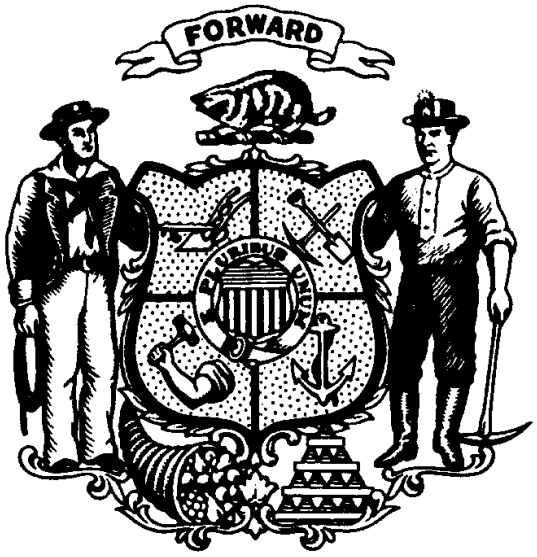
WISCONSIN ADMINISTRATIVE REGISTER

No. 511



Publication Date: July 31, 1998
Effective Date: August 1, 1998

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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 (3)

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**

3. Rules adopted amending **s. ATCP 75.015 (7)(c),** relating to the retail food establishment license exemption for restaurant permit holders.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 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 (2)

Department of Commerce

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

(Uniform Multifamily Dwellings, Ch. ILHR 66)

1. 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**

2. Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

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 ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered

multifamily housing as defined in s. 101.132 (1) , Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132,Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

Publication Date: **June 17, 1998**
Effective Date: **June 17, 1998**
Expiration Date: **November 14, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. ILHR 67,** relating to rental unit energy efficiency.

Finding of Emergency

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 s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

· Buildings of one or two rental units that were constructed after December 1, 1978.

· Buildings of three or more rental units that were constructed after April 15, 1976.

· Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

· Attics

· Furnaces and boilers

· Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building

· Sill boxes

· Heating and plumbing supply in unheated crawlspaces

· Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: **June 30, 1998**
Effective Date: **June 30,1998**
Expiration Date: **November 27,1998**
Hearing Date: **August 14, 1998**
[See Notice this Register]

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 Corrections

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**
Hearing Date: **June 26, 1998**

EMERGENCY RULES NOW IN EFFECT

Financial Institutions
(Division of Securities)

Rules adopted revising **chs. DFI–Sec 1** to **9**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Finding of Emergency

The Department of Financial Institutions, Division of Securities, finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

Recently enacted legislation in 1997 Wis. Act 316 that is scheduled for publication on July 8, 1998 to become effective the following day on July 9, 1998 made a number of changes to the Wisconsin Uniform Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 ("NSMIA").

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so–called "federal covered securities," but permitting states to establish certain notice filing requirements (including fees) for such "federal covered securities;" and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a "federal covered adviser," but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for "federal covered securities" and "federal covered advisers," and in addition, established statutory requirements for the licensing of "investment adviser representatives" (who previously were subject only to a qualification" process in Wisconsin). Comprehensive administrative rules are needed immediately to implement the statutory changes contained in 1997 Wisconsin Act 316, particularly relating to the filing requirements for federal covered securities, federal covered advisers and investment adviser representatives. In order to have such rules in place contemporaneously with the effectiveness of 1997 Wis. Act 316, these emergency rules are adopted on an interim basis until identical permanent rules can be promulgated using the standard rule–making procedures.

Publication Date: **July 7, 1998**
Effective Date: **July 9, 1998**
Expiration Date: **December 6, 1998**

EMERGENCY RULES NOW IN EFFECT (4)

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**

3. Rules adopted revising **chs. HFS 172, 175, 178, 195, 196, 197 & 198,** relating to permit and related fees for regulated entities.

Finding of Emergency

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

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective July 1, 1998 to increase, for Department–regulated facilities only, permit fees by 18%, the penalty for late payment of a permit fee from $50 to $75 and the pre–inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries), and to impose on Department–regulated facilities only a one–time technology improvement surcharge of $15 to $25 payable on July 1, 1998.

These rule changes are being promulgated by emergency order to protect public health and safety. Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one–time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This rulemaking order also amends the definition of "incidental food service" in ch. HFS 196, the Department's rules for restaurants. The significance of that definition is that s. HFS 196.04 (1) (b) exempts an incidental food service from the requirement to have a restaurant license. An incidental food service is currently defined as meals offered to the general public by a retail food establishment, such as a grocery store, a convenience store or a bakery, licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP), which are not a primary activity of the retail food establishment, comprise no more than 25% of the gross annual food sales of the business and do not involve full service food preparation. This order modifies the definition, mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals from at most 25% to less than *50%*. The effect of the change is to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken jointly by the Department and DATCP to eliminate "double licensing" that is, regulation (inspections, approvals and fees, enforcement) of an establishment by both the Department and DATCP for the same purpose of protecting the public's health.

The modification of the definition of "incidental food service" will be effective for permits issued by the Department starting with

the permit period beginning July 1, 1998, but as a mandated change will be delayed for one year, by amendment of the agent agreements, for permits issued by agent local health departments.

This rule change is being promulgated by emergency order for preservation of the public welfare. Retail food establishments licensed by DATCP that serve meals on the premises to the public will be required to have only a license issued by DATCP and not also a permit issued by the Department. It has become possible at this time, at the beginning of a new restaurant permit period and regulatory cycle and in view of changes occurring lately in the retail food industry, to eliminate duplicative and at times conflicting regulation that does not serve a public purpose, and therefore it should be eliminated promptly.

Publication Date: **June 24, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**
Hearing Date: **August 5, 1998**

4. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk–Sharing Plan.

Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a $1,000 deductible. Plan 2 has a $500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out–of–pocket maximum of $2,000 (which includes the $1,000 deductible) per individual and $4,000 per family for major medical and $500 per individual for Medicare supplement. There is a lifetime limit of $1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than $20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk–Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance RiskSharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re–creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

–Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

–Deletion of a physician certification requirement in connection with applications of some persons for coverage;

–Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

–Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

–Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

–Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

–Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost–effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

–Continuation of an alternative plan of health insurance that has a $2500 deductible (this was added by emergency order effective January 1, 1998);

–Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

–Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**

EMERGENCY RULES NOW IN EFFECT (2)

Insurance

1. 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

2. A rule was adopted amending **s. Ins 17.01 (3) (intro.), (a)** and **(b)**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998.

Finding of Emergency

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

This emergency rule relating to mediation fees corresponds to the emergency rule relating to fund fees published in the Wisconsin State Journal on May 28, 1998. As the permanent rulemaking process takes a minimum of nine months to complete, and the fund's actuaries' recommendations are made in February each year, the commissioner was unable to promulgate the permanent rule, clearinghouse rule no. 98–048, in time for the patients compensation fund (fund) to notify and bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

This emergency rule is necessary to establish mediation fees applicable to the fiscal year 1998–99 in a timely manner. A germane amendment to the permanent rule was made on June 12, 1998 to include the reduced mediation fees. 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: June 19, 1998
Effective Date: June 19, 1998
Expiration Date: November 16, 1998

EMERGENCY RULES NOW IN EFFECT (6)

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
Hearing Date: July 16, 1998

4. Rules adopted revising **chs. NR 10 and 11,** relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: June 24, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

5. Rules were adopted revising **ch. NR 19,** relating to wildlife damage abatement and claims program.

Exemption From Finding of Emergency

Pursuant to s. 9137(11s)(b), 1997,Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**

6. Rules adopted revising **s. NR 20.03 (1)(k),** relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

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

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: **June 27, 1998**
Effective Date: **June 27, 1998**
Expiration Date: **November 24, 1998**
Hearing Date: **July 24, 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

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. 196.2l8 (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**
Extension Through: **September 23, 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**

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**
Extension Through: **September 9, 1998**

STATEMENTS OF SCOPE OF PROPOSED RULES

Administration

Subject:

Adm Code – Relating to amending rules relating to Small Cities Community Development Block Grants for Housing.

Description of policy issues:

Description of the objective of the proposed rule:

To amend the existing rule in order to comply with the amendment of s. 16.358, Stats., as created in 1997 Wis. Act 27.

Description of policy issues:

The current rule provides the requirements for the award of the Community Development Block Grant funds to local units of government.

The Department proposes amending the rule to comply with the statutory amendment, to remove a subjective element from the evaluation criteria and to clarify existing rule language.

Statutory authority for the rule:

Sections 16.004 (1), 16.358 (2), and 227.11 (2) (a), Stats.

Staff time required:

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

Agriculture, Trade & Consumer Protection

Subject:

Chs. ATCP 10–12 – Relating to animal health fees.

Description of policy issues:

Preliminary objective:

In order to maintain essential animal health and disease control services, the Department proposes to increase fees currently charged for the following:

* Farm–raised deer herd registrations.

* Interstate health certificate forms.

* Livestock market, dealer and trucker licenses.

Preliminary policy analysis:

A person keeping farm–raised deer is currently required to register with the Department under s. 95.55, Stats. The Department currently charges a registration fee to offset costs of animal health services provided to the farm–raised deer industry. The Department sets registration fees by rule. Current fees are scheduled to "sunset" at the end of 1998, but the Department will continue to incur substantial costs after that date. In order to cover reasonably anticipated program costs, the Department proposes to continue registration fees beyond 1998. Without continued fee funding, the Department will be forced to curtail critical animal health services. That will increase health risks to the farm–raised deer industry and to Wisconsin's other major livestock industries.

The Department currently furnishes interstate health certificate forms to private veterinarians who certify the health of livestock for movement in interstate commerce. Under s. 93.06 (1g), Stats., the Department may charge a fee for each form, to offset the cost of processing interstate health certificates. The current cost is $2 for each form. The cost of processing interstate health certificates has increased, and current fees are not adequate to maintain timely and effective processing of interstate health certificates. The Department proposes to increase the current fee by rule.

The Department currently licenses and inspects livestock markets, dealers and truckers under ss. 95.68, 95.69 and 95.71, Stats. The Department regulates these entities to prevent and control animal diseases that pose a major threat to Wisconsin's livestock industry. The Department may establish license fees by rule. Program costs currently exceed license revenue. A reserve, generated in prior years, is nearly depleted. The Department proposes to increase license fees to maintain essential services.

Policy alternatives:

● No change. If the Department does not increase fees, its costs will exceed its revenues. Eventually, it will be forced to curtail essential services.

● Reduce costs and services. Under current law, the Department must register farm–raised deer herds, provide interstate health certificates, and license livestock markets, dealers and truckers. These functions are important for controlling disease, and safeguarding Wisconsin's major livestock industry. The Department has employed cost–effective methods, and will seek new methods to control costs. However, the Department cannot achieve major cost reductions without laying–off staff and curtailing critical services. This may pose unacceptable disease risks.

Statutory authority:

The Department proposes to develop these rules under authority of ss. 93.06 (1g), 93.07 (1), 95.55 (3), 95.68 (4), 95.69 (4) and 95.71 (5), Stats.

Staff time required:

The Department estimates that it will use approximately 0.50 FTE (Full–Time Equivalent) staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions and communicating with affected persons and groups. The Department believes that, in the long run, the rule will save staff time and increase program efficiency. The Department will assign existing staff to develop this rule.

Agriculture, Trade & Consumer Protection

Subject:

Chs. ATCP 29, 35 and 40 – Relating to the agricultural chemical cleanup reimbursement program, fee revenues and funding.

Description of policy issues:

Administrative code reference:

Chs. ATCP 29 (Pesticide Use and Control), ATCP 35 (Agricultural Chemical Cleanup Program) and ATCP 40 (Fertilizer and Related Products). The Department may renumber or reorganize portions of these rules.

Preliminary objectives:

Modify current fees under the agricultural chemical cleanup program, as required by 1997 Wis. Act 27. 1997 Wis. Act 27 requires DATCP to set fees by rule after a 2–year "fee holiday" that is currently in effect.

Preliminary policy analysis:

The Department currently administers an agricultural chemical cleanup reimbursement program under s. 94.73, Stats. and ch. ATCP 35, Wis. Adm. Code. The program offers reimbursement of costs incurred to clean up spills of agricultural chemicals (pesticides and fertilizers). Persons who incur legitimate cleanup costs may apply to the Department for partial reimbursement of those costs. Cost reimbursement promotes effective and timely cleanup, which helps to minimize environmental harm.

The cleanup reimbursement program is currently funded by agrichemical license and tonnage fees (surcharges). 1997 Wis. Act 27 clarified these fees, and directed that they be deposited to a separate Agricultural Chemical Cleanup Fund. Under 1997 Wis. Act 27, the Department must set fees, by rule, at a level that will maintain a fund balance between $2 million and $5 million.

The Department is currently implementing a "fee holiday" because the current fund balance exceeds $5 million. The "fee holiday" ends in the year 2000. This rule will establish fees that will apply after that date. The rule will keep fee revenues in line with actual cleanup reimbursement needs.

Policy alternatives:

* Do nothing. If the Department does not adopt rules, fees will resume at the same levels that existed before the "fee holiday" began. According to the Department's revenue and expenditure projections, those fee levels would be higher than necessary and would generate a fund balance in excess of the $5 million statutory limit.

Statutory authority:

The Department proposes to modify chs. ATCP 29, 35 and 40 under authority of s. 94.73(15), Stats.

Staff time required:

The Department estimates that this rulemaking proceeding will require approximately 0.25 FTE (Full–Time Equivalent) staff. This includes staff time to coordinate advisory committee meetings, draft the rule, prepare related documents, organize and hold public hearings, and communicate with affected persons and groups. This rulemaking proceeding may be merged with another proceeding –– currently in progress –– which will amend ch. ATCP 34, Wis. Adm. Code (Chemical and Container Collection Program).

Agriculture, Trade & Consumer Protection

Subject:

Ch. ATCP 139 – Relating to consumer product safety.

Description of policy issues:

Preliminary objectives:

Protect Wisconsin consumers by adopting federal consumer product safety standards for bicycle helmets and clothing drawstrings. Make other technical changes to consumer product safety rules, as necessary.

Preliminary policy analysis:

About 900 people, including more than 200 children, are killed annually in bicycle–related incidents. Approximately 60 percent of these deaths involve a head injury. More than 500,000 people are treated annually in U.S. hospital emergency rooms for bicycle–related injuries. Research indicates that a helmet can reduce the risk of head injury in a bicycle–related incident by up to 85 percent. Effective **February 1, 1999**, federal law requires all bike helmets manufactured or imported for sale in the United States to carry a label stating the helmet meets the new safety standard set by the federal Consumer Product Safety Commission (CPSC).

Between 1985 and 1996, the CPSC received reports of 17 deaths and 42 nonfatal incidents involving the entanglement of children's clothing drawstrings on such items as playground equipment, bus doors and cribs. Recently, a Wisconsin child seriously injured his eye when the toggle on the elastic drawstring on the hood of his jacket struck him. Children's jackets with drawstrings are currently available in a number of Wisconsin clothing stores. In February, 1996, the CPSC issued guidelines limiting the use of drawstrings in children's clothing.

Under current law, the Department may:

- Adopt federal consumer product safety standards by rule.
- Ban hazardous articles intended for use by children.
- Prohibit unfair business practices and methods of competition.

