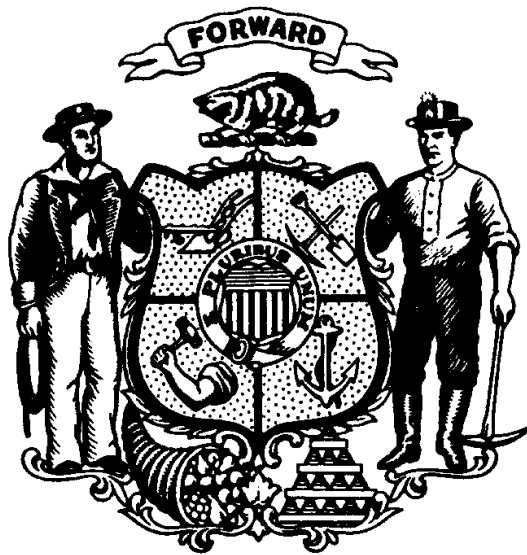


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 509**



Publication Date: May 14, 1998  
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## EMERGENCY RULES NOW IN EFFECT

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

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

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

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

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### EMERGENCY RULES NOW IN EFFECT

#### Department of Administration (Gaming Board)

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

#### Finding of Emergency

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

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

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

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

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

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

**Publication Date:** December 8, 1997

**Effective Date:** December 8, 1997

**Expiration Date:** May 7, 1998

**Hearing Date:** February 26, 1998

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### EMERGENCY RULES NOW IN EFFECT (2)

#### Agriculture, Trade & Consumer Protection

1. Rules adopted creating **Ch. ATCP 36**, relating to the sale and use of pesticides containing the active ingredient clomazone.

#### Finding of Emergency

(1) Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

(2) Clomazone is volatile. Off-target movement from clomazone applications can affect non-target plants located hundreds of feet from the application site. Off-target movement from clomazone applications can damage non-target plants by inhibiting the formation of chlorophyll in those plants.

(3) Off-target movement has occurred in many clomazone applications to date. Non-target plants exposed to off-target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long lasting than in prior years. In 1997, the department received 49 complaints of off-target movement to non-target plants. These complaints comprised 20% of all pesticide complaints received by the department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off-target movement incidents that occurred. Off-target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

(4) The department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non-target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off-target movement and nontarget damage during the 1998 planting and growing season.

(5) Clomazone herbicides are commonly applied during spring planting. The department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

**Publication Date:** March 15, 1998

**Effective Date:** March 15, 1998

**Expiration Date:** August 12, 1998

**Hearing Date:** April 28, 1998

2. Rules adopted creating **ss. ATCP 10.68** and **11.58**, relating to fish farms and imports of live fish and fish eggs.

## Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

### Fish Farms

#### Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

#### Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

#### Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:

- \*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

- \*Allows public fishing, for a fee, for fish hatched at that fish farm.

- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

- \*Allows public fishing at the fish farm for a fee.

- \*Sells or trades fish, from the fish farm, to any person.

- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

- \*Sell minnows to any person

- \*Sell fish or fish eggs to a type A registrant.

- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- \*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

- \*The fish farm consists solely of ponds used to hold or grow fish.

- \*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

#### Registration Fees

This emergency rule establishes the following registration fees:

· Type A registration	\$50.00
· Type B registration	\$25.00
· Type C registration	\$ 5.00
· Type D registration	\$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

#### Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.

- DNR informs DATCP that DNR has approved the facility.

#### Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.

- The date on which the operator received or delivered the fish or fish eggs.

- The location at which the operator received or delivered the fish or fish eggs.

- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

#### Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.

- Violating the terms of the registration

- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.



- Physically assaulting a DATCP employee performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.
- Paying registration fees with a worthless check.

### Fish Imports

#### Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.
- Selling them as bait, or for resale as bait.
- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

#### Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.
- The number of each fish farm registration certificate, if any, held by the importer.
- Each species of fish or fish eggs which the importer is authorized to import under the permit.
- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.
- The purpose for which the fish or fish eggs are being imported.
- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.
- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

#### Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

#### Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

#### Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

#### Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

**Publication Date:** March 16, 1998

**Effective Date:** March 16, 1998

**Expiration Date:** See section 9104 (3xr) 1997 Wis. Act 27

**Hearing Date:** April 27, 1998

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## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Petroleum Environmental Cleanup Fund, Ch. ILHR 47)

Rules adopted revising **ch. ILHR 47**, relating to the petroleum environmental cleanup fund.

### Finding of Emergency and Rule Analysis

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

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the

Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over \$15,000,000 per month. Approximately \$7,500,000 per month is allotted to the fund for the payment of claims. The fund currently has a backlog of \$250,000,000 representing almost a 30-month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

#### Administrative Elements.

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

#### Progress Payments.

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

#### Remedial Alternative Selection.

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

- A documented expansion of plume margin;
- A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;
- Soil contamination within bedrock or within 1 meter of bedrock;
- Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and
- Documented contamination discharges to a surface water or wetland.

#### Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for \$80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost-effective remediations would also be provided.

#### Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 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:** April 21, 1998  
**Effective Date:** April 21, 1998  
**Expiration Date:** September 18, 1998  
**Hearing Date:** May 29, 1998  
 [See Notice this Register]

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## 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

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Commerce*

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

Rule adopted 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  
**Hearing Date:** February 12, 1998

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## EMERGENCY RULES NOW IN EFFECT (2)

### Department of Corrections

1. 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

2. Rule adopted amending **s. DOC 328.22 (5)**, relating to custody and detention of felony probationers and parolees.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: the Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court rule in *Sullivan v. Kliesmet*, that the Sheriff of Milwaukee may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11 (2), and 973.10, Stats., the Department of Corrections

hereby amends s. DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

**Publication Date:** March 23, 1998  
**Effective Date:** March 23, 1998  
**Expiration Date:** August 20, 1998

## EMERGENCY RULES NOW IN EFFECT

### *Dentistry Examining Board*

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

### Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats. The Governor vetoed a provision in the budget bill which would have permitted dentists licensed in other states to obtain a license in Wisconsin, despite their not having passed a clinical licensing examination with a periodontal part. In doing so, the Governor requested the board adopt an emergency rule to permit these dentists to obtain licenses in Wisconsin under other reasonable and appropriate methods. The concern for the public health, safety and welfare is that this state's citizens are currently being deprived of necessary dental services from qualified dentists who, themselves, are experiencing substantial and perhaps unnecessary hardship in becoming licensed in Wisconsin. These rules are put into effect prior to the time they would be effective under routine rulemaking procedures to assure that the public is not deprived of necessary dental services from qualified dental professionals and that adequate safeguards for protecting the health and safety of dental patients are part of the licensing process.

**Publication Date:** October 18, 1997  
**Effective Date:** October 18, 1997  
**Expiration Date:** March 17, 1997  
**Hearing Date:** January 7, 1998

## EMERGENCY RULES NOW IN EFFECT (2)

### *Health and Family Services*

(Health, Chs. HSS/HFS 110—)

1. Rules adopted revising s. HFS 196.03 (22), relating to an exemption from regulation as a restaurant.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a "locally sponsored sporting event" from being regulated under ch. HFS 196 as a restaurant. Following enactment of the State Budget, the Department received several inquiries from its own region-based inspectors and local health departments serving as the Department's agents for enforcement of the Department's environmental sanitation rules, including rules for restaurants, about the meaning of "locally sponsored sporting event." What did the term cover? Did it cover food stands at facilities of locally-owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department's rules for restaurants and, in this connection, defines both "locally sponsored sporting event" and "concession stand." The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, "such as a little league game," that follows the term, "locally sponsored sporting event," in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department's understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department's understanding of what "locally sponsored sporting event" should be taken to mean has been communicated to its field-based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public's health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change that will prevent any local inspector from exempting from regulation food stands at locally sponsored sporting events for adults.

**Publication Date:** March 14, 1998  
**Effective Date:** March 14, 1998  
**Expiration Date:** August 11, 1998  
**Hearing Date:** May 11, 1998

2. Rules were adopted revising ch. HSS 138, relating to subsidized health insurance premiums for certain persons with HIV.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the current Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or who must reduce their hours of work:

The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.

Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.

