs or is discovered:

- The responsible person is required to be licensed under ss. 94.67 to 94.71, Stats.
- The responsible person employs more than 25 persons.
- The responsible person has gross annual sales of more than \$2,500,000.

Transportation Discharges

For reimbursement purposes under this rule, whenever an agricultural chemical is discharged while being transported from a site owned or controlled by the same person who owns or controls the agricultural chemical, the discharge is deemed to occur at that site.

Maximum Reimbursement Per Discharge

Current rules prohibit the department from reimbursing more than \$100,000 per discharge unless the department or the department of natural resources orders active groundwater remediation. Under this rule, the department may reimburse more than \$100,000 per discharge if the department does both of the following:

- Determines that the additional costs are reasonable and necessary based on the nature, size and complexity of the corrective action.
- Approves the additional costs before the responsible person incurs them. The department may specify conditions and limitations on its approval. Prior approval is not required for reasonable and necessary corrective action costs incurred before October 14, 1997.

A “discharge,” for purposes of this formula, includes all discharges that occur at a discharge site before the responsible person initiates corrective action in response to any of those discharges. A subsequent “discharge” is considered a separate discharge, subject to a separate \$100,000 limit.

Reimbursement Priorities and Payments

Current rules require the department to withhold reimbursement of most cleanup costs until the last day of the state fiscal year. This rule allows the department to make payments throughout the year on a first–in, first–out basis, unless the agricultural chemical cleanup fund balance drops below \$1,000,000. If the balance drops below \$1,000,000, the department may continue to make initial payments of up to \$50,000 per discharge site on a first–in, first–out basis, but may not make any further payments until the last day of each state fiscal year.

Fiscal Estimate

(See 02-15-98 Wis. Adm. Register, page 22)

Initial Regulatory Flexibility Analysis for revisions to chs. ATP 32, 33 and 35, Wis. Adm. Code.

(See 02-15-98 Wis. Adm. Register, page 22)

Notice of Hearing

Commerce

*(Building & Heating, etc.,
Chs. Comm/ILHR 50-64
Multi-family Dwellings, Ch. ILHR 66)*

Notice is hereby given that pursuant to ss. 101.02 (1) and (15) and 101.973 (1), Stats., the Department of Commerce announces it will hold a public hearing on proposed rules and existing emergency rules relating to the Commercial Building Code and the Uniform Multifamily Dwelling Code.

Hearing Information

March 11, 1998
Wednesday
Commencing at 9:30 a.m.
Third Floor Conf. Room 3B
WHEDA Building
201 West Washington Ave.
Madison, WI

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1) and (15) and 101.973 (1)

Statutes Interpreted: ss. 101.02 (15), 101.12, 101.14 (4m) and 101.971 to 101.978

Under ss. 101.02 (15), 101.12, and 101.971 to 101.978, Stats., the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public building including multifamily dwellings. Present requirements include methods for stopping fire in one area of a buildings from spreading to another area through service openings in wall, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fall under fire testing conditions.

The emergency rules proposed rules impact all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire-stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area-separation protection consisting of either a fire-protective membrane or fire-resistive rate construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revision, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Written Comments and Copies of Rule

Interested persons are invited to appear at the hearing and present comments on the emergency rules and proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **March 20, 1998**, to permit submittal of written comments form persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing.

This hearing is being 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) 261-6546 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the emergency rules or proposed rules may be obtained without cost from Margaret Slusser, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 261-6546 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.
Builders and owners of commercial buildings and multifamily dwellings may encounter higher costs for providing the approved fire stops required by these rules.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No new requirements.

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

Builders of commercial buildings and multifamily dwellings who have not used approved fire stops in the past may need to acquire additional skills to provide the fire stops required by these rules.

Fiscal Estimate

The department currently regulates the construction of commercial buildings and multifamily dwellings. The proposed rule replaces current requirements with requirements that are not expected to result in significant additional costs.

Notice of Hearings ***Department of Corrections***

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.24 (4), and 301.132(3), Stats., the department of corrections will hold public hearings on the emergency rule and proposed permanent rule relating to establishing a lie detector test program for probationers and parolees who are sex offenders.

Hearing Information

March 16, 1998 **State Office Building**
Monday **Room 45**
10:00 A.M. **819 North 6th Street**
 Milwaukee, Wisconsin

March 16, 1998 **State Office Building**
Monday **GEF III, Room 585**
3:00 P.M. **125 South Webster Street**
 Madison, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

EMERGENCY RULE

The following is the emergency rule adopted by the Department of Corrections, effective December 15, 1997.

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.

Text of Rule

Under the authority vested in the Department of Corrections by s. 301.132 (3), Stats., the Department of Corrections hereby creates rules interpreting s. 301.132, Stats, as follows:

SECTION 1. DOC 328.04 (3) (o) and (p) are created to read:

DOC 328.04 (3) (o) Submit to the lie detector examination process under s. DOC 332.14 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.15 (3) and 332.18 and comply with any required department procedures regarding payment of fees.

SECTION 2. DOC 332.015 is created to read:

DOC 332.015 **AUTHORITY AND APPLICABILITY OF LIE DETECTOR TESTING.** These rules are promulgated under the authority of s. 301.13 (3), Stats., to establish a lie detector program for probationers and parolees who are sex offenders. The rules apply to the department and to probationers and parolees who are sex offenders.

SECTION 3. DOC 332.02 (6) to (11) are created to read:

DOC 332.02 (6) "Lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(7) "Lie detector examination process" means the entire process of lie detector testing, including completion of any preliminary questionnaires, pretest questions, baseline questions and the actual lie detector testing, and post-testing interrogation.

(8) "Offender" means a probationer or parolee.

(9) "Polygraph" means an instrument that fulfills all of the following requirements:

- (a) Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.
- (b) Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.
- (10) "Probation and parole agent" or "agent" means an employee of the department who is assigned the duties and responsibilities of an agent under chs. DOC 328, DOC 331 and DOC 333.
- (11) "Sex offender" means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1), Stats.

SECTION 4. DOC 332.15 to 332.18 are created to read:

DOC 332.15 **LIE DETECTOR REQUIREMENT.** The department may require an offender who is a sex offender to submit to the lie detector examination process in accordance with s. DOC 332.17 as a condition of supervision.

DOC 332.16 **PURPOSE OF LIE DETECTOR PROGRAM.** (1) The department may use the lie detector examination process as a supervision tool for offenders who are sex offenders. Testing may achieve the following in supervising an offender who is a sex offender:

- (a) Disclose offense pattern information for treatment purposes.
- (b) Hold the offender accountable for behaviors which occur while on supervision.
- (c) Verify the accuracy of self-reporting.
- (d) Assist in the monitoring and early identification of rule violations and other criminal behavior.
- (e) Provide a deterrent to re-offending.
- (f) Identify the offenders who need more intensive supervision or treatment.
- (g) Provide more information for purposes of assessment, treatment and monitoring.

(2) The department shall not use the lie detector examination process as a punishment or sanction.

DOC 332.17 OPERATION OF LIE DETECTOR PROGRAM. (1) SELECTION OF PARTICIPANTS. Upon the approval of an agent's supervisor, an agent may require an offender who is a sex offender to participate in the lie detector program. The agent may require an offender who is a sex offender to submit to the lie detector examination process based on the following:

(a) For an offender who is a sex offender and who is approaching release from confinement:

1. The offender's criminal record of sexual offenses.
 2. The offender's adjustment under previous supervision.
 3. The offender's participation in offense-related programming while incarcerated or institutionalized.
 4. The offender's motivation or refusal to participate in continued programming in the community.
 5. The assessed risk the offender poses to the public.
- (b) For an offender who is a sex offender and who is currently on probation or parole:
1. The offender's criminal record of sexual offenses.
 2. The offender's adjustment under supervision, including recent rules violations or consideration for alternatives to revocation.
 3. The offender's compliance with current programming involvement.
 4. The assessed risk the offender poses to the public.

(2) NOTICE. (a) An agent shall provide an offender who is a sex offender and who is selected to participate in the lie detector examination process written notice of the lie detector program requirements. The department may require an offender who is a sex offender to participate in the lie detector examination process without the offender's informed consent.

(b) An agent shall provide written notice to an offender who is a sex offender and who is required to take a lie detector test which shall include the following:

1. Date, time, and location of the scheduled test.
2. Instructions to complete any preliminary questionnaires.

(3) LIE DETECTOR TEST QUESTIONS. (a) The lie detector examiner shall determine the questions to be asked during the lie detector examination process and shall consult with the agent in determining the questions to be asked. If the offender who is a sex offender is receiving treatment, the examiner or agent may consult with the treatment provider regarding development of questions to be asked during the lie detector examination process.

(b) The agent or examiner may consider any of the following in determining the questions to be asked during the lie detector examination process:

1. The offender's involvement in current offense-related programming.
2. The offender's level of denial.
3. The offender's recent pattern of rules violations.
4. The offender's noncompliance with treatment.
5. The agent's need to verify the offender's compliance with supervision, treatment or self-reporting.
6. The agent's need to document and verify the extent of the offender's sexual history.

(4) TEST ADMINISTRATION. The department may administer lie detector tests or contract with an outside vendor to administer the tests.

(5) ASSESSMENT OF FEES. The department shall establish a schedule of fees to partially offset the costs of the program for offenders who are sex offenders and who are required to take a lie detector test.

(a) An offender shall pay for the costs of the test in accordance with a schedule of fees developed by the department. The costs of the tests may vary depending on the type of test used.

(b) An offender shall also pay a \$5 administrative fee with each payment.

(6) SANCTIONS. (a) If an offender who is a sex offender refuses to participate in any portion of the lie detector examination process or to pay a lie detector fee, the agent shall investigate the refusal as a violation of a rule or condition of supervision in accordance with ch. DOC 331.

(b) If an offender who is a sex offender discloses a violation of a rule or condition of supervision during the lie detector examination process, the agent shall investigate the disclosure as a violation of a rule or condition of supervision, in accordance with ch. DOC 331.

(c) If an offender who is a sex offender discloses criminal conduct during the lie detector examination process, the agent, with the approval of the agent's supervisor, shall refer the disclosure to law enforcement authorities.

(d) Revocation of probation or parole of an offender who is a sex offender may not be based solely on a finding of deception as disclosed by a lie detector test.

(7) DISCLOSURE OF TEST INFORMATION. The department may disclose information regarding a lie detector test or information disclosed during the lie detector test examination process of an offender who is a sex offender only to the following and only for purposes relating to correctional programming, care and treatment of the offender:

- (a) Department employees.

- (b) Department vendors.
- (c) Another agency or person.
- (d) Law enforcement agencies.

DOC 332.18 LIE DETECTOR FEE. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:

(1) BASIS OF FEE. Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.

(2) TIMING OF PAYMENTS. Permit payment of the fee to be paid in any of the following ways:

- (a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.
- (b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.
- (c) Monthly installment payments of the fee to continue until the fee is paid in full.
- (3) DEFERRAL OF PAYMENTS. (a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:
 - 1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.
 - 2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify that the offender is enrolled and attending a full-time course work at the educational institution.
 - 3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.
 - 4. Has a statement from a licensed physician excusing the offender from work for medical reasons and is unable to be employed because of the medical reasons.
- (b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10 working days of a reported change in the offender's financial or employment status.
- (c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.

(4) COLLECTION. Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.

(5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES. Provide the offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.

(6) RECORD OF PAYMENTS. Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.

(7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED. Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.

(8) POSSIBLE ACTIONS IF FEE IS NOT PAID. Take action under s. DOC 332.17(6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:

- (a) Counseling.
- (b) Wage assignment.
- (c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.
- (d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.
- (e) Any other appropriate means of obtaining the lie detector fee.

PROPOSED PERMANENT RULE

In response to Legislative Clearinghouse Comments, the Department made several changes to clarify the meaning of the rule, specifically, the Department made changes to ss. DOC 332.015, 332.02(7), 332.16(1)(intro), (2), 332.17(1)(a)(intro), subd. 5, (1)(b)subd.2, 3, and 4, (2)(b)(intro), (5), and 332.18(2)(a)4 and (b).

In addition, the Department added a provision for requiring the Department to establish standards for the selection of lie detector test examiners (DOC 332.17(3)).

The above changes are reflected in the following proposed rule:

SECTION 1. DOC 328.04 (3) (o) and (p) are created to read:

DOC 328.04 (3) (o) Submit to the lie detector examination process under s. DOC 332.14 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.15 (3) and 332.18 and comply with any required department procedures regarding payment of fees.

SECTION 2. DOC 332.015 is created to read:

DOC 332.015 **AUTHORITY AND APPLICABILITY OF LIE DETECTOR TESTING.** Sections DOC 332.15 to DOC 332.18 are promulgated under the authority of s. 301.132(3), Stats., to establish a lie detector program for probationers and parolees who are sex offenders. The rules apply to the department and to probationers and parolees who are sex offenders.

SECTION 3. DOC 332.02 (6) to (11) are created to read:

DOC 332.02 (6) “Lie detector” means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(7) “Lie detector examination process” means the entire process of lie detector testing, including completion of any preliminary questionnaires, pretest questions, and the actual lie detector testing.

(8) “Offender” means a probationer or parolee.

(9) “Polygraph” means an instrument that fulfills all of the following requirements:

(a) Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(b) Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(10) “Probation and parole agent” or “agent” means an employee of the department who is assigned the duties and responsibilities of an agent under chs. DOC 328, DOC 331 and DOC 333.

(11) “Sex offender” means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1), Stats.

