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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (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 employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employe while the employe 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

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

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
Extension Through: August 25, 1998

EMERGENCY RULES NOW IN EFFECT

Commerce

(Barrier-Free Design, Ch. Comm 69)

Rule adopted creating s. Comm 69.18 (2) (a) 2. c., relating to vertical access to press box facilities.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide

access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

Publication Date: May 15, 1998
Effective Date: May 15, 1998
Expiration Date: October 12, 1998

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
Extension Through: July 28, 1998

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
Extension Through: July 12, 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 (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 employe 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

EMERGENCY RULES NOW IN EFFECT (4)

Insurance

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

Exemption From Finding of Emergency

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

Analysis Prepared by the Office of the Commissioner of Insurance

January 1, 1998 Premium Adjustments

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

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

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
Extension Through: June 30, 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
Extension Through: June 30, 1998

4. Rules were adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, to limit fund fee refund requests to the current and immediate prior year only, and to establish standards for the application of the aggregate underlying liability limits upon the termination of a claims-made policy.

Finding of Emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 98-48, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1998. Because the provisions of this rule first apply on July 1, 1998, it is necessary to promulgate the rule on an emergency basis. A hearing

on the permanent rule, pursuant to published notice thereof, was held on May 8, 1998.

Publication Date: May 28, 1998
Effective Date: June 1, 1998
Expiration Date: October 29, 1998

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. 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

3. Rule was adopted amending s. NR 20.037 (2), relating to readjustment of daily bag limits for walleye in response to tribal harvest.

Finding of Emergency

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

The Chippewa bands set harvest goals for walleye on several waters each year prior to the spring spearing season. The Department then reduces daily bag limits on individual waters for anglers in response to these harvest goals. Frequently, the Chippewa harvest goals are not met on many waters and notification that harvesting is complete is not given to the Department. The unused tribal harvest results in unnecessarily low walleye bag limits for anglers. On waters where Chippewa harvest goals are established but not met, the resulting reduced bag limits are not needed to protect walleye populations. Walleye bag limits lower than 3 per day result in reduced fishing opportunities and have led to tensions between anglers and the Chippewa tribes. The reduced daily bag limits also result in hardships on businesses dependent upon tourism and

sportfishing in the ceded territory. The foregoing rule will allow the Department of Natural Resources to increase the walleye daily bag limits for anglers on waters where the Chippewa harvest goals are not met.

Publication Date: May 30, 1998
Effective Date: May 30, 1998
Expiration Date: October 27, 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, 1 998, 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

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
Extension Through: July 29, 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
Extension Through: August 14, 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
Extension Through: August 14, 1998

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. 196.2 18(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

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
Hearing Date: June 30, 1998

[See Notice this Register]

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

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
Extension Through: July 30, 1998

EMERGENCY RULES NOW IN EFFECT

Workforce Development **(Wage Rates, chs. DWD 290-294)**

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

Finding of Emergency

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

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

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

Publication Date: February 13, 1998
Effective Date: February 13, 1998
Expiration Date: July 12, 1998
Hearing Date: March 27, 1998

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 69 – Relating to vertical access requirements in government-owned or -operated facilities.

Description of policy issues:

1. Description of the objective of the rule:

The objective of the rule revisions is to do the following:

- ⊕ Exempt elevator access to areas within a government-owned or -operated facility that are less than 500 square feet and have a capacity less than 5 persons.
- ⊕ Establish rules where vertical access would be permitted by means of a limited-use elevator or a platform lift.

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

a) Existing policies. The Department promulgated administrative rules to be consistent with the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. The Wisconsin Administrative Code, ch. Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. In accordance with both the federal and previous state rules, an elevator must be used to provide vertical access to floors above or below the floor level of accessible entrance and exit. This requirement has caused a serious financial hardship on many small government-owned or -operated facilities where there are occupied floor levels above or below the level of accessible entrance or exit.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in ch. Comm 69 that require vertical access to press box facilities in government-owned or -operated facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the proposed federal exemption for certain publicly-controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule went into effect on May 15, 1998.

b) New Policies. The Department wants to ensure buildings and facilities are designed with reasonable access for people with disabilities. The objective is to create a clearly understood code that is consistent with and reflects the intent of the federal ADAAG standards.

c) Analysis of policy alternatives. The Department has identified two policy alternatives:

Policy alternative: Promulgate the emergency rule into a permanent rule and consider other alternative access to floor levels above or below the level of entrance or exit that are greater than 500 square feet.

Analysis: It is the intent of the agency to develop accessibility requirements for state or local government facilities that will provide reasonable access to all floor levels of the building or facility for people with disabilities without incurring excessive costs to the owners.

Policy alternative: Do not promulgate the emergency rule into a permanent rule and do not consider rules to permit alternative access to floor levels above or below the level of accessible entrance and exit.

Analysis: If the agency does not proceed with the development of permanent rules for the emergency rule or to permit alternative access to floor levels above or below the level of accessible entrance and exit, the objectives of Part 1 would not be achieved.

Statutory authority for the rule:

Section 101.02 (1): Requires the Department to promulgate rules that establish reasonable standards for the design and construction of commercial buildings.

Section 101.02 (15): Requires the Department to ascertain, fix, and order reasonable standards for the construction, repair and maintenance of public buildings so as to be safe.

Section 101.13: Requires the Department to promulgate rules that ensure people with disabilities have access to and throughout a public building or place of employment.

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

The following is the estimated work time that staff will be involved in these code change issues:

Conduct code research, preparation of code draft	= 80 hours
Hold public hearings, prepare responses, revise draft accordingly	= 50 hours
Prepare environmental assessment	= 30 hours
Adoption process, including proof-reading	= 10 hours
Total time	= 170 hours

Commerce

Subject:

Chs. Comm 82 & 84 and Comm 2 – Relating to the Wisconsin Uniform Plumbing Code, and the Fee Code.

Description of policy issues:

Part 1. Description of the objective of the rule:

The objectives of this rule revision, to be incorporated into one or more rule packages, are to:

- a) Result in a clearly understood code that reflects the application and use of basic plumbing principles and practices, installations, products and materials, standards.
- b) Address code requirement clarity problems and incorporate any official code interpretations since the last code revision.
- c) Establish or incorporate the appropriate and most recent, when available, national standards for design and installation of plumbing systems and to ensure that new technology will be used or allowed and will function properly.
- d) Evaluate current policies and practices for inspection and make necessary changes to reflect current operations.
- e) Revise tables and other text that no longer reflect approved rulemaking format and style.
- f) Incorporate statutory language from 1995 and 1997 Wisconsin Acts, now incorporated into the statutes.
- g) Review existing submittal requirements and incorporate procedures to provide 'streamlined' submittals and review determination.

- h) Analyze review time for various submittals and revise fees for submittals accordingly.
- i) Add and revise definitions for matters relating to updated technology, clarity, materials and installations, and/or statutory changes.
- j) Evaluate current policies and practices for approval of products and systems.
- k) Coordination of Wisconsin’s plumbing code with the International Building Code.

Part 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

- a) Existing policies. The Department’s strategic plan includes, as a goal, revision of its rules to be consistent with Department goals and objectives— promulgating cost-effective and contemporary administrative rules and regulations, making internal and external processes focused on the customer, and at the same time, protecting the safety, health, and welfare of the public and the environment.
- b) New policies. The Department’s strategic plan also includes, as a goal of the Division of Safety & Buildings, the review of national and model codes such that the review of existing rules will result in the revision of outdated and ineffective rules.

Policy alternatives:

The alternative of not revising the code will result in the Department not achieving the objectives outlined in Part 1 of this statement.

Statutory authority for the rule:

Section 145.02, Stats. – Provides the Department authority over the construction, installation and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, so that plumbing shall be safe, sanitary and such as to safeguard the public health and the waters of the state.

Section 145.13, Stats. – Requires the Department to adopt the state uniform plumbing code. The state plumbing code and amendments to that code as adopted by the Department have the effect of law in the form of standards statewide in application and shall apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision thereof. The state plumbing code shall comply with ch. 160, Stats. All plumbing installations shall so far as practicable be made to conform with such code.

Section 145.02 (2), Stats. – Provides that the Department shall have general supervision of all such plumbing and shall after public hearing prescribe, publish and enforce reasonable standards which shall be uniform and of statewide concern so far as practicable. Any employe designated by the Department may act for the Department in holding such public hearing. To the extent that the historic building code applies to the subject matter of these standards, the standards do not apply to a qualified historic building if the owner elects to be subject to s. 101.121, Stats.

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

The following is the estimated time between 6/98 and 7/99 that Department staff will be involved in these short-term code change issues:

		Hours
Advisory council meetings	8 meetings @ 10 hrs. each	80
Code topics research, language		400
Hearings, responses, revisions, etc.		60
Graphics for appendix/figures		65
Administrative and support		80
Environmental assessment		100
TOTAL		785

The following is the estimated time that Department staff will be involved in future multiple rule-making packages between now and 2002 in order to achieve the objectives outlined in Part 1 of this statement.