The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employee and

group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

The rule changes are being published by emergency order so that the program changes made by Act 27 can be implemented quickly for the benefit of persons with HIV infection who are newly eligible for the subsidy or for continuation of the subsidy. Act 27 was effective on October 14, 1997. Implementation of the statutory changes, which is expected to increase the caseload from 50 to about 300, depends upon rule changes. Following determination of what changes were needed in the rules, a statement of scope of proposed rules was published on November 15, 1997. After that the rulemaking order was drafted and decisions were made about language and the expected contribution of some eligible individuals toward payment of the annual premium. The proposed permanent rule changes were sent to the Legislative Council's Rules Clearinghouse for review on March 3, 1998, but because of the length of the permanent rulemaking process will not take effect until August 1, 1998 at the earliest. Earlier implementation of the statutory changes will allow some prospective program clients to maintain health insurance policies they otherwise could not afford. Not having the coverage could result in deterioration of their health.

**Publication Date:** March 28, 1998  
**Effective Date:** March 28, 1998  
**Expiration Date:** August 25, 1998  
**Hearing Dates:** April 22 & 23, 1998

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## EMERGENCY RULES NOW IN EFFECT (3)

### Insurance

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

### Exemption From Finding of Emergency

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

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

#### January 1, 1998 Premium Adjustments

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

reduction of approximately 14.5%, and is mandated by plan financing changes in 1997 Wis. Act 27.

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

2. Rules 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

3. 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

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## EMERGENCY RULES NOW IN EFFECT (3)

### Natural Resources

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

1. 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:

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

**Publication Date:** December 15, 1997

**Effective Date:** April 1, 1998

**Expiration Date:** April 1, 1999

**Hearing Date:** January 12, 1998

2. 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

3. 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

## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

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

Rules adopted creating **ch. NR 166**, relating to the Safe Drinking Water Loan Program.

### Exemption From Finding of Emergency

Statutory authority: ss. 281.61 (2),(6), (12)(a)(b) and 227.24

Statute interpreted: s. 281.61

SECTION 1 creates ch. NR 166, Wis. Adm. Code, entitled "Safe Drinking Water Loan Program."

The federal Safe Drinking Water Act Amendments signed by President Clinton on August 6, 1996 created a new state revolving loan fund for drinking water infrastructure. The program creates a capitalization grant to states that enables states to provide loans to community water systems as well as nonprofit non-community water systems that build, upgrade, or replace water supply

infrastructure to protect public health and address federal and state drinking water requirements.

The state budget bill, Wisconsin Act 27, s. 281.61, Stats., directs the Department of Natural Resources to promulgate rules establishing eligibility criteria, priority, and application procedures to administer the Safe Drinking Water Program, and to promulgate rules needed for the Department to exercise its responsibilities under the Safe Drinking Water Loan Program.

In order for the Department to meet deadlines for the capitalization grant, the rules providing eligibility criteria, priority, and application procedures must be in place by March 1, 1988. Accordingly, section 91 37(3x) of Act 27 authorizes the Department to promulgate emergency rules for the Safe Drinking Water Loan Program without providing proof that an emergency rule is needed to preserve public peace, health, safety, or welfare. The Department intends to promulgate ch. NR 166 as an emergency rule effective March 1, 1998 and to have the permanent rule in place by August 1, 1988.

The eligibility criteria and project priorities in ch. NR 166 reflect the overarching intention of s. 281.61 and the amendments to the federal Safe Drinking Water Act – 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 that determine project ranking give priority, to the extent possible, 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. Ch. 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. Ch. NR 166 also establishes interest rates based on financial eligibility criteria that reflect the priorities in s. 281.61 and the Safe Drinking Water Act.

Ch. NR 166 establishes the types of financial assistance available as authorized by s. 281.61, Stats., establishes eligibility criteria for types of projects and costs, and excludes types of projects listed as ineligible in s. 281.61 and the Safe Drinking Water Act.

Ch. NR 166 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.

**Publication Date:** March 18, 1998

**Effective Date:** March 18, 1998

**Expiration Date:** August 15, 1998

**Hearing Dates:** March 13 and 16, 1998

## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

#### (Environmental Protection-Water Regulation, Chs. NR 300-)

Rules adopted revising **ch. NR 300**, relating to fees for waterway and wetland permit decisions.

### Finding of Emergency

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

Land development and public infrastructure projects that affect water resources are being delayed as a result of extreme workload and high staff vacancy rate in southeastern Wisconsin and elsewhere. Fee revenue must be generated immediately in order to support positions authorized in the recent budget to address the delays.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 25, 1998.

The rules contained herein shall take effect on April 1, 1998, following publication in the official state newspaper pursuant to authority granted by s. 227.24(1)(c), Stats.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 1998  
**Hearing Dates:** May 27 and 28, 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  
**Hearing Date:** January 14, 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  
**Hearing Dates:** February 17, 18 and 19, 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  
**Hearing Dates:** February 17, 18 and 19, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Public Service Commission*

Rules adopted amending ss. **PSC 160.05, 160.11 (6) and 160.17**, relating to the provision of universal telecommunications service and administration of the universal service fund and creating **ch. PSC 161**, establishing the Education Telecommunication Access Program.

### ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Technology for Educational Achievement in Wisconsin (TEACH) initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly enacted s. 196.218(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department) and Technology for Educational Achievement (TEACH) in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program. Section 9141 of Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats.

These emergency rules establish the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices. These rules implement the TEACH legislation by:

- ◆ Defining the entities which may be eligible under this program, i.e., “private college,” “private school,” “public library board,” “school district” and “technical college district.”

- ◆ Defining a “data line” as a data circuit which provides direct access to the internet.

- ◆ Defining a “video link” as a 2-way interactive video circuit and associated services.

- ◆ Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.

- ◆ Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

- ◆ Including privacy protections as required by s. 196.218 (4r)(c)5., Stats.

- ◆ Providing an application procedure which (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, (3) prohibits a technical college district from applying before April 1, 1998, and (4) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under s. PSC 160.11.

- ◆ Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access, readiness of the applicant to utilize the requested access and proposed uses of the requested access.

- ◆ Requiring the Board to determine by April 1, 1998, whether there are sufficient monies in the appropriation to include technical college districts in the program on or after that date.

- ◆ Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.

- ◆ Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.

- ◆ Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.

- ◆ Providing that assessments for this program shall be made by the Commission under ch. PSC 160.

### Exemption From Finding of Emergency

In Section 9141 of 1997 Wis. Act 27, the legislature specifically exempted the Commission from the finding of emergency required by ss. 227.24, Stats.

**Publication Date:** February 27, 1998

**Effective Date:** February 27, 1998

**Expiration Date:** July 26, 1998

**Hearing Date:** May 5, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Technical College System Board*

Rules adopted creating **ch. TCS 15**, relating to Faculty Development Grants.

### Finding of Emergency

The Wisconsin Technical College System Board 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 facts constituting the emergency is:

1997 Wis. Act 27 (the 1997–99 biennial budget bill) took effect on October 14, 1997, which was three and a half months into fiscal year 1997–98. That act created ss. 20.292(1)(eg) and 38.33, Stats. An annual appropriation of \$832,000 in each of the state fiscal years of the 1997–99 biennium was established. These funds are to be awarded by the technical college system board as grants to technical college district boards to establish faculty development programs.

The Act requires the technical college system board to promulgate rules establishing specific criteria for awarding these grants. The technical college system board has just begun the permanent rule making process for establishing administrative rules for the faculty development grants program. However, there is insufficient time to have the permanent rules in place before the local technical college districts must submit their proposals for faculty development grants under s. 38.33, Stats. It is imperative that the program be implemented and the funds be distributed before the end of the fiscal year or else the appropriated funds will lapse to the general fund. The loss of funds, including local matching funds, will



have a detrimental effect on the ability of district boards to establish faculty development programs.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 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  
**Extension Through:** May 14, 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  
**Hearing Date:** March 16, 1998

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## **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  
**Hearing Date:** March 27, 1998

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### ***Chiropractic Examining Board***

**Subject:**

Chir Code – Relating to provision of dietary and nutritional counsel and advice and the use of vitamins and other food and nutritional supplements in the practice of chiropractic.

**Description of policy issues:**

*Objective of the rule:*

To specify and define the practice of chiropractic as it relates to the provision of dietary and nutritional counsel and advice and the use of vitamins and other food and nutritional supplements in the practice of chiropractic.

*Policy analysis:*

The principles and techniques of chiropractic science (and the curriculum for education and training of chiropractors) include the provision of dietary and nutritional counsel and advice and the use of vitamins and other food and nutritional supplements for the restoration and preservation of health and proper condition of chiropractic patients. Dietary and nutritional counsel and advice and the use of vitamins and other food and nutritional supplements is considered part of the practice of chiropractic and is authorized by the statutory definition of the practice of chiropractic.