SECTION 4. DOC 332.15 to 332.18 are created to read:

DOC 332.15 LIE DETECTOR REQUIREMENT. The department may require an offender who is a sex offender to submit to the lie detector examination process in accordance with s. DOC 332.17 as a condition of supervision.

DOC 332.16 PURPOSE OF LIE DETECTOR PROGRAM. (1) The department may use the lie detector examination process as a supervision tool for offenders who are sex offenders. Testing may be used to achieve any of the following in supervising an offender who is a sex offender:

- (a) Disclosing offense pattern information for treatment purposes.
- (b) Holding the offender accountable for behaviors which occur while on supervision.
- (c) Verifying the accuracy of self-reporting.
- (d) Assisting in the monitoring and early identification of rule violations and other criminal behavior.
- (e) Providing a deterrent to re-offending.
- (f) Identifying the offenders who need more intensive supervision or treatment.
- (g) Providing more information for purposes of assessment, treatment and monitoring.
- (2) The department may not use the lie detector examination process as a punishment or sanction.

DOC 332.17 OPERATION OF LIE DETECTOR PROGRAM. (1) **SELECTION OF PARTICIPANTS.** Upon the approval of an agent’s supervisor, an agent may require an offender who is a sex offender to participate in the lie detector program. The agent may require an offender who is a sex offender to submit to the lie detector examination process based on the following:

- (a) For an offender who is a sex offender and who is currently in prison but nearing the release date on mandatory or discretionary parole:
 1. The offender’s criminal record of sexual offenses.
 2. The offender’s adjustment under previous supervision.
3. The offender’s participation in offense-related programming while incarcerated or institutionalized.
4. The offender’s motivation or refusal to participate in continued programming in the community.
- (b) For an offender who is a sex offender and who is currently on probation or parole:
 1. The offender’s criminal record of sexual offenses.
 2. The offender’s adjustment under supervision, including recent rules violations or recent consideration for alternatives to revocation.
 3. The offender’s compliance with current programming.

(2) **NOTICE.** (a) An agent shall provide an offender who is a sex offender and who is selected to participate in the lie detector examination process written notice of the lie detector program requirements. The department may require an offender who is a sex offender to participate in the lie detector examination process without the offender’s informed consent.

(b) An agent shall provide written notice to an offender who is a sex offender and who is required to take a lie detector test. The notice shall include the following:

1. Date, time, and location of the scheduled test.
 2. Instructions to complete any preliminary questionnaires.
 - (3) **LIE DETECTOR TEST QUESTIONS.** (a) The lie detector examiner shall determine the questions to be asked during the lie detector examination process and shall consult with the agent in determining the questions to be asked. If the offender who is a sex offender is receiving treatment, the examiner or agent may consult with the treatment provider regarding development of questions to be asked during the lie detector examination process.
 - (b) The agent or examiner may consider any of the following in determining the questions to be asked during the lie detector examination process:
 1. The offender's involvement in current offense-related programming.
 2. The offender's level of denial.
 3. The offender's recent pattern of rules violations.
 4. The offender's noncompliance with treatment.
 5. The agent's need to verify the offender's compliance with supervision, treatment or self-reporting.
 6. The agent's need to document and verify the extent of the offender's sexual history.
 - (4) **TEST ADMINISTRATION.** The department may administer lie detector tests or contract with an outside vendor to administer the tests. The department shall establish standards for the selection of lie detector examiners.
 - (5) **ASSESSMENT OF FEES.** The department shall establish a schedule of fees in accordance with s. DOC 332.18.
 - (6) **SANCTIONS.** (a) If an offender who is a sex offender refuses to participate in any portion of the lie detector examination process or to pay a lie detector fee, the agent shall investigate the refusal as a violation of a rule or condition of supervision in accordance with ch. DOC 331.
 - (b) If an offender who is a sex offender discloses a violation of a rule or condition of supervision during the lie detector examination process, the agent shall investigate the disclosure as a violation of a rule or condition of supervision, in accordance with ch. DOC 331.
 - (c) If an offender who is a sex offender discloses criminal conduct during the lie detector examination process, the agent, with the approval of the agent's supervisor, shall refer the disclosure to law enforcement authorities.
 - (d) Revocation of probation or parole of an offender who is a sex offender may not be based solely on a finding of deception as disclosed by a lie detector test.
 - (7) **DISCLOSURE OF TEST INFORMATION.** The department may disclose information regarding a lie detector test or information disclosed during the lie detector test examination process of an offender who is a sex offender only to the following and only for purposes relating to correctional programming, care and treatment of the offender:
 - (a) Department employees.
 - (b) Department vendors.
 - (c) Another agency or person.
 - (d) Law enforcement agencies.
- DOC 332.18 LIE DETECTOR FEE.** The department shall establish a schedule of fees to partially offset the costs of the lie detector program for offenders who are sex offenders and who are required to take a lie detector test. The costs of the tests may vary depending on the type of test used. An offender shall also pay a \$5 administrative fee with each payment. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:
- (1) **BASIS OF FEE.** Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.
 - (2) **TIMING OF PAYMENTS.** Permit payment of the fee to be paid in any of the following ways:
 - (a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.
 - (b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.
 - (c) Monthly installment payments of the fee to continue until the fee is paid in full.
 - (3) **DEFERRAL OF PAYMENTS.** (a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:
 1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.
 2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify to the department that the offender is enrolled and attending a full-time course work at the educational institution.

3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.
4. Has a statement from a licensed physician excusing the offender from work for medical reasons and the offender is unable to be employed because of the medical reasons.
 - (b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10 working days of a change in the offender's financial or employment status as reported in accordance with s. DOC 328.04(3)(f).
 - (c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.
 - (4) COLLECTION. Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.
 - (5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES. Provide the offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.
 - (6) RECORD OF PAYMENTS. Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.
 - (7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED. Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.
 - (8) POSSIBLE ACTIONS IF FEE IS NOT PAID. Take action under s. DOC 332.17(6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:
 - (a) Counseling.
 - (b) Wage assignment.
 - (c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.
 - (d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.
 - (e) Any other appropriate means of obtaining the lie detector fee.

Fiscal Estimate

This rule requires most sex offender probationers and parolees to repay the Department for the cost of the lie detector test and an administrative fee. The Department will slightly increase its workload and incur approximately \$2,200 in one-time computer development costs. The Department is able to absorb these costs.

Contact Person

Kathryn R. Anderson
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707-7925
(608) 266-9281

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

Written Comments

Written comments on the proposed rules received at the above address no later than **March 23, 1998**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing *Employe Trust Funds*

The Wisconsin Department of Employee Trust Funds will hold a second public hearing to review this proposed rule, which creates s. ETF 10.08, Wis. Adm. Code, relating to defining termination of employment for purposes of eligibility for benefits administered by the Department of Employee Trust Funds in accordance with the provisions of s. 227.16(1), Stats. The time and date of the public hearing will be **Wednesday, March 11, 1998 at 1:00 PM in room 2A, 801 West Badger Road, Madison, Wisconsin**. The public record on this proposed rule making will be held open until **2:00 p.m. on March 12, 1998** to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Authority for Rule: ss. 40.02 (26) and 40.22

Statutes Interpreted: ss. 40.02 (26), 40.22 and 40.223 (1) (a) 1

To qualify for a separation benefit, lump sum payment or retirement annuity under ss. 40.23, 40.24 and 40.25, Stats., a participant must terminate from all Wisconsin Retirement System (WRS) participating employment as specified in ss. 40.22. Many individuals who retire and begin receiving WRS benefits subsequently return to work for a WRS employer. They frequently return to the same WRS employer from which they retired, sometimes doing the same type of work, and this often occurs within a short period of time after the termination date. In some cases there may be question as to whether a valid termination of employment actually occurred, particularly in cases where the employer made have made a commitment of future employment before the "termination" occurred.

The purpose of this rule is to define the conditions which a termination must meet to be considered a valid termination of employment that would qualify a participant to receive WRS benefits, and the other benefits administered by the Department that are associated with termination of employment.

General Summary of Rule

The rule applies to terminations of participating Wisconsin Retirement System employment that occur on or after the effective date of this rule. ETF 10.08 defines the conditions which a termination of employment must meet to be considered a valid termination for benefit eligibility purposes.

As of the termination date the participant cannot have rights to any future employment that meets the WRS participation standards in s. 40.22. The employee must have ceased to render services to the employer, and the employer from which the participant is terminating must treat the employee in all respects in a manner consistent with other similarly situated employees with whom the employer-employee relationship has been permanently severed. This includes payout or expiration of all accrued leave, such as sick leave, vacation, leave of absence or other accrued benefits normally payable to terminated employees. As of the termination date the participant has not been elected to a term of office beginning after the termination date which would meet the participation standards in s. 40.22, other than a part-time elected position for which the participant has waived coverage under s. 40.23 (1) (am).

The termination date shall be the earliest of the dates on which certain conditions are met, including the date on which the employee last renders services to the employer, the date a leave of absence expires, the effective date of an employer's discharge for cause or of the employee's date of resignation, or the employee's date of death. The date of termination is subject to review by the Department, and the Department may determine a termination date in accord with ss. ETF 10.08 and 40.02 (26), Stats., upon evidence satisfactory to the Department.

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this rule making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, technical college school district or sewerage district.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Persons

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule making, please call Linda Owen, Benefit Plan Policy Analyst, (608) 261-8164. Legal questions about this rule may be addressed to Robert Weber, Wisconsin Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707, telephone (608) 266-5804.

Notice of Proposed Rule

Financial Institutions

Div. of Savings Institutions

The Division of Savings Institutions in the Department of Financial Institutions proposes an order to renumber s. S-L 13.03 and to adopt s. DFI-SL 13.03 (3) (d) 6, relating to creating an exception for savings and loan associations to the 10% down payment requirement for a mortgage loan made to meet the objectives of the federal Community Reinvestment Act.

Notice is hereby given that pursuant to s. 215.02 (7) (a), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Division of Savings Institutions in the Department of Financial Institutions will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice on March 1, 1998, the Division of Savings Institutions in the Department of Financial Institutions is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared By the Div. of Savings Institutions in the Dept. of Financial Institutions

Statutory authority: s. 214.715 (1) (d)

Statute interpreted: s. 214.715 (1) (d)

As a general rule for savings and loan associations ("S&L's"), an applicant for a mortgage loan must make a down payment of at least 10% of the appraised value of the real estate that is to be the security for the loan. There are currently five exceptions to this general requirement. A sixth exception is created by this rule. Under this rule, a mortgage loan up to 100% of the value of the real estate security may be made by a savings

and loan association with the written approval of the Division, if the loan is to meet the objectives of the federal Community Reinvestment Act of 1977. (This exception currently exists for mortgage loans made by savings banks; see s. DFI-SB 13.02 (3) (d).)

Fiscal Estimate

This rule will have no fiscal impact on the Division of Savings Institutions in the Department of Financial Institutions. The review of a S&L's use of this exception will be done as part of routine examinations of S&L's with existing personnel and resources.

Initial Regulatory Flexibility Analysis

This rule will provide an exception for all S&L's -including S&L's covered in the definition of "small business" under s. 227.114 (1) (a), Stats. - from requiring at least a 10% down payment for a mortgage loan. The rule allows a loan up to 100% of the real estate security if the loan is to meet the objectives of the federal Community Reinvestment Act. Exempting small businesses from this rule would be contrary to this objective and not in the best interests of the public.

Text of Rule

Pursuant to the authority of the Division of Savings Institutions in the Department of Financial Institutions under s. 214.715 (1) (d), Stats., the Division rennumbers s. S-L 13.03 to s. DFI-SL 13.03 and adopts s. DFI-SL 13.03 (3) (d) 6, relating to creating an exception to the required 90% down payment or private mortgage insurance rule for loans made to comply with the federal Community Reinvestment Act.

SECTION 1. S-L 13.03 is renumbered s. DFI-SL 13.03.

SECTION 2. DFI-SL 13.03 (3) (d) 6. is created to read:

DFI-SL 13.03 (3) (d) 6. The loan is to meet the objectives of 12 USC 2109ff. with the prior written approval of the division.

Notes: (A) The exception which this rule creates for savings and loan associations is identical to the exception allowed savings banks in s. DFI-SB 13.02 (3) (d) 6.

(B) "DFI-SL" will prefix the numbers of all savings and loan association administrative rules (currently prefixed "S-L") to reflect the merger of the agency regulating savings and loan associations into the department of financial institutions as the savings institutions division, effective July 1, 1996.

(C) 12 USC 2109ff. is the citation to the federal community reinvestment act of 1977.

Notes (A) and (B) are intended for readers while this draft is a proposed rule. Note (C) is intended to be placed in the Administrative Code.

Contact Person

Thomas M. Boykoff, Administrator
Division of Savings Institutions
Dept. of Financial Institutions
Telephone (608) 261-4338

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 30.635 and 227.11(2)(a), Stats., interpreting s. 30.635, Stats., the Department of Natural Resources will hold the second of two hearings on the creation of s. NR 5.21(3), Wis. Adm. Code, relating to waiver of the slow-no-wake speed restriction on Tombeau lake, Watworth county. The Department received a petition dated July 14, 1997 from the Lake Benedict/Lake Tombeau Lake Management District for the waiver. Section 30.635, Stats., provides that on lakes 50 acres or less having public access, motorboats may not be operated in excess of slow-no-wake speed. Tombeau lake is 35 acres. The proposed rule is based on comments from the first hearing and authority granted the Department in s. NR 5.20(4)(b), Wis. Adm. Code. The proposed rule would waive the slow-no-wake restrictions between 10:00 a.m. and sunset from May 15 to September 15. This waiver does not apply to waterskiing.