The Department proposes to adopt CPSC safety standards for bike helmets and drawstrings. This would:

- Provide more effective protection, and more effective redress, for Wisconsin consumers. Few Wisconsin consumers complain to the CPSC, and state enforcement of federal rules is limited.
- Protect businesses complying with CPSC safety standards from unfair competition by businesses who are not complying.

Policy alternatives:

▶ Do nothing. This would provide less protection against product safety hazards and unfair competition.

▶ Create Wisconsin standards that differ from federal standards. This would create confusion and make enforcement more difficult.

Statutory authority:

The Department proposes to modify ch. ATCP 139 under authority of ss. 93.07 (1), 100.20 (2), 100.37 (2) and 100.42 (2), Stats.

Staff time required:

The Department estimates that it will use no more than 0.5 FTE (Full–Time Equivalent) staff time to develop these rules. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions, and communicating with affected persons and groups. The Department will assign existing staff to develop this rule.

Barbering and Cosmetology Examining Board

Subject:

BC Code – Relating to the apprenticeship application process.

Description of policy issues:

Objective of the rule:

The objective of the rule is to clarify the role and responsibility between the Department of Regulation and Licensing and the Department of Workforce Development, as well as the role of the apprentice and the manager. Amendments will be made to accurately reflect the requirements for a barbering and cosmetology apprenticeship. Provisions relating to the length of an apprenticeship permit issued by the Board and how an apprentice may transfer will also be amended.

Policy analysis:

The proposed amendments will clarify the apprenticeship application process by identifying the Department of Regulation and Licensing's and the Department of Workforce Development's roles in the application process, as well as clarify the roles of the apprentice and manager. Existing policy identifies forms that have been modified, refers to an agency whose name has been changed and requires applicants to meet the theory instruction in an unrealistic time frame. The new policies will reflect the recommendations of the Department's Ad Hoc Apprenticeship Advisory Committee. The alternatives are to make the changes now or to leave the rules as they are until a more significant change needs to be made which could include the less significant changes. The Board believes the changes should be made now, since some references are no longer correct and some provisions are not consistent with recent statutory changes.

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:

80 hours.

Barbering and Cosmetology Examining Board

Subject:

BC Code – Relating to examination passing scores.

Description of policy issues:

Objective of the rule:

The objective of the rule is to make amendments which require an examination passing score for each part of a five−part practical examination and for a written examination. The Board seeks a scoring alternative that would average all scores, practical and written, for one passing score.

Policy analysis:

The Board requires its applicants to successfully pass each of five parts of a practical examination and to pass one written examination. The amendments would take an average of all five practical scores and the theoretical examination score. It is a fairer means to assess applicants' minimum competency. The previous single score method did not accurately reflect applicants successfully completing theoretical instruction with a passing final examination.

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:

60 hours.

Commerce

Subject:

Chs. Comm 16, 17 and 73 – Relating to the electrical and illumination codes.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to update ch. Comm 16 – Electrical Code, including the adoption by reference of the 1999 National Electrical Code (NEC) published by the National Fire Protection Association (NFPA) as NFPA standard No. 70.

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 state electrical code has adopted the NEC by reference since 1972. Currently, the 1996 edition of the NEC is adopted in ch. Comm 16. This rule project will update the state code to the 1999 edition of the NEC.

This rule project will involve evaluating several new policies relating to electrical requirements. Because the Department is considering adopting the new International Building Code (IBC), this rule project will review and evaluate the electrical requirements in the IBC. This rule project will also evaluate moving the electrical inspection requirements from ch. Comm 17 into a subchapter in ch. Comm 16. And finally, this rule project will review and evaluate the illumination requirements in ch. Comm 73 for placement in the electrical code or other appropriate chapter.

The alternative of not updating ch. Comm 16 would result in the state code not being up−to−date with current nationally−recognized standards for the design, installation and operation of electrical conductors and equipment in all buildings and structures.

Statutory authority for the rule:

The statutory authority for ch. Comm 16 is contained in ss. 101.63 (1), 101.73 (1), 101.82 (1) and 101.865 of the Wisconsin Statutes.

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

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

Corrections

Subject:

Ch. DOC 349 −− Relating to holding juveniles in municipal lockup facilities.

Description of policy issues:

Description of the objectives of the rule:

The objective of the rule is to amend ch. DOC 349, Municipal Lockup Facilities, to permit the holding of juveniles in municipal lockup facilities in accordance with s. 938.209 (2m), Stats. The rule will establish minimum standards for the holding of juveniles in municipal lockup facilities and for the operation of the facility. In addition, the rules will provide for a procedure for the Department of Corrections to approve a municipal lockup facility as a suitable place for holding juveniles in custody. In accordance with s. 938.209 (2m) (b), Stats., the rule shall be designed to protect the health, safety and welfare of the juveniles held in municipal lockup facilities.

The alternative to the proposed policy would result in not amending the current rule to permit the housing of juveniles in municipal lockup facilities in accordance with s. 938.209 (2m), Stats. Without the rule, juveniles may not be held in municipal lockup facilities. Holding juveniles in these facilities without rules violates state and federal regulations.

Statutory authority for the rule:

S. 938.209 (2m) (b), Stats.

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

The Department estimates that it will take approximately 40 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Employment Relations

Subject:

ER Code – Relating to reinstatement eligibility, restoration of sick leave, other related time periods for state personnel transactions, and minor and technical rule changes.

Description of policy issues:

Description of the objective of the rule:

The rule will increase the eligibility period for reinstatement for state employes from three to five years to match the recent statutory change to the same effect. The rule will also amend provisions relating to restoration of unused sick leave upon re−appointment of former state employes. Other relevant time periods for state personnel transactions will also be increased. Minor technical changes will also be made as necessary in the rules.

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

Sections 230.25 (3) (a), 230.31 (1) (intro) and (1) (a), 230.33(1) and 230.40 (3), Stats., were amended by 1997 Wis. Act 307 to increase the reinstatement eligibility period for state employes from three years to five years. Section 230.35 (1) (g) 2. was also amended to increase from three to five years the period during which a former employe's annual vacation earning rate would be restored if the person is re−employed. The increased eligibility period applies to employes who are initially eligible for reinstatement on and after July 5, 1998.

There are numerous references to the three−year reinstatement period in the administrative rules that need to be amended to reflect the longer statutory reinstatement period.

The statutes also provide that sick leave usage is to be regulated by the rules of the Secretary. Section ER 18.03 (5), Wis. Adm. Code, provides that if a person terminates from state service, his/her unused sick leave shall be restored if the person is re−appointed within 3 years. This rule change will increase this restoration period to five years in order to maintain consistency with the longer reinstatement eligibility period.

There are also other references to "three years" in the rules which were established, in part, to correspond to the three−year reinstatement period. These references will also be increased to five years where appropriate.

Since the reinstatement eligibility period is governed by the statutes, there is no alternative to amending the rules to correspond to the statutes. For the other proposed changes that are not directly tied to the three−year statutory reinstatement (e.g. sick leave restoration), the only alternative would be to leave the references at three years. However, because of the traditional connection between these provisions and the statutory reinstatement period, the Department believes it is important to maintain consistency in these periods.

The Department also intends to make minor technical changes to other provisions of the rules as necessary.

Statutory authority for the rule:

Section 230.25 (3) (a), Stats., as amended by 1997 Wis. Act 307, provides that the reinstatement eligibility period for state employes is five years.

Section 230.35 (2) provides that sick leave for state employes shall be regulated by the administrative rules of the Secretary of the Department of Employment Relations.

Section 230.04 (5), Stats., grants the Secretary general authority to promulgate rules on all matters related to the Department (except those reserved to the Administrator of the Division of Merit Recruitment and Selection).

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

Estimated time to be spent by state employes−−50 hours. No other resources are necessary.

Employment Relations Merit Recruitment and Selection

Subject:

ER−MRS Code − Relating to reinstatement eligibility, other related time periods for state personnel transactions, employment register eligibility and minor and technical rule changes.

Description of policy issues:

Description of the objective of the rule:

The rule will increase the eligibility period for reinstatement for state employes from three to five years to match the recent statutory change to the same effect. Other relevant time periods for state personnel transactions will also be increased. The term of eligibility on employment registers will be modified to permit the administrator of the Division of Merit Recruitment and Selection to allow a register to expire in three months; the normal life of a register will remain at six months. Minor technical changes will also be made as necessary in the rules.

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

Sections 230.25 (3) (a), 230.31 (1) (intro) and (a), 230.33 (1) and 230.40 (3), Stats., were amended by 1997 Wis. Act 307 to increase the reinstatement eligibility period for state employes from three years to five years. The increased eligibility period applies to employes who are initially eligible for reinstatement on and after July 5, 1998.

There are numerous references to the three−year reinstatement period in the administrative rules that need to be amended to reflect the longer statutory reinstatement period.

There are also other references to "three years" in the rules which were established, in part, to correspond to the three−year reinstatement period. These references will also be increased to five years.

Since the reinstatement eligibility period is governed by the statutes, there is no alternative to amending the rules to correspond to the statutes. For the other proposed changes that aren't directly tied to the three−year statutory reinstatement, the only alternative would be to leave the references at three years. However, because of the traditional connection between these provisions and the statutory reinstatement period, the Division Administrator believes it is important to maintain consistency in these eligibility periods.

1997 Wis. Act 307 also permits the Administrator to allow an employment register to expire after three months (the normal life of a register will remain at six months). This rule change will amend the administrative rules to reflect this new option, which may be exercised only after considering the impact on equal employment opportunity and affirmative action policies.

The Division Administrator also intends to make minor technical changes to other provisions of the rules as necessary.

Statutory authority for the rule:

Section 230.25 (3) (a), Stats., as amended by 1997 Wis. Act 307, provides that the reinstatement eligibility period for state employes is five years.

Section 230.25 (3) (b), Stats., as created by 1997 Wis. Act 307, states that the Administrator of the Division may allow a register to expire after 3 months, but only after considering the impact of such an action on the policy of this state to provide for equal employment opportunity and to take affirmative action

Section 230.05 (5), Stats., grants the Administrator of the Division of Merit Recruitment and Selection general authority to promulgate rules on provisions for which the administrator has statutory responsibility.

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

Estimated time to be spent by state employes−− 50 hours. No other resources are necessary.

Hearings and Appeals

Subject:

HA Code — Relating to the procedures governing due process hearings conducted by the Division of Hearings and Appeals for applicants and recipients affected by adverse actions in the Medicaid, food stamps, Wisconsin Works (W−2), public assistance and social services programs which are administered by the Departments of Administration, Workforce Development and Health and Family Services.

Description of policy issues:

Description of the objective of the rule:

This rule would replace and update ch. HFS 225, Wis. Adm. Code, which governed "fair hearings" conducted by the Office of Administrative Hearings in the Department of Health and Family Services (DHFS). That office and its functions were moved out of the Department and merged with the Division of Hearings and Appeals. Because these hearings require different procedures from the other proceedings conducted by the Division, it is necessary to specify the procedures which apply to them. The proposed rule also recognizes the movement of administration of the Low Income Home Energy Assistance Program from DHFS to the Department of Administration and the creation of an appeals process for Wisconsin Works.

Statutory authority for the rule:

Sections 15.03, 227.11 (2) (b) and 227.43 (1) (c), Stats.

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

About 80 hours of state employes' time will be required to draft the rule and comply with all rule−making requirements.

Insurance

Subject:

S. Ins 16.01 − Relating to annual billings for the examination of domestic insurers.

Description of policy issues:

A statement of the objective of the proposed rule:

The objective is to amend s. Ins 16.01, to adjust the method of billing domestic insurers to more accurately distribute the actual costs associated with OCI (Office of the Commissioner of Insurance) financial and market conduct investigations.

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

Currently all domestic insurers share in OCI's total annual estimated cost of conducting financial and market conduct examinations according to a formula based upon each insurer's net premiums. However, the costs associated with financial and market conduct examinations of insurers that are physically located in Wisconsin may be considerably less than investigations that occur outside of the state. This proposed amendment would change the billing formula to consider travel and other costs associated with conducting financial and market conduct examinations outside the state.

A statement of the statutory authority for the rule:

SS. 601.41 and 601.45, Stats.

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

80−−100 hours.

Medical Examining Board

Subject:

Med Code − Computer−based administration of USMLE [United States Medical Licensing Examination].

Description of policy issues:

Objective of the rule:

The objective of these revisions is to allow for the computer−based administration of the USMLE starting in 1999.

Policy analysis:

The proposed changes require the Medical Examining Board to promulgate rules regarding the change from a paper and pencil examination to a computer−based examination.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

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

60 hours.

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

Subject:

Ch. NR 20 − Relating to sport fishing for yellow perch in tributaries to Lake Michigan.

Description of policy issues:

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

Sport fishing rules for Lake Michigan (outlying waters) sometimes differ from those for its tributaries (inland waters). Because in isolated cases this may raise problems in the regulation of yellow perch harvests, this rule makes perch fishing rules in Lake Michigan tributaries (up to the first dam or lake) identical to those for the open lake.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Sport fishing regulations for yellow perch in Lake Michigan include a June closure and a 5−fish daily bag limit during the remainder of the year. Those restrictions are designed to limit the harvest of yellow perch until the population recovers from its current low level of abundance. Because tributaries to Lake Michigan are classified as inland waters, fishing regulations there may differ from those for Lake Michigan. In the case of yellow perch, this may cause difficulties in isolated situations where lake perch enter the tributaries. This rule will correct the problem.

Statutory authority:

Sections 29.174 and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 24 hours. One public hearing is proposed to be held in October, 1998 at Port Washington.

Natural Resources (Air Pollution Control, Chs. NR 400−−)

Subject:

Chs. NR 400−499 − Relating to updating and cleanup revisions, including the addition of 20 compounds to those excluded from the definition of "volatile organic compound" (VOC) in accord with federal changes.

Description of policy issues:

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

The changes include the revision of the state definition of "volatile organic compound"(VOC) to exclude a number of additional compounds now excluded from the federal definition in 40 CFR 51.100 (s) (1). Groups likely to be interested in these changes include users and manufacturers of these compounds, which will no longer be regulated as VOC's.

As one of these compounds, methyl acetate, has listed threshold values, environmental groups may ask the Department to regulate it as a hazardous air pollutant.

One compound now excluded from the federal definition which is not proposed for addition to the state VOC exclusion list at this time is perchloroethylene. This is a hazardous air pollutant (state and federal) which will be considered in a separate rule package in which the possible need to more closely regulate its emissions as a suspected carcinogen can be considered concurrently with ending its regulation as a VOC.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

These updating and cleanup changes address non−controversial issues of rule clarity and consistency between chapters as well as with DNR and U.S. EPA policies and procedures. Examples of proposed changes are the updating of test methods which have been incorporated by reference to cite the latest version, and the creation of definitions to state the meanings of certain undefined terms used in the rules to reflect the meanings currently being applied. Also, the definition of "volatile organic compound" (VOC) is being revised to be more consistent with the federal definition. Other minor changes include formatting, style and grammar corrections.

Statutory authority:

Sections 227.11 (2) and 285.11 (1), Stats.

Anticipated time commitment:

The anticipated time commitment is 230 hours. One public hearing is proposed to be held in October, 1998 at Madison.

Natural Resources (Investigation & Remediation of Environmental Contamination, Chs. NR 700−−)

Subject:

Chs. NR 716, 722, 724 and 726 − Relating to natural attenuation feasibility monitoring and streamlining of reporting requirements.