The Board intends to clarify and define the scope of dietary and nutritional counsel and advice and the use of vitamins and other food and nutritional supplements for the restoration and preservation of health and proper condition of chiropractic patients as authorized by the Statutes and Administrative Code.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 446.01 (2), 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:**

20 hours.

### ***Health & Family Services***

**Subject:**

SS. HSS 98.28 to 98.32 – Relating to lie detector testing of sex offenders in community placements.

**Description of policy issues:**

*Description of objective(s):*

To implement s. 51.375 (3), Stats., which directs the Department to establish a lie detector test program for sex offenders who have been committed to the Department for treatment and are in community placements.

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

A recent session law, 1995 Wis. Act 440, directed the Department of Corrections to establish by rule a lie detector test program for probationers and parolees who are sex offenders, that is, who meet the criteria specified in s. 301.45 (1), Stats., and the Department of Health and Family Services to establish by rule a lie detector test program for sex offenders, defined by the same criteria, who have been committed to the Department for treatment and are in community placements, that is, they have been conditionally transferred into the community under s. 51.35 (1), Stats., conditionally released under s. 971.17, Stats., paroled from a commitment for specialized treatment under ch. 975, Stats., or conditionally released under ch. 980, Stats.

The Department, in developing its rules, will use as models the Department of Corrections' emergency rules relating to lie detector testing of parolees and probationers who are sex offenders, which were published on December 15, 1997, and that agency's proposed permanent rules on the same subject. Agents of the Department of Corrections, under contract with the Department and in accordance with ch. HSS 98, now supervise the Department's forensic clients who are in community placements.

The Department's rules for lie detector testing of sex offenders in community placements will be made part of current rules, ch. HSS 98, relating to field supervision of persons who have been committed to the Department for treatment.

**Statutory authority :**

Sections 51.37 (9), 51.375 (3), 971.17 (3) (e), 980.06 (2) (d) and 980.08 (6), Stats.

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

Estimated hours of staff time — 30 hours.

### ***Natural Resources***

**Subject:**

S. NR 20.08 – Relating to extending the fishing tournament rules for 3 years beyond the current sunset of December 31, 1998.

**Description of policy issues:**

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

The Department is merely proposing to extend the existing fishing tournament permitting rules, which are scheduled to sunset on December 31, 1998; Competitive Anglers Sportfishing Tournaments (CAST) will be interested in the issue, as will the many tournament organizers around the state, although the noncontroversial, interim nature of this proposed revision will not attract much immediate interest.

This action does not represent a change from past policy.

**Statutory authority for the rule:**

Section 29.174, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 44 hours. One public hearing is proposed to be held in July, 1998 at Madison.

### ***Natural Resources***

**Subject:**

Ch. NR 20 – Relating to establishing a harvest limit for the sturgeon spearing season.

**Description of policy issues:**

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

The Department is proposing to develop a safe harvest system for sturgeon harvest limits for sturgeon. The Department is planning to meet with constituent groups to develop a proposal to take to hearings this summer. Sturgeon spears, Sturgeons for Tomorrow, and various sports clubs around the Lake Winnebago system will be interested in the issue. The proposal may be controversial, depending on the way the Department proposes to limit harvest, but this has yet to be determined.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Spear harvest of sturgeon continues to increase annually. In years of high water clarity, the Department's harvest goal for female sturgeon is often exceeded. Until this year, the Department did not have statutory authority to limit harvest. The Department hopes to propose a safe harvest system that protects the sturgeon resource and is acceptable to sturgeon spearers around the Winnebago system.

**Statutory authority for the rule:**

Section 29.174, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 110 hours. Three–four public hearings are proposed to be held in August, 1998 in the vicinity of the Lake Winnebago system.

## ***Natural Resources***

**Subject:**

Chs. NR 102, 104 and 210 – Relating to:

Ch. NR 102: Temperature standards and limits based on water quality standards for Wisconsin surface waters; and

Chs. NR 104 and 210: Updating the list of streams in ch. NR 104 classified as limited aquatic life (marginal) and limited forage fish (intermediate) and the associated requirements.

**Description of policy issues:**

Ch. NR 102:

*Description of policy issues to be resolved in developing the proposed rule:*

The revisions to the current temperature standards will eliminate the categorical–based language of ch. NR 102, and will instead provide for water quality–based standards that will take into account various conditions of the receiving water. These conditions may include size, classification and use designation, quality, flow, seasonal variations, and indigenous aquatic communities.

The implementation of the new standards will be developed with the input of environmental groups and affected parties, including municipalities, electric utilities, and other various industries.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Several years ago, the existing temperature standards, as set forth in ch. NR 102, Wis. Adm. Code, were struck down by the Wisconsin Supreme Court. The Supreme Court decision interpreted the thermal provisions of ch. NR 102 as categorical–based effluent limitations for the steam–electric power category of dischargers, subsequently finding them to be more restrictive than Federal guidelines, and thus invalid. The effect of this decision was to limit the Department's ability to regulate the temperature of point source discharges.

In 1991, U.S. EPA Region 5 requested that the DNR again attempt to implement the language of ch. NR 102 to regulate temperature. Absent such regulation, U.S. EPA, under Federal Regulations 40 CFR 124.57 (123.25 for State programs), proposed to issue federal permits to regulate temperature.

In response to U.S. EPA's request and because there is no existing applicable temperature standard, the DNR proposes to establish water quality–based thermal standards, thus eliminating the categorical–based effluent limitation language from ch. NR 102. Also, the DNR plans to develop an implementation rule for application to point source dischargers. This will allow the State to protect water quality, issue permits containing adequate temperature limitations, and meet U.S. EPA requirements.

Ch. NR 104:

*Description of policy issues to be resolved in developing the proposed rule:*

Ch. NR 104 was originally promulgated in the late 1970's. It classified streams which cannot meet full fish and aquatic life standards due to natural conditions. This system enabled us to establish effluent limits in an efficient manner and yet provide a level of water quality protection commensurate with economic realities and available science. Several dozen stream reaches were classified at that time and specifically listed in ch. NR 104.

Since that original publication, many additional streams have been evaluated for similar purposes. In addition, the Department has reviewed many of the classifications which were done in the 1970's and, based on new information or more rigorous science, has (in some cases) determined the streams should be reclassified to another (usually better–quality) classification subcategory. These changes in classification would carry with them different and, in most cases, more stringent water quality standards and associated requirements (e.g., effluent limitations). This code revision would place these new and/or revised classifications into the administrative code and may result in a change in effluent limitations for the facilities which discharge to these streams.

This action does not represent a change from past policy.

**Statutory authority for the rule:**

Section 281.15, Stats.

**Anticipated time commitment:**

Ch. NR 102:

The anticipated time commitment is 1,981 hours. Two public hearings are proposed to be held in August, 1998 at Madison and Milwaukee.

Ch. NR 104:

The anticipated time commitment is 1,850 hours. Four public hearings are proposed to be held in August, 1998 at Waukesha, Green Bay, Madison and Eau Claire.

## ***Public Service Commission***

**Subject:**

Ch. PSC 3 – Relating to the Intervenor Compensation Program.

**Description of policy issues:**

*Objective of the rule:*

The existing Commission rule, ch. PSC 3, Wis. Adm. Code, was last revised in 1995. Prior to that, the rule had not been revised since it was created in 1983. The Commission intends to make several changes to meet the concerns that have been raised about the intervenor program from numerous parties to the PSC processes. New rules will clarify the application process, tighten the approval criteria used by the Commission to make decisions on applications, and require more accountability of the intervenor as they spend these public funds.

*Existing policies relevant to rule, new proposed policies in the rule and an analysis of policy alternatives:*

The Commission met and discussed several of the main topics addressed in the rules. The Commission is interested in changes to the rule that include sections dealing with conducting compliance and financial audits of intervenors, creating specific criteria for when supplemental requests for funding will be considered, restructuring the current portions of the rules to allow for payments to intervenors on a different basis than the current invoice as spent basis, creating a monetary contribution requirement beyond the existing in–kind contribution language, and creating some type of presumptive funding award cap with a waiver under certain circumstances. All of the ideas have been discussed by members of the Assembly Utility Oversight Committee in a hearing on the PSC Intervenor Compensation Program and by the Commission in an open meeting on April 16, 1998. The Commission believes these changes should be addressed now.