		Hours
Advisory council meetings	20 meetings @ 10 hrs. each	200
Code topics research, language		1200
Participation on national code committees		200
Hearings, responses, revisions, etc.		400
Graphics for appendix/figures		200
Administrative and support		180
Environmental assessment		200
TOTAL		2580

Commerce

Subject:

Chs. Comm 90 and Comm 2 – Relating to design and construction of public swimming pools, and fees.

Description of policy issues:

Part 1. Description of the objective of the rule:

In March 1994 this chapter was renumbered to ch. ILHR 90 from ch. HSS 171. In April 1998 this chapter was renumbered as ch. Comm 90 to reflect the authority given to the Department of Commerce. No other revisions were made to the chapter since revisions adopted in 1989.

The following items will be addressed within the scope of the planned rule revisions:

- a) Recognize that authority for these rules is now within the Department of Commerce, as per 1995 Wis. Act 27.
- b) Recognize that the Department of Natural Resources, until March 30, 2001, allows pool discharges to groundwater and waters of the state, with some exceptions.
- c) Consider changes to increase efficiency needed in internal processes for plan review.
- d) Consider the need to increase fees to better reflect the time and cost of making a plan review determination.
- e) Consider adoption of national standards for various design, technology, water filtration and recirculation methodologies.
- f) Recognize national practices in clearly understood rules.
- g) Reflect changes in inspection and installation practices.

Part 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

- a) Existing policies. The Department’s strategic plan includes, as a goal, revision of its rules to be consistent with Department goals and objectives — promulgating cost-effective and contemporary administrative rules and regulations, making internal and external processes focused on the customer, and at the same time, protecting the safety, health, and welfare of the public and the environment.
- b) New policies. The Department’s strategic plan also includes, as a goal of the Division of Safety & Buildings, the review of national and model codes such that the review of existing rules will result in the revision of outdated and ineffective rules.

Policy alternatives:

The alternative of not revising the code will result in the Department not achieving the objectives outlined in Part 1 of this statement.

Statutory authority for the rule:

The Department authority for the design and installation of public swimming pools is given in s. 145.26, Stats.

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

The following is the estimated work time that staff will be involved in these code change issues:

		Hours
Advisory council meetings	8 meetings @ 15 hrs. each	120
Code topics research, language		160
Technical/Specialty support		360
Participation on national code committee(s)		35
Hearings, responses, revisions, etc.		40
Graphics for appendix/figures		20
Administrative and support		40
Environmental assessment		25
	TOTAL	800

Medical Examining Board

Subject:

Med Code – Relating to credentialing of physician assistants and the services that they perform under the direction of a medical doctor.

Description of policy issues:

Objective of the rule:

The objective of these revisions is to fulfill the mandate of 1997 Wis. Act 67 which requires the Board to promulgate rules specifying: changing the term “patient services” to “medical care”; changing the credentialing title from “certification” to “licensure”; and changing the prescribing limitation from “protocols” to “guidelines.”

Policy analysis:

The proposed changes require the Medical Examining Board to promulgate rules regarding 1997 Wis. Act 67 so as to bring the rules regarding physician assistants into compliance with the law.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats., and 448.05 (5) (a) (intro.), Stats., as amended by 1997 Wis. Act 67.

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

4 hours.

Natural Resources

Subject:

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

Description of policy issues:

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

In order to implement the transfer of authority from the Great Lakes commercial fishing boards to the Department accomplished by 1997 Wis. Act 189, the order amends existing commercial fishing procedural rules to substitute or insert references to the Department in place of or in addition to references to the Lake Superior or Lake Michigan commercial fishing board. The affected rules govern or refer to the process for transfer of individual allocated quotas between licensees or to quotas previously allocated by the fishing boards.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Enactment of 1997 Wis. Act 189 has transferred to the Natural Resources Board (NRB) the authority to adopt rules to allocate the harvests among individual licensees and it expands the advisory role of the fishing boards. These rules conform the administrative code to the new law by changing the procedure for quota transfers.

Statutory authority:

Section 29.33, Stats., as affected by 1997 Wis. Act 189.

Anticipated time commitment:

The anticipated time commitment is 11 hours. One public hearing will be held in October, 1998 at Madison.

Physical Therapists Affiliated Credentialing Board

Subject:

PT Code – Relating to supervision of unlicensed persons by physical therapists.

Description of policy issues:

Objective of the rule:

The objective of this revision is to further define how many unlicensed persons may be supervised by a physical therapist regarding on-premises, off-premises locations.

Policy analysis:

The Physical Therapists Affiliated Credentialing Board is of the opinion that there needs to be a clarification regarding how many unlicensed persons can be supervised when a physical therapist is directly on-premises and when they are not.

Statutory authority:

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

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

4 hours.

Regulation and Licensing

Subject:

RL Code – Relating to education requirements for real estate brokers and salespeople.

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

These revisions are in response to recommendations by the Council on Real Estate Curriculum and Examinations, and the Real Estate Board. The changes will amend provisions relating to the contents of pre-license education programs, procedures for approving schools and courses, and the number of hours of education required of applicants for initial licensure and renewal of a license. The changes will most notably include new provisions relating to the approval of distance learning courses. "Distance learning" refers to delivering instruction when the instructors and the students are separated by distance. Various media are utilized, such as CD-ROM, videocassettes, the Internet, video-conferencing and others.

Policy analysis:

The proposed amendments create criteria relating to the approval of distance learning courses. These criteria relate to the contents of courses, criteria for delivery of the courses and criteria for satisfactory completion of the courses. The Department anticipates that the current lists of contents of the broker's and salesperson's pre-license education courses will be amended to bring them current with statutes, rules and practice. Some adjustments to the number of hours could be made, especially those pertaining to persons licensed in another state and seeking a license in Wisconsin. A variety of other fine-tunings could be made to other provisions in ch. RL 26.

The new policies that could be proposed are listed above. The policy alternatives primarily relate to trying to be flexible and facilitate distance learning or to maintain current policies which are oriented toward classroom education and which hinder the offering of distance learning courses by means of new technology.

Statutory authority:

Sections 227.11 (2), 440.42 (3) (b), 452.04, 452.05, 452.06, 452.07, 452.09 (2) and 452.12 (5), Stats.

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

12 hours.

Technical College System Board**Subject:**

Chs. TCS 6 to 9 – Relating to:

1. General district policies (Ch. TCS 6)—Procurement
2. District budget, audit and finance (Ch. TCS 7)—Accounting standards
3. Contract for services (Ch. TCS 8)—Reporting standards
4. District reporting of student participation in compulsory school attendance, postsecondary options and technical preparation programs (Ch. TCS 9)

Description of policy issues:*A. Description of the objectives of the rules:*

1. General district policies—Procurement (S. TCS 6.05). The current rule regarding technical college (WTCS) district procurement policies was originally promulgated in 1984 based on federal procurement guidelines and regulations to provide consistency for all purchases regardless of funding source. In recent years, changes at both the federal and state levels have led to higher threshold amounts for competitive procurement requirements. The proposed rule amendment would not only reflect these changes, but also make several improvements to the procurement process. See B-1 for further details on the proposed amendment.

2. District budget, audit and finance—Accounting standards (S. TCS 7.03). The current rule requires WTCS districts to comply with accounting standards established by the National Council on Governmental Accounting (NCGA) and incorporates these standards

into the rule by reference to the source document. At the time this rule was promulgated (September, 1983), the NCGA was the authoritative source of generally accepted accounting principles for state and local governments. However, shortly thereafter, the authority to establish governmental accounting standards was transferred to the Governmental Accounting Standards Board (GASB). The proposed rule amendment would recognize this change in authority by adopting and incorporating by reference the GASB accounting standards.

3. Contract for services—Reporting standards (S. TCS 8.06). The current rule interprets s. 38.14 (3) (e), Stats., which requires each WTCS district board to submit to the WTCS Board a report identifying all contracts under which the district board provided services. However, the rule reflects the statutory language prior to 1989. In 1989, the reporting requirement was modified by the Legislature. The current rule would be amended to reflect these changes.

4. High school student reporting requirements (s. TCS 9.03). The current rule interprets s. 38.04 (11) (a) 2, Stats., which requires the WTCS Board, in consultation with the State Superintendent of Public Instruction, to establish a uniform format for WTCS districts to annually report the number of students participating in compulsory school attendance, postsecondary options and technical preparation programs. The proposed rule amendment would change the deadline for reporting this data and clarify the conditions under which high school students qualify for advanced standing and transcribed credit at a technical college.

B. Description of existing relevant policies and new policies to be included in the rules and analysis of policy alternatives:

1. General district policies—Procurement (s. TCS 6.05). Section 38.04 (14) (a) 2., Stats., requires the WTCS Board to promulgate rules, applicable to all WTCS district boards, establishing general district policies and procedures related to procurement.