Description of policy issues:

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

The proposed amendments would incorporate changes to clarify natural attenuation feasibility monitoring, closure evaluation criteria and streamline reporting requirements and remedy selection requirements. Interested parties are likely to include: consultants, Petroleum Marketers of Wisconsin, Wisconsin Manufacturers and Commerce, and the Department of Commerce.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

The purpose of these rules is to streamline the existing reporting and remedy selection requirements. This will help reduce confusion and costs for RP's (responsible parties) and the PECFA fund. Clarifying the natural attenuation feasibility monitoring and closure evaluation requirements will aid RP's, consultants and field staff in remedy selection and in closure and certificate of completion decisions. Without code language, field staff must rely on guidance, which is unenforceable. Codifying minimum monitoring requirements will allow staff to better make technical decisions and will ensure greater consistency in natural attenuation application. Codifying minimum requirements should also reduce the pressure on staff from RP's and Commerce to further reduce costs on a site–specific basis at the expense of obtaining adequate information.

Statutory authority:

Sections 292.11, 292.15 and 292.31, Stats.

Anticipated time commitment:

The anticipated time commitment is 516 hours. Four public hearings are proposed to be held in September and October, 2000 at Madison, Eau Claire, Green Bay and Milwaukee.

Physical Therapists Affiliated Credentialing Board

Subject:

PT Code – Relating to the requirement of submitting photographs with applications for a *locum tenens* license.

Description of policy issues:

Objective of the rule:

The Physical Therapists Affiliated Credentialing Board recently promulgated rules of a housekeeping nature. The credentialing board inadvertently left out this amendment in that rule–making order.

Policy analysis:

Photographs are no longer required to be submitted with applications for a license, as there are now other means of identification used for examinations, such a driver's license or a picture ID.

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:

30 hours.

Public Service Commission

Subject:

Ch. PSC 117 – Relating to the creation of rules establishing requirements and procedures for the Commission, in setting rates for retail electric service, to reflect the assignment of costs and the treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve.

Description of policy issues:

Description of objective:

1997 Wis. Act 204 was passed in part to enhance the reliability in the generating and transmission of electric power to Wisconsin customers. As part of that process, s. 196.03 (5m), Stats., was created to ensure that rates to in–state retail customers reflect a proper assignment of costs to out–of–state sales of electricity by public utilities located within the state.

1997 Wis. Act 204 created s. 196.03 (5m), Stats., that requires the Commission to promulgate rules establishing requirements and procedures for the Commission to reflect the assignment of costs and the treatment of revenues from sales by a public utility to customers outside the state that the public utility does not have a duty to serve in setting rates for retail electric service.

Description of policy issues:

In the past, the Commission has addressed the issue of assignment of costs and treatment of revenues in individual rate cases based on the relevant facts ascertained from the hearings process for those rate cases. The Commission's authority in setting retail electric rates is established in various sections of ch. 196, Stats., including ss. 196.03, 196.20, 196.22, and 196.37, Stats. The Commission does not have any formal internal policies which address the assignment of costs and treatment of revenues from sales by a public utility to customers outside the state, that the public utility does not have a duty to serve in setting rates for retail electric service to customers in the state.

The rules are expected to:

1) Establish formal methods for assigning costs to sales by a public utility to a customer outside the state in setting retail electric rates; and

2) Establish formal methods for the treatment of revenues from sales by a public utility to a customer outside the state in setting retail electric rates.

Groups likely to be impacted:

The creation of ch. PSC 117, Wis. Adm. Code would directly impact Wisconsin's electric public utilities. In addition, the creation of ch. PSC 117, Wis. Adm. Code, would indirectly impact the customers of Wisconsin's electric public utilities, owners of "wholesale merchant plants," and electric cooperative associations organized under ch. 185, Stats.

Statutory authority:

Sections 196.03 (5m), and 227.11, Stats.

Estimate of time and resources needed to develop the rules:

The Commission estimates that approximately 500 hours of employe time will be required to develop the proposed rules. If you have any questions, you may contact Robert Norcross at (608) 267–9229 or Kevin B. Cronin at (608) 267–9203 of our Electric Division.

Regulation & Licensing

Subject:

RL Code – Relating to the practice of real estate appraisers, including:

- ❑ Revisions to credential application, education, experience and continuing education requirements;
- ❑ Temporary practice and reciprocity requirements;
- ❑ Scope of appraisal practice;
- ❑ The rules of professional conduct;
- ❑ The Uniform Standards of Professional Appraisal Practice ("USPAP"); and
- ❑ Minor and technical corrections.

Description of policy issues:

Objective of the rule:

Clarify and update administrative rules. Recommended changes relate to:

- ⁎ Changes to credential application, education, experience and continuing education requirements.

⁎ Clarification of temporary practice and reciprocity requirements.

⁎ Revisions relating to the scope of appraisal practice and the rules of professional conduct.

⁎ Corrections to chs. RL 80–87 (Appendix I) relating to revisions contained in the 1998 edition of USPAP.

⁎ Clarity, grammar, punctuation, and use of plain language.

Policy analysis:

Existing policies are reflected in chs. RL 80–87 (and Appendix I). The proposal would do the following:

◇ Assure consistency with requirements established under federal law.

◇ Revise the criteria utilized for approval of education and continuing education courses for the purpose of increasing the number of qualified course providers.

◇ Clarify the scope of appraisal practice and rules of professional conduct.

Statutory authority:

Sections 227.11 (2), 458.03, 458.06, 458.08, 458.085 and 458.24, Stats.

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

80 hours.

Transportation

Subject:

Ch. Trans 201 – Relating to changing the method by which distance from an intersection is measured for purposes of outdoor advertising structure placement.

Description of policy issues:

Description of the objective of the rule:

This rulemaking will amend ch. Trans 201 by changing the method by which distance from an intersection is measured for purposes of outdoor advertising structure placement.

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

Current rules measure the distance outdoor advertising structures must be placed from a non–freeway intersection from the end of any pavement taper at the intersection. This rule was written in the early 1970's. Current highway designs are different from those prevalent in the early 1970's. For example, paved highway shoulders are common today, but were uncommon at the time the current rule was written. Where paved shoulders are used, there is no pavement taper at the end of the intersection merge area. Rather, that area is designated by pavement markings (painted lines), which may not be consistently repainted in the identical location. Similarly, turning lanes that become longer over time are common on today's State Trunk Highway system, but were uncommon in the early 1970's.

Other states measure this distance from the center of affected intersections. The Department proposes to adopt this mechanism for measuring these distances. While the location of highway interchanges can change, their locations change less frequently than the locations of tapers and highway markings.

The policy alternatives are to maintain the existing system or to move to a system under which distances are measured from a more easily determined fixed point. The existing system currently results in repeated litigation resulting from disagreements between the Department and the regulated industry regarding the means of making such measurements. Adopting a fixed point measuring scheme would result in fewer litigated cases. Neither alternative should materially affect the number of billboards erected in the state.

No change is contemplated with respect to freeway or interstate sign location.

Statutory authority for the rule:

Section 84.30, Stats.

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

20 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On July 2, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends chs. ATCP 102 and 105, Wis. Adm. Code, relating to the sales below cost.

Agency Procedure for Promulgation

Public hearings are required and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Trade and Consumer Protection is primarily responsible for promulgation of this rule.

Contact Person

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

Kevin LeRoy
Division of Trade and Consumer Protection
Telephone (608) 224–4928

or

Atty. Karl Marquardt
Telephone (608) 224–5031

Commerce

Rule Submittal Date

On July 13, 1998, the Wisconsin Department of Commerce submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. ILHR 32.

Analysis

The subject matter of the proposed rule relates to public employe safety and health.

Agency Procedure for Promulgation

A public hearing is required, and two public hearings are scheduled for August 19 and 21, 1998. The agency unit responsible for promulgation of the rule is the Safety and Buildings Division.

Contact Person

If you have any questions, you may contact:

Margaret Slusser
Program Development Bureau
Telephone (608) 261–6546
or (608) 264–8777 (TTY)

Commerce

Rule Submittal Date

On July 15, 1998, the Wisconsin Department of Commerce submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. Comm 67.

Analysis

The subject matter of the proposed rule relates to rental unit energy efficiency standards.

Agency Procedure for Promulgation

A public hearing is required, and one public hearing is scheduled for August 14, 1998. The agency unit responsible for promulgation of the rule is the Safety and Buildings Division.

Contact Person

If you have any questions, you may contact:

Margaret Slusser
Program Development Bureau
Telephone (608) 261–6546
or (608) 264–8777 (TTY)

Employe Trust Funds

Rule Submittal Date

On July 13, 1998, the Wisconsin Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting s. ETF 50.48.

Analysis

The subject matter of the proposed rule amendment relates to the Long–Term Disability Insurance (LTDI) program and the requirement for the employer's certification.

Agency Procedure for Promulgation

A public hearing is scheduled for August 12, 1998.

Contact Person

If you have any questions, you may contact:

Peg Narloch
Insurance Services Division
Telephone (608) 267–9035

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 July 14, 1998.

Analysis

These changes will affect ss. Ins 3.27, 3.39 and 3.46, Wis. Adm. Code, relating to revising the requirements for Medicare Supplement policies to comply with recent federal and state laws.

Agency Procedure for Promulgation

The date for the public hearing is August 25, 1998.

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

Natural Resources

Rule Submittal Date

On June 29, 1998, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed Board order [WM–33–98] affecting ch. NR 10.

Analysis

The subject matter of the proposed rule relates to revisions to deer management units 73C (Iowa and Grant counties) and 75 (Iowa and Lafayette counties).

Agency Procedure for Promulgation

A public hearing is scheduled for September 8, 1998.

Contact Person

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

Natural Resources

Rule Submittal Date

On June 29, 1998, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed Board order [FH–45–98] affecting s. NR 20.08 (10).

Analysis

The subject matter of the proposed rule relates to the tournament fishing sunset extension.

Agency Procedure for Promulgation

Public hearings are scheduled for September 9 and 10, 1998.

Contact Person

Tim Simonson
Bureau of Fisheries Mgmt. & Habitat Protection
Telephone (608) 266–5222

Natural Resources

Rule Submittal Date

On June 29, 1998, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [FH–44–98] affecting ch. NR 25.

Analysis

The subject matter of the proposed rule relates to commercial fishing for chubs in Lake Michigan.

Agency Procedure for Promulgation

A public hearing is scheduled for August 18, 1998.

Contact Person

Bill Horns
Bureau of Fisheries Mgmt. & Habitat Protection
Telephone (608) 266–8782

Natural Resources

Rule Submittal Date

On June 29, 1998, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [FR–16–98] affecting ch. NR 46.

Analysis

The subject matter of the proposed rule relates to the definition of "human residence" as it pertains to forest tax landowners.

Agency Procedure for Promulgation

Public hearings are scheduled for August 11 and 12, 1998.

Contact Person

Ken Hujanen
Bureau of Forestry
Telephone (608) 266–3545

Natural Resources

Rule Submittal Date

On June 29, 1998, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [WM–3–98] affecting s. NR 50.23.

Analysis

The subject matter of the proposed rule relates to wildlife abatement and control grants for urban communities.

Agency Procedure for Promulgation

A public hearing is scheduled for August 13, 1998.

Contact Person

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

NOTICE SECTION

Notice of Hearing

Accounting Examining Board

Notice is hereby given that pursuant to authority vested in the Accounting Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 442.04 (4) (b), (bm) and (c), Stats., the Accounting Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Accy 3.05 (1) (b) 2. and 3., 3.055 (1) and (3) and 7.035 (intro.); and to create s. Accy 7.035 (5), relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after **December 31, 2000**.

Hearing Information

Date & Time	Location
August 14, 1998	**Room 179A**
Friday	**1400 E. Washington Ave.**
10:00 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 **August 28, 1998** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

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

Statute interpreted: s. 442.04 (4) (b), (bm) and (c)

This proposed order of the Accounting Examining Board has two primary effects. First, under the current rules a candidate to take the certified public accountant examination (CPA examination) provided by the American Institute of Certified Public Accountants (AICPA) must graduate from an institution with a resident major in accounting or its reasonable equivalent no later than 45 days after the CPA examination is taken. This time requirement has caused problems when graduation occurs a few days beyond the 45 day limit, due to individual school graduation dates. The relevant rules should be modified to extend the "examination–graduation" window to 60 days in order to accommodate these situations. Accordingly, SECTIONS 1 and 2 amend the related provisions in ss. Accy 3.05 and 3.055, respectively, to provide that candidates may sit for the CPA examination, if graduation will occur within 60 days thereafter.

The second area of rule–making will permit individuals who have graduated with a resident major in accounting or its reasonable equivalent prior to January 1, 2001, but who do not have 150 semester hours of accounting concentration, to sit for the CPA examination after December 31, 2000. SECTION 4 creates s. Accy 7.035 (5) to accomplish this purpose. Section 442.04 (4), Stats., as amended by 1995 Wis. Act 333, will require a person to have either a degree representing 150 semester hours education with an "accounting concentration," or its "reasonable equivalence" as determined by the Accounting Examining Board in order to take the qualifying examination after December 31, 2000. However, prior to that date there will be graduates with less than 150 semester hours who have either taken the examination and not successfully completed all of its parts or who, for whatever reason, chose not to take the examination prior to January 1, 2001, although they were eligible to do so. The Board believes that such individuals should be permitted to take or retake the examination after December 31, 2000, even though they may not possess 150 semester hours, because they had acquired the right to take the examination prior to the January 1, 2001 date. Good public policy and basic fairness indicate that these individuals should be "Grandparented" under the rules to permit them to exercise the right to take the examination they had acquired prior to January 1, 2001.

Text of Rule

SECTION 1. Accy 3.05 (1) (b) 2. and 3. are amended to read:

Accy 3.05 (1) (b) 2. Verification from an institution, as defined in s. 442.04 (4) (a), Stats., that the candidate is expected to graduate with a resident major in accounting within ~~45~~ 60 days following the examination date.

3. Certified copies of transcripts for all academic work completed at an institution, as defined in s. 442.04 (4) (a), Stats., a list of all courses in which the candidate is currently enrolled, and verification from the institution that the candidate is expected to graduate within ~~45~~ 60 days following the examination date, if the candidate expects to receive the reasonable equivalence of a resident major in accounting.

SECTION 2. Accy 3.055 (1) and (3) are amended to read:

Accy 3.055 (1) A candidate permitted to sit for the examination upon the basis of reasonably expecting to receive a bachelor's or higher degree with a resident major in accounting or the reasonable equivalence of a resident major in accounting within ~~45~~ 60 days following the examination must submit certified copies of transcripts for all academic work completed at an institution, at least one of which must reflect the award of a bachelor's or higher degree, to the board office within 120 days following the date of the examination.

(3) A candidate who fails to receive a bachelor's or higher degree with a resident major in accounting or the reasonable equivalence of a resident major in accounting within ~~45~~ 60 days following the examination shall be deemed ineligible to have taken the examination, and the scores shall be deemed null and void.

SECTION 3. Accy 7.035 (intro.) is amended to read:

Accy 7.035 Education requirement effective January 1, 2001. Pursuant to s. 442.04 (4), Stats., after December 31, 2000, a person may not take the examination leading to the certificate to practice as a certified public accountant unless the person has, as part of the 150 semester hours education, met one of the following ~~four~~ conditions:

SECTION 4. Accy 7.035 (5) is created to read:

Accy 7.035 (5) Whether or not the person has 150 semester hours education, has graduated with a bachelor's or higher degree with a resident major in accounting, or its reasonable equivalence, prior to January 1, 2001.