**Statutory authority for the rule:**

The authority for the PSC to initially create and subsequently revise the rule was expressly granted in s. 196.31 (3), Stats., (Intervenor Financing) and in s. 227.11 (2), Stats.

**Estimated amount of state employee time and estimated resources to develop the rule:**

Based on time estimates collected for other Public Service Commission rulemaking dockets, it is probable that staff will spend about \$15,000–\$20,000 in equivalent staff time to create a draft of the rule and complete the public process of the rulemaking. The time would be absorbed by existing staff, and no new resources will be needed. The Commission believes that the time being spent on this effort by staff is more than worth it because it will result in significantly improved management of the intervenor compensation program and better accountability in the expenditure of these public funds. If you have specific questions or comments regarding this proposed rulemaking, please contact Gordon Grant, Director of Fiscal Services, at (608) 267–9086.

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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

#### Commerce

##### Rule Submittal Date

On April 28, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule-making order affects ch. ILHR 47, relating to the petroleum environmental cleanup fund.

##### Agency Procedure for Promulgation

A public hearing is required, and will be held on May 29, 1998. The agency unit responsible for the promulgation of this rule is the Bureau of PECFA.

##### Contact Person

If you have any questions, you may contact:

Diane Ploessl  
Bureau of PECFA  
Dept. of Commerce  
Telephone (608) 261-7726 or  
(608) 264-8777 (TTY)

#### Commerce

##### Rule Submittal Date

On April 28, 1998 the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. Comm 106, relating to the Wisconsin Development Fund.

##### Analysis

##### Statutory authority:

Chapter 560, Stats., creates the Wisconsin Development Fund, which includes the Customized Labor Training, Technology Development Fund, Major Economic Development, and Small Business Innovation Research Bridge Financing Rules. Section 560.685, Stats., authorizes the Department to promulgate rules required to administer the programs.

The proposed rule makes changes to the Customized Labor Training, Technology Development Fund, and Major Economic Development programs. The proposed rule also eliminates the Small Business Innovation Bridge Financing program. These changes are a result of statutory changes made to these programs in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical

changes to simplify the rules for the programs and to make the rules for each program as uniform as possible.

The significant changes in the proposed rules include:

1. Priority will be given under all the programs to brownfields projects.
2. Eligible activities under the Customized Labor Training program now includes training on manufacturing processes that are new to the business and in which advances have been made.
3. The minimum match requirements for the Customized Labor Training and Technology Development Fund programs have been reduced from 50 percent and 40 percent respectively to 25 percent. This change makes these match requirements consistent with the Department's other financial assistance programs.
4. Previously, an applicant under the Technology Development Fund had to have successfully completed a Phase I (research and development) project funded by the Department in order to be eligible for a Phase II (commercialization). Applicants that have successfully developed a new product, regardless of the funding source for the research and development, are now eligible to apply for a Phase II award.
5. The Department is allowed to charge a 1.5 percent fee on awards of over \$200,000 under the Customized Labor Training and Major Economic Development programs.
6. The Small Business Innovation Research Bridge Financing program rules are repealed. Individuals and businesses that formerly were eligible for this program can now apply to the Technology Development Fund program for the same purpose.

##### Agency Procedure for Promulgation

A public hearing is required, and two public hearings will be held on June 17 and 18, 1998. The agency unit responsible for the promulgation of this rule is the Bureau of Budget and Policy Development.

##### Contact Person

If you have any questions, you may contact:

Ms. Louie Rech  
Bureau of Policy & Budget Development  
Dept. of Commerce  
Telephone (608) 267-9382

#### Commerce

##### Rule Submittal Date

On April 27, 1998 the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, affecting ch. Comm 114, relating to the minority business finance program.

**Analysis***Statutory authority:*

Sections 560.038 and 560.039, Stats., create the Minority Business Incubator programs. Subchapter VII, ch. 560, Stats., creates the Minority Business Finance programs. Sections 560.02 and 560.85 (1), Stats., authorize the Department to promulgate rules required to administer the programs.

The proposed rule creates rules for the new business incubator programs, the new development finance and education and training grants program, and a new revolving loan fund program. These changes are a result of statutory changes made in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rules for the programs and to make the rules for each program as uniform as possible.

The significant changes in the proposed rules include:

1. Two programs are created for business incubators. The Department may award up to \$300,000 per year to fund minority business incubators. The incubators must provide services primarily to minority group members or minority businesses. The incubators must meet at least two of the following criteria:

A. Space in the facility is rented at a rate lower than the market rate in the community.

B. Shared business services are provided in the facility.

C. Management and technical assistance are available at the facility.

D. Businesses using the facility may obtain financial capital through a direct relationship with at least one financial institution.

2. The Minority Business Finance Board (Board) may award grants of up to \$200,000 in a fiscal year to a local development corporation to create, expand or continue a revolving loan fund that will benefit minority businesses, or to provide loans of up to \$50,000 to minority businesses for a project.

3. The Board may award grants to a nonprofit organization or private financial institution to make loans for up to \$5,000 for working capital for minority group members and businesses, or to pay origination fees or other administrative costs associated with making loans for working capital. The Board may also award grants to a nonprofit organization that is a minority business and that will provide education and training to minority members and businesses that receive working capital loans, as mentioned above, of up to \$5,000.

4. The definition of a development project has been expanded to include the promotion of economic development and employment opportunities for minority groups members or minority businesses.

**Agency Procedure for Promulgation**

A public hearing is required, and three public hearings will be held on June 17, 18 and 24, 1998. The agency unit responsible for the promulgation of this rule is the Bureau of Budget and Policy Development.

**Contact Person**

If you have any questions, you may contact:

Ms. Louie Rech  
Bureau of Policy & Budget Development  
Dept. of Commerce  
Telephone (608) 267-9382

**Commerce****Rule Submittal Date**

On April 27, 1998 the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. Comm 116, relating to the rural economic development program.

**Analysis***Statutory authority:*

Section 560.17, Stats., creates the Rural Economic Development program. Section 560.02 (4), Stats., authorizes the Department to promulgate rules required to administer its programs and activities.

The proposed rule makes changes to the Rural Economic Development program. The changes are the result of statutory changes made to the program in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rule and to make the rules for this program uniform with the rules for the Department's other financial assistance programs.

The significant changes in the proposed rule include:

1. The eligibility requirements were changed to increase the size of eligible applicants from 25 employees to 50 employees, and to increase the size of eligible communities from 4,000 to 6,000 population.

2. The matching requirement was changed from 25 percent of the funds received to 25 percent of the total project cost.

3. Priority for funding will be given to brownfield projects.

4. The program for professional services such as feasibility studies and business plans was changed to a grant only program (Early Planning Grants), rather than a grant or loan program.

5. The maximum amount that can be provided for Early Planning Grants is decreased to \$15,000 from the previous maximum of \$30,000.

6. The micro-loan program that provides assistance for working capital and fixed assets, was made a grant or loan program rather than a loan program.

7. The maximum amount that can be provided for a Micro-Loan program is increased from \$25,000 to \$100,000.

8. A new grant program was created for dairy farms or other agricultural business projects. The proceeds of this grant may only be used for professional services or management assistance related to the start-up, expansion, or modernization of the dairy farm or agricultural business. The applicant must provide at least 25 percent of the total cost of the project.

**Agency Procedure for Promulgation**

A public hearing is required, and two public hearings will be held on June 17 and 18, 1998. The agency unit responsible for the promulgation of this rule is the Bureau of Budget and Policy Development.

**Contact Person**

If you have any questions, you may contact:

Ms. Louie Rech  
Bureau of Policy & Budget Development  
Dept. of Commerce  
Telephone (608) 267-9382

**Commerce****Rule Submittal Date**

On April 27, 1998 the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, affecting ch. Comm 119, relating to mining economic development grants and loans.

**Analysis***Statutory authority:*

Section 560.135, Stats., creates the Minority Economic Development Grants and Loans Program. Sections 560.02 and 560.135 (7), Stats., authorize the Department to promulgate rules required to administer the programs.

The proposed rule creates procedures for administering the new program. The program was created in 1997 Wis. Act 27, the biennial budget bill.