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

March 16, 1998
Monday
at 4:30 p.m.

Bloomfield Town Hall
1100 Town Hall Road
Pell Lake, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Engfer at (608) 266 0859 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments and Copies of Rule and Fiscal Estimate

Written comments on the proposed rule may be submitted to Mr. William Engfer, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than **March 20, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE-8-98] and fiscal estimate may be obtained from Mr. Engfer.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.174(2), 29.107, 29.1075 and 29.103, Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 10, 11, 15, 19 and 27, Wis. Adm. Code, relating to wildlife management housekeeping changes. The proposed rule:

Adds lynx to the list of protected species. Canada lynx were classified as an endangered species in ch. NR 27 from October 1, 1972 until August 1, 1997. They were removed from the endangered species list because they are not known to breed in the state and are considered extirpated.

Prohibits hunting crows with rifles and establishes shot size limits for turkeys. It is currently illegal to hunt game birds with a rifle; however, crows are not game birds. For consistency and safety concerns, we are proposing that crow hunting be treated like game bird hunting. With the development of new shot materials, such as bismuth, hunters may use shells with shot as large as BB because the current code does not regulate shot types other than lead and steel. Regulating the size of shot is necessary to insure hunter safety.

Clarifies the prohibition on hunting turkeys over bait in the spring. A recent rule change requiring that hunting areas be free of bait for 10 days prior to hunting is designed to regulate fall hunting. This rule would extend the requirement to the spring.

Allows raccoon trapping with wet sets in fisher closed areas in the Nicolet and Chequamegon National Forests. The current prohibition was established in the early 1960's when raccoons were uncommon in northern forests. This rule would allow trappers who currently trap other wetland species within these areas to legally possess raccoon. This rule does not affect the current dryland trap restriction nor jeopardize the intent of the current rule.

Reduces the size of the refuge at Sheboygan Marsh. There is currently a 1400 acre no entry refuge located on the south side of Sheboygan Marsh Wildlife Area. A 160 acre portion of the refuge is not connected and the small flowages are no longer functional, attracting few waterfowl. Eliminating the 160 acre portion from the refuge will increase the area open to hunting and other recreation.

Adds Phantom Lake in Burnett County to the list of lakes where harvesting wild rice is prohibited. The Department has established wild rice stands on flowages within Crex Meadows to provide waterfowl habitat. Harvesting wild rice may compromise the value of the rice beds as habitat.

Requires background checks for trapper education instructors. Background checks are required of most volunteer safety and education instructors because duties of these positions include working with people under the age of 18 with limited supervision.

Corrects scientific names for endangered and threatened species that are currently erroneously listed in the code.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.14, 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

March 16, 1998
Monday
at 10:00 a.m.

Room 709, GEF #2
101 S. Webster St.
Madison, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Todd Peterson at (608) 267-2948 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Todd Peterson, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **March 17, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WM-2-98] and fiscal estimate may be obtained from Mr. Peterson.

Notice of Hearings

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

Notice is hereby given that pursuant to ss. 23.11(1), 29.085, 29.174(2) and 227.11(2)(a), Stats., interpreting ss. 29.174(1), 29.30, 29.34, 29.344, 29.36 and 29.37, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 21, Wis. Adm. Code, relating to commercial fishing in the Wisconsin-Minnesota boundary waters. The proposed rule:

1. Adds definitions for terms used in the code that previously were undefined.
2. Updates the wording of the special possession limit that applies to persons while on the ice, waters, bank or shore of the Wisconsin-Minnesota boundary waters; changes the definition of reciprocity for commercial fishing and adopts the same policy that Minnesota now uses which limits commercial fishers from fishing beyond the state line and requires commercial fishers to carry their licenses while fishing and to exhibit the license to the department or its wardens.
3. Requires all non-commercial game fish and all threatened or endangered fish to be returned to the water immediately and, if taken in a seine haul, to be removed and released on the first day of the seine haul.
4. Requires fishers to be present at all times when their nets or setlines are set, placed, tended or operated.
5. Allows a net or setline to be marked or tagged with only one licensed fisher's tag and bars commercial fishers from using another fisher's tagged or marked gear.
6. Declares that improperly placed or tagged commercial fishing gear is a public nuisance.
7. Adds the terms open water and ice to current law for various fishing operations; requires monthly reports to be signed by the licensee and to show all fish sold; and prohibits one licensed fisher from selling fish taken under the authority to another unless in possession of a wholesale fish dealers license.
8. Sets out reorganized commercial fishing gear restrictions by use.

Initial Regulatory Flexibility Analysis

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

- a. Types of small businesses affected: Wisconsin-Minnesota boundary water commercial fishers
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

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

March 30, 1998
Monday
at 5:00 p.m.

Lower Level Auditorium
La Crosse Co. Admin. Bldg.
400 N. 4th Street
LaCrosse

March 31, 1998
Tuesday
at 1:00 p.m.

County Board Room
St. Croix Co. Courthouse
911 Fourth St.
Hudson

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

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Gary R. Homuth, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than **April 10, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [LE-9-98] and fiscal note may be obtained from Mr. Homuth.

Notice of Hearings

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.174 and 227.11(2)(a), Stats., interpreting ss. 29.085 and 29.174(2)(a), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 20, 21, 23, 25 and 26, Wis. Adm. Code, relating to recreational and commercial fishing regulations and fish refuges. The proposed rules:

1. Eliminate "position fishing", allow "motor trolling" with one bait, hook or lure and no planer boards on all inland waters currently closed to trolling, and prohibit "row trolling" while a propulsion device (i.e., a motor) is in the water.
2. Create a definition of waters included in the "Lake Winnebago system".
3. Create a definition of "planer board" to include floating devices that direct a fishing line away from the boat.
4. Allow fishing within the area of Lake Michigan formerly known as the "Mid Lake refuge" by repealing the refuge, closing the season for lake trout in the area that was formerly the refuge, with a daily bag limit of 0 for lake trout for sport anglers and continued closure of the area to commercial fishing.
5. Increase the minimum length limit of 12" to 14" and establish a combined daily bag limit of 5 for largemouth and smallmouth bass in Green Bay and Lake Michigan.
6. Increase the daily bag limit for brown trout greater than 20" from 2 to 5 and reduce the minimum length limit for rainbow trout from 28" to 26" on Lake Superior.
7. Establish an 18" minimum length limit and daily bag limit of 1 for largemouth and smallmouth bass on Little Clam lake, Ashland county; Sailor lake, Price county; Big Muskegon, Forest, Wabasso and West Plum lakes, Vilas county; and reduce the minimum length limit from 18" to 14" and increase the daily bag limit from 1 to 5 in total for bass in Shishebogama lake, Oneida county.
8. Establish an 18" minimum length limit and daily bag limit of 1 for largemouth and smallmouth bass on Long, Herde and Dark lakes, Chippewa county; Silver lake, Kenosha county; Jersey Valley, Sidie Hollow and Runge Hollow lakes, Vernon county; and Delavan lake, Walworth county.
9. Establish a protected slot length limit of 14" to 18" and a daily bag limit of 3 in total, with only 1 fish larger than 18" allowed on Brekke lake, Waupaca county.
10. Establish a 14" to 18" protected slot length limit and a daily bag limit of 5 in total, with only 1 fish larger than 18", for walleye and sauger on Dark and Herde lakes and tributaries to the Yellow river, Chippewa county.
11. Eliminate the restriction that allowed only 1 walleye larger than 14" to be harvested daily from Shell lake, Washburn county, and establish a no minimum length limit and 5 daily bag limit.
12. Establish a daily bag limit of 0 for sauger on the Lake Winnebago system.
13. Establish a 26" minimum length limit and a daily bag limit of 2 for northern pike on Pella pond, Shawano county and the entire Lake Winnebago system, and exclude the lower Chippewa river south of U.S. highway 10, Buffalo and Pepin counties, and Sheboygan marsh, Sheboygan county from the 26" minimum length limit and 2 daily bag limit.
14. Change the trout regulation category from 5 to 4 for the Pike river, Marinette county.

15. Extend downstream boundary of the category 5 trout regulation segment on the Mecan river, Marquette county, from state highway 22 to the Germania barrier.
16. Establish catch and release only fishing with artificial lures for trout in Stress springs and the Namekagon river from Airport road upstream to the Phipps dam, Sawyer county.
17. Establish catch and release only fishing with artificial lures and barbless hooks for trout in Seas branch, Vernon county, upstream from the impoundment in T13N R4W S14.
18. Establish catch and release only fishing with artificial lures and barbless hooks for trout in the upper Pine river (upstream from Wild Rose millpond) and Soules creek (upstream from Wautoma millpond), Waushara county.
19. Establish a 40" minimum length limit for muskellunge in all waters of St. Croix county.
20. Establish procedures for closing waters to bait harvest when unintentionally introduced, potentially harmful exotic species are found to be present.
21. Establish a 15" minimum length limit for walleye and sauger on Pool 3 of the Mississippi river.
22. Increase the minimum length limit for bass on all Wisconsin-Michigan boundary waters from 12" to 14" and make the season consistent with other inland waters of Wisconsin.
23. Establish a fish refuge on Rice creek, Barron county, for 100 feet upstream and downstream of state highway 8 from January 1 to May 1.
24. Establish a fish refuge on Wingra creek, Dane county, from the Wingra Lake spillway downstream for 50 feet.
25. Establish a fish refuge on Spring creek, Barron county, for 100 feet upstream and downstream of county highway M from April 1 to May 31.
26. Establish a fish refuge on Wolf river, Langlade county, from the Post Lake dam downstream for 75 feet to the bottom of the first rapids from April 1 to May 31.

Notice is hereby further given that pursuant to ss. 29.174(3) and 227.11(2)9a), Stats., interpreting ss. 29.107, 29.1075 and 29.103, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 11 and 45, Wis. Adm. Code, relating to hunting and trapping. The proposed rules:

1. Establish a pelt tag issuance system for other identical to the bobcat and fisher program. Annual harvest goals would be determined based on population size for each zone. The number of tags issued would depend upon the annual harvest goal.
2. Extend spring turkey hunting hours to 5:00 p.m. and require registration of turkeys by 5:00 p.m. the following day.
3. Allow use of handguns firing shotshells by disabled hunters.
4. Restrict the use and placement of the 220-sized comibear-type trap.
5. Provide November muskrat and mink trapping season in the Mississippi River zone. The muskrat and mink trapping season would open the second Monday in November when waterfowl seasons extend into late November and early December. When the waterfowl seasons are short the trapping season would open on the day after the duck season closes.
6. Expand the archery season in deer management unit 77M to run from the third Saturday in September through January 31, with the exception of the Friday immediately before opening day of gun deer season.
7. Allow muzzleloader deer hunting in fifteen areas closed to waterfowl hunting but which are currently only open to deer hunting during the regular deer gun season.
8. Allow deer gun hunting in the "refuge" portion of the Pine Island Wildlife Area.
9. Expand the loaded or uncased firearm restrictions for state-owned lands to include Columbia county.

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

Hearing Information

Notice is hereby further given that the hearings will be held on Monday, April 13, 1998 at 7:00 p.m. at the following locations:

Adams	Adams-Columbia Electric Co-op Bldg. 401 E. Lake St. Friendship
Ashland	Ashland High School Auditorium Ashland
Barron	Barron Co. Courthouse Auditorium Barron

Bayfield

Drummond High School
Drummond

Brown

Southwest High School Auditorium
1331 Packerland Dr.
Green Bay

Buffalo

Alma Area High School Auditorium
S1618 STH '35'
Alma

Burnett

Burnett County Government Center
Siren

Calumet

Calumet County Courthouse
Rm. 205
206 Court Street
Chilton

Chippewa

Chippewa County Courthouse
Large Assembly Room
711 N. Bridge
Chippewa Falls

Clark

Greenwood Elementary School
708 E. Division
Greenwood

Columbia

Columbia County Admin. Bldg.
Basement
400 De Witte St.
Portage

Crawford

Crawford County Courthouse
Circuit Courtroom
Prairie du Chien

Dane

Dane County Expo Center
(Next to Coliseum)
Exhibition Hall, Mendota Room
Madison

Dodge

Horicon City Hall
404 E. Lake St.
Horicon

Door

Door County Court House
Rm. A150
421 Nebraska
Sturgeon Bay

Douglas

St. Croix High School
Solon Springs

Dunn	Dunn County Fish/Game Club 1900 Pine Ave. Menomonie
Eau Claire	So. Middle School Auditorium 2115 Mitscher Ave. Eau Claire
Florence	Florence Natural Resources Center Lg. Conference Room Hwys. 70 & 101 Florence
Fond du Lac	Moraine Park Technical College Cafeteria, Hwy. 23 East Fond du Lac
Forest	Crandon High School Auditorium Hwy. 8 West Crandon
Grant	Lancaster Senior High School Hillary Auditorium 806 E. Elm Street Lancaster
Green	Pleasant View Annex, Auditorium N3150 Hwy 81 Monroe
Green Lake	Green Lake High School Multi Purpose Room 612 Mill St. Green Lake
Iowa	Dodgeville Elementary School Gym. 404 N. Johnson Dodgeville
Iron	Iron County Courthouse Hurley
Jackson	Jackson County Courthouse County Boardroom 307 Main Black River Falls
Jefferson	Jefferson County Courthouse Room 205 320 South Main Street Jefferson
Juneau	Juneau County Courthouse