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 on state funds 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 and Licensing
1400 E. Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **Reprinted from Mid–July, 1998 *Wis. Adm. Register*.**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold hearings on proposed rule revisions relating to the Department's drainage district program (ch. ATCP 48, Wis. Adm. Code). Four hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule revisions.

Copies of Rule

A copy of the proposed rule revisions may be obtained, free of charge, by calling (608)224–4620 or by writing to:

Drainage District Program
Land & Water Resources Bureau
Department of Agriculture, Trade
and Consumer Protection
PO Box 8911
Madison, Wisconsin 53708–8911

Copies of the proposed rule revisions will also be available at the public hearings.

Written Comments

The hearing record will remain open for one week beyond the last public hearing. All written comments received by **4:30 p.m. on Friday, August 7, 1998,** will become part of the official hearing record. All written comments should be sent to the address previously listed.

Hearing Information

Each public hearing listed below will have two sessions: 2:30–4:30 p.m. and 6:30–8:30 p.m.

July 27, 1998 **Monday**	**Mead Inn** **451 E. Grand Ave.** **Wisconsin Rapids**
July 28, 1998 **Tuesday**	**Liberty Hall** **800 Eisenhower Drive** **Kimberly**
July 29, 1998 **Wednesday**	**Jefferson County Courthouse** **Room 202** **Jefferson**
July 30, 1998 **Thursday**	**Green Lake County Courthouse** **Safety Building Room** **Green Lake**

Persons requiring an interpreter may request one prior to **July 10, 1998**, by contacting Sheila Vanney at (608) 224–4620 or by contacting the message relay system (TTY) at (608) 266–4399 which will forward your call to the department. Handicap access is available at the hearings. Requests may also be made by writing to: Sheila Vanney, PO Box 8911, Madison, WI 53708–8911.

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

Statutory authority: ss. 88.11 and 93.07(1)

Statutes interpreted: ch. 88

The Department of Agriculture, Trade and Consumer Protection (DATCP) supervises the operation of drainage districts under ch. 88, Stats. This rule modifies the Department's current rules, under ch. ATCP 48, Wis. Adm. Code, related to drainage districts.

Drainage districts are special purpose districts formed to drain land for agricultural or other purposes. Lands within a drainage district are drained by means of common drains that cross individual property boundaries. Ch. 88, Stats., spells out procedures for creating, modifying and dissolving drainage districts.

All drainage districts within a county are operated by the county drainage board, which is appointed by the circuit court. The county drainage board must operate drainage districts in compliance with ch. 88, Stats., and DATCP rules. The county drainage board may levy assessments against landowners in a drainage district to pay for the design, construction and maintenance of district drains, and to pay other district operating costs. The county drainage board is primarily responsible for resolving drainage disputes within and between drainage districts.

DATCP monitors county drainage board compliance with ch. 88, Stats., and DATCP rules, and approves construction projects in drainage districts. The state of Wisconsin Department of Natural Resources must also approve certain construction projects in drainage districts.

Drainage District Specifications

Under current rules, a county drainage board must file drainage district specifications for every drainage district under the drainage board's jurisdiction. The county drainage board must file the specifications with DATCP and the county zoning administrator. The specifications must include all of the following:

- The boundaries of the drainage district, as last confirmed by the circuit court or the county drainage board.
- The location and extent of every district drain.
- The location and width of every district corridor. The district corridor is an access corridor and buffer strip established around each district ditch according to current rules.

County drainage boards were required to file specifications for all existing drainage districts by December 31, 1995. However, many county drainage boards have not yet filed them. This rule expands and clarifies the current requirements, and extends the filing deadline to **December 31, 2000**. Under this rule:

- The county drainage board must file a map showing all of the following:
  - * Drainage district boundaries.
  - * The alignment and extent of every district drain.
  - * The location and width of every district corridor.
- The county drainage board must document the "cross–section" and "grade profile" of every district drain. This rule defines what is meant by a "cross–section" and "grade profile."
- The county drainage board must give landowners notice and an opportunity to object to its proposed drainage district specifications.
- The county drainage board must obtain DATCP approval of drainage district specifications. DATCP approval does not preclude a landowner from challenging a specification that violates ch. 88, Stats., or this rule.
- After the county drainage board adopts the approved specifications, the county drainage board must file them with DATCP, the county zoning administrator and the county register of deeds.

Drainage District Boundaries

The initial boundaries of a drainage district are specified by the circuit court. A county drainage board may modify drainage district boundaries according to statutory procedures prescribed under ss. 88.77 to 88.80, Stats.

This rule prohibits a county drainage board from changing drainage district boundaries except by the procedures prescribed under ss. 88.77 to 88.80, Stats. If court records documenting current boundaries are not available or are unclear, a county drainage board may clarify the boundaries using the same statutory procedures. If a county drainage board changes a drainage district boundary, it must file a record of the change with DATCP, the county zoning administrator and the county register of deeds.

Designating District Drains

In many cases, lands within a drainage district are drained by "private drains" that empty into "district drains" constructed and operated by the county drainage board. In some cases, it is unclear whether an existing drain is a "private drain" or a "district drain." This rule prohibits a county drainage board from designating a drain as a "district drain," over the objection of a landowner who owns or holds an easement to the land on which the drain is located, unless the county drainage board does one of the following:

- ☞ Documents that a circuit court has designated the drain as a district drain.
- ☞ Documents that the drain has historically been operated and maintained as a district drain.
- ☞ Condemns the land required for the district drain and district corridor, if any, using statutory condemnation procedures.
- ☞ Properly designates the drain as a district drain in a proceeding under s. 88.73 or ss. 88.77 to 88.80, Stats.

Under this rule, if a county drainage board redesignates a private drain as a "district drain," the county drainage board must file a record of the change with DATCP, the county zoning administrator and the county register of deeds.

Drain "Cross–Section" and "Grade Profile"

The circuit court initially establishes the "cross–section" and "grade profile" of each district drain. The "cross–section" and "grade profile" are important, because they determine drainage access and efficacy. Subsequent construction activity or neglect may cause a deviation from the "cross–section" or "grade profile" established by the circuit court. Over time, additional runoff from upstream development may also cause a deviation from the established "grade profile." These deviations may deprive landowners of drainage to which they are entitled, and may seriously affect land use and land values. In extreme cases, they may cause disastrous flooding.

Under this rule, a county drainage board must:

- ☛ Document the formally established "cross–section" and "grade profile" of each district drain.
- ☛ Restore and maintain each district drain to prevent deviations from the formally established "cross–section" or "grade profile."

This rule defines "cross–section" and "grade profile" more clearly. Under this rule:

- A "cross–section" is a series of vertical sections of a drain, taken at periodic intervals along the length of a drain at right angles to the center line of the alignment of the drain. Each vertical section in the formally established "cross–section" of a district ditch must include all of the following:
  - The top and bottom width of the ditch.
  - The design depth of the ditch.
  - The side slope angle of the ditch.
- A "grade profile" is a vertical section along the alignment of a drain. The formally established "grade profile" of a district ditch must include all of the following:
  - The grade elevations at the top and bottom of the ditch.
  - The estimated water surface elevations in the ditch at base flow.
  - The estimated water surface elevations in the ditch in the event of a 10–year peak discharge.

In some cases, court records establishing the "cross–section" or "grade profile" of a district drain may be unavailable or incomplete. In those cases, a county drainage board may reconstruct the documentation based on physical evidence in the drainage district. (For example, a county drainage board may be able to reconstruct a historical grade profile based on soil conditions and the historical elevation of structures in a district drain.)

If a county drainage board cannot document a formally established "cross–section" or "grade profile" based on court records or physical evidence, it must establish an appropriate cross–section or grade profile with Department approval. If a currently established "cross–section" or "grade profile" lacks some of the elements required by this rule (e.g., water surface elevations in a "grade profile"), the county drainage board must also establish those missing elements.

This rule spells out a procedure by which a county drainage board may establish missing or poorly documented elements of a "cross–section" or "grade profile." The procedure is designed to protect landowners whose drainage rights may be affected. The county drainage board may use the same procedure to change a formally established "cross–section" or "grade profile," should that become necessary.

A county drainage board may not establish or change a "cross–section" or "grade profile" without specific DATCP approval. A county drainage board may not change an established "grade profile" over the objection of any landowner whose access to drainage is affected. Whenever a county drainage board changes an established "cross–section" or "grade profile" with DATCP approval, the county drainage board must file that new "cross–section" or "grade profile" with DATCP, the county zoning administrator and the county register of deeds.

Drain Alignment

The circuit court initially approves the "alignment" of a district drain. This rule requires a county drainage board to restore and maintain district drains so they conform to their formally established "alignments."

This rule prohibits a county drainage board from changing the formally established "alignment" of a district drain without specific DATCP approval. A county drainage board may not take new land for a drain realignment unless the landowner consents or the county drainage board formally condemns that land. The county drainage board must file the new "alignment" with DATCP, the county zoning administrator and the county register of deeds.

County Drainage Boards; Compliance Plans

Under current rules, county drainage boards must develop a plan for bringing drainage districts into compliance with DATCP rules. Among other things, the plan must explain how the county drainage board will correct and prevent deviations from established "cross–sections" and "grade profiles."

County drainage boards were originally required to file compliance plans by December 31, 1996, and bring all drainage districts into compliance by December 31, 1999. In districts where drains have been neglected for many years, extensive restoration may be needed to comply with DATCP rules.

For various reasons, few county drainage boards have filed compliance plans with DATCP. Few, if any, drainage boards will bring all of their drainage districts into compliance with DATCP rules by December 31, 1999. This rule extends the plan filing deadline to December 31, 2001, and extends the actual compliance deadline to December 31, 2004.

This rule also spells out minimum requirements for compliance plans. A county drainage board must file a separate plan for each drainage district in the county. The plan must include all of the following:

- ✔ A professionally drawn map of the drainage district.
- ✔ A restoration plan that identifies:
  - ✦ Drain segments, if any, that do not conform to established "cross–sections," "grade profiles" or "alignments."
  - ✦ A priority sequence and schedule for restoring non–complying drains to their established "cross–sections," "grade profiles" and "alignments."
  - ✦ An estimate of the amount of material to be dredged from drains scheduled for restoration.
  - ✦ The intended disposition of dredged materials, including the locations at which the materials will be deposited.
  - ✦ The projected costs of restoration, and a plan for financing those costs.
- ✔ A repair and maintenance plan that includes:
  - ✧ A plan for routine maintenance of drainage structures.
  - ✧ A plan for maintaining district corridors and controlling woody vegetation in those corridors.
  - ✧ A plan for special maintenance projects, if any.

- ✧ The projected costs of maintenance, and a plan for financing those costs.

✔ A plan for controlling soil erosion and runoff in the drainage district. The plan must include the estimated cost to implement the plan.

Persons Obstructing or Altering District Drains

This rule prohibits any person from obstructing or altering a district drain (e.g., by installing or changing the height of a dam) without prior written approval from the county drainage board. However, an owner of land adjacent to a district drain may, without prior drainage board approval, withdraw water from a district drain and place an obstruction in the district drain for that purpose if all of the following apply:

❍ The landowner notifies the county drainage board before withdrawing the water.

❍ The landowner obtains a DNR permit if required under s. 30.18 (2) (a) 2., Stats. (No DNR permit is currently required for cranberry growers.)

❍ The obstruction does not elevate the water level in the district drain above the base flow elevation specified as part of the formally established "grade profile" for that district drain.

❍ The withdrawal does not reduce the base flow, in a district drain that has a navigable stream history, below the minimum base flow level which the Wisconsin department of natural resources has established for that district drain under s. 88.31, Stats.

❍ The withdrawal does not injure a district drain.

A county drainage board may require a landowner to provide information showing that the landowner's withdrawal of water complies with this rule. A county drainage board may prohibit a landowner from withdrawing water if the drainage board reasonably concludes that the withdrawal violates this rule.

Structures Impeding Drainage

This rule prohibits a county drainage board from installing or modifying any structure in a district drain, or approving the installation or modification of any structure in a district drain, if the installation or modification causes or aggravates a deviation from the formally established "grade profile." This prohibition does not apply to any of the following:

◆ A temporary structure or modification that is reasonably necessary to protect the public health, safety or welfare in an emergency.

◆ A temporary structure or modification that is necessary for other lawful construction or maintenance operations under this rule.

◆ A temporary structure or modification to provide essential crop irrigation during a drought if all of the following apply:

- ❖ The county drainage board gives notice to upstream landowners whose access to drainage may be affected.
- ❖ The county drainage board resolves any objections from affected landowners to the satisfaction of those landowners.
- ❖ The county drainage board imposes written conditions to protect the public interest and the interests of all landowners in the drainage district.

◆ A temporary structure or modification to provide water for cranberry harvest, or for cranberry winter ice cover, if all of the following apply:

- ➔ The structure or modification is installed for no more than 14 days for cranberry harvest, and no more than 14 days for cranberry winter ice cover.
- ➔ The county drainage board gives notice to upstream landowners whose access to drainage may be affected.
- ➔ The county drainage board resolves any objections from affected landowners to the satisfaction of those landowners.
- ➔ The county drainage board imposes written conditions to protect the public interest and the interest of all landowners in the drainage district.

Restoration Projects; Notice to DATCP

Under current rules, a county drainage board must obtain DATCP approval before undertaking or approving a drainage district "restoration project" involving the dredging or excavation of more than 3,000 cubic yards of material. A "restoration project" means dredging or other operations to bring a district drain into closer conformity with the formally established "cross–section," "grade profile" or "alignment" of that drain.

This rule eliminates the requirement for DATCP approval of "restoration projects." However, a county drainage board must notify DATCP in writing before it initiates a "restoration project" that involves the dredging or excavation of more than 3,000 cubic yards of material. A county drainage board may need to obtain a dredging permit from DNR before undertaking a "restoration project."

Construction Projects and Drainage Alterations; DATCP Approval Required

Under current rules, DATCP must approve a "construction project" before a county drainage board undertakes or approves that "construction project." This rule expands and clarifies the current rules.

With certain exceptions (described below), this rule prohibits a county drainage board from doing any of the following without written approval from DATCP:

- Constructing or modifying any district drain, or authorizing any person to construct or modify a district drain.
- Installing or modifying any structure in a district drain, or authorizing any person to install or modify any structure in a district drain.
- Authorizing any person (including any municipality or government entity) to connect that person's "private" drain to a district drain.
- Changing the formally established "cross–section," "grade profile" or "alignment" of a district drain, regardless of whether that change involves any physical alteration to a district drain or structure.

Under this rule, a county drainage board is **not** required to obtain DATCP approval for any of the following:

✶ Actions, such as routine maintenance or repair projects, that do not cause or aggravate any deviation from the formally established "cross–section," "grade profile" or "alignment" of a district drain.

✶ Restoration projects that merely restore district drains to their formally established "cross–sections," "grade profiles" or "alignments."

✶ Temporary structures or modifications that a county drainage board installs or approves according to this rule (see above).