The provisions in the proposed rule include:

1. The Wisconsin Development Finance Board may make grants or loans for various activities in an area that has been affected by metallic mineral mining. The eligible entities, maximum award amount, and the eligible activities are:

A. A business may receive up to \$100,000 to finance costs associated with the start-up, maintenance or expansion of the business.

B. A city, village, town, or county (municipality) may receive up to \$100,000 to develop an economic diversification plan.

C. A municipality, community-based organization, or local development corporation may receive up to \$200,000 to establish a local revolving loan fund to finance businesses that will create long-term employment opportunities.

D. A community-based organization or local development corporation may receive up to \$100,000 to conduct a local economic development project that will create long-term employment opportunities and to provide assistance to businesses or entrepreneurs.

E. A business may receive up to \$15,000 to obtain professional services related to the start-up, maintenance or expansion of the business. The professional services may include feasibility studies, financial plan, marketing plans, or managerial assistance after the start-up or expansion.

2. The rule also includes evaluation criteria to be used by the Board in making funding decisions. The criteria include:

A. The extent to which the project will retain or increase employment in this state.

B. The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.

C. Whether the project will be located in an area of high unemployment or low average income.

D. The financial soundness of the business.

E. The intention of the eligible recipient to repay the grant or loan.

F. Whether the project will be located in a targeted area.

G. The extent to which the business or other entity assisted by the project is likely to provide stable, long-term employment opportunities to reduce the dependence of the area on mining.

3. The rule also provides procedures for the Department to contract with successful applicants, applicant reporting and auditing requirements, the Department's responsibilities relating to administering the program, and the Wisconsin Development Finance Board's responsibilities relating to administering the program.

#### ***Agency Procedure for Promulgation***

A public hearing is required, and two public hearings will be held on June 17 and 18, 1998. The agency unit responsible for the promulgation of this rule is the Bureau of Budget and Policy Development.

#### ***Contact Person***

If you have any questions, you may contact:

Ms. Louie Rech  
Bureau of Policy & Budget Development  
Dept. of Commerce  
Telephone (608) 267-9382

## **Health & Family Services**

#### ***Rule Submittal Date***

On April 29, 1998 the Department of Health & Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, affecting ch. HFS 167, relating to the statewide poison control system.

#### ***Analysis***

*Statutory authority:* ss. 146.57 (4) and 227.11 (2), Stats.

#### ***Reason for rules, intended effects, requirements:***

These are amendments to the Department's rules for operation of a statewide poison control system. Two centers operate 24-hour telephone hotlines, providing callers with information about poisons. One center is located at UW Hospitals and Clinics in Madison and the other at Children's Hospital of Wisconsin in Milwaukee. The two centers have divided the state between them.

The rules are being amended at the request of the two hospitals, to give them more flexibility in staffing the center phones. The hospitals report that 70% of inquiries they receive can be answered by staff who do not have the qualifications of the types of staff specified in the current rules.

The amendments will permit poison control centers to employ a new type of on-line staff called "poison information providers" who are to have appropriate health-oriented backgrounds, receive 16 hours of job-relevant training each year, and refer callers who seek interpretations of poison exposure data and callers who are health care providers requesting drug interaction advice to on-duty staff qualified to handle those calls. The amended rules say that a person with appropriate health-oriented background would be an EMT, a licensed practical nurse or a registered pharmacy intern.

#### ***Agency Procedure for Promulgation***

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

#### ***Contact Person***

If you have any questions, you may contact:

Susan Uttech  
Division of Health  
Telephone (608) 267-3561

## **Natural Resources**

#### ***Rule Submittal Date***

On April 29, 1998 the Wisconsin Department of Natural Resources submitted a proposed rule [FH-31-98] to the Wisconsin Legislative Council Rules Clearinghouse.

#### ***Analysis***

The proposed rule-making order, affecting ch. NR 300, relates to fees for waterway and wetland permit decisions.

#### ***Agency Procedure for Promulgation***

A public hearing is required and public hearings will be held on May 27 and 28, 1998.

#### ***Contact Person***

If you have any questions, you may contact:

Mary Ellen Vollbrecht  
Bureau of Fisheries Management and  
Habitat Protection  
Telephone (608) 264-8554

## **Revenue**

#### ***Rule Submittal Date***

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., on April 29, 1998 the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

#### ***Analysis***

The proposed rule order amends s. Tax 11.56, relating to sales and use tax treatment within the printing industry.



***Agency Procedure for Promulgation***

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

***Contact Person***

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

Mark Wipperfurth  
Income, Sales and Excise Tax Division  
Telephone (608) 266-8253

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## NOTICE SECTION

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### Notice of Proposed Rule

#### Administration

Notice is hereby given that pursuant to ss. 16.004 (1), 16.855 (23) (d) and 227.11, Stats., and interpreting s. 16.855 (23), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule as proposed in this notice without a public hearing unless, within 30 days after publication of this notice on **May 15, 1998**, the Department of Administration is petitioned for a public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

#### Analysis Prepared by the Dept. of Administration

*Statutes authorizing promulgation:* ss. 16.004 (1), 16.855 (23) (d) and 227.11 (2) (a)

*Statute interpreted:* s. 16.855 (23)

The Department of Administration is responsible for creating rules to govern the use of digital signatures under s. 16.855 (23), Stats., which was created in 1997 Wis. Act 27. The proposed rule describes the Department's use of and verification procedure for digital signatures.

#### Text of Rule

**SECTION 1.** Chapter Adm 22 is created to read:

##### Chapter Adm 22

##### DIGITAL SIGNATURES

**Adm 22.01 Authority.** Section 16.855 (23) (d), Stats., requires the department to adopt rules governing the use of digital signatures under s. 16.855 (23), Stats., and to establish procedures for their verification.

**Adm 22.02 Definitions.** In this chapter:

- (1) "Department" means the department of administration.
- (2) "Digital signature" has the meaning specified in s. 16.855 (23) (a), Stats.
- (3) "Division" means the division of facilities development in the department of administration.

**Adm 22.03 Use of digital signatures.** Digital signatures may be used at the discretion of the department if the proposed user meets all of the requirements of s. 16.855 (23), Stats., for all transactions where a signature is required as related to any services or work performed for the division including all items of correspondence and all contract documents.

**Adm 22.04 Verification.** A digital signature shall be verified by the use of a password issued or otherwise authorized by the department.

#### Initial Regulatory Flexibility Analysis

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

#### Fiscal Estimate

The Division of Facilities Development indicates there will be little additional cost to implement the rule for digital signatures for construction activities.

### Contact Person

Donna Sorenson  
Telephone (608) 266-2887

### Notice of Hearing

#### Commerce

#### (PECFA, Ch. ILHR 47)

Notice is hereby given that pursuant to ss. 101.143 and 101.144, Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules and current emergency rules affecting ch. ILHR 47, relating to the Petroleum Environmental Cleanup Fund.

#### Hearing Information

The public hearing will be held as follows:

**May 29, 1998**  
**Friday**  
**Commencing at**  
**9:30 a.m.**

**Conference Room 3B**  
**Third Floor, WHEDA Bldg.**  
**201 West Washington Ave.**  
**MADISON, WI**

*This hearing is held in accessible facilities. If you have special needs or circumstances that 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.*

#### Analysis of Proposed Rules

*Statutory authority:* ss. 101.143 and 101.144

*Statutes interpreted:* ss. 101.143 and 101.144

Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over \$15,000,000 per month. Approximately \$7,500,000 per month is allotted to the fund for the payment of claims. The fund currently has a backlog of \$250,000,000 representing almost a 30-month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

##### Administrative Elements

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decisionmaking for remedial action approvals and providing new direction to owners, operators and consulting firms.

##### Progress Payments

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

##### Remedial Alternative Selection

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk

of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

- ① A documented expansion of plume margin;
- ② A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160, Stats.;
- ③ Soil contamination within bedrock or within 1 meter of bedrock;
- ④ Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and
- ⑤ Documented contamination discharges to a surface water or wetland.

#### Reimbursement Provisions

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for \$80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost-effective remediations would also be provided.

#### Review of Existing Sites

These changes give the Department more ability to redirect actions and impose cost-saving measures for sites that are already undergoing remedial actions. Reevaluations, including the setting of cost caps, would be done on sites chosen by the Department.