Court Room
220 E. State St.
Mausfon

Kenosha County Center
Hearing Room
19600 75th St.
Bristol

Kewaunee County Courthouse
Circuit Court Room 212
Kewaunee

Central High School Auditorium
1801 Losey Blvd. South
La Crosse

Darlington Community High School
Cafeteria
11838 Center Hill Rd.
Darlington

Langlade County Courthouse
Large Courtroom
800 Clermont
Antigo

Merrill Senior High School
Auditorium
107 Polk St.
Merrill

UW Center–Manitowoc
Lecture Hall
705 Viebahn St.
Manitowoc

Edgar High School Auditorium
203 Birch St.
Edgar

Wausaukee High School
Auditorium
N11941 Hwy 141
Wausaukee

Marquette County Courthouse
77 W. Park
Montello

Menominee County Courthouse
Basement Meeting Room
Keshena

Kenosha

Kewaunee

La Crosse

Lafayette

Langlade

Lincoln

Manitowoc

Marathon

Marinette

Marquette

Menominee

Milwaukee	Nathan Hale High School Auditorium 11601 Lincoln Ave. West Allis
Monroe	Sparta High School Auditorium 506 N. Black River St. Sparta
Oconto	Suring High School Cafeteria 411 E. Algoma Suring
Oneida	James Williams Junior High Auditorium 915 Acacia Lane Rhinelander
Outagamie	Jefferson Elementary School 1000 S. Mason Street Appleton
Ozaukee	American Legion Hall 435 N. Lake Street Port Washington
Pepin	Pepin County Government Center County Board Room 740 7th Ave. N. Durand
Pierce	Hillcrest Elementary School Gym. 350 S. Grant Ellsworth
Polk	Government Center Circuit Court Room Balsam Lake
Portage	Ben Franklin Junior High School Auditorium 2000 Polk St. Stevens Point
Price	Price County Courthouse County Board Room Phillips
Racine	Union Grove High School Gym. 3433 S. Colony Ave. Union Grove

Richland

Richland County Courthouse
Circuit Court Room
Richland Center

Rock

Rock County Health Care Center
Auditorium
3530 N. Hwy F.
Janesville

Rusk

Ladysmith High School
Auditorium
Ladysmith

St. Croix

American Legion Post 240
410 Maple St
Baldwin

Sauk

UW – Baraboo Campus
A4 Lecture Hall
1006 Connie Rd.
Baraboo

Sawyer

Winter High School
Winter

Shawano

Shawano Middle School
1050 S. Union St.
Shawano

Sheboygan

Sheboygan Falls High School
Cafeteria
220 Amherst Ave.
Sheboygan Falls

Taylor

Taylor County Fairgrounds
Multi-purpose Bldg.
Medford

Trempealeau

Trempealeau County Courthouse
Trempealeau Room
36245 Main St.
Whitehall

Vernon

Viroqua Middle School
Large Lecture Room
Blackhawk Drive
Viroqua

Vilas

Plum Lake Town Hall
Lake Street
Sayner

Walworth	National Guard Armory 401 E. Fair St. Elkhorn
Washburn	Agriculture Research Station Spoonerville
Washington	UW–Washington County Campus Room 201 (Big Lecture Hall) West Bend
Waukesha	Waukesha County Expo Center North Hall 4848 Northview Rd. Waukesha
Waupaca	Grand Seasons Motel 110 Grand Seasons Dr. Waupaca
Waushara	Waushara County Courthouse Demo Room #1 209 S. St. Marie Wautoma
Winnebago	Oshkosh North High School Auditorium 1100 W. Smith Oshkosh
Wood	Pittsville High School Auditorium 5407 1st Avenue Pittsville

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 Candy Knutson at (608) 267–3134 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rules may be submitted to Mr. Al Phelan, Conservation Congress Liaison, P.O. Box 7921, Madison, WI 53707 no later than **April 17, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings.

Fiscal Estimate

There is no fiscal effect.

Copies of Rules and Fiscal Estimate

A copy of the proposed rules [FH–12–98, WM–1–98] and fiscal estimates may be obtained from Ms. Candy Knutson, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267–3134.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

Notice is hereby given that pursuant to ss. 29.085, 29.166(1), 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.085, 29.166(2) and 29.174(2)(a), Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 20.16, Wis. Adm. Code, relating to sport trolling fishing reports. The proposed rule establishes an automated interactive system of telephonic reporting for use by licensed Great Lakes

support trollers. Licensees may use the new system or may continue using the paper forms and monthly reporting system. A licensee who elects to use the new system but who fails to comply with its requirements may be cited for violation of the traditional reporting requirements.

Initial Regulatory Flexibility Analysis

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

- a. Types of small businesses affected: Licensed charter captains on Lake Michigan and Lake Superior
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

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

March 23, 1998
Monday
at 5:00 p.m.

1st Floor Meeting Room
Kewaunee Co. Courthouse
613 Dodge,
Kewaunee

March 26, 1998
Thursday
at 5:00 p.m.

Auditorium
Public Ives Grove Complex
14200 Washington Ave.
Sturtevant

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

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **April 6, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH-10-98] and fiscal estimate may be obtained from Mr. Horns.

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 26.38, 227.11(2)(a) and 227.24, Stats., interpreting s. 26.38, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FR-11-98(E) creating ch. NR 47, subch. 7 establishing the private forest landowner grant program. This emergency order took effect on February 20, 1998. This rule establishes criteria for awarding grants and procedures for administering grants that share the cost of implementing forestry practices with the landowners. The rule establishes 7 practices that protect, improve and enhance soil and water quality; endangered, threatened or rare species forest communities, sustainable forestry, habitat for fish and wildlife; and recreational, aesthetic and environmental benefits of forest land.

Hearing Information

March 13, 1998
Friday
at 1:30 p.m.

Room 511, 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 Linda DePaul at (608) 266-2388 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the emergency rule may be submitted to Ms. Linda DePaul, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than **March 20, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [FR11-98(E)] may be obtained from Ms. DePaul.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to 26.145, 23.11, 28.07, 227.11(2)(a) and 227.24, Stats., interpreting s. 26.145, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FR-7-98(E) relating to the creation of ch. NR 47, subch. 8 establishing the forest fire protection grant program. This emergency order will take effect on March 9, 1998. This rule implements the Forest Fire Protection Grant Program which is a cooperative effort with local fire departments to prevent and suppress forest fires in Wisconsin. 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.

Hearing Information

March 13, 1998

Room 511, GEF #2

101 S. Webster Street

Madison

at 1:00 p.m.

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.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the emergency rule may be submitted to Mr. Bob Egan, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707 no later than **March 13, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [FR-7-98(E)] may be obtained from Mr. Egan.

Notice of Hearings

Natural Resources

(Environmental Protection -

General, Chs. NR 100-)

Notice is hereby given that pursuant to ss. 227.11(2), 281.61(2), (6), (12)(a) and (b), Stats., interpreting s. 281.61, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 166, Wis. Adm. Code, relating to the safe drinking water loan program. The eligibility criteria and project priorities in ch. NR 166 reflect the intent of s. 281.61, Stats., and the amendments to the federal Safe Drinking Water Act which is to help fund projects that will facilitate compliance with national primary drinking water standards or otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

The federal and state statutes also require that the rules give priority to projects that address the most serious risks to human health, especially acute health risks related to microbial organisms, that are needed to ensure compliance with the Safe Drinking Water Act and that assist communities that are most in need on a per household basis. Chapter NR 166 therefore assigns points to projects based on criteria that include: the severity of the human health risks that can be reduced or lessened by the project, the size and median household income of the population served by the water system, secondary contaminant violations or system compliance addressed by the project and the technical, financial and managerial capacity of the water system. Chapter NR 166 also establishes interest rates based on financial eligibility criteria that reflect the priorities in s. 281.61, Stats., and the Safe Drinking Water Act.

The proposed rule establishes the types of financial assistance available, establishes eligibility criteria for types of projects and costs and excludes types of projects that are ineligible. The proposed rule also details the procedures and requirements to apply for assistance, the conditions that will apply to assistance agreements, the options available to the Department in the event of noncompliance and the review of Department decisions available to applicants.

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

March 13, 1998
Friday
at 11:00 a.m.

Room 137B
Waukesha Co. DOT
141 NW Barstow
Waukesha

March 16, 1998
Monday
at 11:00 a.m.

Room "E", 2nd Floor
Portage Co. Courthouse
1516 Church St.
Stevens Point

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 Carol Bentzler at (608) 267-7585 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Ms. Carol Bentzler, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707 no later than **March 17, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [CF-15-98] and fiscal estimate may be obtained from Ms. Bentzler.

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), 285.11(1) and 285.35(3), Stats., interpreting ss. 285.11(6) and 285.35(3), Stats., and revising the State Implementation Plan developed under s. 285.11(6), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 487, Wis. Adm. Code, relating to the clean fuel fleet program to reduce volatile organic compound and oxides of nitrogen emissions from fleet vehicles.

The proposed revisions will delay the start of the clean fuel fleet program in Wisconsin from model year 1998 to model year 1999, consistent with recent action by the U.S. Environmental Protection Agency (EPA). The U.S. EPA has decided to allow states to delay the mandatory implementation of the clean fuel fleet program by one model year due to non-availability of an adequate model-mix and volume of certified clean fuel vehicles which meet low emission vehicle tailpipe emission standards.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.14, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Clean fuel providers and covered fleet operators
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills required

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

April 1, 1998
Wednesday
at 10:30 a.m.
Room 141
DNR Southeast Region
Headquarters
2300 N. Dr. Martin Luther
King, Jr. Drive
Milwaukee

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Mr. Muhammed Islam at (608) 264-9219 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. Muhammed Islam, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than **April 15, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing.

A copy of proposed rule [AM-6-98] 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

Notice of Hearings

*Natural Resources
(Solid Waste Management,
Chs. NR 500-)
(Hazardous Waste
Management, Chs. NR 600-)*

Notice is hereby given that pursuant to ss. 227.11(2)(a), 289.05, 289.06(1), 289.24(1)(c), 289.34, 289.61, 291.05, 291.07, 291.23, 291.25(2) and (4) and 299.05, Stats., interpreting ss. 289.24(1)(c), 289.34, 291.23, 291.25(2) and (4) and 299.05, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 500, 502, 507, 509, 512, 514, 520, 620 and 680, Wis. Adm. Code, relating to technical corrections, fee clarifications and incorporation of statutory requirements for solid and hazardous waste management rules.

Section 299.05, Stats., requires the Department to develop rules to refund certain fees paid for licenses (including those for solid and hazardous waste facilities) if the Department fails to meet established deadlines for issuing the licenses. Section NR 500.06(6), Wis. Adm. Code, is created requiring the Department to refund the submitted fee to the applicant if the Department does not make a determination on the solid waste licenses within 45 business days of receiving all required information. Sections NR 620.15(1)(d), 680.24(1m), 680.31(4) and 680.45(4)(b), Wis. Adm. Code, would be created to require refunds where deadlines for making determinations on hazardous waste licenses are not met.

Section 289.34, Stats., prohibits the Department from issuing certain approvals for landfills if the applicant is not in compliance with orders or approvals related to other solid or hazardous waste facilities. Present rules do not require an applicant to provide information to affirm this determination; therefore, the department is proposing to amend the requirements for a license (s. NR 500.06(5)), a feasibility report (s. NR 512.19) or a plan of operation (s. NR 514.04(3)) for solid waste landfills, and applications for licenses, or feasibility or plan of operation reports for hazardous waste facilities (s. NR 680.06(2m)) to include the information needed to determine whether the applicant is in compliance with s. 289.34, Stats.

Section 289.24(1)(c), Stats., requires that feasibility reports for landfills describe how the proposed landfill relates to any applicable county solid waste management plan approved under s. 289.10, Stats. Language would be added to s. NR 512.07 which would require landfill applicants to address this issue in the feasibility report.

The NR 500 series rule revisions which became effective in August, 1997 contained substantial plan review and license fee increases for many non-landfill solid waste facilities. However, since promulgation of these rule revisions, an inequity in the new fee structure has come to the department's attention involving municipal waste combustors. While the fees are appropriate for larger municipal waste combustors, these fees would also apply to several small medical waste combustors operated by hospitals. The Department does not believe that this is equitable and proposes to lower plan review and license fees for such facilities. A lower-fee category in Table 2 of NR 520.15 is created for municipal solid waste combustors processing 10 tons of waste per day or less.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.14, 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

March 11, 1998
Wednesday
at 10:00 a.m.
Room 120
State Office Building
141 NW Barstow
Waukesha

March 12, 1998
Thursday
at 10:30 a.m.
Room 185
DNR West Central
Region Hdqtrs.
1300 W. Clairemont
Eau Claire

March 17, 1998
Tuesday
at 10:30 a.m.
Room 310
City Hall
100 N. Jefferson
Green Bay

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 Ms. Vera Starch at (608) 267-7564 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. James Walden, Bureau of Waste Management, P.O. Box 7921, Madison, WI 53707 no later than **March 18, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WA-20-98] and fiscal estimate may be obtained from Mr. Walden.

Notice of Hearing

Pharmacy Examining Board

Notice is hereby given that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2), 440.08 (3) (b), 450.02 (3) (b), 450.02 (3) and 961.31, Stats., and interpreting ss. 450.04, 450.05, 450.06, 450.07, 450.08, 450.09 and 450.10, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise chs. Phar 1 to 13, relating to pharmacists and pharmacies.