The current rule regarding WTCS district procurement requires that each district adopt, at a minimum, certain policies and procedures on procurement. In general, such policies and procedures must require:

- i) Competitive bid or selection procedures if the total cost of the procurement exceeds \$10,000;
- ii) The solicitation of written quotes from at least 2 prospective vendors if the total cost is between \$3,000 and \$10,000; and
- iii) A procedure established by the district board if the total cost is below \$3,000 (small procurements).

In addition, all district contracts for public construction must be accomplished through the use of competitive bids if the estimated cost exceeds \$10,000 (as required under s. 38.18, Stats.).

The proposed rule amendment would:

- i) Increase the level for competitive bid or selection procedures to procurements in excess of \$25,000;
- ii) Increase the solicitation of written quotes levels to procurements between \$10,000 and \$25,000 and require quotes from at least 3 vendors; and
- iii) Increase the small procurement level to \$10,000. The \$10,000 competitive bid level for public construction contracts would remain unchanged.

This proposal would bring the WTCS district procurement thresholds more in line with current federal and state regulations. The federal standard for competitive procurement is now \$100,000. The current purchasing law applicable to state agencies requires competitive procurement when the estimated cost of the transaction exceeds \$25,000 and a simplified procedure established by the state Department of Administration is used for transactions of \$25,000 or less (essentially quotes from at least 3 vendors without any formal bid procedures).

The current rule also requires that all procurements within a 30-day period from a single contractor or from multiple contractors (involving similar procurements) be considered in the aggregate in determining the method of procurement used by the district. The proposed amendment would replace this 30-day aggregation rule with a requirement that a district board's procurement policies include an annual review to determine if a more competitive procurement process should be used in succeeding years. This review would be conducted based on a report that aggregates multiple purchases of similar goods, supplies and services procured without competitive bids or selection procedures. The district board would be required to take formal action on this report that would be reflected in the board's minutes.

The current rule allows sole source procurement in certain circumstances including where cooperative purchasing under s. 16.73, Stats., is utilized. Such cooperatives involve joint purchasing agreements among a group of municipalities or between the state Department of Administration and a group of municipalities. The proposed rule amendment would modify the list of sole source procurements to include cooperative purchasing associations recognized by the State Director as having procurement policies that are substantially equivalent to those of the WTCS.

Finally, the proposed amendment would require that each district board disclose the evaluation criteria related to competitive selection procedures in the specifications provided to prospective vendors. This change will ensure that vendors are fully aware of the criteria and relative weight each criterion will receive in the selection process.

The WTCS Board also intends to make format changes to the procurement rule.

The alternative to this amendment would be to maintain the current rule. However, this rule was written nearly 15 years ago and is in need of updating to provide WTCS districts with greater flexibility in their purchasing decisions, to ensure compatibility with federal and state standards, and to increase public accountability.

2. District budget, audit and finance—Accounting standards (S. TCS 7.03). Section 38.04 (11), Stats., requires the WTCS Board to prescribe a uniform financial fund accounting system for WTCS districts. The current rule adopts and incorporates by reference the accounting standards in Statement 1, Governmental Accounting and Reporting Principles as established by the National Council on Governmental Accounting (NCGA), Municipal Finance Officers Association of the United States and Canada. However, the authority to establish governmental accounting standards was transferred in 1984 to the Governmental Accounting Standards Board (GASB). The proposed rule amendment would adopt and incorporate by reference the GASB accounting standard.

There is no alternative to this amendment because the NCGA standards are no longer applicable and the GASB is the authoritative source of accounting standards for state and local governments.

3. Contract for services—Reporting standards (S. TCS 8.06). Section 38.14 (3) (e), Stats., requires each WTCS district board to submit to the WTCS Board an annual report by December 1st identifying all contracts under which the district board provided services in the preceding fiscal year. The current rule is based on an earlier statute that required district boards to submit their contract report monthly and on the forms provided by the WTCS Board. 1989 Wis. Act 31 changed the requirement to an annual report due by December 1st and specified that the report be submitted in a form determined by the WTCS Board.

The proposed rule amendment would eliminate the monthly reporting requirement; establish the December 1st annual reporting date; specify that the report would be submitted electronically, in the format specified by the Board; and clarify the contents of the report. Due to the statutory changes, there is no alternative to this amendment.

4. High school student reporting requirements (S. TCS 9.03). The current rule interpreting s. 38.04 (11) (a) 2., Stats., requires WTCS districts to annually, by June 15, submit a report to the WTCS Board on the number of high school students participating in the compulsory school attendance, postsecondary options and technical preparation programs. However, the budget for WTCS districts operates on a fiscal year basis ending June 30 of each year of the biennium. Furthermore, s. 38.04 (11) (a), Stats., directs the WTCS Board to establish common use of the fiscal year for both operations and data reporting. Therefore, the June 15th reporting date is not compatible with the closing dates established for WTCS data reporting purposes. The proposed rule amendment would change the annual reporting date to August 15th.

The current rule requires each WTCS district to report the number of high school students enrolled in a secondary course for which advanced standing or transcribed credit may be granted by the college under the technical preparation program. However, advanced standing is not automatic for high schools students and may not be granted unless the student applies for admission to a technical college and specifically requests advance standing based on the course being taken by that student. Similarly, transcribed credit is granted at the time of completion of the course. The proposed rule amendment would clarify that WTCS districts would report high school student participation in advanced standing and transcribed credit courses once these forms of credit have been granted to the student by the technical college.

Finally, the proposed amendment would provide the appropriate cross-references to the new youth options program under s. 118.55, Stats., which replaces the postsecondary enrollments option program under s. 118.37, Stats., as a result of 1997 Wis. Act 27.

There is no alternative to the proposed rule changes because they are basically clarifications and corrections to the existing rule.

Statutory authority for the rules:

1. General district policies—Procurement (S. TCS 6.05). Section 38.04 (14) (a) 2., Stats., requires the WTCS Board to promulgate rules, applicable to all WTCS district boards, establishing general district policies and procedures related to procurement. Section 38.12 (7), Stats., requires each WTCS district board to establish written policies which are consistent with these rules.

2. District budget, audit and finance—Accounting standards (S. TCS 7.03). Section 38.04 (11) (a) 1., Stats., requires the WTCS Board to establish uniform reporting methods for fiscal information provided by WTCS district boards. Section 38.04 (11) (bm), Stats., requires the WTCS Board to prescribe a detailed uniform financial fund accounting system, applicable to all WTCS district boards, which provides for the recording of all financial transactions inherent in the management of the districts and the administration of the district aid programs.

3. Contract for services—Reporting standards (S. TCS 8.06). Section 38.04 (14) (a) 4., Stats., requires the WTCS Board to promulgate rules, applicable to all WTCS district boards, establishing general district policies and procedures relative to contracts to provide services. Section 38.12 (7), Stats., requires each WTCS district board to establish written policies which are consistent with these rules. Section 38.14 (3) (e), Stats., directs each WTCS district board to establish policies governing contracts for services and to submit an annual report to the WTCS Board regarding these contracts.

4. High school student reporting requirements (s. TCS 9.03). Section 38.04 (11) (a) 2., Stats., requires the WTCS Board, in consultation with the State Superintendent of Public Instruction, to promulgate rules establishing a uniform format for WTCS district boards to annually report the number of high school students participating in compulsory school attendance programs (s. 118.15 (1) (b), (cm) and (d), Stats.), the technical preparation program (s. 118.34, Stats.), and the youth options program (s. 118.55 (7r), Stats.).

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

Estimated time to be spent by state employees: 120 hours. No other resources are necessary.

Transportation

Subject:

Ch. Trans 210 – Relating to describing the methodology the Department of Transportation will use to numerically evaluate candidate major highway projects prior to recommending them for consideration by the Transportation Projects Commission under s. 13.489, Stats.

Description of policy issues:

Description of the objective of the rule:

This rulemaking will create ch. Trans 210, which implements statutes enacted in 1997 Wis. Act 86. The objective of this rule is to describe the methodology the Department of Transportation will use to numerically evaluate candidate major highway projects prior to recommending them for consideration by the Transportation Projects Commission under s. 13.489, Stats.

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

The Department of Transportation currently evaluates candidate major highway projects using numerical factors designed to rank proposed projects in terms of their ability to enhance Wisconsin's economy, improve highway service, improve highway safety, minimize undesirable impacts and serve community objectives. A process for evaluating candidate projects has been used to advise the Transportation Projects Commission since the Commission was created in 1983. The process has evolved over time as better information on candidate projects has become available. The current process ranks projects relative to other candidates under consideration and does not establish a minimum score that a project must obtain. The rule will establish a minimum score that a project shall meet or exceed in order to be eligible for recommendation to the Transportation Projects Commission.

Statutory authority for the rule:

Section 85.05, Stats., as created by 1997 Wis. Act 86.

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

It is anticipated that approximately 650 hours will be required to write the draft rule, hold the public hearing, and write the final draft rule. It is not anticipated that other resources will be required.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Dentistry Examining Board

Rule Submittal Date

On May 22, 1998, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 447.02 and 447.04 (1) (a) 6. and (2) (a) 6., Stats.