Applying for DATCP Approval

A county drainage board seeking DATCP approval for a construction project or drainage alteration must file an application that includes all of the following:

- ❑ A complete description of the proposed action, including design specifications prepared by a qualified engineer.
- ❑ The objectives of the proposed action.
- ❑ A construction plan (if applicable) prepared by a qualified engineer.
- ❑ A hydrology analysis prepared by a qualified engineer.
- ❑ The cost, method of financing and effect on landowner assessments.
- ❑ A map of the lands and waters affected.
- ❑ A statement showing that the county drainage board has published a public notice, held a public hearing, and allowed for public comment on the proposed action.
- ❑ A description of any proposed change to the formally established "cross–section," "grade profile" or "alignment" of a district drain.
- ❑ A statement showing that the county drainage board has done both of the following:
  - ✓ Notified upstream landowners of any proposed "grade profile" change that may affect their access to drainage.
  - ✓ Resolved any objections by those upstream landowners (to the landowner's satisfaction).
- ❑ A discussion of significant environmental effects, if any.
- ❑ Additional information requested by the Department.

DATCP Approval or Disapproval

DATCP may not approve any construction project or drainage alteration that causes or aggravates a deviation from the formally established "cross–section," "grade profile" or "alignment" of a district drain. However, DATCP may do any of the following:

- ✳ Approve a change to the formally established "cross–section." Whenever a county drainage board changes an established "cross–section" with DATCP approval, it must file the new "cross–section" with DATCP, the county zoning administrator and the county register of deeds.
- ✳ Approve a change to the formally established "grade profile." Neither DATCP nor the county drainage board may approve a change to an established "grade profile" over the objection of an upstream landowner whose drainage access may be impaired, unless the county drainage board resolves the landowner's objection to the satisfaction of the landowner. Whenever a county drainage board changes an established "grade profile" with DATCP approval, it must file the new "grade profile" with DATCP, the county zoning administrator and the county register of deeds.
- ✳ Approve a change to the formally established "alignment." A county drainage board may not take new land for a realigned drain unless the landowner consents or the county drainage board formally condemns the new land for that purpose. Whenever a county drainage board changes an established "alignment" with DATCP approval, it must file the new "alignment" with DATCP, the county zoning administrator and the county register of deeds.

DATCP must issue a written notice approving or disapproving a county drainage board application within 45 days after a county drainage board files a complete application. DATCP may approve an application subject to conditions specified by DATCP. If DATCP disapproves, it must state its reasons. DATCP may disapprove an application for any of the following reasons:

- ✗ The county drainage board has failed to provide required information.
- ✗ The proposed action or approval would violate DATCP rules or ch. 88, Stats.
- ✗ The proposed action is not technically feasible, is not technically sound, or is not adequately designed to achieve the county drainage board's stated objectives.
- ✗ The proposed action will have a substantial adverse effect on water quality, or on the human or natural environment.

DATCP must prepare a brief environmental assessment before approving a proposed action if any of the following apply:

- ♣ The proposed action will drain more than 200 acres of land not previously drained, or will substantially alter drainage from more than 200 acres of land.
- ♣ The proposed action will drain more than 5 acres of wetlands.
- ♣ The proposed action involves the construction or modification of a dam in a drain with a navigable stream history.
- ♣ The proposed action involves a cold water fishery in a district drain with a navigable stream history.
- ♣ The proposed action will substantially affect the base flow in surface waters of the state.

Landowner Petition

Under this rule, an owner of land in a drainage district may file a written petition with the county drainage board asking the county drainage board to do any of the following:

- ◔ Restore, repair, maintain and, if necessary, modify a district drain in order to conform the drain to the "cross–section," "grade profile" or "alignment" formally established for that drain.
- ◔ Remove an obstruction placed in a district drain in violation of this chapter or ch. 88, Stats.

- Correct a violation of this chapter or ch. 88, Stats.

A landowner petition must identify the grounds for the petition and the action requested of the county drainage board. A county drainage board may require the petitioner to provide further information which is reasonably necessary in order for the board to properly evaluate the petition.

Within 60 days after a landowner files a complete petition with the county drainage board, the county drainage board must provide the landowner with a written response that does all of the following:

- Describes and explains the action, if any, which the county drainage board will take in response to the petition.
- Explains the county drainage board's refusal to take action on the petition, if the county drainage board refuses to take action.

If a petitioner is not satisfied with the county drainage board's response, and believes that the county drainage board has violated this rule or ch. 88, Stats., the petitioner may file a written petition with DATCP alleging that violation. DATCP may, in its discretion, conduct an investigation to determine whether the county drainage board has violated this rule or ch. 88, Stats. If DATCP finds that a county drainage board has violated this rule or ch. 88, Stats., DATCP must issue an order which directs the county drainage board to correct the violation.

Land Ownership Change

This rule confirms that a change of land ownership does not relieve or deprive a succeeding landowner of rights or responsibilities that run with the land under ch. 88, Stats., or this rule.

Row Cropping and Obstructions in District Corridors

Under current rules, a county drainage board must establish a district corridor extending for 20 feet on each side of a district ditch. The drainage board must maintain the corridor according to current rules for the following purposes:

- To provide effective access to the district ditch, for inspection and maintenance.
- To provide a buffer against land uses that may adversely affect water quality in the district ditch.

Current rules completely prohibit "row cropping" in district corridors. This rule prohibits a landowner from doing either of the following without written permission from the county drainage board:

- "Row cropping" in a district corridor.
- Placing in a district corridor any building or other obstruction that interferes with the county drainage board's ability to inspect and maintain the district drain and corridor.

Under this rule, a county drainage board may authorize row cropping or obstructions in a district corridor, subject to conditions or limitations which the drainage board specifies in writing. A person who engages in row cropping or places any obstruction in a district corridor waives any claim for damages to that crop or obstruction that may result from lawful county drainage board activities in the corridor.

In deciding whether to permit row cropping in a district corridor, a county drainage board may consider, for example, whether row cropping will result in increased maintenance, soil erosion, or movement of suspended solids to district drains. A county drainage board may also consider, for example, the type of row cropping and tillage proposed, the topography of the district corridor, and the nature of the soils and subsoils in the district corridor.

This rule does not require a landowner to remove any building or fixture constructed or installed in a district corridor prior to the effective date of this rule. However, the owner waives any claim for damages to that building or fixture that may be caused by lawful county drainage board activities in the corridor.

Under current rules, a county drainage board must control the growth of "woody vegetation" in a district corridor, to ensure effective drainage and effective access for inspection, maintenance and repair. A county drainage board may allow the growth of woody vegetation in portions of a district corridor if it does not interfere with effective access. This rule defines "woody vegetation" but makes no other change.

Assessing Benefits to Landowners in Drainage Districts

Under current law, a county drainage board may levy assessments against landowners in a drainage district to pay for drainage district costs, including costs of construction, maintenance, restoration, district operation, and compensation to landowners. Costs must be apportioned among landowners according to the benefits which they derive from the drainage district. Benefits must be assessed according to a procedure specified in ch. 88, Stats., and current rules.

When assessing benefits to agricultural lands in a drainage district, a county drainage board is currently required to consider a number of factors including:

1. The estimated increase in land value resulting from drainage.
2. The amount of drainage required by, or provided to the assessed land.
3. The thoroughness and reliability of drainage provided.
4. The amount and frequency of flooding on the assessed land.
5. The difficulty of draining the assessed land.
6. Any loss of acreage resulting from the construction of district drains and corridors, or from the deposition of materials excavated during construction.
7. Other factors which the drainage board considers relevant.

Under this rule, a county drainage board must exclude the following acreage from any assessment of benefits:

- Acreage in a district corridor unless the drainage board authorizes row cropping on that acreage.
- Acreage permanently lost to the landowner as a result of the construction, restoration or maintenance of district corridors, or as a result of the deposition of materials from that construction, restoration or maintenance.

Under current rules, a county drainage board may consider potential land uses when it estimates the increase in land value resulting from drainage. This rule clarifies that the drainage board may also consider current uses.

Under current rules, a county drainage board assessing benefits to agricultural lands must consider the type, depth, quality and character of soils and subsoils on the assessed land. Under this rule, the drainage board must also consider the depth of the water table.

Under this rule, a county drainage board assessing benefits to agricultural lands may consider any of the following potential uses of that land (or other potential uses which the board considers appropriate):

- Residential.
- Commercial.
- Cropland, including dryland cropland, pasture, irrigated cropland or cranberry cropland.
- Abandoned cropland (not used for agricultural, residential or commercial purposes).
- Woodlands.
- Wetlands, including soils with standing water that have no significant agricultural value.

Fiscal Estimate

(See Mid–July, 1998 *Wisconsin Administrative Register*, page 29.)

Environmental Assessment

The Department has prepared an environmental assessment on this rule. The public may comment on the environmental assessment, which will be available at the hearings. The assessment concludes that this rule will have no adverse impact on the environment. Alternatives to this rule will not meet program goals and responsibilities as effectively as the proposed rule. No environmental impact statement is necessary under s. 1.11 (2), Stats.

Initial Regulatory Flexibility Analysis

(See Mid–July, 1998 *Wisconsin Administrative Register*, page 30.)

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chs. ATCP 102 and 105, Wis. Adm. Code, relating to sales below cost and s. 100.30, Stats., "The Unfair Sales Act."

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **September 30, 1998** for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from;

Trade Practices Bureau
Telephone (608) 224–4928
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708–8911

Informal Discussion Sessions

In conjunction with the public hearings, the Department will also hold informal discussion sessions. These sessions will take place on each of the dates below, beginning at **5:30 p.m**. at each of the locations listed below. These informal discussion sessions are a chance for petroleum dealers and distributors (and the general public) to discuss issues such as compliance, notice requirements, and cost calculations with Department staff.

Hearing Information

Four hearings are scheduled:

Date & Times	Location
August 20, 1998 **Thursday** **Official public** **hearing: 1:30 p.m.** **to 4:30 p.m.** **Informal discussion** **session: 5:30 p.m.** **to 7:00 p.m.**	**Conference Room** **DATCP Consumer Protection** **Regional Office** **3610 Oakwood Hills Pkwy.** **EAU CLAIRE, WI**
September 1, 1998 **Tuesday** **Official public** **hearing: 1:30 p.m.** **to 4:30 p.m.** **Informal discussion** **session: 5:30 p.m.** **to 7:00 p.m.**	**East 240--Union** **UW–Milwaukee** **2200 E. Kenwood Blvd.** **MILWAUKEE, WI**
September 2, 1998 **Wednesday** **Official public** **hearing: 1:30 p.m.** **to 4:30 p.m.** **Informal discussion** **session: 5:30 p.m.** **to 7:00 p.m.**	**Appleton Public Library** **225 N. Oneida St.** **APPLETON, WI**
September 8, 1998 **Tuesday** **Official public** **hearing: 1:30 p.m.** **to 4:30 p.m.** **Informal discussion** **session: 5:30 p.m.** **to 7:00 p.m.**	**Board Room (SR – 106)** **DATCP Headquarters** **2811 Agriculture Dr.** **MADISON, WI**

An interpreter for the hearing–impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by ***August 5, 1998*** *either by writing to Kevin LeRoy, 2811 Agriculture Drive, PO Box 8911. Madison, WI 53708, (608/224–4928) or by contacting the message relay system (TTY) at* ***(608) 224–5058****. Handicap access is available at the hearings.*

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

Statutory authority: s. 93.07 (1), Stats. (Chs. ATCP 102 and 105), s. 100.20 (2), Stats, (Ch. ATCP 102), and s. 100.30 (7), Stats. (Ch. ATCP 105)

Statutes interpreted: s. 100.20, Stats. (Ch. ATCP 102) and s. 100.30, Stats. (Ch. ATCP 105)

This rule implements legislation enacted as 1997 Wis. Act 55, related to the pricing of motor fuel. The legislation modified s. 100.30, Stats., which prohibits sales of motor fuel and other commodities below cost.

Background

The Department administers s. 100.30, Stats., known as the "Unfair Sales Act." The Unfair Sales Act prohibits sales below "cost" as defined in the law. The Unfair Sales Act applies to sales of motor fuel and other commodities. The Department has adopted rules, under ch. ATCP 105, Wis. Adm. Code, to interpret the Unfair Sales Act.

1997 Wis. Act 55 made several changes to the Unfair Sales Act as it applies to sales of motor fuel. These changes take effect on **August 1, 1998**:

- **"Cost" of motor fuel.** The Unfair Sales Act previously defined the "cost" of motor fuel to mean the seller's invoice cost, less trade discounts, plus excise taxes and a presumptive 3% wholesale and 6% retail markup. Under 1997 Wis. Act 55, the "cost" of motor vehicle fuel is redefined to mean the greater of the following:
  - "Cost" as previously defined (with minor changes).
  - The "average posted terminal price" for the motor fuel terminal located nearest to the retail location, plus a markup of 9.18%. The "average posted terminal price" is defined in the statute as the arithmetic mean of all the prices reported by a nationally recognized "petroleum price reporting service," plus any taxes, transportation and any other charges.
- **"Meeting competition" notice.** The Unfair Sales Act prohibits sales of motor fuel below "cost" as defined in the act. However, a seller may claim, as a defense, that the seller sold motor fuel below cost in order to meet the existing price of a competitor. Under 1997 Wis. Act 55, a seller of motor fuel who wishes to establish a presumptive "meeting competition" defense must notify the department on the same day that the seller initiates the below–cost selling price in response to a competitor's price. The seller must give the notice in the "form and manner required by the department."
- **Private remedy.** The Department may prosecute violations of the Unfair Sales Act. 1997 Wis. Act 55 also creates a private remedy for competing sellers of motor vehicle fuel who are injured by illegal sales below cost.

Rule Contents

Definitions

This rule clarifies terms used in 1997 Wis. Act 55 including "close of business on the determination date," "retail station," "terminal" and "terminal closest to the retail station."

"Meeting Competition" Notice

This rule prescribes the form and content of the notice which a motor fuel seller must file with the Department in order to claim the "meeting competition" defense under the Unfair Sales Act.

Under 1997 Wis. Act 55 and this rule, a person who files a "meeting competition" notice with the Department to justify a below–cost selling price must send that notice before the "close of business" on the day that the person begins selling at the price. This rule clarifies that the "close of business" means the seller's actual close of business or, if the business is open for 24 hours a day, the time at which the business day ends for accounting purposes.

Under this rule, a person must give a "meeting competition" notice in writing, by one of the following methods:

- ▶ By telefax. A seller is rebuttably presumed to have sent a telefax notice "before the close of business" if the Department receives it by midnight on the same day.
- ▶ By electronic mail. A seller is rebuttably presumed to have sent an e–mail notice "before the close of business" if the Department receives it by midnight on the same day.
- ▶ By United States mail. A seller is rebuttably presumed to have sent a mail notice "before the close of business" if the notice is postmarked by midnight of the same day.
- ▶ By commercial courier. A seller is rebuttably presumed to have sent a notice "before the close of business" if the commercial courier takes custody of the notice by midnight of the same day.
- ▶ By personal delivery. A seller is rebuttably presumed to have sent notice "before the close of business" if the notice is personally delivered to the Department by 4:30 PM of the same day.

Under this rule, a person giving a "meeting competition" notice must include all of the following in the notice:

- ❑ The person's name, including any trade name under which the person sells motor fuel at the price which the notice purports to justify.
- ❑ The address and telephone number of each business location at which the person is offering motor fuel at the price which the notice purports to justify.
- ❑ The motor fuel selling price which the notice purports to justify, the effective date of that selling price, and the identity and grade of motor fuel to which that selling price applies.
- ❑ The name of the competitor whose price the person is purporting to meet, and the address at which that competitor is offering that price.
- ❑ The competitor's price which the person is purporting to meet, the relevant dates on which the competitor offered that price, and the identity and grade of motor fuel to which that price applies.