Hearing Information

March 11, 1998
Wednesday
9:30 a.m.
Room 179A
1400 E. Washington Ave.
MADISON, WI

Written Comments

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

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

Written comments must be received by **March 25, 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), 440.08 (3) (b), 450.02 (3) and 961.31

Statutes interpreted: ss. 450.04, 450.05, 450.06, 450.07, 450.08, 450.09 and 450.10

This proposed rule-making order of the Pharmacy Examining Board contains many amendments of a housekeeping nature that relate to the definitions; the statutory authority; and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following sections contain changes of a more substantive nature:

SECTIONS 8, 13 and 15 amend provisions alluding to separate state and federal law examinations for pharmacist licensure to reflect the fact that they have been combined into a single examination called the "multi-state pharmacy jurisprudence examination."

SECTIONS 9 through 13 serve to transfer the requirements for reciprocal pharmacist licensure from ch. Phar 3 into ch. Phar 2, in order to place the requirements for both original pharmacist licensure in Wisconsin, as well as by reciprocity upon pharmacist licensure in another state under the same chapter.

SECTIONS 18, 19 and 20 amend provisions relating to the prelicense examinations and make the provisions similar to other rules of the Department and boards in the Department. These provisions relate to the determination of the passing score on the pharmacist examinations, cheating on the examinations and procedures for reviewing failed examinations administered by the Board.

SECTION 25 creates the requirements for renewing a license that has expired, depending upon whether the application for renewal is made less than 5 years, or 5 years or more, after the renewal date.

SECTION 29 is created to require that all pharmacies have an alarm system that is monitored from a central location.

SECTION 32 raises from one to two the number of non-pharmacists that may engage in aspects of the dispensing function under the supervision of a pharmacist.

SECTION 33 clarifies the circumstances under which a pharmacy may or may not accept the return of dispensed items after they have left the pharmacy.

SECTION 34 sets forth the Board's current interpretation that a pharmacist may not accept prescription orders received by telephone answering machines.

SECTIONS 38, 41 and 42 bring the rules into conformity with regulations regarding controlled substances adopted by the federal Drug Enforcement Administration. Section 38 waives the requirement to mark hard copy prescription orders for a controlled substance with a red "C", if a pharmacy utilizes a computerized recordkeeping system. Section 41 extends to 7 days the time period in which a prescriber has to provide a written order to a pharmacy for a schedule II controlled substance previously authorized by emergency oral order. Section 42 adopts the federal requirements for prescription orders transmitted to pharmacies by facsimile machine.

SECTION 44 creates rules clarifying current Board interpretations that it is unprofessional conduct to practice without a current license, and that the Board must be informed by a licensee when a prescription is dispensed that could likely cause substantial harm to a person.

SECTION 48 repeals ch. Phar 14 providing a procedure for assessing forfeitures without the issuance of a formal disciplinary complaint. The procedures have never been utilized since its creation in 1989. Although the procedure provides for a hearing to contest the forfeiture assessed, the Board believes the process to be highly questionable, from both a legal and public policy perspective.

Text of Rule

SECTION 1. Phar 1.01 is amended to read:

Phar 1.01 Authority. Rules in chs. Phar 1 to 44 ~~13~~ are adopted under authority of ss. 15.08 (5) (b), ~~461-31~~, 227.11 (2), Stats., and ch. 450, Stats.

SECTION 2. Phar 1.02 (7), (8), (11) and (14) are amended to read:

Phar 1.02 (7) "~~NAPLEX~~" "~~NAPLEX~~" means the ~~national association of boards of north American pharmacy licensing examination.~~

(8) "Pharmacist" ~~means a person licensed by the board under ch. 450,~~ has the meaning under s. 450.01 (15), Stats.

(11) "Pharmacy owner" means a person or entity to whom a pharmacy ~~permit~~ license is issued.

(14) "Professional service area" means the area of a pharmacy in which prescriptions are compounded or dispensed, hypodermic needles, syringes, poisons and schedule V controlled substances as listed in s. ~~461.22~~ 961.22, Stats., and ch. CSB 2, Wis. Adm. Code, are available, or where patients are consulted.

SECTION 3. Chapter Phar 2 (title), 2.01 (title) and 2.01 (intro.) are amended to read:

Chapter Phar 2

APPLICATION FOR PHARMACIST LICENSURE BY EXAMINATION LICENSE

Phar 2.01 Qualifications for original licensure. An applicant for original licensure as a pharmacist may be admitted to examination under ch. 450, Stats., if the applicant:

SECTION 4. A Note following Phar 2.01 (2) is created to read:

Note: The Pharmacy Internship Board is located at 425 North Charter Street, Madison, Wisconsin 53706.

SECTION 5. Phar 2.02 (title), (1) (intro.) and (d) are amended to read:

Phar 2.02 Application procedure for original licensure. (1) Each applicant for original licensure as a pharmacist shall submit a completed notarized application no later than 30 days prior to the examination date on forms provided by the board. The application shall include all of the following:

(d) The fees ~~specified~~ required under s. 440.05 (1), Stats.

Note: Applications are available upon request from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 6. Phar 2.03 (title) and (1) are amended to read:

Phar 2.03 Examinations for original licensure. (1) An applicant for original licensure as a pharmacist is required to pass the examinations identified in s. Phar 4.02 (1), (2), (4) and (5), Stats.

SECTION 7. Phar 2.03 (3) is repealed.

SECTION 8. Phar 2.03 (4) and (5) are amended to read:

Phar 2.03 (4) An applicant for licensure as a pharmacist may not be admitted to the ~~NABPLEX NAPLEX~~ or the federal law multi-state pharmacy jurisprudence examination before that ~~uniform~~ designated test date which is immediately before completion of the applicant's internship. Except as provided in sub. (5), an applicant may not be admitted to the ~~state law examination or the~~ laboratory practical examination before the test date which immediately follows completion of the applicant's internship.

(5) An applicant may make a written request for early admittance to the ~~state law examination and~~ laboratory practical examination if the applicant's internship completion date is within 15 days of the scheduled examination date. However, an applicant shall successfully complete an approved internship program and all other requirements before a license to practice may be issued.

SECTION 9. Chapter Phar 3 (title) is repealed.

SECTION 10. Phar 3.01 is renumbered s. Phar 2.04 and, as renumbered, s. Phar 2.04 (title) is amended to read:

Phar 2.04 Qualifications for persons licensed in another state.

SECTION 11. Phar 3.02 is renumbered s. Phar 2.05 and, as renumbered, s. Phar 2.05 (title) and (1) (intro.) are amended to read:

Phar 2.05 Application procedure for persons licensed in another state. (1) Each applicant licensed as a pharmacist in another state shall file with the board, no later than 30 days prior to the examinations, the following:

SECTION 12. Phar 3.03 is repealed.

SECTION 13. Phar 3.04 is renumbered s. Phar 2.06 and, as renumbered, s. Phar 2.06 (title), (1), (3) (intro.), (a), (b) and (c) are amended to read:

Phar 2.06 Examinations for persons licensed in another state. (1) **ACTIVE PRACTICE.** An applicant licensed as a pharmacist in another state who is engaged in the active practice of pharmacy, shall take the ~~state law multi-state pharmacy jurisprudence examination~~ described in s. Phar 4.02 (2) (L), and the patient consultation portion of the laboratory practical examination described in s. Phar 4.02 (4). The applicant shall submit, on forms furnished by the board, information describing his or her practice experience preceding the filing of the application. The board shall review requests for reciprocity.

(3) **EQUIVALENCY EXAMINATION.** Any applicant who has not engaged in the active practice of pharmacy shall take and pass each of the following examinations ~~by a minimum score of 75.0~~:

(a) State practice of pharmacy;

(b) Laboratory practice; ~~and,~~

(c) ~~State law examination~~ Multi-state pharmacy jurisprudence.

SECTION 14. Phar 4.01 (3) is amended to read:

Phar 4.01 (3) At least 10 days prior to the examination, the applicant shall be mailed an admission card and that card shall be presented at the door of the examination room, with a driver's license or passport photograph which is a duplicate of that filed with the application for licensure.

SECTION 15. Phar 4.02 (1) is amended to read:

Phar 4.02 (1) The federal law multi-state pharmacy jurisprudence examination shall determine an applicant's competence to practice within federal laws and regulations and Wisconsin laws and rules governing the practice of pharmacy.

SECTION 16. Phar 4.02 (2) is repealed.

SECTION 17. Phar 4.02 (5) is amended to read:

Phar 4.02 (5) ~~NABPLEX NABPLEX~~ shall determine an applicant's competence in the basic principles and professional areas within the practice of pharmacy.

Note: An otherwise qualified applicant shall be provided with reasonable accommodations, as required by the Americans With Disabilities Act.

SECTION 18. Phar 4.03 (3) is repealed and recreated to read:

Phar 4.03 (3) The score required to pass an examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

SECTION 19. Phar 4.035 is created to read:

Phar 4.035 Unauthorized assistance. An applicant may not give or receive unauthorized assistance during the examination. The action taken by the board when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

SECTION 20. Phar 4.045 and 4.046 are created to read:

Phar 4.045 Examination review. (1) An applicant who fails an examination administered by the board may request a review of that examination by filing a written request to the board within 30 days after the date on which the examination results were mailed to the applicant.

(2) An examination review shall be conducted under the following conditions:

- (a) The time for review shall be limited to one hour.
- (b) The examination shall be reviewed only by the applicant and in the presence of a proctor.
- (c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.
- (d) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing by the applicant on the form provided for this purpose. The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.
- (e) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

Phar 4.046 Claim of examination error. (1) An applicant wishing to claim an error on an examination administered by the board must file a written request for board review in the board office within 30 days after the date the examination was reviewed. The request shall include:

- (a) The applicant's name and address.
- (b) The type of registration applied for.
- (c) A description of the perceived error, including reference text citations or other supporting evidence for the applicant's claim.
- (2) The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.

SECTION 21. Phar 4.05 (1) and (4) are repealed.

SECTION 22. Phar 5.01 (1) and (2) are amended to read:

Phar 5.01 (1) Pharmacists, pharmacies, manufacturers and distributors licensed under ch. 450, Stats., and otherwise qualified for renewal, may continue to be licensed biennially by applying for renewal and paying the fee specified in s. 440.05-(3) 440.08 (2), Stats.

(2) No one without a current renewal ~~and certificate~~ may engage in the practice of pharmacy, nor hold ~~him-~~ himself or herself out to be a pharmacist nor use the title or letters "Pharmacist" or "Registered Pharmacist" or "R.Ph."

SECTION 23. Phar 5.02 (1) and (2) are amended to read:

Phar 5.02 Change of name and address. (1) A pharmacist shall notify the board in writing when his or her name has been legally changed, within 30 days of the change.

(2) A pharmacist shall notify the board of his or her current address in writing when his or her address has changed, within 30 days of the change.

SECTION 24. Phar 5.04 is amended to read:

Phar 5.04 Renewal prohibited; relicensure. Any person whose license is currently suspended or revoked may not renew his or her license. A person whose license has been suspended or revoked and subsequently reinstated by the board, and who is otherwise qualified for renewal, may renew his or her license upon completion of a renewal form and filing of the required renewal fee.

SECTION 25. Phar 5.05 is created to read:

Phar 5.05 Requirements for late renewal; reinstatement. (1) An individual who files an application for renewal of a license within 5 years after the renewal date may be reinstated by filing with the board all of the following:

- (a) An application for renewal on a form prescribed by the department.
- (b) The fee required under s. 440.08 (2), Stats., plus the applicable late renewal fee required under s. 440.08 (3), Stats.

(2) An individual who files an application for renewal of a license 5 years or more after the renewal date may be reinstated by filing with the board all of the following:

- (a) An application for renewal on a form prescribed by the department.
- (b) The fee required under s. 440.08 (2), Stats., plus the applicable late renewal fee required under s. 440.08 (3), Stats.
- (c) Verification of successful completion of examinations or educational requirements, or both, as the board may prescribe, provided that the examination or education requirements may not be more extensive than those required to obtain an initial license.

SECTION 26. Phar 6.01 is amended to read:

Phar 6.01 Licenses; application. Requirements and procedures for applying for a pharmacy license are specified in s. 450.06, Stats. Approved application forms are available from the board. Appointments for the required pharmacy inspection may be made by contacting the board office. A license application and fee shall be on file with the board at least 30 days prior to the granting of the pharmacy license. A pharmacy may not operate unless a pharmacy license has been granted. Board action shall be taken within 90 business days of receipt of a completed pharmacy application, as provided in s. RL 4.03.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 27. The Note following s. Phar 6.03 is repealed.

SECTION 28. Phar 6.06 (1) (j) 3. is amended to read:

Phar 6.06 (1) (j) 3. Wisconsin controlled substances act, ch. 464.961, Stats.

SECTION 29. Phar 6.07 (4) is created to read:

Phar 6.07 (4) A pharmacy shall have a centrally monitored alarm system.

SECTION 30. Phar 7.01 (1) (a) and (e) are amended to read:

Phar 7.01 (1) (a) Receive oral or written prescription orders of a prescriber, review all original and renewal prescription orders, written or oral, determine therapeutic compatibility and legality of the prescription order. The review shall include, when indicated or appropriate, consultation with the prescriber.

(e) ~~Transfer the prescription to the patient or agent of the patient and give~~ Give the patient or agent appropriate consultation relative to the prescription except that prescriptions may be delivered by an agent of the pharmacist to a patient's residence if the delivery is accompanied by appropriate directions and an indication that consultation is available by contacting the pharmacist. The consultation requirement applies to original and renewal prescription orders and, except when prescriptions are delivered to a patient's residence, is not satisfied by only offering to provide consultation.

SECTION 31. Phar 7.01 (1) (em) is created to read:

Phar 7.01 (1) (em) Transfer the prescription to the patient or agent of the patient.