The proposed rule-making order affects chs. DE 1, 2, 5, 6 and 11, relating to dentists and dental hygienists.

Agency Procedure for Promulgation

A public hearing is required, and will be held on July 8, 1998 at Madison.

Contact Person

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

Commissioner of Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 28, 1998.

Analysis

These changes will affect s. Ins 4.10, Wis. Adm. Code, relating to changes in the requirements for the Wisconsin Insurance Plan (WIP).

Agency Procedure for Promulgation

The date for the public hearing is July 9, 1998 at Madison.

Contact Person

To obtain a copy of the proposed rule, contact:

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

For additional information, please contact:

Robert Luck
OCI Legal Unit
Telephone (608) 266-0082
e-mail at bluck@mail.state.wi.us

Commissioner of Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 28, 1998.

Analysis

These changes will affect ch. Ins 26, Wis. Adm. Code, relating to the application process and requirements of prelicensing education for insurance agents.

Agency Procedure for Promulgation

The date for the public hearing is July 9, 1998 at Madison.

Contact Person

To obtain a copy of the proposed rule, contact:

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

For additional information, please contact:

Robert Luck
OCI Legal Unit
Telephone (608) 266-0082
e-mail at bluck@mail.state.wi.us

Commissioner of Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 28, 1998.

Analysis

These changes will affect ch. Ins 28, Wis. Adm. Code, relating to the requirements for continuing education for insurance intermediaries.

Agency Procedure for Promulgation

The date for the public hearing is July 9, 1998 at Madison.

Contact Person

To obtain a copy of the proposed rule, contact:

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

For additional information, please contact:

Robert Luck
OCI Legal Unit
Telephone (608) 266-0082
e-mail at bluck@mail.state.wi.us

Optometry Examining Board**Rule Submittal Date**

On May 15, 1998, the Optometry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis**Statutory authority:**

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

The proposed rule-making order affects chs. Opt 3 and 4, relating to credential applications and examination requirements for individuals applying for a license to practice optometry.

Agency Procedure for Promulgation

A public hearing is required, and will be held on June 19, 1998 at Madison.

Contact Person

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

Pharmacy Examining Board**Rule Submittal Date**

On May 22, 1998, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis**Statutory authority:**

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

The proposed rule-making order creates ch. Phar 15, relating to the preparation of sterile pharmaceuticals by pharmacists.

Agency Procedure for Promulgation

A public hearing is required, and will be held on July 14, 1998 at Madison.

Contact Person

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

NOTICE SECTION

Notice of Hearing

Dentistry Examining Board

Notice is hereby given that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b), 227.11 (2), 447.02 and 447.04 (1) (a) 6. and (2) (a) 6., Stats., and interpreting ss. 447.04, 447.05 and 447.07, Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. DE 1.02 (6), 2.01 (1) (b) and 11.11 (6) (b); to amend ss. DE 1.02 (4) and (8), 2.01 (1) (intro.), (a), (c), (e) and (f), 2.02 (title), (1), (2) and (3), 2.03 (1) (b), (5) (a) 2. and (6) (b), 2.04 (1) (intro.), (c), (e), (2) (intro.), (c) and (d), 5.02 (3), (6), (18), (19), (21), (22) and (23) and 6.01; and to create ss. DE 2.05, 2.06, 2.07 and 2.08, relating to dentists and dental hygienists.

Hearing Information

The public hearing is scheduled as follows:

July 8, 1998
Wednesday
9:15 a.m.

Room 179A
1400 East Washington Ave.
MADISON, WI

Written Comments

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

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

Written comments must be received by **July 24, 1998** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 447.02 and 447.04 (1) (a) 6. and (2) (a) 6.

Statutes interpreted: ss. 447.04, 447.05 and 447.07

This proposed rule-making order of the Dentistry Examining Board contains many amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following sections contain changes of a more substantive nature or are specifically identified to facilitate review of the proposal:

SECTION 1 amends s. DE 1.02 (4) by deleting the reference to a "written part" of the examination as being included within the definition of the clinical and laboratory demonstration required of candidates for a license to practice dentistry. The dentistry examination described within the definition no longer contains a written portion.

SECTION 2 repeals s. DE 1.02 (6) deleting the definition of "examination" as the examinations required for licensure are more specifically described in ch. DE 2.

SECTION 5 repeals s. DE 2.01 (1) (b) which currently requires that applicants for a license submit a current photograph. The submission of a photograph does not serve any real purpose, in that applicants are required to provide adequate identification through a driver's license or other means at the time of examination.

SECTION 9 amends portions of s. DE 2.04 to change the current references from "clinical examination" to "clinical and laboratory demonstrations," so as to be consistent with the definition contained in s. DE 1.02 (4).

SECTION 10 creates s. DE 2.05, making the criteria for determining a passing score on an examination similar to other rules of the Department and boards in the Department permitting the use of scoring procedures that testing experts agree are acceptable for establishing valid and reliable examinations. SECTION 10 also creates s. DE 2.06, specifying the actions which may be taken by the Board in the event an examination candidate is found to have provided or received unauthorized assistance during an examination. SECTION 10 also creates s. DE 2.07, to provide a specific mechanism by which an examination administered by the Board may be reviewed by failing candidates. Similarly, SECTION 10 creates s. DE 2.08, to describe the specific format to be followed in requesting that the Board review the failing candidate's examination for claimed errors in scoring.

SECTION 13 repeals s. DE 11.11 (6) (b), which is no longer necessary in that it gave licensees until November 1, 1989 to obtain specified equipment for the use of nitrous oxide in a dental facility.

Text of Rule

SECTION 1. DE 1.02 (4) is amended to read:

DE 1.02 (4) "Clinical and laboratory demonstration" means a comprehensive examination approved by the board consisting of a ~~written part~~ and a demonstration of skills, operative and restorative techniques and practical application of the basic principles of the practice of dentistry or a comprehensive examination approved by the board consisting of a written part and a demonstration of skills, techniques and practical application of the basic principles of the practice of dental hygiene.

SECTION 2. DE 1.02 (6) is repealed.

SECTION 3. DE 1.02 (8) is amended to read:

DE 1.02 (8) "Supervision" means the direction of the practice of dental hygiene, as ~~specified in~~ authorized by s. DE 3.02, by a licensed dentist.

SECTION 4. DE 2.01 (1) (intro.) and (a) are amended to read:

DE 2.01 (1) An applicant for license as a dentist shall submit all of the following to the board:

(a) An application on a form approved by the board;

SECTION 5. DE 2.01 (1) (b) is repealed.

SECTION 6. DE 2.01 (1) (c), (e) and (f) are amended to read:

DE 2.01 (1) (c) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.;

(e) Evidence satisfactory to the board of having completed educational requirements in s. 447.04 (1), Stats. In the case of a graduate of a foreign dental school, verification shall be provided from a board-approved foreign graduate evaluation program of successful completion of the evaluation course;

(f) Verification from the commission on national examinations of the American dental association or other board-approved professional testing services of successful completion of an examination; ~~and~~.

SECTION 7. DE 2.02 (title), (1), (2) and (3) are amended to read:

DE 2.02 Duration of license. (1) Every person granted a license as a dentist shall be deemed ~~registered~~ licensed for the current ~~registration~~ biennial license period.

(2) Every person granted a license as a dental hygienist shall be deemed ~~registered~~ licensed for the current ~~registration~~ biennial license period.

(3) ~~Registrants~~ Licensees shall qualify biennially for ~~certificates of registration~~ renewal of license.

SECTION 8. DE 2.03 (1) (b), (5) (a) 2. and (6) (b) are amended to read:

DE 2.03 (1) (b) The fee ~~specified in~~ authorized by s. 440.08 (2), Stats.

(5) (a) 2. The fee ~~specified in~~ authorized by s. 440.08 (2), Stats., plus the applicable late renewal fee ~~specified in~~ authorized by s. 440.08 (3), Stats.

(6) (b) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.;

SECTION 9. DE 2.04 (1) (intro.), (c) and (e), (2) (intro.), (c) and (d) are amended to read:

DE 2.04 (1) The board may grant a license as a dentist to an applicant who holds a valid license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~specified in~~ authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that:

(c) The applicant has not failed the central regional dental testing service clinical and laboratory demonstration examination, or any other dental licensing examination, within the previous 3 years.

(e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing services, or, alternatively, has successfully completed a board specialty certification examination of an American dental association accredited specialty within the previous 10 years.

(2) The board may grant a license as a dental hygienist to an applicant who holds a license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~specified in~~ authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that:

(c) The applicant has not failed the central regional dental testing service clinical and laboratory demonstration examination, or any other dental hygiene licensing examination, within the previous 3 years.

(d) The applicant has successfully completed a clinical and laboratory demonstration examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service.