A person giving a "meeting competition" notice may not falsify any of the information contained in that notice. The person may not claim that a competitor offered a motor fuel selling price on a specified date at a specified address if the competitor was not open for business on that date at that address.

Technical and Editorial Changes

This rule makes other technical and editorial changes to make the Department's current rules consistent with the Unfair Sales Act as amended by 1997 Wis. Act 55.

Fiscal Estimate

The proposed revisions to ch. ATCP 105 are in response to 1997 Wis. Act 55, which was a set of amendments to s. 100.30, Stats., "The Unfair Sales Act." 1997 Wis. Act 55 will go into effect on **August 1, 1998**.

Two provisions of the act will present a material increase in costs for the Department.

First, "cost" to sellers of motor vehicle fuel is now based on the "average posted terminal price." This is an index published by a nationally recognized oil pricing service. This is valuable, proprietary data that is somewhat expensive to obtain. The Department currently subscribes to a service called "Petroscan" by a company called Oil Price Information Service. This service is currently used occasionally to double–check information submitted by complainants and respondents. However, under the new provisions of the statute, the Department will need to use this service much more often because it will be essential for determining whether or not petroleum sellers are in compliance with the statute. Staff estimates that spending on this service will go from roughly $2,400 per year to roughly $6,000 per year.

The second fiscal effect is from a provision of the revised statute that states sellers must "notify the department" before lowering their price to meet the existing price of a competitor. The statute grants immunity for private and state enforcement actions to sellers of motor vehicle fuel who provide this notification. Because of the immunity, the Department estimates that it will receive up to 500 notices per day, most of these via fax. If this estimate is correct, the Department would need to significantly increase spending on items such as fax supplies (paper, toner & drums) phone lines, fax overflow voice–mail system and document storage. Staff estimates that these items will cost roughly $2,000 per year.

1997 Wis. Act 55 and this rule are not expected to have any fiscal effect on local governments.

Initial Regulatory Flexibility Analysis

This rule interprets s. 100.30, Stats., which prohibits sales below cost. The legislature recently modified this statute with 1997 Wis. Act 55. The Department is proposing changes to the rule at this time to bring the rule into conformity with the amended statute. The proposed rule does not include any substantive provisions that are now already addressed in the statute. Therefore, the small business impacts are based on an analysis of the impacts of 1997 Wis. Act 55.

Small businesses in Wisconsin that sell motor vehicle fuels at either wholesale or retail are affected by the statutory change. There will be some increased reporting required and some retailers may need to purchase additional information services. However, these increased burdens on small business may be offset by the potential for increased revenues.

New definitions for "cost"

Under the new law, cost of motor vehicle fuel is based on "the average posted terminal price" of the fuel. This is the average of all the refining companies' selling prices at the petroleum terminal located nearest to the retail station. Under the old law, cost of motor vehicle fuel was based on the seller's invoice cost. The new definitions of cost should help sellers of motor vehicle fuel increase their revenue.

Under the old law, a seller who is able to purchase gasoline at low wholesale cost has two choices. They could either set their price at the minimum and hope to capture increased market share because of a low price, or they could set their price at a medium or high level and enjoy increased profits. If this seller chooses the first option, this forces other sellers with higher wholesale costs to set their price below the minimum markup so they do not lose market share. (This is perfectly legal because of the "meeting competition" exception.) This scenario leads to an equilibrium retail price that is approximately 9.18% over the ***lowest*** terminal price.

Under the new law, all sellers in a certain area have the same "cost" for minimum markup purposes. All sellers must base their price on the ***average*** terminal price. This change leads to an equilibrium retail price that may be a couple pennies higher per gallon than the scenario discussed above because the 9.18% is over the ***average*** terminal price. This may result in higher revenues for some gasoline dealers.

Petroleum Pricing Service

The new definitions of cost rely on the "average posted terminal price." This price is valuable proprietary information that can only be obtained by subscribing to a service. The minimum cost of this service is roughly $55 per month. The service will report prices via fax, e–mail, satellite, or allow their customers to search through the database (requires a modem and computer). Motor vehicle fuel sellers who wish to make their pricing decisions based on statutory costs (as opposed to competition) will need to subscribe to this service.

Many petroleum dealers already use this service to help them determine where and when to buy fuel. At first glance 1997 Wis. Act 55 does not present an additional expense to this group. However, many of these business receive their prices early in the day. But these prices are irrelevant for determining minimum markup. The new law specifies that the average posted terminal price is at the "close of business" on the determination date. Therefore, petroleum dealers who already subscribe to the service must carefully determine whether the information they are already getting is relevant to the Unfair Sales Act. They may have to increase their spending on this service to get the information needed to comply with the statute.

Other petroleum dealers, typically small business, rely on a distributor or jobber to sell them fuel. These people have had no need for a subscription to a pricing service until now. Under the new law, a subscription to a pricing service will be essential to determine whether or not their price is in compliance with the law.

Although this could be a significant cost to the seller, it should be stressed that neither the Department nor the new statute requires small business to absorb this expense. Sellers could choose to simply always meet their competitor's prices or estimate the "average posted terminal price" based on their own invoices or price reports pulled earlier in the day. However, if they chose one of these options, they must submit a notice to the Department to take advantage of the meeting competition defense. (see following).

Private cause of action

Beginning **August 1, 1998**, sellers of motor vehicle fuel who are injured or threatened with injury may bring suit against their competitors who violate the Unfair Sales Act. Maximum damages are treble any monetary loss or $2,000 per day, whichever is greater, plus attorney fees. Obviously, this could significantly impact small business. All businesses who sell gasoline will need to carefully asses their pricing policies and procedures and determine their level of risk of having to pay damages. In addition there will be a cost associated with bringing a suit or successfully defending against a suit.

Notification for meeting competition

The Unfair Sales Act has always granted certain exceptions where sales below cost are acceptable. The exception most widely used by motor vehicle fuel sellers is the "meeting competition defense." It is acceptable to sell fuel below cost if the seller is doing so to meet the price of a competitor. However, under the new statute, sellers who "notify the department" that they are lowering their price below the minimum in order to meet a competitor's price enjoy immunity from liability under private and state enforcement actions.

There will be a cost associated with submitting notifications. The Department will accept notices via: fax, e–mail, U.S. mail, courier, or hand delivery. Because of the immunity that sellers will receive if they submit a notice, the Department predicts that many sellers will wish to submit a notice on a very regular basis, simply as a risk management precaution. This will involve a significant paperwork burden for small business.

It should be stressed that submitting a notice is a decision that the motor vehicle fuel sellers make for themselves. It is not mandated by the Department or by the statute. Alternatively, a seller could chose to not sell below the minimum markup –– regardless of what their competitors are doing –– or they could simply take their chances on being sued for selling fuel below the minimum markup. Failing to provide notice does not mean that the seller will automatically lose any case that may be brought against them. Furthermore, there is no penalty for simply failing to submit a notice on a day that the seller lowered their price to meet the price of a competitor. The notice is simply an efficient way of defending against a suit when it is first filed.

Conclusion

It is very difficult to estimate the statute and rule's overall impact on small businesses. There may be a potential for increased revenues. However this could be offset by increases in expenses for a subscription to an oil pricing service and the expense of filing a notification with the Department. These potential increases in expenses are entirely at the discretion of the business.

Notice of Hearings

Commerce

(Public Employe Safety & Health, Ch. Comm 32)

Notice is hereby given that pursuant to ss. 101.02 (1) and 101.055 (3), Stats., the Department of Commerce announces that it will hold public hearings on proposed rules repealing ch. ILHR 32 and creating ch. Comm 32, relating to public employe safety and health.

Hearing Information

The public hearings will be held as follows:

Date & Time	Location
August 19, 1998 **Wednesday** **10:00 a.m.**	**Room 3B, WHEDA Bldg.** **201 West Washington Ave.** **MADISON, WI**
August 21, 1998 **Friday** **10:30 a.m.**	**Room C106** **Northcentral Tech. College** **1000 Campus Dr.** **WAUSAU, WI**

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 261–6546 or TTY at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1) and 101.055 (3)

Statute interpreted: s. 101.055 (3)

The Department of Commerce is responsible for adopting standards to protect the safety and health of public employes in the state of Wisconsin. The adopted standards must provide protection at least equivalent to that afforded to private sector employes under standards administered and enforced by the federal Occupational Safety and Health Administration (OSHA).

Chapter ILHR 32 currently contains general safety and health standards for all public employes through the incorporation by reference of several OSHA standards. Chapter ILHR 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of a complete update of ch. ILHR 32, including the incorporation by reference of the 1998 edition of the OSHA standards. The following is a summary of the major changes contained in the proposed update of ch. ILHR 32.

1. Elimination of the rule that required the OSHA construction standards to apply where the OSHA general standards did not cover the activity involved.
2. Elimination of the rule that incorporated by reference the threshold limit values and biological exposure indices published by the American Conference of Governmental Industrial Hygienists.
3. Consolidation of the portable ladder rules into one section and a modification to include fiberglass ladders.
4. Revision of the exhaust ventilation rules by eliminating several prescriptive standards and prohibiting recirculation of contaminated air.
5. Revision of the spray finishing rules by eliminating the prescriptive standards.
6. Elimination of the special Wisconsin confined spaces rules. The proposed rules adopt the OSHA confined spaces standard with several additions to the standard.
7. Elimination of several Wisconsin rule additions to the OSHA standards. These additions are covered in the 1998 edition of the OSHA standards and include subjects such as conveyors, cranes and machine guards.
8. Compared to the currently adopted OSHA standards, the 1998 standards contain several new requirements, including new standards relating to scaffolds used in construction, exposure to 13 carcinogens, access to employe records, asbestos, ionizing radiation, occupational exposure to methylene chloride, and respiratory protection.

Written Comments

Interested people are invited to appear at the hearings and present comments on the proposed rules. People making oral presentations are requested to submit their comments in writing. People submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **September 4, 1998**, to permit submittal of written comments from people who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Copies of Rule and Contact Person

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

Margaret Slusser
Telephone (608) 261–6546
or (608) 264–8777 (TTY)
Program Development Bureau
Dept. of Commerce
P.O. Box 2689
Madison, WI 53701

Copies will also be available at the public hearings.

Initial Regulatory Flexibility Analysis

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

The proposed rules will not affect any small businesses as defined in s. 227.114 (1) (a), Stats. The proposed rules apply to public sector employers and employes.

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

Not applicable.

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

Not applicable.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Robert Langstroth
Telephone (608) 264–8801
or TTY (608) 264–8777
Division of Safety and Buildings
Department of Commerce
P.O. Box 2599
Madison, WI 53701

Written comments will be accepted until **September 4, 1998**.

Fiscal Estimate

The Safety and Buildings Division currently administers and enforces the provisions of ch. ILHR 32 as part of the public sector safety and health program. The proposed rules update the existing administrative rules now being enforced, with no new requirements that would affect costs or revenues. Therefore, the proposed rules will not have any fiscal effect on the Division.

At the local government level, there should be no significant fiscal effect. Some of the new requirements, such as the respiratory protection standard, may result in additional costs in time and equipment for some local governments; however, these costs should be minimal.

Notice of Hearing

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Notice is hereby given that pursuant to ss. 101.02 (1) and 101.122 (2), Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules and current emergency rules affecting ch. Comm 67, relating to rental unit energy efficiency standards.

Hearing Information

The public hearing will be held as follows:

Date & Time	Location
August 14, 1998	**Conf. Room 3B, Third Floor**
Friday	**WHEDA Building**
Commencing at	**201 West Washington Ave.**
9:30 a.m.	**MADISON, WI**

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 261–6546 or TTY at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1) and 101.122 (2)

Statutes interpreted: ss. 101.122 and 778.25 (1) to (3)

Under s. 101.122, Stats., the Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. These requirements are contained in ch. Comm 67, Wis. Adm. Code. The proposed rule would modify the current ch. Comm 67 to be consistent with 1997 Wis. Act 288. These modifications would exclude the following buildings from the rental unit energy efficiency program:

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

The modifications would also limit the application of rental unit energy efficiency requirements to the following items:

- ✔ Attics;
- ✔ Furnaces and boilers;
- ✔ Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building;
- ✔ Sill boxes;
- ✔ Heating and plumbing supply in unheated crawlspaces; and
- ✔ Shower heads.

The modifications also eliminate the expiration of the certificate of code compliance after 5 years.

The proposed rule would replace an emergency rule which became effective on **June 30, 1998**, and which also made the above modifications.

The proposed rule has been expanded from the emergency rule to include minor changes necessary for the Department to exercise the citation authority granted under 1997 Wis. Act 288, and to include performance standards as an alternative means for demonstrating compliance with the energy efficiency requirements.

Written Comments

Interested people are invited to appear at the hearing and present comments on the proposed rules. People making oral presentations are requested to submit their comments in writing. People submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **August 25, 1998**, to permit submittal of written comments from people who are unable to attend the hearing or who wish to supplement testimony offered at the hearing.

Copies of Rule and Contact Person

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

Margaret Slusser
Telephone (608) 261–6546
or (608) 264–8777 (TTY)
Program Development Bureau
Department of Commerce
P.O. Box 2689
Madison, WI 53701

Copies will also be available at the public hearing.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearing. Requests for the EA and comments on the EA should be directed to:

Robert Langstroth
Telephone (608) 264–8801
or TTY (608) 264–8777
Division of Safety and Buildings
Department of Commerce
P.O. Box 7969
Madison, WI 53701

Written comments will be accepted until **August 25, 1998**.

Initial Regulatory Flexibility Analysis

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

Owners of rental properties, rental unit energy inspectors, and providers of the energy measures installed as a result of the energy inspections.

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

Minor documentation changes may be needed to implement the citation authority for obtaining compliance with ch. Comm 67, and for demonstrating compliance with the energy performance standards instead of the current prescriptive standards.

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

Some rental unit energy inspectors may need to acquire minor additional skills for applying the energy performance standards.

Fiscal Estimate

The proposed rule changes would remove one– and two–unit buildings built after 1978, larger buildings built after 1976, and condominiums of over two units, from coverage under the rental unit energy efficiency requirements. This proposal would also eliminate the requirement to obtain certifications more than once during the life of a building. Rental unit energy efficiency requirements are narrowed to focus on attics, furnaces, boilers, storm windows and doors (with an option to meet an air infiltration standard), sill boxes, heating and plumbing supply in unheated crawlspaces, and shower heads.

Annual revenues from the rental unit energy efficiency program have averaged $428,600 over the past five years. Revenues are from credentialling of inspectors, applications for exemptions, applications for waivers, inspections, certification stamps and applications for stipulations.

If this proposal is adopted, it is expected that revenues and expenditures would not change significantly. Although fewer buildings would be covered under the rental unit energy efficiency requirements, the narrower focus of the requirements is expected to result in a higher rate of compliance.

This higher rate of compliance and the corresponding certification fees are expected to offset any decrease in revenues that would result from having fewer buildings covered by the rental unit energy efficiency requirements.

Local government costs may increase if the Department pursues unpaid penalties or fees through the court system. Local government revenues could increase due to the payment of court fees.

Notice of Hearing

Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of a proposed rulemaking order affecting ss. Ins 3.27, 3.39 and 3.46, Wis. Adm. Code, relating to revising the requirements for Medicare Supplement policies to comply with recent federal and state laws.