### **Written Comments**

Interested people are invited to appear at the hearing and present comments on the proposed rules. People making oral presentations are requested to submit their comments in writing. People submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **June 10, 1998**, to permit submittal of written comments from people who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

### **Copies of Rule and Contact Person**

A copy of the proposed rules may be obtained without cost from:

Diane Ploessl  
Telephone (608) 261-7726, or  
(608) 264-8777 (TTY)  
Bureau of PECFA  
Department of Commerce  
P.O. Box 7838  
Madison, WI 53707

Copies will also be available at the public hearing.

### **Fiscal Estimate**

The proposed rules implement cost control provisions in an existing program that pays claims from the Petroleum Environmental Cleanup Fund. They are not expected to result in extensive changes in the number or complexity of claims that are reviewed by existing staff.

#### *Long-Range Fiscal Implications:*

The impact of the cost control provisions of the proposed rules will probably be in the area of remedial equipment costs and consulting costs. Remedial equipment costs run approximately 13.4% of the fund's costs. Consultant charges are 36.5% of the fund. The use of the two-tier approach to remediation will reduce remedial equipment costs. An estimated reduction would be 50%. Similarly, through the use of remediation bundling and bidding, consultant costs could potentially be reduced as much as 25%. Based on the estimate of \$15 million in claims per month, a reduction of the type estimated could result in remedial equipment savings of \$1,005,000 per month and consultation cost savings of \$1,368,750 per month.

### **Initial Regulatory Flexibility Analysis**

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

Owners and operators of properties contaminated by discharges from petroleum product storage systems, and consultants and contractors who are hired to remediate the contamination.

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

Minor documentation changes may be needed for demonstrating compliance with the requirements for bundling of services at multiple sites, using a public bidding process, and using environmental factors to determine the risk of a site.

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

Some consultants engaged in site investigation and remediation design may need to acquire minor additional skills to apply the specified environmental factors and determine the risk of a site.

## **Notice of Hearings**

### *Commerce*

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

Notice is given that pursuant to ss. 560.02 and 560.685, Stats., the Department of Commerce proposes to hold public hearings to consider the proposed rules to amend ch. Comm 106, Wis. Adm. Code, relating to the Wisconsin Development Fund.

### **Hearing Information**

The public hearings are scheduled as follows:

**June 17, 1998**  
**Wednesday**  
**9:00 a.m.**

**D 105, Health Resource Ctr.**  
**North Central Tech. College**  
**1000 W. Campus Dr.**  
**WAUSAU, WI**

**June 18, 1998**  
**Thursday**  
**9:00 a.m.**

**I 131, Industrial Occup. Bldg.**  
**Waukesha Co. Tech. College**  
**800 Main St.**  
**PEWAUKEE, WI**

*These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 267-9382 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.*

### **Copies of Rule**

A copy of the rules to be considered may be obtained from the Department of Commerce, Bureau of Policy and Budget Development, P. O. Box 7970, Madison, Wisconsin 53707, by calling (608) 267-9382 or at the appointed times and places the hearings are held.

### **Written Comments and Contact Person**

Interested people are invited to appear at the hearings 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 hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **June 30, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to:

Ms. Louie Rech  
Bureau of Policy & Budget Development  
Dept. of Commerce  
P. O. Box 7970  
Madison, WI 53707

Written comments will be given the same consideration as testimony presented at the hearings. People submitting comments will not receive individual responses.

### **Analysis Prepared by the Dept. of Commerce**

#### *Statutory authority:*

Chapter 560, Stats., creates the Wisconsin Development Fund, which includes the Customized Labor Training, Technology Development Fund, Major Economic Development, and Small Business Innovation Research Bridge Financing rules. Section 560.685, Stats., authorizes the Department to promulgate rules required to administer the programs.

The proposed rule makes changes to the Customized Labor Training, Technology Development Fund, and Major Economic Development programs. The proposed rule also eliminates the Small Business Innovation Bridge Financing program. These changes are a result of statutory changes made to these programs in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rules for the programs and to make the rules for each program as uniform as possible.

The significant changes in the proposed rules include:

1. Priority will be given under all the programs to brownfields projects.
2. Eligible activities under the Customized Labor Training program now includes training on manufacturing processes that are new to the business and in which advances have been made.
3. The minimum match requirements for the Customized Labor Training and Technology Development Fund programs have been reduced from 50 percent and 40 percent respectively to 25 percent. This change makes these match requirements consistent with the Department's other financial assistance programs.
4. Previously, an applicant under the Technology Development Fund had to have successfully completed a Phase I (research and development) project funded by the Department in order to be eligible for a Phase II (commercialization). Applicants that have successfully developed a new product, regardless of the funding source for the research and development, are now eligible to apply for a Phase II award.
5. The Department is allowed to charge a 1.5 percent fee on awards of over \$200,000 under the Customized Labor Training and Major Economic Development programs.
6. The Small Business Innovation Research Bridge Financing program rules are repealed. Individuals and businesses that formerly were eligible for this program can now apply to the Technology Development Fund program for the same purpose.

### **Initial Regulatory Flexibility Analysis**

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

These rules will not affect small businesses.

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

These rules will impose no new requirements.

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

No professional skills are required to comply with the rules.

### **Fiscal Estimate**

The rules make program and procedural changes to the administrative rules for the Wisconsin Development Fund, which includes the Customized Labor Training, Technology Development Fund, and Major Economic Development programs. The rule also eliminates the Small Business Innovation Research Bridge Financing program. The changes proposed by these rules will have no fiscal effect on the Department or on businesses that apply for funding under the programs.

## **Notice of Hearings**

### *Commerce*

#### *(Financial Resources for Businesses & Communities, Chs. Comm 105 to 128)*

Notice is given that pursuant to ss. 560.02 and 560.85 (1), Stats., the Department of Commerce proposes to hold public hearings to consider the proposed rules to amend Comm 114, Wis. Adm. Code, relating to the Minority Business Finance Program.

### **Hearing Information**

**June 17, 1998**  
**Wednesday**  
**9:00 a.m.**

**Wausau**  
**North Central Tech. College**  
**1000 W. Campus Drive**  
**Health Resource Center**  
**Room D 105**

**June 18, 1998**  
**Thursday**  
**9:00 a.m.**

**Pewaukee**  
**Waukesha Co. Tech. College**  
**800 Main Street**  
**Industrial Occupations Bldg.**  
**Room I 131**

**June 24, 1998**  
**Wednesday**  
**2:00 p.m.**

**Milwaukee**  
**DNR S.E. District Hdqtrs.**  
**2300 N. Dr. M.L.K. Jr. Drive**  
**Room 140**

### **Written Comments and Copies of Rule**

A copy of the rules to be considered may be obtained from the Department of Commerce, Bureau of Policy and Budget Development, P. O. Box 7970, Madison, Wisconsin 53707, by calling (608) 267-9382 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **June 30, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Ms. Louie Rech, Bureau of Policy and Budget Development, Department of Commerce, P. O. Box 7970, Madison, Wisconsin 53707. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 267-9382 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

## **Analysis Prepared by the Department of Commerce**

Statutory Authority: Sections 560.038 and 560.039, Stats., creates the Minority Business Incubator programs. Subchapter VII, Ch. 560 creates the Minority Business Finance programs. Section 560.02 authorizes the Department to promulgate rules required to administer the programs.

The proposed rule creates rules for the new business incubator programs, the new development finance and education and training grants program, and a new revolving loan fund program. These changes are a result of statutory changes made in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rules for the programs and to make the rules for each program as uniform as possible.

The significant changes in the proposed rules include:

1. Two programs are created for business incubators. The Department may award up to \$300,000 per year to fund minority business incubators. The incubators must provide services primarily to minority group members or minority businesses. The incubators must meet at least two of the following criteria:

- A. Space in the facility is rented at a rate lower than the market rate in the community.

- B. Shared business services are provided in the facility.

- C. Management and technical assistance are available at the facility.

- D. Businesses using the facility may obtain financial capital through a direct relationship with at least one financial institution.

2. The Minority Business Finance Board (Board) may award grants of up to \$200,000 in a fiscal year to a local development corporation to create, expand or continue a revolving loan fund that will benefit minority businesses; or to provide loans of up to \$50,000 to minority businesses for a project.

3. The Board may award grants to a nonprofit organization or private financial institution to make loans for up to \$5,000 for working capital for minority group members and businesses, or to pay origination fees or other administrative costs associated with making loans for working capital. The Board may also award grants to a nonprofit organization that is a minority business and that will provide education and training to minority members and businesses that receive working capital loans, as mentioned above, of up to \$5,000.