SECTION 32. Phar 7.01 (1) (f) (intro.) and (3) are amended to read:

Phar 7.01 (1) (f) ~~Obtain~~ Receive, when required by law and standard professional practice, permission to renew from authorized prescribers, and note on the prescription order, medication profile record or uniformly maintained and readily retrievable document the following information:

(3) A pharmacist may supervise no more than one pharmacy intern and ~~one non-pharmacist~~ 2 non-pharmacists engaged in compounding and dispensing activities as described in sub. (1) (c), except a higher ratio may be authorized by the board upon request to and approval by the board of a specific plan describing the manner in which additional interns or non-pharmacists shall be supervised.

SECTION 33. Phar 7.04 is repealed and recreated to read:

Phar 7.04 Return or exchange of health items. (1) In this section:

(a) "Health item" means drugs, devices, hypodermic syringes, needles or other objects for injecting a drug, medicines, or items of personal hygiene.

(b) "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, tuberculosis sanitarium or similar facility, but does not include community-based residential facilities, jails or prison facilities.

(2) No health items after taken from a pharmacy where sold, distributed or dispensed, may be returned, except for any of the following:

(a) From an inpatient health care facility, provided they are in their original containers and the pharmacist determines the contents are not adulterated or misbranded.

(b) Where the health items were dispensed in error, were defective, adulterated, misbranded, or dispensed beyond their expiration date.

(c) When in the professional judgment of the pharmacist substantial harm could result to the public or a patient if they were to remain in the possession of the patient, patient's family or agent.

(3) Health items returned to a pharmacy pursuant to sub. (2), may not be sold, resold, or repackaged and sold or resold, given away, or otherwise distributed or dispensed. Returned health items shall either be destroyed at the pharmacy or delivered for destruction or other disposal by an authorized person or entity.

(4) It is not a "return" for a patient or agent of a patient to deliver a previously dispensed drug or device to a pharmacy for the purpose of repackaging and relabeling of that previously dispensed drug or device, and subsequent return of the drug or device for the same patient's use.

Note: Sub. (2) does not apply to controlled substances since current regulations of the DEA do not permit the return of controlled substances to a pharmacy under any circumstances.

SECTION 34. Phar 7.065 is created to read:

Phar 7.065 Answering machines in pharmacies. Oral prescription orders may be received at a pharmacy via a telephone answering device and dispensed by the pharmacist if the voice of the physician or physician's agent is known to the pharmacist, and provided other requirements of reducing the prescription order to writing, labeling and filing are met.

SECTION 35. Phar 7.07 (1) is amended to read:

Phar 7.07 (1) ~~Within 3 years of February 1, 1989, an~~ An individual medication profile record system shall be maintained in all pharmacies for persons for whom prescriptions, original or renewal, are dispensed for outpatient use. The system shall be capable of permitting the retrieval of information. The system need not be limited to individual medication profile records.

SECTION 36. Phar 8.01 is amended to read:

Phar 8.01 Scope. Procedures governing the manufacture, distribution and dispensing of controlled substances pursuant to ch. 461.96L, Stats., are set forth generally by that chapter and specifically by sections of this chapter and chs. Phar 12 and 13.

SECTION 37. Phar 8.02 (1), (2) and (3) (e) 2. are amended to read:

Phar 8.02 (1) Any pharmacy, practitioner, or other federal drug enforcement administration registrant, as referenced in ch. 461.96L, Stats., shall maintain complete and accurate records of each controlled substance received, manufactured, distributed, dispensed or disposed of in any other manner.

(2) Records required by the federal controlled substances act and ch. 461.96L, Stats., shall be maintained at the location where the drug is received, manufactured, distributed or dispensed, and be available for inspection by authorized persons for at least 5 years from the date of such record. Financial and shipping records such as invoices and packing slips, but not executed order forms, may be kept at a central location. A complete and accurate biennial physical inventory of all schedule II, III, IV and V controlled substances pursuant to ss. 461.18, 461.20 and 461.22, Stats., and ch. CSB 2, Wis. Adm. Code, on hand shall be made in conformance with all applicable federal and state laws.

(3) (e) 2. If a schedule V drug is dispensed other than pursuant to a prescription order, the dispenser shall make the record required by s. 461.23, 961.23, Stats., in a bound controlled substance V register at the time of the transaction.

SECTION 38. Phar 8.03 (1) and (3) are amended to read:

Phar 8.03 (1) All controlled substance prescription orders shall be maintained on file, in chronological order, for a period of at least 5 years. The orders shall be readily accessible to enforcement personnel authorized by s. 461.51, 961.5L, Stats.

(3) Schedule III, IV and V prescription orders may be filed with those for non-controlled drugs provided that orders for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height in the lower right hand corner of the order or orders for schedule III, IV and V substances may be filed separately. However, if a pharmacy employs an ADP system or other electronic recordkeeping system for prescription orders which permits identification by prescription order number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription order with a red "C" is waived.

SECTION 39. Phar 8.04 (1) is amended to read:

Phar 8.04 (1) Prescription orders for controlled substances shall be issued for a legitimate medical purpose by individual practitioners acting in the usual course of professional practice. Responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription order not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription order within the meaning and intent of ss. 450.01 (21) and 461.38, 961.38, Stats. The person knowingly dispensing pursuant to such a purported order, as well as the person issuing it, shall be subject to the penalties provided for violation of the provision of law relating to controlled substances.

SECTION 40. Phar 8.05 (2) is amended to read:

Phar 8.05 (2) A pharmacist may dispense a controlled substance listed in schedule II, III or IV only pursuant to a prescription order issued by an individual practitioner. The order shall be initiated and dated by the dispensing pharmacist as of the date the prescription is dispensed. If the person accepting the medication pursuant to any prescription order for a schedule II controlled substance, specified in s. 461.46, 961.16, Stats., is not personally known to the pharmacist, there shall be written in ink, on the reverse side, the printed name, signature and address of the person.

SECTION 41. Phar 8.09 (4) is amended to read:

Phar 8.09 (4) Within 72 hours 7 days after authorizing an emergency oral prescription order, the practitioner shall cause a written order for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of s. Phar 8.05, the order shall contain on its face "authorization for emergency dispensing" and the date of the oral order. The written order may be delivered to the pharmacist in person or by mail, but if delivered by mail it shall be postmarked within the 72 hours 7 day period. Upon receipt, the dispensing pharmacist shall attach this prescription order to the oral emergency order reduced to writing under sub. (2) (b). The pharmacist shall notify the board or department of regulation and licensing if the practitioner fails to deliver the written order. Failure of the pharmacist to provide notification shall void the authority conferred by this section to dispense without a written order of a practitioner.

SECTION 42. Phar 8.12 is created to read:

Phar 8.12 Prescription orders transmitted by facsimile machine. (1) PRESCRIPTION DRUGS OTHER THAN SCHEDULE II CONTROLLED SUBSTANCES. A pharmacist may dispense a prescription drug, other than a schedule II controlled substance, pursuant to a prescription order transmitted by a facsimile machine from the practitioner or the practitioner's agent to the dispensing pharmacy if all of the following conditions are met:

(a) The transmitted facsimile prescription order must contain all of the information required for a valid written prescription order. The order shall also contain the time and date of the transmission, as well as the telephone number and name of the transmitter.

(b) Unless the facsimile paper is non-fading, the facsimile prescription order received must be duplicated by copy machine or other similar device and the copy must be physically attached to the order received. (2) SCHEDULE II CONTROLLED SUBSTANCES. A pharmacist may not dispense a schedule II controlled substance pursuant to a prescription order transmitted by a facsimile machine unless all of the conditions stated in sub. (1) are satisfied, and either:

(a) The prescription order is written for a schedule II controlled substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, and is transmitted by the practitioner or the practitioner's agent to the home infusion pharmacy by facsimile; or,

(b) The prescription order is written for a schedule II controlled substance for a patient in a long term care facility, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile;

(c) The prescription order is written for a schedule II controlled substance for a patient residing in a hospice certified by Medicare under Title XVIII or licensed by this state, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) PRESCRIPTION ORDERS TRANSMITTED BY FACSIMILE CONSIDERED WRITTEN ORDERS. For all purposes under chs. 450 and 961, Stats., and the rules of the board, a prescription order transmitted by facsimile machine shall be considered the original written prescription order.

SECTION 43. Phar 10.02 (1), (2) and (3) are amended to read:

Phar 10.02 Definitions. In this chapter:

(1) "Dispense" means to select, compound, mix, combine, measure, count, or otherwise prepare a drug or drugs for delivery to the patient, or to deliver a drug or drugs to the patient has the meaning under s. 450.01 (7), Stats.

(2) "Drug" has the meaning defined in s. 450.06 under s. 450.01 (10), Stats.

(3) "Patient" means the individual for whom drugs are prescribed or to whom prescription drugs are administered has the meaning under s. 450.01 (14), Stats.

SECTION 44. Phar 10.03 (7m) and (19) are created to read:

Phar 10.03 (7m) Failing to report to the board information that reasonably suggests there is a probability that a prescription drug or device has caused or contributed to the substantial bodily injury or death of a customer or patient.

(19) Practicing without a current license.

SECTION 45. Phar 12.03 (2) (intro.), (a), (b), (c), (d) and (5) are amended to read:

Phar 12.03 (2) To obtain a license a person shall do all of the following:

(a) Submit an application on a form provided by the board;

(b) Pay the fee specified in s. 440.05 (8) (1), Stats.;

(c) Meet the inspection requirement under s. Phar 12.04;

(d) Register with the food and drug administration and comply with all applicable requirements of 21 CFR 200, 201, 202, 207, 210 and 211 (1985); and;

(5) The board shall act on the license within 60 business days after receiving the completed application, as provided in s. RL 4.03.

SECTION 46. Phar 13.02 (3) is amended to read:

Phar 13.02 (3) "Controlled substance" has the meaning set forth in s. ~~461.01 (4)~~ 961.01 (4), Stats.

SECTION 47. Phar 13.07 is amended to read:

Phar 13.07 Application review. The board shall act upon an application for a license within 60 business days after receiving the completed application, as provided in s. RL 4.03. If the license is denied, the applicant may request a hearing pursuant to ch. RL 1.

SECTION 48. Chapter Phar 14 is repealed.

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 *Public Service Commission*

Notice is hereby given that a public hearing will be held at the time and place indicated below to consider revision of ch. PSC 113, Wis. Adm. Code, relating to the service rules for electric utilities, with the exception of Part XII, "Standards for Electric Service Extension".

Hearing Information

The public hearing is scheduled as follows:

March 26, 1998
Thursday
10:00 a.m.
Amnicon Falls Hrg. Room
Public Service Commission
610 North Whitney Way
MADISON, WI 53705

This building is accessible to people in wheelchairs through the Whitney Way main floor entrance (lobby). Parking for people with disabilities is available along the south side of the building. Any party with a disability who needs accommodations should contact Richard Teslaw at (608) 267-9766.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02 (3), 196.49 (3) (b) and 227.11

Statutes interpreted: ss. 196.15, 196.16, 196.17, 196.171, 196.175, 196.18, 196.37, 196.49, 196.52, 196.595, 196.643, 196.85, 196.855, and 196.857

On February 6, 1996, the Public Service Commission of Wisconsin (Commission) directed on its own motion that a rulemaking proceeding be initiated to update, supplement, and revise its service rules for electric utilities contained in ch. PSC 113, Wis. Adm. Code, with the exception of Part XII, "Standards for Electric Service Extension". The service extension rules of Part XII are excluded from this rulemaking because they are being addressed in docket 1-AC-140.

This chapter contains the Commission's rules and requirements for electric utilities in the general area related to the technical and administrative aspects of electric service adequacy and consumer protection. The last major revision of metering and other technical service provisions of the Code was enacted in January 1988, while the last major revision of the rates and billing provisions of the Code was enacted in November 1989.

The purpose of the proposed amendments is to revise and update the existing rules based on experience or problems identified since they were last revised and to supplement the existing rules in areas of concern raised by the electric industry restructuring activities which were part of the Commission's generic investigation in docket 05-EJ-114 as well as the Commission's goal of assuring reliable service.

Since the last major revision of the Code, significant changes have been made to testing procedures to address advancements in meter technology and to the rules of deposits, collections, and disconnections, including the winter moratorium. Also since the last revision, power quality has become a more significant issue in the provision of adequate electric service. Besides the traditional reliability concerns with the frequency and duration of outages, customers are also becoming more sensitive to other temporal problems common to the electric system, such as momentary outages, voltage sags and swells, voltage flicker, voltage or current surges (transients), and harmonic distortion. Service quality standards to ensure maintenance and enhancement of electric service adequacy and reliability are also an identified long-term regulatory concern associated with the movement toward a restructured electric industry.

Fiscal Estimate

There will be no fiscal impact of the proposed rules on state or local units of government.

Initial Regulatory Flexibility Analysis

The proposed amendment will have no effect on small businesses.

Environmental Analysis

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. While the preparation of neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is normally required, an environmental assessment will be prepared on the proposed code revisions. Persons wishing to comment on the environmental aspects of the proposed code revisions should contact Paul Rahn, Public Service Commission, P.O. Box 7854, Madison, Wisconsin 53707-7854, or call (608) 267-8967.

Written Comments and Contact People

The record in this proceeding will be held open until **12:00 p.m. (noon) on April 10, 1998**, for receipt of any written comments. Written comments should be submitted to:

Ms. Lynda L. Dorr, Secretary to the Commission
Public Service Commission of Wisconsin
P. O. Box 7854
Madison, WI 53707-7854

The FAX due date is **April 9, 1998 at 12:00 p.m. (noon)**, and the FAX number is (608) 266-3957.