Hearing Information

Date & Time	Location
August 25, 1998	**Room 23, OCI**
Tuesday	**121 East Wilson St.**
10:00 a.m.	**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. 601.41 (3), 625.16, 628.34 (12), 628.38, and 632.81

Statutes interpreted: ss. 625.16, 628.34 (12), 628.38, and 632.81

Most of these revisions update Wisconsin's Medicare supplement regulations to conform to the revised National Association of Insurance Commissioner's model as required by federal law and to certain additional mandated benefits required by recent Wisconsin law changes.

The definition of advertisement for accident and health advertising is revised to specifically include electronic communications.

The definitions and qualifying conditions are defined for creditable coverage for purposes of requiring open enrollment to certain plans with sufficient credible coverage from prior insurance coverage.

The rule clarifies that insurers must accept and process applications from people within 3 months prior to an open enrollment period. Some insurers have refused to accept applications for people eligible prior to becoming eligible, making them apply after they are eligible, causing undo hardship on them.

Wisconsin mandated coverages for TMJ and breast reconstruction are added to the basic Medicare supplement policy.

Two new plans with high deductibles are defined as required by Federal law. These plans presumably would have lower premiums because of the high deductibles. The outline of coverage is modified to incorporate these plans.

Alternate disclosure statements now allowed by Federal law are incorporated into the rule.

The commission limitations are removed for full–time, salaried employes of Medicare replacement policies.

Require guaranteed issue of certain Medicare supplement plans for people who terminate from defined employe welfare benefit plan, Medicare+Choice plans or insolvent issuers or nonissuer organizations.

The outline of coverage and the Notice of Changes in Medicare are updated to reflect current requirements.

The requirements for disclosure statements related to Long Term Care policies are eliminated.

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

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

Notice is hereby given that pursuant to ss. 29.174 (3) and 227.11 (2) (a), Stats., interpreting s. 29.174 (2), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 10.104 (4) (b) and 10.28, Wis. Adm. Code, relating to deer management units 73C (Iowa and Grant counties) and 75 (Iowa and Lafayette counties).

Agency Analysis

The proposed rule will extend the western boundary for Unit 73C. The unit numbering will change Unit 73 to 73D and Unit 73C will become Unit 73E. The proposed rule will also divide Unit 75 into two management units. The Iowa county portion of Unit 75 will become Unit 75C and the Lafayette county portion will be 75D.

Initial Regulatory Flexibility Analysis

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

Environmental Assessment

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

Hearing Information

Notice is hereby further given that the hearing will be held on:

Date & Time	Location
September 8, 1998 **Tuesday** **7:00 p.m.**	**Basement, Sheriff's Dept.** **1205 N. Bequette St.** **DODGEVILLE, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Mytton at (608) 266–2194 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. William Mytton
Bureau of Wildlife Management
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **September 10, 1998**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WM–33–98] and fiscal estimate may be obtained from Mr. Mytton.

Fiscal Estimate

Summary of Rule:

This rule modifies the boundaries of deer management units 73C (Grant & Iowa counties) and 75 (Iowa & Lafayette counties).

Fiscal Impact:

Adoption of the rule will require revision of the statewide deer management unit map. This map is available in an electronic format, and changes are inexpensively made.

Notice of Hearings

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

Notice is hereby given that pursuant to ss. 29.174 (3) and 227.11 (2) (a), Stats., interpreting s. 29.174 (1) and (2), Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 20.08 (10), Wis. Adm. Code, relating to extending the sunset on the tournament permitting rules until **December 31, 2001**. As yet, statutory authority to establish an external organization to sanction tournaments has not been granted.

Initial Regulatory Flexibility Analysis

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

Environmental Assessment

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

Hearing Information

Notice is hereby further given that the hearings will be held on:

Date & Time	Location
September 9, 1998 **Wednesday** **6:00 p.m.**	**Conference Room, DNR Office** **3911 Fish Hatchery Rd.** **FITCHBURG, WI**
September 10, 1998 **Thursday** **6:00 p.m.**	**Room 149** **Marathon Co. Courthouse** **500 Forest St.** **WAUSAU, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Simonson at (608) 266–5222 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Tim Simonson
Bureau of Fisheries Mgmt. & Habitat Protection
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **September 14, 1998**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH–45–98] and fiscal estimate may be obtained from Mr. Simonson.

Fiscal Estimate

Summary of Rule:

The Department is proposing revisions to extend the sunset date on the fishing tournament permit system, to allow time to gain statutory authority to form an external sanctioning body to administer the program. The rule being promulgated is based on biological and sociological findings and public comments, and will have no adverse impact on the fisheries of the state. This proposal contains rule changes approved by the Natural Resources Board and the rules themselves will have no fiscal impact on either state or local units of government.

The procedure required to implement these rules will have a minor fiscal effect on state government, due to one–time costs for travel to hearings and printing hearing materials.

The following assumptions were made in order to arrive at the fiscal estimate for this rule change:

1. The proposed rules do not affect relations with local units of government or other state agencies.
2. No liability or revenue fluctuations are anticipated.
3. No staffing is required by state or local units of government.
4. State DNR law enforcement personnel will enforce these rules during the normal course of their duties.
5. No fee collection is involved with these rule changes.

Fiscal Impact:

None anticipated.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Notice is hereby given that pursuant to ss. 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a), Stats., interpreting ss. 29.085, 291.74 (2) (a) and 29.33 (1), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 25.02 (25) and 25.05 (1) (d), Wis. Adm. Code, relating to commercial fishing for chubs in Lake Michigan.

Agency Analysis

Under current rules, no commercial chub fishing may occur at depths less than 60 fathoms during the winter fishing period, January 16 through the end of February. This rule revision opens waters of the northern chub fishing zone shallower than 60 fathoms but deeper than 55 fathoms to chub fishing during the winter period of license years 1998–1999 and 1999–2000. This rule revision also expands the area open to chub fishing to the north of the current southern chub fishing zone during the 1998–1999 and 1999–2000 license years. By revising the definition of the southern chub fishing zone, it allows chub fishing during the winter periods of these years in waters 60 fathoms deep or deeper north of the current southern chub fishing zone, but south of a line extending east of the entrance of Algoma harbor.

Initial Regulatory Flexibility Analysis

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

a. Types of small businesses affected:

Lake Michigan commercial fishers of chubs.

b. Description of reporting and bookkeeping procedures required:

No new procedures.

c. Description of professional skills required:

No new skills.

Environmental Assessment

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

Hearing Information

Notice is hereby further given that the hearings will be held on:

Date & Time	Location
August 18, 1998 **Tuesday** **11:30 a.m.**	**Room A150** **Door Co. Courthouse** **421 Nebraska St.** **STURGEON BAY, WI**
August 18, 1998 **Tuesday** **4:30 p.m.**	**Room 140** **DNR Southeast Region Hdqrs.** **2300 N. Martin L. King, Jr. Dr.** **MILWAUKEE, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266–8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Bill Horns
Bureau of Fisheries Mgmt. & Habitat Protection
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **August 18, 1998**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH–44–98] and fiscal estimate may be obtained from Mr. Horns.

Fiscal Estimate

Fiscal Impact:

None.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Notice is hereby given that pursuant to ss. 77.82 (1) (bn) and 227.11 (2) (a), Stats., interpreting s. 77.82 (1) (bn) 3., Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 46.15 (9) and the creation of s. NR 46.16 (8), Wis. Adm. Code, relating to the definition of "human residence" as it pertains to forest tax law landowners.

Agency Analysis

The Legislature has directed the Department to define "human residence" to include primary and secondary residences of forest tax law landowners. Under the proposed definition, a landowner will be required to file a statement on the attributes of any buildings on their tax law lands. Once a building exceeds the minimum specifications for a human residence, the land would be subject to withdrawal and assessed a penalty.

Initial Regulatory Flexibility Analysis

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

Environmental Assessment

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

Hearing Information

Notice is hereby further given that the hearings will be held on:

Date & Time	Location
August 11, 1998 **Tuesday** **10:30 a.m.**	**Room 1, 3rd Floor** **Outagamie Co. Adm. Bldg.** **410 S. Walnut St.** **APPLETON, WI**
August 11, 1998 **Tuesday** **10:30 a.m.**	**Auditorium** **U.W. Agriculture Research Ctr.** **Hwy. 70** **SPOONER, WI**

August 11, 1998	**Room 120**
Tuesday	**State Office Bldg.**
10:30 a.m.	**141 NW Barstow**
	WAUKESHA, WI
August 12, 1998	**County Board Room**
Wednesday	**Jackson Co. Courthouse**
10:30 a.m.	**307 Main**
	BLACK RIVER FALLS, WI
August 12, 1998	**Council Chambers**
Wednesday	**Dodgeville City Hall**
10:30 a.m.	**100 E. Fountain St.**
	DODGEVILLE, WI
August 12, 1998	**Council Chambers**
Wednesday	**Rhinelander City Hall**
10:30 a.m.	**135 S. Stevens St.**
	RHINELANDER, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ken Hujanen at (608) 266–3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to

Mr. Ken Hujanen
Bureau of Forestry
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **August 13, 1998**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FR–16–98] and fiscal estimate may be obtained from Mr. Hujanen.

Fiscal Estimate

The proposed 1999 stumpage rate schedule includes an average 7.82% increase in sawtimber prices and a 9.78% average net change in cordwood prices. The severance and yield tax collection in CY'97 (Calendar Year 1997) was $1,203,032. Of this, about 20% of the gross revenue is from sawtimber harvests. Eighty percent of the revenue was related to cordwood harvests. As a result, a 7.82% increase in sawtimber prices will produce an increase in gross revenue of about $18,810. A 9.78% increase in cordwood values will generate about $94,130 in additional revenue. The gross receipts are shared, the towns receiving roughly 50% and the state 50% of the revenue.

The other aspects of the rule change (a new definition of "human residence", along with the requirement of a landowner to file a statement on buildings on his or her lands) have no fiscal effects on state or local costs or revenues that can be directly estimated. In reality, more buildings will be denied entry under the Managed Forest Law (MFL) or be withdrawn, due to violations based on the new building limits, which will mean more land taxed as building sites and not as MFL land. A portion of the new buildings will also be kept below the new limitations and, in turn, be taxed lower than if they had been built to higher standards.

The net fiscal effect of the rule change will be about a $56,470 increase in state revenue and a $56,470 increase in local revenue.

Long–Range Fiscal Implications:

None.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Notice is hereby futher given that pursuant to ss. 29.595 and 227.11 (2) (a), Stats., interpreting ss. 20.370 (5) (fr), 29.595 and 29.598, Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 50.23, Wis. Adm. Code, relating to wildlife management and control grants for urban communities.

Agency Analysis

The proposed rule authorizes urban communities to receive 50% cost sharing for a variety of wildlife damage and control measures for white–tailed deer and Canada geese. The rule requires that participating communities gather public input on solving their wildlife damage problems, monitor and establish population goals, and describe control methods. The Department will evaluate proposals based on criteria included in the rule.

Initial Regulatory Flexibility Analysis

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

Environmental Assessment

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

Hearing Information

Notice is hereby further given that the hearing will be held on:

Date & Time	Location
August 13, 1998 **Thursday** **10:00 a.m.**	**Room 137B** **State Office Bldg.** **141 NW Barstow** **WAUKESHA, WI**

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

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to

Mr. Todd Peterson
Bureau of Wildlife Management
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **August 14, 1998**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WM–3–98] and fiscal estimate may be obtained from Mr. Peterson.

Fiscal Estimate

Summary of Rule:

This program was created in the FY97–99 (Fiscal Year 97–99) state budget and has spending authority for $25,000 annually from the wildlife damage surcharge account. The rule authorizes urban communities to receive 50% cost sharing for a variety of wildlife damage and control measures for white–tailed deer and Canada geese. The rule requires that participating communities gather public input on solving their wildlife damage problems, monitor and establish population goals, and describe control methods. The Department will evaluate proposals based on criteria included in the rule.

Fiscal Impact:

There will be some costs associated with establishing and administering the grant program, but it is assumed there will be a small number of grants. The Department can absorb these costs within the existing appropriation.

Utilizing the funding for the grant program will reduce the amount of revenue available for other wildlife damage claims.

Long−Range Fiscal Implications:

None.

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) (a), (b), (d) and (e), Stats., and interpreting ss. 450.01 (21), 450.11 (1m) and (5), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Phar 7.01 (1) (a), 8.06 (2) (intro.) and (a) (intro.) and 8.07 (2), 8.09 (1) (intro.), (2) (intro.), (3) and (4); and to create s. Phar 7.08, relating to the transmission and receipt of electronic prescription orders.

Hearing Information

Date & Time	Location
August 12, 1998	**Room 179A**
Wednesday	**1400 E. 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 **August 26, 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) (a), (b), (d) and (e)

Statutes interpreted: ss. 450.01 (21), 450.11 (1m) and (5)

The proposed order of the Pharmacy Examining Board is in response to 1997 Wis. Act 27 (the "Act") which amended several sections of ch. 450, Stats., to specifically authorize the electronic transmission of prescription orders from prescribers to pharmacies. Prior to the new law, the statutes alluded specifically only to oral or written prescription orders. The objective of the proposed rules is to assure the appropriate use of electronic transmission systems in conveying prescription orders, and to provide guidance to the profession in adopting procedures and systems assuring the validity, accuracy and security of prescription orders received electronically from prescribers.

Section 1 amends s. Phar 7.01 (1) (a), to provide that pharmacists are required to review all electronically transmitted prescription orders for therapeutic compatibility and legality, as is currently required for oral and written prescription orders they receive.

Section 2 creates s. Phar 7.08, setting forth the requirements that must be met to authorize a pharmacist to dispense pursuant to an electronically transmitted prescription order. Among these are requirements that the electronic prescription orders must be sent only at the option of the patient and to the pharmacy chosen by the patient; they must contain identifying information regarding the sender and contain language to the effect that the prescription order is being "Electronically Transmitted"; contain all the information required for a valid prescription order under law (e.g., patient name, prescriber name, medication name, directions for use, etc.); and contain either the prescriber's electronic signature or other secure method of validating the order as coming from a prescriber. Additionally, pharmacists are required to adopt measures assuring the security, integrity and confidentiality of the information received by electronic transmission of prescription orders.

Sections 3, 4 and 5 make technical amendments to existing rules consistent with the intent of the Act, by specifically authorizing the renewal of schedule III and IV controlled substance orders by electronic transmission and permitting the emergency and partial dispensing of schedule II controlled substances pursuant to electronically transmitted prescription orders.

Text of Rule

SECTION 1. Phar 7.01 (1) (a) is amended to read:

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

SECTION 2. Phar 7.08 is created to read:

Phar 7.08 Prescription orders transmitted electronically. (1) Except as otherwise prohibited by law, prescription orders may be accepted and dispensed if they have been transmitted electronically from a practitioner or his or her designated agent to a pharmacy via computer modem or other similar electronic device. Prescription orders transmitted by facsimile machine are not considered electronic prescription orders; but rather, written prescription orders.

(2) A pharmacist may dispense a prescription pursuant to a prescription order transmitted electronically, if the pharmacist assures the prescription order does all of the following:

(a) Was sent only to the pharmacy of the patient's choice and only at the option of the patient, with no intervening person or third party having access to the prescription order other than to forward it to the pharmacy.

(b) Identifies the individual sender's name and telephone number for oral confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission.