SECTION 10. DE 2.05, 2.06, 2.07 and 2.08 are created to read:

DE 2.05 Examination passing score. The score required to pass an examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

DE 2.06 Unauthorized assistance. An applicant may not give or receive unauthorized assistance during the examination. The action taken by the board when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

DE 2.07 Examination review. (1) An applicant who fails an examination administered by the board may request a review of that examination by filing a written request to the board within 30 days after the date on which the examination results were mailed to the applicant.

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

(a) The time for review shall be limited to one hour.

(b) The examination shall be reviewed only by the applicant and in the presence of a proctor.

(c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.

(d) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing by the applicant on the form provided for this purpose. The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.

(e) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

DE 2.08 Claim of examination error. (1) An applicant wishing to claim an error on an examination administered by the board must file a written request for board review in the board office within 30 days after the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address.

(b) The type of license applied for.

(c) A description of the perceived error, including reference text citations or other supporting evidence for the applicant's claim.

(2) The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.

SECTION 11. DE 5.02 (3), (6), (18), (19), (21), (22) and (23) are amended to read:

DE 5.02 (3) Practicing or attempting to practice beyond the scope of any license ~~or certificate~~.

(6) Administering, dispensing, prescribing, supplying or obtaining controlled substances as defined in s. ~~461.01 (4)~~ 961.01 (4), Stats.

(18) Failing to maintain records and inventories as required by the United States department of justice drug enforcement administration, and under ch. ~~461 961~~, Stats., and s. ~~Phar 8.02, Wis. Adm. Code~~.

(19) Failing to supervise the practice of a dental hygienist as specified in s. ~~447.08 (1) or (4)~~ 447.065, Stats., and s. DE 3.01.

(21) Aiding or abetting or permitting unlicensed persons in the practice of dentistry, as defined in s. ~~447.02 (1) (a) to (j)~~ 447.01 (8), Stats.

(22) Aiding or abetting or permitting unlicensed persons in the practice of dental hygiene, as defined in s. ~~3.02 441.01 (3)~~, Stats.

(23) Obtaining, prescribing, dispensing, administering or supplying a controlled substance designated as a schedule II, III or IV stimulant in s. ~~461.15 (5), 461.18 (2m) or 461.20 (2m)~~ 961.16 (5), 961.18 (2m) or 961.20 (2m), Stats., unless the dentist has submitted, and the board has approved, a written protocol for use of a schedule II, III or IV stimulant for the purpose of clinical research, prior to the time the research is conducted.

SECTION 12. DE 6.01 is amended to read:

DE 6.01 Authority. The rules in this chapter are adopted pursuant to authority ~~in~~ in s. ~~447.07 (6)~~ 447.07 (3) (o), Stats.

SECTION 13. DE 11.11 (6) (b) is repealed.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearings

Health & Family Services (Community Services, Chs. HFS/HSS 30--)

Notice is hereby given that pursuant to s. 51.44 (5) (a), Stats., the Department of Health and Family Services will hold public hearings to consider the revision of ch. HFS 90, Wis. Adm. Code, relating to early intervention services for children with developmental needs in the age group from birth up to 3.

Hearing Information

The public hearings will be held:

July 6, 1998
Monday
4:00 p.m. to
6:00 p.m.

Room B155
State Office Bldg.
One West Wilson St.
MADISON, WI

July 8, 1998
Wednesday
3:00 p.m. to
5:00 p.m.

Early Intervention Classroom
Achievement Center
1640 West River Dr.
STEVENS POINT, WI

The hearing sites are fully accessible to people with disabilities. For the Madison site, parking for people with disabilities is available in the parking lot behind the building or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Dept. of Health & Family Services

This order amends the Department's rules for operation of the Birth to 3 Program under s. 51.44, Stats., to establish a state-level mediation process for resolution of disputes between parents and county administrative agencies, to improve the required documentation by county administrative agencies that "natural environments" are being used to the maximum extent appropriate as the locations for provision of early intervention services, and to make several corrections, updating changes and experienced-based improvements in the rules.

The rule changes relating to how disputes are resolved between parents and county administrative agencies and to documentation of the use of natural environments for provision of early intervention services are being made to incorporate changes made in Part C of the federal Individuals with Disabilities Education Act (IDEA), 20 USC 1400, by Public Law 105-17.

The other changes made in ch. HFS 90 by this rulemaking order are the following:

- ◇ Addition of references to federal Public Law 105-17 which recently amended the Individuals with Disabilities Education Act;
- ◇ Substitution of Part C for Part H as the federal grant program reference to the Birth to 3 Program in the Individuals with Disabilities Education Act, pursuant to a change made by PL 105-17;
- ◇ Deletion of the phrase, "and other early intervention services identified in a child's IFSP" from s. HFS 90.11

(2) (a) 2. That phrase was inadvertently not deleted when ch. HFS 90 was amended, effective May 1, 1997, to provide that fees be charged for non-core services, and therefore is not consistent with the changes made at that time in ch. HFS 90;

- ◇ Under s. HFS 90.11 (4), Other Early Intervention Services, the identification of a specific new service under certain types of early intervention services. The new service is "provide consultation to and training of parents, other service providers and community agencies in regard to" the service type. This is added under audiology services, communication services, nursing services, occupational therapy services, physical therapy services, psychological services, social work services, special instruction services and vision services; and
- ◇ Insertion of "motor skills" in s. HFS 90.11 (4) (m) 2. to correct an obvious omission.

Contact Person

To find out more about the hearings or to request a copy of the proposed changes to ch. HFS 90, write or phone:

Donna Miller (608) 267-5150 or,
if you are hearing-impaired, (608) 266-7376 (TTY)
Birth to 3 Program
Department of Health & Family Services
P. O. Box 7851
Madison, WI 53707-7851

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

Written comments on the proposed rule changes received at the above address no later than **July 27, 1998**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

The changes to the rules (that relate to establishment of a state-level mediation process and improvement of documentation that natural environments are being used as the locations for service provision) are being made at the direction of the federal government to incorporate requirements added by Public Law 105-17 to Part C (formerly, Part H) of the Individuals with Disabilities Education Act (IDEA).

The operation by state government of the state-level mediation process will be paid for out of the federal appropriation for the Birth to 3 Program. The rule changes will not otherwise affect the expenditures or revenue of state government.

The rule changes will not affect the expenditures or revenues of local governments. Counties currently pay for hearings with federal Birth to 3 funds and will continue to pay for hearings with federal Birth to 3 funds.

Initial Regulatory Flexibility Analysis

These rule changes will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to the Department and to county agencies administering the Birth to 3 Program. County administrative agencies may contract with medical and other service providers organized as small businesses to provide early intervention services, in which case the small business providers, like other public and private providers of services to eligible children and their families, must comply with the rules for provision of services including the changes made by this rulemaking order in those rules.

Notice of Hearing

Commissioner of Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rule-making order affecting s. Ins 4.10, Wis. Adm. Code, relating to changes in the requirements for the Wisconsin Insurance Plan (WIP).

Hearing Information

The public hearing is scheduled as follows:

July 9, 1998
Thursday
10:00 a.m.

Room 23
Commissioner of Insurance
121 East Wilson St.
MADISON, WI

Written Comments

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

Robert Luck, OCI
P.O. Box 7873
Madison, WI 53707

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 619.01 and 628.34 (12)

Statutes interpreted: ss. 600.01, 619.01 and 628.34 (12)

The Wisconsin Insurance Plan (WIP) is a risk-sharing facility providing insurance coverage on certain types of properties not acceptable for coverage from regular insurance companies.

The definition of a farm is revised to require gross annual receipts in excess of \$5000 for a risk to be considered a farm. Rooming and boarding houses and nurses' and sisters' homes are removed from the definition of a habitational risk to allow for higher limits to be written on these risks. Older terminology is removed from some definitions and replaced by current terminology where appropriate.

The maximum limits of coverage for dwelling risks are revised increased to \$200,000 for the dwelling and \$100,000 for personal property from the current \$100,000 maximum for both coverages combined.

A new section is added to set the stating maximum limits of coverage for homeowner risks at \$200,000 for the dwelling, 10% of the dwelling amount with customary percentages for other structures, 50% for personal property, and 10% for loss of use. The homeowner maximum for personal liability is \$100,000 and the maximum for medical payments coverage is \$1000.

The requirement for the Plan to seek to place excess coverage limits over the Plan's applicable limits is removed.

Duties of the Governing Committee are revised to allow for voting by proxy and remove the provision requiring the full Governing Committee to approve any expenditures not included in the annual budget. The Plan will no longer be required to mail the annual budget to all insurers. The type of reports submitted by the Governing Committee to the Commissioner is made less restrictive.

The procedure to call for a special meeting of the Governing Committee is revised to state this type of meeting can be called by 10 or more insurers. At the special meeting the the Governing

Committee would have voting rights on any matter within its authority. Current rules allow both the insurers and the Governing Committee to call a special meeting and appear to provide voting rights to the insurers, not the Governing Committee. Another section of this rule already allows the Governing Committee to meet as often as may be required.