4. The definition of a development project has been expanded to include the promotion of economic development and employment opportunities for minority groups members or minority businesses.

## **Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules. These rules will not affect small businesses.

2. Reporting, bookkeeping and other procedures required for compliance with the rules: These rules will impose no new requirements.

3. Types of professional skills necessary for compliance with the rules: No professional skills are required to comply with the rules.

## **Fiscal Estimate**

The rules make program and procedural changes to the administrative rules for the Minority Business Finance Program and creates new rules for programs that were created in 1997 Wisconsin Act 27. The changes proposed by these rules will have no fiscal effect on the Department or on businesses that apply for funding under the programs.

## **Notice of Hearings**

### **Commerce**

### **(Financial Resources for Businesses & Communities, Chs. Comm 105 to 128)**

Notice is given that pursuant to s. 560.02, Stats., the Department of Commerce proposes to hold public hearings to consider the proposed rules to amend Comm 116, Wis. Adm. Code, relating to the Rural Economic Development Program.

### **Hearing Information**

**June 17, 1998**  
**Wednesday**  
**9:00 a.m.**

**Wausau**  
**N. Central Tech. College**  
**1000 W. Campus Drive**  
**Health Resource Center**  
**Room D 105**

**June 18, 1998**  
**Thursday**  
**9:00 a.m.**

**Pewaukee**  
**Waukesha Co. Tech. College**  
**800 Main Street**  
**Industrial Occupations Bldg.**  
**Room I 131**

### **Written Comments and Copies of Rule**

A copy of the rules to be considered may be obtained from the Department of Commerce, Bureau of Policy and Budget Development, P. O. Box 7970, Madison, Wisconsin 53707, by calling (608) 267-9382 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **June 30, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Ms. Louie Rech, Bureau of Policy and Budget Development, Department of Commerce, P. O. Box 7970, Madison, Wisconsin 53707. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 267-9382 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

## **Analysis Prepared by the Department of Commerce**

Statutory Authority: Section 560.17, Stats., creates the Rural Economic Development program. Section 560.02 (4) authorizes the Department to promulgate rules required to administer its programs and activities.

The proposed rule makes changes to the Rural Economic Development program. The changes are the result of statutory changes made to the program in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rule and to make the rules for this program uniform with the rules for the Department's other financial assistance programs.

The significant changes in the proposed rule include:

1. The eligibility requirements were changed to increase the size of eligible applicants from 25 employees to 50 employees, and to increase the size of eligible communities from 4,000 to 6,000 population.

2. The matching requirement was changed from 25 percent of the funds received to 25 percent of the total project cost.

3. Priority for funding will be given to brownfield projects.

4. The program for professional services such as feasibility studies and business plans was changed to a grant only program (Early Planning Grants), rather than a grant or loan program.

5. The maximum amount that can be provided for Early Planning Grants is decreased to \$15,000 from the previous maximum of \$30,000.

6. The micro-loan program that provides assistance for working capital and fixed assets, was made a grant or loan program rather than a loan program.

7. The maximum amount that can be provided for a Micro-Loan program is increased from \$25,000 to \$100,000.

8. A new grant program was created for dairy farms or other agricultural business projects. The proceeds of this grant may only be used for professional services or management assistance related to the start-up, expansion, or modernization of the dairy farm or agricultural business. The applicant must provide at least 25 percent of the total cost of the project.

### **Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules. These rules will not affect small businesses.

2. Reporting, bookkeeping and other procedures required for compliance with the rules: These rules will impose no new requirements.

3. Types of professional skills necessary for compliance with the rules: No professional skills are required to comply with the rules.

### **Fiscal Estimate**

The rules make program and procedural changes to the administrative rules for the Rural Economic Development Program. The changes proposed by these rules will have no fiscal effect on the Department or on businesses that apply for funding under the program.

## **Notice of Hearings**

### **Commerce**

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

Notice is given that pursuant to ss. 560.02 and 560.85 (1), Stats., the Department of Commerce proposes to hold public hearings to consider the proposed rules to create ch. Comm 119, Wis. Adm. Code, relating to the mining economic development grants and loans program.

### **Hearing Information**

The public hearings are scheduled as follows:

**June 17, 1998**  
**Wednesday**  
**9:00 a.m.**

**D 105, Health Resource Ctr.**  
**North Central Tech. College**  
**1000 W. Campus Dr.**  
**WAUSAU, WI**

**June 18, 1998**  
**Thursday**  
**9:00 a.m.**

**I 131, Industrial Occup. Bldg.**  
**Waukesha Co. Tech. College**  
**800 Main St.**  
**PEWAUKEE, WI**

*These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 267-9382 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.*

### **Copies of Rule**

A copy of the rules to be considered may be obtained from the Department of Commerce, Bureau of Policy and Budget Development, P. O. Box 7970, Madison, Wisconsin 53707, by calling (608) 267-9382 or at the appointed times and places the hearings are held.

### **Written Comments and Contact Person**

Interested people are invited to appear at the hearings 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 hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **June 30, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to:

Ms. Louie Rech  
Bureau of Policy & Budget Development  
Dept. of Commerce  
P. O. Box 7970  
Madison, WI 53707

Written comments will be given the same consideration as testimony presented at the hearings. People submitting comments will not receive individual responses.

### **Analysis Prepared by the Dept. of Commerce**

*Statutory authority:* Section 560.135, Stats., creates the Minority Economic Development Grants and Loans Program. Sections 560.02 and 560.135 (7), Stats., authorize the Department to promulgate rules required to administer the programs.

The proposed rule creates procedures for administering the new program. The program was created in 1997 Wis. Act 27, the biennial budget bill.

The provisions in the proposed rule include:

1. The Wisconsin Development Finance Board may make grants or loans for various activities in an area that has been affected by metallic mineral mining. The eligible entities, maximum award amount, and the eligible activities are:

A. A business may receive up to \$100,000 to finance costs associated with the start-up, maintenance or expansion of the business.

B. A city, village, town, or county (municipality) may receive up to \$100,000 to develop an economic diversification plan.

C. A municipality, community-based organization, or local development corporation may receive up to \$200,000 to establish a local revolving loan fund to finance businesses that will create long-term employment opportunities.

D. A community-based organization or local development corporation may receive up to \$100,000 to conduct a local economic development project that will create long-term employment opportunities and to provide assistance to businesses or entrepreneurs.

E. A business may receive up to \$15,000 to obtain professional services related to the start-up, maintenance or expansion of the business. The professional services may include feasibility studies, financial plan, marketing plans, or managerial assistance after the start-up or expansion.

2. The rule also includes evaluation criteria to be used by the Board in making funding decisions. The criteria include:

A. The extent to which the project will retain or increase employment in this state.

B. The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.

C. Whether the project will be located in an area of high unemployment or low average income.

D. The financial soundness of the business.

E. The intention of the eligible recipient to repay the grant or loan.

F. Whether the project will be located in a targeted area.

G. The extent to which the business or other entity assisted by the project is likely to provide stable, long-term employment opportunities to reduce the dependence of the area on mining.

3. The rule also provides procedures for the Department to contract with successful applicants, applicant reporting and auditing requirements, the Department's responsibilities relating to administering the program, and the Wisconsin Development Finance Board's responsibilities relating to administering the program.

### **Initial Regulatory Flexibility Analysis**

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

These rules will not affect small businesses.

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

These rules will impose no new requirements.

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

No professional skills are required to comply with the rules.

### **Fiscal Estimate**

The rules create provision for the mining economic development grants and loans program that was created in 1997 Wis. Act 27. These rules will have no fiscal effect on the Department or on businesses that apply for funding under the program.

## **Notice of Hearing Insurance**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the proposed rulemaking order affecting s. Ins 2.30, Wis. Adm. Code, relating to adopting additional annuity mortality tables.

### **Hearing Information**

June 19, 1998  
Friday

11:00 a.m., or as soon  
thereafter as the matter  
may be reached

Room 187, OCI  
121 E. Wilson St.  
Madison

### **Written Comments**

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Stephen Mueller, OCI, P.O. Box 7873, Madison, WI 53707.

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

Statutory authority: ss. 601.41, 623.02 & 623.06

Statutes interpreted: ss. 623.02 & 623.06

The purpose of this rule is to amend current rule Ins. 2.30, Wis. Adm. Code to add updated mortality tables approved for use by insurers to determine reserve liabilities for annuity contracts. The currently in-force mortality tables are based on a National Association of Insurance Commissioners (NAIC) Model Act adopted by OCI in 1985. The current rule incorporates those tables by reference to the Proceedings of the NAIC where they were published in 1982 and 1984.