All filings must be received at the Commission by noon of the day that the filing is due. Any faxed material must be received at the Commission by noon of the day before the due date. Legal or procedural questions may be directed to the Examining Division at (608) 266-1261.

Other questions regarding this matter may be directed to James D. Looock, Chief Engineer, at (608) 266-3165, or Leon Swerin, Legal Counsel, at (608) 267-3589, of the Public Service Commission. A copy of the proposed rule can be obtained by contacting Mr. Looock or Mr. Swerin.

Notice of Hearing

Commissioner of Railroads

Notice is hereby given that the Office of the Commissioner of Railroads (office) will hold a public hearing to consider proposed changes to ch. RR 1, relating to the office's practices and procedures.

Hearing Information

March 27, 1998
Friday
9:30 a.m.
Commissioner of Railroads
610 N. Whitney Way, Rm. 110
Madison, WI

This building is accessible to people in wheelchairs through the main entrance (Lobby) on the front side of the building. Handicapped parking is available on the south side of the building. Any person with a disability who needs additional accommodations may contact the office at (608) 266-9536, (608) 267-1479/TTY, or (Fax) (608) 261-8220, or by writing to the office at 610 N. Whitney Way, Room 110, P.O. Box 8968, Madison, Wisconsin 53708-8968.

Written Comments

Interested people may also submit written comments until **March 27, 1998**, in lieu of appearing at the hearing.

Copies of Rule and Contact Person

For additional information concerning these proposed rules or to request a copy of the proposed rules, please contact:

Douglas S. Wood, Legal Counsel
Telephone (608) 266-9536
Office of the Commissioner of Railroads
610 North Whitney Way, Room 110
P.O. Box 8968
Madison, WI 53708-8968

Analysis

Statutory authority: ss. 189.02 (1), 195.03 (1), 195.39 and 227.11 (2) (a) and (b)

Statutes interpreted: ss. 19.35, 84.05, 86.12-86.13, 189.02, 190.16, 191.07, 191.09, 192.29, 192.31, 192.324, 192.34, 192.52, 192.53, 192.56, 195.03 to 195.041, 195.043, 195.05, 195.07 to 195.08, 195.19, 195.27 to 195.285, 195.29 to 195.32, 195.37, 195.60, 227.44, and 227.46 to 227.47

Legislative Council Staff Recommendations

On July 7, 1997, the Office received the Legislative Council Staff's (LCS) Clearinghouse Report on the proposed rule. The LCS suggested a number of changes which have been incorporated in the proposed rule. The proposed rule corrects the note to s. RR 1.12 (3) which previously stated incorrect record fees. The proposed rule lists specific statutory sections being interpreted rather than entire chapters. The LCS suggested that the phrase "transmitted facsimile" be added to s. RR 1.11 (1) for consistency with amended ss. RR 1.01 and 1.08 (3). The LCS questioned the use of the phrase "findings of ultimate fact" in new ss. RR 1.14 and 1.15. The proposed rule changes this phrase to "ultimate conclusion on each material issue", which is the wording used in s. 227.47 (1). The remaining changes suggested by the LCS related to form and grammar.

Analysis Prepared by the Office of the Commissioner of Railroads

The Wisconsin Office of the Commissioner of Railroads proposes to repeal s. RR 1.13 (2) (a) to (d), (f) and (g); to renumber ss. RR 1.02 (1) to (5) and RR 1.13 (2) (i); to renumber and amend s. RR 1.13 (2) (e) and to amend ss. RR 1.01 (1), (2) and (3), 1.04 (1) and (7), 1.07 (3), 1.08 (1) and (3), 1.11 (1), and 1.12 (3); to repeal and recreate s. RR 1.001; and to create ss. RR 1.02 (2), 1.025, 1.03 (3), 1.12 (4), 1.14 and 1.15, relating to procedures and practices of the office.

Chapter RR 1 sets forth the office's procedures and practices, primarily for hearings. The proposed rules primarily codify current office practices and delete obsolete provisions. The proposed rules establish a new procedure for issuance of final decisions by the hearing examiner in cases where the commissioner is unable to do so.

The proposed rule repeals and recreates s. RR 1.001. The recreated rule adds definitions of “mail”, “party”, “crossing” and “highway”. New s. RR 1.02 (2) provides for the certification of parties. RR 1.01 (1) and (2) and RR 1.08 (3) are amended to allow filing documents with the office by facsimile. RR 1.08 (3) and RR 1.11 (1) are amended to reduce from 3 to one the number of copies which parties must submit to the office.

New s. RR 1.025 sets forth information which petitioners must submit to the office when requesting a change in a crossing, establishment of a new crossing or closure of an existing crossing. This section also allows the examiner to delay a hearing until the petitioner files the necessary documents.

New s. RR 1.03 (3) specifies the information which a notice of hearing issued by the office must contain.

RR 1.07 (3) is amended to remove a stated purchase price for a copy of a hearing tape. The current cost is stated in an attached note. RR 1.12 (3) is similarly amended to remove the cost of record copies. The current cost for various records and record searches is stated in a note. RR 1.12 (3) is also amended to remove the record fee exemption currently granted to government agencies. The amended rule would treat record requests from government agencies the same as requests from private citizens. New s. RR 1.12 (4) authorizes the use of private copying services, with the agreement of the requester, for record requests.

Section s. RR 1.13 governs environmental review of office actions. Amended s. RR 1.13 (2) deletes reference to agency actions which are preempted by federal law. The ICC Termination Act extended exclusive federal jurisdiction over all aspects of economic regulation of railroads and expressly preempts state regulation in this area. Because the office can no longer undertake these actions, reference to them is obsolete.

New sections ss. RR 1.14 and 1.15 set forth items which proposed and final decisions must contain. These sections codify current office practice. RR 1.15 (3) (a) allows the Commissioner to designate the examiner, rather than the Commissioner, to issue a final decision. This paragraph requires the Commissioner to so designate the examiner in any instance that the Commissioner recuses from a case. RR 1.15 (3) (b) grants the examiner authority to issue a final decision in uncontested cases during a prolonged absence or disability of the Commissioner or the vacancy of the Commissioner position. Current law makes no provision for decision-making in the event of recusal, disability or vacancy. RR 1.15 (3) (a) and (b) fills this void.

Text of Rule

SECTION 1. RR 1.001 is repealed and recreated to read:

RR 1.001 Definitions.

- (1) “Crossing” means the intersection of a highway with a track or tracks of a railroad, including the area affecting or affected by said intersection.
- (2) “Highway” includes all public ways and thoroughfares and all bridges on the same, whether used by motorized vehicles or not, but does not include snowmobile trails.
- (3) “Mail” means first class, certified or regular mail, or inter-departmental mail.
- (4) “Office” means the office of the commissioner of railroads.
- (5) “Party” means any person who requests admission as a party and whose substantial interest may be affected by a decision. “Party” includes the railroad and maintaining highway authority and the department of transportation when a highway project which encompasses a crossing involves the expenditure of federal funds, whether on a state highway or not.

SECTION 2. RR 1.01 (1), (2), and (3) are amended to read:

RR 1.01 Communications and documents addressed to office. (1) All written communications and documents ~~should~~ shall be filed with the office by deposit in the mail, by facsimile transmission, or in person.

(2) Documents shall be served upon the office by deposit in the ~~first-class mail, by facsimile transmission, or by delivery in person.~~ When service is made upon the office the date of service shall be the day when the document is received by the office.

(3) Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays, ~~Martin Luther King Jr.'s Birthday, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, Christmas, New Year's Eve day, New Years, Good Friday afternoon, Memorial Day, and other days as designated by the governor and on holidays listed in s. 16.275 (6), Stats.~~

SECTION 3. RR 1.02 (1), (2), (3), (4) and (5) are renumbered s. RR 1.02 (1) (a), (b), (c), (d) and (e).

SECTION 4. RR 1.02 (2) is created to read:

RR 1.02 Parties. (2) CERTIFICATION. The commissioner or hearing examiner shall certify parties. The certified parties shall be listed in the proposed decision and the final decision. For purposes of certifying parties, the commissioner or hearing examiner shall consider the nature, duration and degree of the effect of the final decision upon a person's interest.

SECTION 5. RR 1.025 is created to read:

RR 1.025 Petitions, complaints and applications. (1) FORM. Each petition, complaint or application filed with the office shall be in writing and signed by the petitioner, complainant, or applicant, or a person authorized to file the petition, complaint or application.

(2) CONTENT. Each petition filed with the office for the alteration, closure, establishment, or relocation of a crossing shall include all of the following:

(a) Engineering design plans showing the proposed changes.

(b) The proposed construction completion date.

(c) The proposed apportionment of cost for the construction.

(3) COPIES. At the time of filing, a petitioning highway authority shall provide a copy of the petition to the affected railroad or a petitioning railroad shall provide a copy of the petition to the affected highway authority.

(4) SANCTIONS. Failure to comply with sub. 2. or sub. 3 may result in an order by the examiner that the matter not be heard until those requirements are met.

Note: Addresses for railroads and highway authorities may be obtained by contacting the office at Office of the Commissioner of Railroads, 610 N. Whitney Way, Room 110, PO Box 8968, Madison, WI 53708-8968, Voice (608) 266-7607, Fax (608) 261-8220 or TTY (608) 267-1479.

SECTION 6. RR 1.03 (3) is created to read:

RR 1.03 (3) The notice of hearing shall be in writing, with a title identifying the matter and the docket number and contain the all of the following information:

- (a) The date, time and location of the hearing.
- (b) The statutory authority for the hearing.
- (c) A short summary of the matter to be considered.
- (d) A statement of the issues.

(e) A notice of assessment of costs against the railroad under s. 195.60, Stats., where applicable.

(f) Such other information as the commissioner or hearing examiner may deem appropriate.

SECTION 7. RR 1.04 (1) and (7) (intro.) are amended to read:

RR 1.04 Hearings. (1) At any hearing an examiner may preside. ~~An examiner shall disqualify himself or herself if by reason of personal interest in or knowledge of the matter to be heard he or she is unable to act disqualifies the examiner if it prevents the examiner from acting fairly or impartially.~~ No person who has directly participated in the investigation of the matter to be heard shall be designated or serve as examiner.

(7) Failure to comply with any order issued under sub. (2) or s. RR 1.09 by any of the parties without good cause shown for the failure to comply shall result in sanctions being imposed by the examiner. Sanctions which ~~shall~~ may be imposed include any of the following:

SECTION 8. RR 1.07 (3) is amended to read:

RR 1.07 (3) If a proceeding has been recorded, the office may substitute a copy of the tapes for a transcript request if no petition for judicial review has been filed. The cost per tape shall be ~~\$11.00~~ an amount set by the office based on the actual total cost and paid in advance, unless otherwise provided by statute.

Note: The cost per tape is \$12.00. This amount is subject to change.

SECTION 9. RR 1.08 (1) and (3) are amended to read:

RR 1.08 (1) The examiner may require briefs in any matter before the office and answers to complaints.

(3) Briefs shall be no more than 10 pages, typed in double space on 8 1/2 x 11 inch paper, unless the examiner provides otherwise. Three copies ~~An original and one copy~~ of the brief shall be filed with the office and one copy mailed, transmitted by facsimile or delivered in person to each of the other parties.

SECTION 10. RR 1.11 (1) is amended to read:

RR 1.11 Comments on proposed decisions. (1) Where a proposed decision is prepared and circulated, comments shall be filed within 15 days of ~~deposit in the first-class mail or delivery in person~~ the date of the proposed decision unless a different date is specified by the examiner or commissioner. An original and one copy of the comments shall be filed with the office and one copy mailed, transmitted by facsimile, or delivered in person to each of the other parties listed in the proposed decision.

SECTION 11. RR 1.12 (3) is amended to read:

RR 1.12 (3) The fee ~~shall be 15 cents per page.~~ No fee shall be assessed against government bodies for reproduction, photocopying, photographing, transcription or other duplication of a public record in the custody of the office may not exceed the actual, direct and necessary cost.

Note: The office charges the following fees: simple photocopying — 15 cents per page, cassette tape of hearing \$12.00. When the cost of locating a record exceeds \$50, the office charges the actual, necessary and direct costs of location. These amounts are subject to change.

SECTION 12. RR 1.12 (4) is created to read:

RR 1.12 (4) With the agreement of the record requester, the custodian of records may elect to use a private company to produce copies of records in any form. The fee for such copies shall be the actual cost charged by the private company plus the cost of any office staff labor.

SECTION 13. RR 1.13 (2) (a) to (d), (f) and (g) are repealed.

SECTION 14. RR 1.13 (2) (e), (h), and (i) are renumbered s. RR 1.13 (2) (a), (b), and (c), and s. RR 1.13 (2) (a) and (b), as renumbered, are amended to read:

RR 1.13 (2) The following types of office actions ~~shall~~ do not require an environmental impact statement:

- (a) Orders relating to ~~railroad~~ highway crossings.
- (b) Approval of spur track ~~abandonment~~ removal.
- (c) Granting of applications by water carriers.

SECTION 15. RR 1.14 is created to read:

RR 1.14 Proposed decision. (1) FORM. Each proposed decision issued by a hearing examiner shall be in writing, with a title identifying the matter and the docket number.

(2) CONTENT. Each proposed decision shall include all of the following:

- (a) Specific proposed findings of fact.
- (b) Proposed ultimate conclusion on each material issue.

(c) Proposed conclusions of law.

(d) A proposed order setting out the duties of each party, including deadlines for work or installations required, and an apportionment of costs.