Inspection procedures of the Plan are revised to allow the Governing Committee to waive inspections for specified classes of risks and not require the applicant to be present at an inspection. Current rules allow inspection waivers only for risks requesting burglary or theft coverage and require the applicant or a representative to be present at an inspection.

Underwriting procedures of the Plan are revised to clarify the Plan may require underwriting information in addition to the application before binding coverage or deciding whether to accept or decline a risk. Declination procedures are revised to clarify the Plan may decline to insure a risk based on property or liability underwriting standards.

Notification of hearing procedures are revised to comply with changes previously made to subdivision (16) and to remove the requirement to send action reports to the Commissioner.

Mailing procedures are revised to state the Plan can determine whether to mail the policy to the applicant or to the agent for delivery to the applicant. Current rules have the Plan delivering the policy to the applicant.

Underwriting standards of the Plan are revised to:

- * Require active rehabilitation work on property vacant more than 60 days to be acceptable for insurance coverage. Current rules do not require active work.
- * Allow for underwriting previous loss history or matters of public record concerning any person insured under the policy. Current rules apply only to the applicant.
- * Add a requirement for the applicant to purchase a business liability policy with limits of at least \$100,000 per occurrence if a homeowner risk has a business operating from the home.
- * Add a requirement for the applicant to purchase special liability policy with limits of at least \$100,000 per occurrence covering horses or other riding animals if a homeowner risk has three or more horses or other riding animals.
- * Clarify the Plan may cancel in the first 60 days for new business or non-renew a risk if it does not meet any of the reasonable underwriting standards for property or liability coverage.
- * Allow the Plan to cancel in the first 60 days for new business or non-renew a policy if the insured does not repair the property after 60 days from the payment of any loss. Current rules apply only to fire losses.
- * Allow the Plan to consider all losses caused by conditions which are the responsibility of any insured in deciding whether to cancel or non-renew a policy. Current rules apply only to fire losses under the responsibility of the owner named insured.

The amendments summarize the cooperation requirements and authority limitations of insurance agents. Agents cannot bind coverage, alter policies, settle losses, act on behalf of, or commit the Plan to any course of action.

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

Notice of Hearing**Commissioner of Insurance**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rule-making order affecting ch. Ins 26, Wis. Adm. Code, relating to the application process and requirements of prelicensing education for insurance agents.

Hearing Information

The public hearing is scheduled as follows:

July 9, 1998
Thursday
10:00 a.m.

Room 23
Commissioner of Insurance
121 East Wilson St.
MADISON, WI

Written Comments

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

Robert Luck, OCI
P.O. Box 7873
Madison, WI 53707

Analysis Prepared by the Commissioner of Insurance

Statutory authority: ss. 600.01 (1) (b) 5, 601.41 (3), and 628.04

Statute interpreted: s. 628.04 (3)

This order amends the prelicensing education and application requirements for individuals seeking to become licensed insurance agents in the four major lines in Wisconsin. These changes do the following:

⇒ Eliminate the requirement of an original certificate of prelicensing data from the requirements necessary to submit a "complete" application;

⇒ Add the requirement of an original letter of clearance to the documents which must be submitted in a complete application for nonresident applicants;

⇒ Require that the form DJ-LG-250 from the Department of Justice be submitted not more than 180 days prior to the submission of an application rather than the original requirement of 90 days prior to the test date;

⇒ Mandates that intermediaries notify the Commissioner of Insurance of any change of name, and eliminate the requirement that intermediaries notify the Commissioner of changes in the location of their records;

⇒ Requires credit and non-credit course providers to submit a computerized list of individuals completing prelicensing education programs in an electronic format;

⇒ Rescind the provision permitting an approved noncredit program to be taught by an individual found to be qualified by

demonstrating exemplary education or experience in the line of insurance being taught;

⇒ Modify the course requirements for prelicensing education; and

⇒ Eliminate the exemption from prelicensing education requirement from the prelicensing exemption form for nonresident agents seeking a nonresident license in Wisconsin.

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

Notice of Hearing**Commissioner of Insurance**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rule-making order affecting ch. Ins 28, Wis. Adm. Code, relating to the requirements for continuing education for insurance intermediaries.

Hearing Information

The public hearing is scheduled as follows:

July 9, 1998
Thursday
10:00 a.m.

Room 23
Commissioner of Insurance
121 East Wilson St.
MADISON, WI

Written Comments

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

Robert Luck, OCI
P.O. Box 7873
Madison, WI 53707

Analysis Prepared by the Commissioner of Insurance

Statutory authority: ss. 601.41 (3), 628.04 (3) and 628.10 (2) (a)

Statute interpreted: s. 628.04 (3)

This order amends the continuing education requirements for individuals licensed as insurance intermediaries in the four major lines of property, casualty, life, accident and health, and the limited line of automobile. In order to satisfy the continuing education requirements, an applicant shall biennially complete 24 credit hours of study as described in ch. Ins 28. These changes do the following:

- Eliminate the 12 credit hour requirement of continuing education that was in effect for the period that ended February 15, 1997;

- Allow nonresident agents to furnish evidence of compliance with another state's continuation program as proof of compliance with the continuing education requirement in Wisconsin;

- Detail how courses completed between January 1 and April 16 of odd-numbered years are credited;
- Add additional types of courses which will not qualify as continuing education courses;
- Add more recognized programs of study and limit the fees that are paid for recognized courses;
- Eliminate the requirement that providers transmit course participant's social security numbers to the Office of the Commissioner of Insurance (OCI) after course completion;
- Eliminate the specific format for the course completion certificate and instead describe the information to be included in the certificates issued to agents completing approved courses;
- Allow for the use of a national application; and
- Extend the time a home state letter of certification for original licensing and for compliance with continuing education requirements is accepted from 60 to 90 days.

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

Notice of Hearing

Pharmacy Examining Board

Notice is hereby given that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3), Stats., and interpreting s. 450.09 (3) and (4), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create ch. Phar 15, relating to the preparation of sterile pharmaceuticals by pharmacists.

Hearing Information

The public hearing is scheduled as follows:

July 14, 1998	Room 179A
Tuesday	1400 East Washington Ave.
9:15 a.m.	MADISON, WI

Written Comments

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

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

Written comments must be received by **July 31, 1998** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3)

Statute interpreted: s. 450.09 (3) and (4)

The proposed order of the Pharmacy Examining Board creates standards relating to the compounding of drugs by pharmacists in the areas of:

- 1) Pharmaceutical care;
- 2) The preparation, labeling and distribution of sterile pharmaceutical drugs by pharmacies, either pursuant to or in anticipation of receiving a prescription order; and
- 3) Product quality and characteristics.

The standards would be applied to all sterile pharmaceutical drug products, notwithstanding the location of the patient, whether in a home, hospital, nursing home, hospice or physician's office.

The proposed order recognizes that an important aspect of practice for many pharmacists is the act of compounding. Compounding is defined in s. 450.01 (3), Stats., to mean to "mix, combine or put together various ingredients or drugs for the purpose of dispensing." Compounding involves the preparation of drugs by a pharmacist for dispensing to patients; as opposed to the dispensing of prefabricated drugs (e.g., tablets, liquids) received from drug manufacturers.

The Board currently does not have any rules establishing minimum standards for the preparation of sterile drug products by pharmacists. However, in compounding sterile drug products, the Pharmacy Examining Board believes it is essential to the health, safety and welfare of the public that the pharmaceuticals be prepared in a physical environment that is suitable for the aseptic preparation of drug products. Additionally, appropriate records need to be maintained regarding the preparation of sterile pharmaceuticals (e.g., documentation of refrigerator and freezer temperatures, certification of laminar airflow hoods). Furthermore, pharmacies must maintain a documented, ongoing quality assurance control program to monitor personnel performance, equipment, and facilities to assure the consistent preparation of quality sterile products for patient use.

Various resources have been reviewed in preparing the proposed rules, including the "Model Rules for Sterile Pharmaceuticals" formulated by the National Association of Boards of Pharmacy, the "Technical Assistance Bulletin on Quality Assurance for Pharmacy-Prepared Sterile Products" issued by the American Society of Hospital Pharmacists, and reference materials regarding the use of sterile products in the United States Pharmacopoeia.

More specifically, s. Phar 15.02 sets forth definitions of several technical terms utilized in the practice of compounding and used throughout the proposed rule. Section Phar 15.03 requires a policy and procedure manual be developed relating to various aspects of the compounding process. Section Phar 15.04 sets forth the physical requirements necessary for the compounding area in order to assure the aseptic preparation of sterile pharmaceuticals. Section Phar 15.05 lists the specific records which must be kept respecting the preparation of sterile pharmaceuticals. Section Phar 15.06 requires the appropriate environment control during the shipping of sterile pharmaceuticals. Section Phar 15.07 specifies that emergency drugs must be available for home care patients receiving sterile pharmaceuticals in the event of an emergency need. Section Phar 15.08 imposes additional requirements upon pharmacies compounding "cytotoxic" drugs. Section Phar 15.09 sets forth the labeling requirements for sterile pharmaceuticals. Section Phar 15.10 relates to documenting the training provided a patient who self-administers sterile pharmaceuticals. Section Phar 15.11 requires the establishment of a documented quality assurance control program to monitor personnel performance, equipment and facilities.