This proposed amendment conforms the rule to recent NAIC Model Act changes by adding 2 more tables, the "1994 GAR Table"

and the "Annuity 2000 Mortality Table". Although these tables were adopted by the NAIC for this purpose the NAIC has chosen not to publish these new tables in their Proceedings bulletin. Therefore these tables are incorporated by reference to the publication Transactions, Society of Actuaries, where these tables were first published after adoption by the Society of Actuaries.

Prior to the first draft of this rule the attorney general and the revisor had given OCI permission to incorporate the new tables by reference to the NAIC Proceedings. However since the NAIC has decided not to publish these tables we have sent the attorney general and revisor a revised request to incorporate the new tables by reference to the Transactions, Society of Actuaries instead of the NAIC Proceedings.

### **Fiscal Estimate**

There will be no state or local government fiscal effect.

### **Initial Regulatory Flexibility Analysis**

This rule does not impose any additional requirements on small businesses.

### **Contact Person**

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Meg Gunderson, Services Section, Office of the Commissioner of Insurance, at (608) 266-0110 or at 121 E. Wilson Street, P.O. Box 7873, Madison, WI 53707-7873.

## **Notice of Hearings**

### **Natural Resources**

#### **(Environmental Protection—Water Regulation, Chs. NR 300—)**

Notice is hereby given that pursuant to ss. 30.28, 31.39 and 281.22, Stats., interpreting ss. 30.10 to 30.205, 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38 and 281.22, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 300, Wis. Adm. Code, relating to fees for waterway and wetland permit decisions. The proposed rule sets standard time frames for making decisions on proposed physical alterations affecting surface water resources, establishes a process for requesting expedited decision making and sets fees for standard and expedited application review.

### **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**

May 27, 1998  
Wednesday  
at 1:00 p.m.

Room 137B, DOT Bldg.  
141 N.W. Barstow  
Waukesha

May 28, 1998  
Thursday  
at 1:00 p.m.

Woodruff Town Hall  
750 Elm Street  
Woodruff

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 Mary Ellen Vollbrecht at (608) 264-8554 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the proposed rule may be submitted to Ms. Mary Ellen Vollbrecht, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **May 28, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Ms. Vollbrecht.

### **Fiscal Estimate**

#### Expedited permit Decisionmaking

This revision proposes to set a fee of \$2,000 for expedited permit service under the following assumptions:

1. 1997 Wis. Act 27 provided 3.0 FTE for expedited permit processing, but did not provide additional expenditure authority. The annual salary, fringe, and supplies/services costs of 3.0 FTE Water Regulation & Zoning Specialist staff positions to deliver expedited decisions is \$133,500—calculated as follows:

\$13.282/hr – 2080 hrs. – 38.02% fringe	= \$38,100
\$6400 (ongoing supplies + services)	= <u>\$ 6,400</u>
Annual costs per position:	\$44,500
(x3 FTE)	= \$133,500

2. Additionally, there are one-time costs [desktop computer (\$5550) and equipment (\$1650)] associated with each position totaling: \$7,200 (x 3.0 FTE) = \$21,600.

3. Eighty (80) expedited permit decisions requests are projected per year. The projection is based on review of a calendar year 1996 applicant list for Kenosha County (a county representative of moderate development pressure) to identify corporate, large landowners and municipal applicants. The proportion of anticipated expedited decisions requests from Kenosha County was applied to the total number of permits statewide to arrive at the estimate of 80.

4. The expedited permit decision fee of \$2,000 per permit was set to generate sufficient revenue from the projected requests to support the 3.0 FTE Water Regulation & Zoning positions needed to deliver the service. (80 permits annually @ \$2,000 each = \$160,000).

#### The Permit Fee Increase

In addition to instituting a fee for expedited permit service, this revision proposes to increase the standard fees for each category as follows:

The fee for a “simple” permit would increase from \$30 to \$50.

The fee for a “normal” permit would increase from \$100 to \$300.

The fee for a “complex” permit would increase from \$300 to \$500.

#### Assumptions

1. The projected number of permits for which a fee is charged, at current permit fee rates, will result in a deficit in the appropriation in the current biennium.

2. The number of permit requests will remain relatively constant. This fiscal estimate uses actual numbers of permits from calendar year 1996.

3. The breakdown of permits among the three types (simple; normal; and complex) will remain relatively constant. This fiscal estimate uses a three-year average of the percentages of each type of permit (32% simple; 48% normal; and 20% complex).

4. Approximately 40% of permit applications will be for multiple permits related to one project, for which only the single highest fee is collected.

5. Approximately 22% of applicants receive state or federal funding for their projects and are therefore exempt from fees.

6. The permit fees will generate \$223,400 in revenue, or \$3,900 annually over the FY 99 statutory expenditure authority. This fiscal estimate also assumes that revenue from the sale of wetland maps, which is credited to this appropriation, will remain constant at the fiscal year 1997 level of \$35,800.

Permit Fee Revenue Estimates were generated as follows:

Simple – 275 @ \$50 =	\$ 19,000
Normal – 412 @ \$300 =	\$171,300
Complex – 172 @ \$500 =	<u>\$119,000</u>
Total	\$223,400



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

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

**Commerce (CR 98-7):**

Ch. Comm 110 – Relating to Brownfields Grant Program.

**Commerce (CR 98-17):**

Chs. Comm 51 and ILHR 57 and 66 – Relating to the design and construction of commercial buildings and uniform multifamily dwellings.

**Health & Family Services (CR 97-135):**

Ch. HFS 173 – Relating to regulation of tattooists and tattoo establishments and regulation of body piercers and body-piercing establishments.

**Health & Family Services (CR 98-46):**

SS. HFS 149.02 (6) and 149.03 (7) – Relating to vendor authorization expiration and reauthorization dates under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

**Transportation (CR 98-40):**

S. Trans 276.07 (31) – Relating to allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

**Veterans Affairs (CR 98-37):**

Chs. VA 1 to 4 and 11 and s. VA 13.05 – Relating to the health care aid grant, retraining grant, primary mortgage loan, economic assistance loan, consumer loan and veterans assistance programs.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

**Administration (CR 98-5):**

An order amending s. WGC 13.05 (3) (a) and repealing  
s. WGC 13.15 (4) (c), relating to kennel license fees.  
Effective 07-01-98.

**Investment Board (CR 97-150):**

An order affecting ch. IB 1 and s. IB 2.02, relating to  
restrictions on Investment Board employees.  
Effective 06-01-98.

**Transportation (CR 97-154):**

An order creating ch. Trans 512, relating to the  
Transportation Infrastructure Loan Program.  
Effective 07-01-98.

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*NOTICE OF NONACQUIESCENCE*

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VACATION OWNER'S ASSOCIATION, INC.,

NOTICE OF NONACQUIESCENCE

Petitioner,

v.

Docket No. 95-S-1513

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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Pursuant to section 73.01 (4) (e) 2, Stats., the respondent hereby gives notice that, although it is not appealing the decisions and orders rendered by the Tax Appeals Commission in the above-captioned matter under dates of March 3, 1998 and April 2, 1998, it has adopted a position of nonacquiescence in those portions of the Commission's decisions and orders involving the application of section 77.54 (18), Stats., to maintenance fees charged in connection with time-share units sold prior to August 9, 1989. With respect to maintenance fees involving time-share units sold prior to August 9, 1989, the Department maintains that modification on or after August 9, 1989, of any written contractual document or agreement "by which the seller is unconditionally obligated to provide the service or property for the amount fixed under the contract" within the meaning of section 77.54 (18), Stats., subjects the seller of such services and property to sales taxation as of the date of modification of the contractual document or agreement. The Department also maintains that, with respect to time-share units sold prior to August 9, 1989, section 78.54 (18), Stats., subjects the payer of any maintenance fees for periods on or after August 9, 1989, to use tax even if such a contractual document or agreement is not modified.

The effect of this action is that, although the decisions and orders are binding on the parties for the instant case, neither the Commission's conclusions of law nor the rationale and construction of statutes in those portions of the Commission's decisions and orders in which the Department does not acquiesce in the instant case are binding on or required to be followed by the Department in future cases.

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