SECTION 16. RR 1.15 is created to read:

RR 1.15 Final decision. (1) FORM. Each final decision issued by a hearing examiner shall be in writing, with a title identifying the matter and the docket number.

(2) CONTENT. Each final decision shall include all of the following:

(a) Specific findings of fact.

(b) Ultimate conclusion on each material issue.

(c) Conclusions of law.

(d) An order setting out the duties of each party, including deadlines for work or installations required, and an apportionment of costs. The order is not limited simply to granting or denying a petition, but may order any reasonable method for the improvement of public safety or convenience.

(3) FINAL DECISION BY EXAMINER. (a) The commissioner may, at any stage of the proceedings, designate the examiner to render the final decision. The commissioner shall designate the examiner to render the final decision when the commissioner has recused himself or herself from participation in a proceeding. The designation shall be in writing and provided to all parties.

(b) During any prolonged disability or absence of the commissioner, the examiner shall render the final decision in any uncontested matter. During any period in which the position of commissioner is vacant, the examiner shall render the final decision in any uncontested matter.

Fiscal Estimate

There is no fiscal impact from the adoption of these rules. A copy of the proposed rules and a full fiscal estimate may be obtained without cost from the contact person at the Office of the Commissioner of Railroads upon request.

Initial Regulatory Flexibility Analysis

These rule changes will not affect small business.

Notice of Hearing

Commissioner of Railroads

Notice is hereby given that the Office of the Commissioner of Railroads (Office) will hold a public hearing to consider proposed repeal of ch. RR 3, relating to railroad ratemaking.

Hearing Information

March 27, 1998
Friday
9:30 a.m.
Commissioner of Railroads
610 N. Whitney Way, Rm. 110
Madison, WI

This building is accessible to people in wheelchairs through the main entrance (Lobby) on the front side of the building. Handicapped parking is available on the south side of the building. Any person with a disability who needs additional accommodations may contact the office at (608) 266-9536, (608) 267-1479/TTY, or (Fax) (608) 261-8220, or by writing to the office at 610 N. Whitney Way, Room 110, P.O. Box 8968, Madison, Wisconsin 53708-8968.

Written Comments

Interested people may also submit written comments until **March 27, 1998**, in lieu of appearing at the hearing.

Contact Person

For additional information concerning these proposed rules or to request a copy of the proposed rules, please contact:

Douglas S. Wood, Legal Counsel
Telephone (608) 266-9536
Office of the Commissioner of Railroads
610 North Whitney Way, Room 110
P.O. Box 8968
Madison, WI 53708-8968

Analysis

Statutory authority: ss. 189.02 (1), 195.03 (1), 195.39 and 227.11 (2) (a) and (b)

Statutes interpreted: ss. 189.02, 195.03 to 195.043, 195.05, 195.08 to 195.17, 195.21, 195.37 to 195.39

Legislative Council Staff Recommendations

On June 25, 1997, the office received the Legislative Council Staff's (LCS) Clearinghouse Report on the proposed rule. The LCS submitted no suggested changes.

Analysis Prepared by the Office of the Commissioner of Railroads

The Wisconsin Office of the Commissioner of Railroads proposes to repeal ch. RR 3, Railroad Rate-making, which sets forth procedural and substantive provisions for the regulation of intrastate railroad rates. Chapter RR 3 has been preempted by federal law.

The Interstate Commerce Commission Termination Act granted exclusive jurisdiction over the regulation of railroad economic activity to the Surface Transportation Board (Board). 49 USC sec. 10501. The Termination Act preempted state regulation of intrastate railroad rates with which ch. RR 3 was concerned. The jurisdiction of the Board over (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers . . . is exclusive . . . [T]he remedies . . . with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 USC 10501 (b) (1). See also, 61 FR 14849 in which the Board stated its conclusion that the Termination Act preempts state regulation in this area.

The legislative history of the Termination Act also demonstrates Congressional intent to preempt state regulatory authority over intrastate rail rates. The House Transportation Committee report stated that the new law effects a "general pre-emption of State economic regulation of rail carriers . . ." H.R. Rep. No. 311, 104th Cong., 1st Sess. 103 (1995).

For these reasons, the office proposes to repeal ch. RR 3.

Text of Rule

SECTION 1. Chapter RR 3 is repealed.

Note: The Interstate Commerce Commission Termination Act granted exclusive jurisdiction over the regulation of railroad economic activity to the Surface Transportation Board (STB). 49 USC sec. 10501. The Termination Act preempted state regulation of intrastate railroad rates with which chapter RR 3 was concerned. See also, 61 FR 14849, in which the STB stated its conclusion that the Termination Act preempts state regulation in this area. The STB took over many of the duties of the Interstate Commerce Commission, which the Termination Act abolished. The Board can be reached at: Office of Public Services, Room 848, Surface Transportation Board, 1925 K St. N.W., Washington, DC 20423-0001. (202) 565-1592.

Fiscal Estimate

There is no fiscal impact from the adoption of these rules. A copy of the proposed rules and a full fiscal estimate may be obtained without cost from the contact person at the Office of the Commissioner of Railroads upon request.

Initial Regulatory Flexibility Analysis

These rule changes will not affect small business.

Notice of Hearing Workforce Development

(Economic Support, Chs. DWD 11-59)

Notice is hereby given that pursuant to s. 49.26, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the revision of s. DWD 12.25, Wis. Adm. Code, relating to amendments to the Learnfare Program.

Hearing Information

The public hearing is scheduled as follows:

March 16, 1998
Monday
10:00 a.m.
Room 400X, GEF #1
201 E. Washington Ave.
Madison, WI

This hearing 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 the EEO/AA office of the Division of Economic Support at (608) 267-0927 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

Statutory authority for rule: s. 49.26 (1) (gm) 2 and (h) 1
Statute interpreted by the rule: s. 49.26

This rule implements changes to the Learnfare Program made by 1997 Wis. Act 27 by amending the existing rules on the Learnfare Program, s. DWD 12.25, Wis. Adm. Code, as follows:
Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the Learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child's parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W-2 agency, the W-2 agency is required to impose a financial penalty, unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under Learnfare. In addition, good cause for failing to participate in Learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court-ordered appearance or temporary incarceration.
- Observance of a religious holiday.
- Death of a relative.
- Family emergency.
- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent's child.
- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child's parent, as determined by the W-2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W-2 participant who is in a community service job (CSJ) or transitional placement and will be imposed as a liability against a W-2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W-2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until an exemption or good cause reason is verified.

Copies of Rule

A copy of the rules to be considered may be obtained from:

Division of Economic Support
State Dept. of Workforce Development
Telephone (608) 266-0988
One West Wilson Street
P.O. Box 7935
Madison, WI 53707-7935

Copies may also be obtained at the appointed time and place the hearing is held.

Written Comments

Interested people are invited to appear at the hearing, and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing may be submitted no later than **March 20, 1998** for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Dianne Reynolds at the address previously given. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Fiscal Estimate

This is the rule to implement the changes to the Learnfare Program made in 1997 Wis. Act 27.

All costs to the Department and local governments for the operation of the Learnfare Program were included in the 1997-1999 biennial budget act, 1997 Wis. Act 27. There are no additional costs for state government or local governments as a result of the promulgation of these administrative rule changes.

Initial Regulatory Flexibility Analysis

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

- None. These rules affect W-2 participants with children between the ages of 6 to 17.
2. *Reporting, bookkeeping and other procedures required for compliance with the rules:*
Not applicable.
 3. *Types of professional skills necessary for compliance with the rules:*
Not applicable.

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

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

Corrections (CR 96-185):

Ch. DOC 309 – Relating to leisure time activities, inmate activity groups and religious beliefs and practices for inmates. **(withdrawn)**

Health & Family Services (CR 97-130):

Chs. HFS 10 and 67 and HSS 118 – Relating to hearings on relief from institutional charges, a low-income standard for allocating state nutrition and senior volunteer funds, and maintaining the confidentiality of personal facts included in medical information obtained by Department staff in the conduct of official business.

Insurance (CR 97-137):

S. Ins 3.53 – Relating to HIV testing procedures.

Investment Board (CR 97-150):

Ch. IB 1 and s. IB 2.02 – Relating to restrictions on Investment Board employees.

Natural Resources (CR 97-123):

S. NR 20.13 (2) (a) and (c) – Relating to ice fishing shelters on the Fox River.

Natural Resources (CR 97-153):

Subch. IX of ch. NR 47 – Relating to the forest fire protection grant program.

Physical Therapists Affiliated Credentialing Board (CR 97-133):

Chs. PT 1, 2, 3, 4, 6 and 8 – Relating to application requirements, examinations, temporary licenses, unprofessional conduct and biennial license renewals of physical therapists.

Regulation & Licensing (CR 97-118):

Chs. RL 70, 71, 72 and 73 – Relating to the certification and regulation of acupuncturists.

Transportation (CR 97-154):

Ch. Trans 512 – Relating to the Transportation Infrastructure loan program.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Administration (CR 96-166):

An order creating ch. Adm 68, relating to length, expiration date and fee for licenses issued to manufactured and mobile home dealers and salespeople and for registration plates issued to dealers.

Effective 04-01-98.

Administration (CR 97-82):

An order affecting ch. Adm 1, relating to parking on state-controlled property.

Effective 04-01-98.

Administration (CR 97-102):

An order repealing and recreating ch. Adm 2, relating to the use, care and preservation of property under the Department's control.

Effective 04-01-98.

Chiropractic Examining Board (CR 97-65):

An order affecting ss. Chir 5.01, 5.02 and 5.03, relating to continuing education requirements and approval of continuing education programs for chiropractors.

Effective 04-01-98.

Employment Relations (CR 97-142):

An order affecting ss. ER 18.02, 18.03, 18.04 and 18.15, relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employes, and catastrophic leave.

Effective 04-01-98.

Insurance (CR 97-99):

An order affecting ss. Ins 2.14 and 2.16, relating to life insurance solicitations.

Effective 04-01-98.

Transportation (CR 97-139):

An order amending s. Trans 276.07 (15) and (31), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Effective 04-01-98.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **February 28, 1998 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.

Administration (CR 96-164):

An order creating ch. Adm 66, relating to financial qualifications of manufactured home dealer license applicants.

Effective 03-01-98.

Administration (CR 96-165):

An order repealing ch. Trans 141 and creating ch. Adm 67, relating to manufactured home dealer trade practices, facilities and records.

Effective 03-01-98.

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

An order affecting ss. ATCP 42.01 and 42.04, relating to commercial feed.

Effective 03-01-98.

Corrections (CR 97-92)

An order creating ch. DOC 332, relating to registration and community notification of sex offenders.

Effective 3-1-98.

Higher Educational Aids Board (CR 97-111):

An order repealing and recreating ch. HEA 9, relating to the academic excellence higher education scholarships.

Effective 03-01-98.

Natural Resources (CR 97-120):

An order affecting s. NR 102.10 (1m) 6., 9., 9m. and 11., relating to waters classified as outstanding resource waters.

Effective 03-01-98.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Administration (CR 96–164)

Ch. Adm. 66 – Financial qualifications of manufactured home dealer license applicants.

Summary of Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the department has determined that the proposed rule will not have any adverse impact on small businesses.

Summary of Comments:

No comments were reported.

2. Administration (CR 96–165)

Ch. Adm 67 – Manufactured home dealer trade practices, facilities and records.

Summary of Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the department has determined that the proposed rule will not have any adverse impact on small businesses.

Summary of Comments:

No comments were reported.

3. Agriculture, Trade & Consumer Protection (CR 97–86)

Ch. ATCP 42 – Commercial feed revisions.

Summary of Final Regulatory Flexibility Analysis:

1. Type of businesses that will be affected by the proposed rule changes:

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

Commercial Feed Manufacturers and Distributors

There are currently 1000 commercial feed facilities in Wisconsin. Approximately 700 of these facilities engage in manufacturing commercial feed. The remainder are distribution points or labelers. A firm that identifies itself on the label as the party responsible for the feed and distributes a product that is manufactured by another is a distributor. The department estimates that about 70% of the manufacturing facilities also engage in other agri–business activities such as sales of fertilizer and pesticides. The department also estimates that about 70% of the manufacturing facilities are small businesses.

Feed Manufacturers Distribution of Labeled Feed Per Year

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

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

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

Feed Manufacturers – Category of Feed Produced

300 firms produce medicated animal feed.

400 firms only produce non–medicated animal feeds.

Poultry and Livestock Farm Operations

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

Commercial Feed Consultants

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

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

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

2. Reporting, record keeping and other procedures required for compliance with the rules:

Commercial Feed Manufacturers and Distributors

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

Commercial Feed Consultants

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

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

Commercial Feed Manufacturers and Distributors

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

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

4. Special accommodations to reduce small business impact:

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

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

Summary of Comments:

No comments were reported.

4. Corrections (CR 97-92)

Ch. DOC 332 – Registration and community notification of sex offenders.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not require small business to perform any duties and will have no impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

5. Higher Educational Aids Board (97-111)

Ch. HEA 9 – Academic excellence higher education scholarships.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

6. Natural Resources (CR 97-120)

S. NR 102.10 – Waters classified as outstanding resource waters.

Summary of Final Regulatory Flexibility Analysis:

The proposed additions to ch. NR 102 would affect small businesses which propose a new discharge to one of the four water bodies on the list. Proposed new discharges to these flowages would be more strictly regulated based on the outstanding resource water designation than the existing fish and aquatic life classification. The four flowages on the list are not likely candidates for new wastewater discharges from small businesses.

Summary of Comments by Legislative Review Committee:

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

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