Text of Rule

SECTION 1. Chapter Phar 15 is created to read:

Chapter Phar 15

STERILE PHARMACEUTICALS

Phar 15.01 Authority. The rules in this chapter are adopted pursuant to the authority in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3), Stats.

Phar 15.02 Definitions. In this chapter:

(1) "Aseptic preparation" means the technique involving procedures designed to preclude contamination of drugs, packaging equipment or supplies by microorganisms during processing.

(2) "Biological safety cabinet" means a containment unit suitable for preparation of low to moderate risk agents where there is a need for protection of the product, personnel and environment, according to national sanitation foundations standard 49.

(3) "Class 100 environment" means an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air, according to federal standard 209.

Note: "Federal Standard 209" current revision is the approved governing standard required for use by all federal agencies, utilizing clean room work station controlled environments.

(4) "Critical activities" means activities that are different from other activities by the increased potential opportunity for contamination to occur.

(5) "Critical objects" means objects that are different from other objects by the increased potential opportunity for contamination to occur.

(6) "Cytotoxic drug" means a pharmaceutical used therapeutically as a toxin to alter biochemical activities of phases of cellular division which uniquely contribute to normal cell growth.

(7) "OSHA" means the federal occupational safety and health administration or its successor.

(8) "Parenteral" means a sterile preparation of drugs for injection through one or more layers of skin.

(9) "Practice of pharmacy" has the meaning given in s. 450.01 (16), Stats.

(10) "Sterile pharmaceutical" means any dosage form devoid of viable microorganisms, including but not limited to parenterals, injectables and ophthalmics.

Phar 15.03 Policy and procedure manual. (1) A policy and procedure manual shall be prepared and maintained for compounding, dispensing, delivery, administration, storage and use of sterile pharmaceuticals.

(2) The policy and procedure manual shall include a quality assurance program for the purpose of monitoring personnel qualifications, training and performance, product integrity, equipment, facilities and guidelines regarding patient education and the provision of pharmaceutical services. In addition it shall include up-to-date information on the preparation of sterile pharmaceuticals.

(3) The policy and procedure manual shall be available to all personnel and updated annually or as needed to reflect current practice.

(4) The policy and procedure manual shall be current and available for inspection by the board or its designee.

Phar 15.04 Physical requirements. (1) The pharmacy shall have a designated area with entry restricted to designated personnel for preparing sterile pharmaceuticals. This area shall be a room structurally isolated from other areas, with restricted entry and access, and must be designed to avoid unnecessary traffic and airflow disturbances from occurring within the controlled facility. It shall only be used for preparation and documentation of sterile pharmaceuticals. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation and security. Additional drug inventory and bulk supplies shall be stored in an area separate from the designated area for preparing sterile pharmaceuticals.

(2) The pharmacy shall maintain an environment suitable for aseptic preparation of sterile pharmaceuticals and shall have all of the following:

(a) Appropriate environment control devices capable of maintaining at least class 100 conditions in the workplace where

critical objects are exposed and critical activities are performed. Furthermore, these devices are capable of maintaining class 100 conditions during normal activity.

(b) Appropriate disposal containers as required by OSHA regulations for used needles, syringes, as well as for disposal of other items in compounding, and if applicable, for cytotoxic waste from the preparation of chemotherapy agents and infectious wastes. This should be disposed of in a timely manner.

(c) Appropriate environmental controls to include class II biological safety cabinetry when cytotoxic drug products are prepared.

(d) Temperature-controlled delivery containers as necessary.

(e) For hand-washing, a sink with hot and cold running water should be in close proximity.

(f) Administration devices as necessary.

(3) The pharmacy shall have sufficient reference materials related to sterile pharmaceuticals to meet the needs of the pharmacy staff.

(4) The designated area should be closed and disinfected at regular intervals with appropriate agents.

Phar 15.05 Records and reports. (1) In addition to state required record and reporting requirements, the following additional records and reports must be maintained for pharmacy prepared sterile pharmaceutical documentation:

(a) Training and competency evaluations.

(b) Documentation of refrigerator and freezer temperatures.

(c) Certification of laminar airflow hoods.

(2) The following minimum labeling requirements must be met for sterile pharmaceuticals prepared by a single patient when they are to be completely administered within 28 hours by including it on the label only:

(a) Identity of all solutions and ingredients and their corresponding amounts, concentration or volumes and the final preparation container in such a manner as to allow the locating of problematic final products.

(b) Identity of personnel involved in preparation.

(c) Date and time of pharmacy preparation where applicable.

(d) Final sterile pharmaceuticals expiration date, and storage requirements where applicable.

Phar 15.06 Delivery service. The pharmacist shall assure the appropriate environmental control of all products shipped.

Phar 15.07 Emergency kits. (1) When sterile pharmaceuticals are provided to home care patients, the dispensing pharmacy must supply the patient or their agent with emergency drugs, when authorized by the physician under protocol, if an emergency situation has been anticipated by either the physician, nurse or pharmacist.

(2) The dispensing pharmacy shall be responsible for providing written instructions on the storage and recordkeeping associated with the emergency kit.

Phar 15.08 Cytotoxic drugs. In addition to the minimum requirements for a pharmacy established by rule of the board, the following requirements are necessary for those pharmacies that prepare cytotoxic drugs:

(1) All cytotoxic drugs should be compounded in a vertical flow, class II, biological safety cabinet. In the event non-exposed surfaces become contaminated with cytotoxic agents, no other products other than cytotoxic agents should be compounded in this cabinet until such time as the cabinet is decontaminated utilizing appropriate techniques to eradicate the contaminant.

(2) Personnel shall be protected by a protective barrier or apparel which must include gloves, gowns and other applicable protective apparel as determined by OSHA.

(3) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with the aseptic techniques required for preparing sterile pharmaceuticals.

(4) Pharmacy disposal and patient and caregiver education regarding disposal of cytotoxic waste shall comply with all applicable local, state and federal requirements.

(5) Written procedures for the handling of both major and minor spills of cytotoxic agents must be developed and must be included in the pharmacy policy and procedure manual.

(6) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions on the primary and shipping container and should be shipped in a manner to minimize the risk of accidental rupture of the primary container.

Phar 15.09 Labeling. In addition to the labeling requirements of s. 450.11 (4), Stats., the following must also be included as a part of the labeling of sterile pharmaceuticals:

- (1) Control or lot number.
- (2) Expiration date, to include time when applicable.
- (3) Appropriate auxiliary labeling, including precautions.
- (4) Storage requirements.
- (5) Identification of the responsible pharmacist.

Phar 15.10 Patient training. A pharmacist is responsible for documenting the patient's training and competency in managing this type of therapy provided by the pharmacist to the patient if self-administered by the patient or a caregiver. A pharmacist is responsible for the provision of or supervision of the patient training process in any area that relates to drug compounding, administration, labeling, storage, stability or incompatibility. A pharmacist must be responsible for seeing that the patient's competency in the above areas is reassessed on an ongoing basis.

Phar 15.11 Quality assurance. (1) There shall be a documented, ongoing quality assurance control program that monitors personnel performance, equipment and facilities. Appropriate samples of finished products shall be examined to assure that the pharmacy is capable of consistently preparing sterile pharmaceuticals meeting specifications.

(2) All class 100 clean rooms, horizontal and vertical laminar flow hoods shall be certified by an independent contractor according to federal standard 209 for operational efficiency. All biological safety cabinets shall be certified according to national sanitation foundations standard 49 or manufacturer's specifications. Certification shall take place before initial use or after relocation and at least annually. Appropriate records shall be maintained.

(3) There shall be written procedures requiring sampling for microbial contamination through a validation procedure, simulation of actual aseptic technique, as well as by using bacterial growth medium to culture environmental samples.

(4) If compounding of parenteral solutions is performed using non-sterile chemicals, extensive end-product sterility testing must be documented. If any parenteral solution fails such testing, procedures shall be in place to quarantine future products for sterility testing to assure end-product sterility prior to release of the products from quarantine. The compounding process must utilize components and techniques which assure a sterile and particulate free product.

(5) There shall be a written justification of the assigned expiration date for pharmacy prepared sterile pharmaceuticals.

(6) There shall be documentation of quality assurance audits, including infection control and sterile technique audits at least annually.

(7) There shall be procedures to assure consistent preparation of sterile pharmaceuticals.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine

whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

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

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

Notice of Hearing

Wis. Technical College System Board

Notice is hereby given that pursuant to ss. 38.33 (3), and 227.11, Stats., and interpreting s. 38.33, Stats., the Wisconsin Technical College System Board will hold a public hearing, at the time and place indicated below, to consider the creation of ch. TCS 15, relating to faculty development grants.

Hearing Information

The public hearing is scheduled as follows:

June 30, 1998
Tuesday
9:00 a.m.

WTCSB Board Room
310 Price Place
MADISON, WI

Analysis Prepared by the Technical College System Board

Statutory authority: s. 38.33 (3)

Statute interpreted: s. 38.33

The purpose of the rule is to establish grant application criteria, and policies and procedures to implement and administer grant funds to local technical college districts. Local technical college districts will use these grants primarily to expand the use of learning technologies and to promote the effective use of newly-emerging technologies. The grant funds will also be used to train new faculty members, upgrade the skills of current faculty, and improve the skills of those faculty members seeking to build a stronger academic environment. Fundamental to the overall success of a faculty development program are the efforts to:

- a) Promote instructor awareness and expertise in a variety of newly-emerging technologies;
- b) Integrate the use of new learning technologies into the curriculum and delivery of technical college instruction; and
- c) Use newly-emerging technologies through sharing and collaboration among faculty and staff both within and across technical college districts.

Section 38.33, Stats., authorizes the Technical College System Board to establish, by administrative rule, specific grant award criteria, along with grant application policies and procedures, that enables a local technical college district board to request and receive available grant funds so that the district board may implement and administer a faculty development program at the district level.

The grant award criteria include:

- a) The availability of adequate funds, including matching funds, to provide a faculty development program.
- b) Whether a technical college district faculty development program promotes curriculum development and instructional assistance associated with learning technologies.
- c) Whether the technical college district's in-service activities are included in the faculty development program.
- d) Whether a technical college district's continuing projects meet or exceed its prior year planned outcomes.

Detailed application instructions and procedures for submitting grant proposals, which includes deadline dates, and reporting

requirements, are contained in a manual that is prepared annually by the Technical College System Board and distributed to each technical college district.

Text of Rule

SECTION 1. Chapter TCS 15 (title) is created to read:

Chapter TCS 15

FACULTY DEVELOPMENT GRANTS

TCS 15.01 Purpose. This chapter establishes criteria, policies and procedures to implement s. 38.33, Stats., relating to district board faculty development programs.

Note: Forms used in administering this rule are available from the Wisconsin Technical College System Board, 310 Price Place, P.O. Box 7874, Madison, Wisconsin 53707-7874.

TCS 15.01 Definitions. In this chapter:

- (1) "Board" means the technical college system board.
- (2) "Director" means the person appointed by the board according to s. 38.04 (2), Stats.
- (3) "District" means a technical college district established according to ss. 38.04 (1) and 38.06, Stats.
- (4) "District board" means the district board in charge of the technical college of a district.
- (5) "District director" means the person employed by a district board under s. 38.12 (3), Stats.
- (6) "Program" means the faculty development program established by the district board under s. 38.33, Stats.

TCS 15.03 General. (1) Only technical college districts are eligible to apply for grant funds under this chapter.

(2) The board shall prepare an application manual and may update it as needed. The manual shall contain the application instructions, procedures and requirements for funding and submitting grant proposals.

TCS 15.04 Grant applications. (1) Annually, during a time established by the board, districts may submit proposals for a grant to assist in the funding of a faculty development program under s. 38.33 (1), Stats.

(2) The grant proposal shall be in writing, signed by the district director or designee, and be in such form as the board requires.

(3) Each district is limited to a single grant application.

(4) Each grant proposal shall include:

(a) A description of the proposed faculty development program, which includes:

1. The planned development of the district's program.
 2. Any current activities being conducted by the district relating to the faculty development program.
- (b) A plan, which includes:
1. The goals and objectives of the program for meeting the instructional technology needs of the district.
 2. A description and explanation of conditions that lead to development of the goals and objectives.
 3. A detailed budget.

TCS 15.05 Grant award criteria. The board shall consider all of the following when granting an award:

(1) The availability of financial resources to successfully provide the program as proposed in the grant proposal.

(2) The extent to which the district's program promotes the use and integration of technology curriculum development and instructional delivery.

(3) The extent to which the district's program is conducted through in-service activities.

(4) Whether a district's continuing project has met or exceeded its prior year planned outcomes.

TCS 15.06 Conditions of the grant award. (1) A district may not apply for more than the amount of funds targeted to it by the board.

(2) District boards shall contribute a matching fund, other than in-kind matching funds, equal to at least 50% of the total grant amount.

(3) Grant award funds, including matching funds, may not be used for administrative or other indirect costs.

(4) The board may establish limitations on the percentage of the grant award funds and matching funds that may be used to lease or purchase equipment or to purchase supply items. Such limitations shall be specified in the application manual prepared by the board under s. TCS 15.03 (2).

TCS 15.07 Reporting requirements. (1) A district receiving faculty development grant funds under this chapter shall submit to the board a mid-year and final grant evaluation report for each grant awarded that includes detailing activities on program completion and effectiveness.

(2) Reports due under sub. (1) shall be on a form provided by the board and submitted on or before January 15 for the current fiscal year, and on or before August 1 following the close of the fiscal year. The director may extend these times as needed.

Written Comments

The public record on this proposed rule will be held open until the close of business on **Tuesday, July 7, 1998**. Written comments from people unable to attend the public hearing or who want to supplement testimony offered at the hearing may be submitted for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the contact person listed below. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

A copy of the proposed rules and the full fiscal estimate may be obtained from the Wisconsin Technical College System Board upon request.

Contact Person

Questions concerning these rules may be directed to:

Jesús G.Q. Garza, Legal Counsel
Wis. Technical College System Board
310 Price Place
P.O. Box 7874
Madison, WI 53707-7874

It is the policy of the WTC SB to provide accommodations to people with disabilities which may affect their ability to access or participate in WTC SB activities. People may request assistance or accommodation for the scheduled public hearing by contacting Mr. Garza at (608) 267-9540, or accessing the TTY line at (608) 267-2483 on or before **June 25, 1998**.

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

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

Elections Board (CR 98-51):

S. ElBd 6.05 – Relating to filing campaign finance reports in electronic format.

Health & Family Services (CR 98-35):

Chs. HFS 172, 175, 178 and 195 to 198 – Relating to increases in permit fees and related fees and a one-time technology improvement surcharge for the operation of Department-regulated public swimming pools, camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Insurance (CR 98-15):

S. Ins 3.70 – Relating to aggregating creditable coverage for the state Health Insurance Risk-Sharing Plan (HIRSP), pursuant to s. 149.10 (2t) (a), Stats.

Insurance (CR 98-48):

SS. Ins 17.01, 17.28 and 17.35 – Relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, to limit fund fee requests to the current and immediate prior year only and to establish standards for the application of the aggregate underlying liability limits upon the termination of a claims-made policy.

Workforce Development (CR 98-32):

SS. DWD 290.15 and 290.155 and ch. DWD 292 – Relating to the adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Agriculture, Trade & Consumer Protection (CR 97-127):

An order affecting chs. ATCP 90 and 91, relating to fair packaging and labeling, weighing and measuring devices, and selling commodities by weight, measure or count.

Effective 07-01-98.

Corrections (CR 96-180):

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

Effective 07-01-98.

Corrections (CR 98-2):

An order creating ss. DOC 328.04 (3) (o) and (p), 332.015, 332.02 (2) to (7) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders.

Effective 07-01-98.

Employe Trust Funds (CR 96-145):

An order affecting s. ETF 10.12 (4), relating to withdrawal of funds invested in the Public Employe Trust Fund by a separate retirement system, as permitted by s. 40.03 (1) (n) and (2) (q), Stats.

Effective 07-01-98.

Employe Trust Funds (CR 97-73):

An order creating s. ETF 10.08, relating to defining termination of employment for purposes of eligibility for benefits administered by the Department of Employee Trust Funds.

Effective 07-01-98.

Employe Trust Funds (CR 97-104):

An order creating s. ETF 10.65, relating to the Department of Employee Trust Funds refunding contributions to the Wisconsin Retirement System (WRS) that exceed the contributions limits set forth in the internal revenue code and the Wisconsin Statutes.

Effective 07-01-98.

Employe Trust Funds (CR 97-105):

An order creating s. ETF 10.79, relating to the Department of Employee Trust Funds' procedures for locating missing participants and transferring the balances of abandoned accounts to the annuity reserve.

Effective 07-01-98.

State Fair Park Board (CR 98-3):

An order affecting ss. SFP 2.07, 2.16 and 2.18 and ch. SFP 7, relating to regulation of the State Fair Park and establishing a bail bond schedule.

Effective 07-01-98.

NOTICE OF CORRECTION TO INSTRUCTIONS FOR MAY MATERIAL

**Notice of Correction to Instructions for Inserting
Material for May 31, 1998**

The instructions for the 8 1/2" material in volumes 7 to 9 for May 31, 1998 should have appeared as shown below (corrections are underlined and errors are stricken):

7	Table of contents:	Volume table of contents	Volume table of contents
7	HFS (Health & Family Services) <u>Health, Chs. HFS 110—:</u>	Table of contents 53 to 56 <u>63</u>	Table of contents 53 to 63
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