(c) Is designated "electronically transmitted prescription", or with similar words or abbreviations to that effect.

(d) Contains all other information that is required in a prescription order under law.

(3) The prescribing practitioner's electronic signature, or other secure method of validation shall be provided with the prescription order electronically transmitted via computer modem or other similar electronic device.

(4) Any visual or electronic document received shall only be accessible within the professional service area of the pharmacy to protect patient confidentiality and assure security.

(5) Any pharmacist who receives any prescription order electronically shall ensure the security, integrity and confidentiality of the prescription order and any information contained therein. To maintain the confidentiality of patient records, the electronic system shall have adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records. Once the prescription has been dispensed, any alterations in prescription order drug data shall be documented including the identification of the pharmacist responsible for the alteration.

(6) Access to the electronic mail system for the receipt of prescription orders electronically may only be acquired by use of a password or passwords, known only to individuals authorized to access the system.

(7) A pharmacist may not use any electronic device to circumvent his or her responsibilities with regard to documenting, authenticating and verifying prescription orders or in order to circumvent other pharmacy laws.

Note: Prescription orders for schedule II controlled substances may not be transmitted electronically except as emergency orders, subject to the same requirements for oral emergency orders for schedule II controlled substances. See s. 961.38 (1r) and (2), Stats., and s. Phar 8.09.

SECTION 3. Phar 8.06 (2) (intro.) and (2) (a) (intro.) are amended to read:

Phar 8.06 (2) The prescribing practitioner may authorize renewals of schedule III or IV controlled substances on the original prescription order or through ~~a verbal~~ an electronic or oral renewal authorization transmitted to the pharmacist. The following conditions must be met:

(a) The pharmacist obtaining the ~~verbal~~ electronic or oral authorization shall note on the prescription order, medication profile record or readily retrievable and uniformly maintained document the following information:

SECTION 4. Phar 8.07 (2) is amended to read:

Phar 8.07 (2) The partial dispensing of a prescription containing a controlled substance listed in schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency ~~verbal~~ electronic or oral prescription order, and the pharmacist makes a notation of the quantity supplied on the face of the written prescription order or written record of the emergency ~~verbal~~ electronic or oral prescription order. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing. If the remaining portion is not dispensed within the 72 hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond the 72 hours without a new prescription order.

SECTION 5. Phar 8.09 (1) (intro.), (2) (intro.), (3) and (4) are amended to read:

Phar 8.09 (1) For the purpose of authorizing an electronic or oral prescription order for a schedule II controlled substance, the term "emergency" means those situations in which the prescribing practitioner determines that:

(2) In an emergency a pharmacist may dispense a controlled substance listed in schedule II upon receiving electronic or oral authorization of a practitioner if:

(3) If the practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the electronic or oral authorization came from an authorized practitioner, which may include a call back to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory and other good faith efforts to insure the practitioner's identity.

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

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 and Licensing
1400 E. Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

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.

Commerce (CR 98–52):
Ch. Comm 87 – Relating to the private onsite wastewater treatment (sewage) system replacement or rehabilitation grant program (Wisconsin Fund).

Commerce (CR 98–61):
Ch. Comm 119 – Relating to the mining economic development grants and loans program.

Commerce (CR 98–62):
Ch. Comm 106 – Relating to the Wisconsin development fund.

Commerce (CR 98–63):
Ch. Comm 116 – Relating to the rural economic development program.

Commerce (CR 98–64):
Ch. Comm 114 – Relating to the minority business finance program.

Funeral Directors Examining Board (CR 98–57):
Chs. FD 1 to 5 – Relating to the practice of funeral directors.

Insurance (CR 98–58):
S. Ins 2.30 – Relating to adopting additional annuity mortality tables.

Natural Resources (CR 95–223):
SS. NR 518.02, 718.03, 718.09, 718.11 and 718.13 – Relating to the remediation of soil contamination through landspreading.

Natural Resources (CR 97–131):
S. NR 485.04 – Relating to emission limitations for motor vehicles.

Natural Resources (CR 97–146):
S. NR 5.21 (3) – Relating to the slow–no–wake speed restriction on Tombeau Lake, Walworth County.

Natural Resources (CR 98–20):
SS. NR 21.02, 21.04, 21.10, 21.11 and 21.12 – Relating to commercial fishing in the Wisconsin–Minnesota boundary waters.

Natural Resources (CR 98–44):
S. NR 45.12 and ch. NR 8 – Relating to implementation of the automated license issuance system.

Natural Resources (CR 98–56):
SS. NR 46.02, 46.15, 46.16 and 46.30 – Relating to the administration of the forest crop law and the managed forest law.

Natural Resources (CR 98–66):
Ch. NR 300 – Relating to fees for waterway and wetland permit decisions.

Public Service Commission (CR 98–49):

SS. PSC 160.05, 160.11 & 160.17 and ch. PSC 161 – Relating to establishing an educational telecommunications access program (Per TEACH WI).

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.

Arts Board (CR 98–13):
An order creating chs. AB 1 to 4, relating to the criteria and procedures under which the Wisconsin Arts Board administers the funds available for grants to individual artists and arts organizations and administers the program of arts in public buildings.
Effective 09–01–98.

Commerce (CR 98–17):
An order affecting chs. Comm 51 and ILHR 66 and ss. ILHR 53.63 and 57.01, relating to the design and construction of commercial buildings and uniform multifamily dwellings.
Effective 09–01–98.

Health and Family Services (CR 98–36):
An order affecting ss. HSS 138.01, 138.03, 138.04 and 138.05, relating to subsidized health insurance premiums for people with human immunodeficiency virus (HIV) infection.
Effective 09–01–98.

Insurance (CR 98–15):
An order creating 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.
Effective 09–01–98.

Insurance (CR 98–48):
An order affecting 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 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.
Effective 09–01–98.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the ***July 31, 1998*** *Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

Commerce (CR 98–7):
An order creating ch. Comm 110, relating to the Brownfields grant program.
Effective 08–01–98.

Employe Trust Funds (CR 97–143):
An order affecting s. ETF 41.02, relating to long–term care insurance.
Effective 08–01–98.

Financial Institutions (CR 98–4):
An order affecting ss. S–L 13.03 and DFI–SL 13.03 (3) (d) 6., relating to creating an exception for savings and loan associations to the 10% down payment requirement for mortgage loan made to meet the objectives of the federal Community Reinvestment Act.
Effective 08–01–98.

Health & Family Services (CR 97–98):
An order repealing and recreating ch. HFS 139, relating to qualifications of public health professionals employed by local health departments.
Effective 08–01–98.

Health & Family Services (CR 97–132):
An order creating ch. HFS 140, relating to required services of local health departments.
Effective 08–01–98.

Health & Family Services (CR 97–135):
An order creating ch. HFS 173, relating to regulation of tattooists and tattoo establishments and regulation of body piercers and body–piercing establishments.
Effective 08–01–98.

Health & Family Services (CR 98–46):
An order amending ss. HFS 149.02 (6) and 149.03 (7) (a), relating to vendor authorization expiration and reauthorization dates under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
Effective 08–01–98.

Hearing & Speech Examining Board (CR 98–12):
An order affecting chs. HAS 1 to 7, relating to hearing instrument specialists.
Effective 08–01–98.

Natural Resources (CR 97–140):
An order affecting ss. NR 10.001 and 10.102, relating to bear hunting.
Effective 08–01–98.

Natural Resources (CR 97–151):
An order affecting ss. NR 10.01, 10.104, 10.27 and 10.28, relating to deer hunting and bonus antlerless deer permits.
Effective 08–01–98.

Natural Resources (CR 98–25):
An order creating ch. NR 166, relating to the safe drinking water loan program.
Effective 08–01–98.

Public Instruction (CR 98–10):
An order creating ch. PI 36, relating to full–time and part–time open enrollment.
Effective 08–01–98.

Public Instruction (CR 98–11):
An order affecting ch. PI 40, relating to the youth options program.
Effective 08–01–98.

Regulation & Licensing (CR 98–8):
An order affecting chs. RL 11 to 13, 16 to 18 and 22 to 26, relating to real estate brokers and real estate salespeople.
Effective 08–01–98.

Transportation (CR 98–40):
An order amending s. Trans 276.07 (31), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.
Effective 08–01–98.

Veterans Affairs (CR 98–37):
An order affecting chs. VA 1 to 4, 11 and 13, relating to the health care aid grant, retraining grant, primary mortgage loan, economic assistance loan, consumer loan and veterans assistance programs.
Effective 08–01–98.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in July, 1998, and will be effective August 1, 1998. For additional information, contact the Revisor of Statutes Bureau at (608) 266–7275.

REVISIONS

Commerce:

Financial Resources for Businesses & Communities, Chs. Comm 105–128

Ch. Comm 110 (entire chapter)

Employe Trust Funds:

Ch. ETF 41
S. ETF 41.02 (4) and (5)

Financial Institutions

Savings Institutions (Savings and Loan)

Ch. DFI–SL 13
S. DFI–SL 13.03 (3) (d)

Health & Family Services:

Health, Chs. HFS/HSS 110––

Ch. HFS 139 (entire chapter)

Ch. HFS 140 (entire chapter)

Ch. HFS 149
S. HFS 149.02 (6)
S. HFS 149.03 (7) (a)

Ch. HFS 173 (entire chapter)

Hearing and Speech Examining Board

Ch. HAS 1
S. HAS 1.005 (entire section)
S. HAS 1.01 (1), (2a) (a) and (b), (2m), (2n), (3), (4), (5m), (5n) and (7)

Ch. HAS 2
S. HAS 2.01 (3) and (4)
S. HAS 2.02 (entire section)

Ch. HAS 3 (entire chapter)

Ch. HAS 4
S. HAS 4.02 (1) and (5)
S. HAS 4.03 (1)
S. HAS 4.04 (entire section)

Ch. HAS 5
S. HAS 5.01 (entire section)
S. HAS 5.02 (1), (2) (intro.), (c), (d), (dm), (g) and (h)

Ch. HAS 6
S. HAS 6.02 (10)
S. HAS 6.03 (3)
S. HAS 6.04 (3) and (7)
S. HAS 6.06 (4)
S. HAS 6.08 (1) (c), (d) and (e), (2) (b) and (3)
S. HAS 6.085 (entire section)
S. HAS 6.09 (1) (b) and (g), and (2) (k)

Ch. HAS 7
S. HAS 7.03 (1) (intro.) and (2) (intro.) and (b)
S. HAS 7.05 (1) (intro.) and (b) and (2) (intro.) and (b)

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Ch. NR 10
S. NR 10.001 (1k), (3), (3h), (9) and (9c)
S. NR 10.01 (3) (e) and (es)
S. NR 10.102 (1) (a) to (c), (e) and (f), (2), (3), (4), (5) and (6)
S. NR 10.104 (8) (e)
S. NR 10.27 (5) (i), (6) and (7)
S. NR 10.28 (1) map

(Environmental Protection––General, Chs. NR 100––)

Ch. NR 166 (entire chapter)

Public Instruction:

Ch. PI 36 (entire chapter)

Ch. PI 40
S. PI 40.01 (entire section)
S. PI 40.02 (entire section)
S. PI 40.03 (1), (3) to (5) and (9)
S. PI 40.04 (1) (a), (d) and (e), (2), (3) (a), (b), (c), (cm) and (d), (4) (a) and (b) and (5)
S. PI 40.05 (3) (a)
S. PI 40.055 (entire section)
S. PI 40.06 (1), (2) (d), (e) and (g), (4) (b) and (c) and (6)
S. PI 40.07 (1) (a), (b) and (c), (1m) (a) to (c), (2) and (3)
S. PI 40.08 (1) (a)
S. PI 40.09 (1), (2) and (3)
S. PI 40.10 (entire section)

Regulation & Licensing:

Ch. RL 11
S. RL 11.01 (entire section)
S. RL 11.02 (intro.), (2), (3), (4), (5) and (6)

Ch. RL 12
S. RL 12.005 (entire section)
S. RL 12.01 (1) (a), (b) and (c) and (2) (a)
S. RL 12.02 (1) (intro.), (2), (4) and (5)
S. RL 12.025 (3)
S. RL 12.026 (entire section)
S. RL 12.04 (2) (intro.) and (a)

Ch. RL 13 (entire chapter)

Ch. RL 16
S. RL 16.02 (2), (3), (4) and (5)
S. RL 16.06 (4)
S. RL 16.07 (entire section)

Ch. RL 17
S. RL 17.025 (entire section)

Ch. RL 18
S. RL 18.02 (3) and (5) (intro.)

Ch. RL 22
S. RL 22.005 (entire section)
S. RL 22.01 (1) to (7), (8) (a) to (e), (9) (b), (c) and (e) and (10) (b) to (d)

Ch. RL 23
S. RL 23.02 (entire section)
S. RL 23.04 (entire section)
S. RL 23.05 (entire section)

Ch. RL 24
S. RL 24.02 (7) and (11)
S. RL 24.17 (3)

Ch. RL 25
S. RL 25.01 (1)
S. RL 25.02 (1) (intro.), (a) and (b)
S. RL 25.03 (3) (r)
S. RL 25.035 (1)
S. RL 25.06 (2) (a)
S. RL 25.065 (7)
S. RL 25.066 (2) (b)

Ch. RL 26
S. RL 26.01 (entire section)

Transportation:

Ch. Trans 276
S. Trans 276.07 (31)

Veterans Affairs:

Ch. VA 1
S. VA 1.12 (5)
S. VA 1.17 (entire section)
S. VA 1.18 (entire section)

Ch. VA 2
S. VA 2.01 (1) (an), (c), (d) and (f) and (2) (b)
S. VA 2.03 (1) (e), (2) (a), (b), (c), (d), (g) and (h), (3) (a), (b) and (c), and (5)

Ch. VA 3 (entire chapter)

Ch. VA 4
S. VA 4.01 (6m), (8m) and (15)
S. VA 4.03 (13), (14) and (15)

Ch. VA 11 (entire chapter)

Ch. VA 13
S. VA 13.05 (entire section)

EDITORIAL CORRECTIONS

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

Commerce:

Liquefied Natural Gas, Ch. Comm 12

Ch. Comm 12 was renumbered from ch. ILHR 12 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

Solar Energy Systems, Ch. Comm 71

Ch. Comm 71 was renumbered from ch. ILHR 71 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

Illumination, Ch. Comm 73

Ch. Comm 73 was renumbered from ch. ILHR 73 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats.

Financial Institutions

Savings Institutions (Savings and Loan)

Chs. DFI–SL 1 to 20 were renumbered from chs. S–L 1 to 20 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

Health & Family Services:

Health, Chs. HFS/HSS 110––

Ch. HFS 174 was renumbered from ch. HSS 174 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

Veterans Affairs:

Ch. VA 1
S. VA 1.02 (entire section)

Ch. VA 4
S. VA 4.03 (9) (c)
S. VA 4.05 (5) (en)

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Commerce (CR 98–7)

Ch. Comm 110– Brownfields Grant Program.

Summary of Final Regulatory Flexibility Analysis:

The Department estimates a large percent of the grants applied for by communities ultimately reach small businesses in one form or another. The grants may be used by eligible communities to fund projects related to brownfields.

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

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

Summary of Comments:

No comments were reported.

2. Employe Trust Funds (CR 97–143)

Ch. ETF 41 – Long–term care insurance.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses.

Summary of Comments:

No comments were reported.

3. Financial Institutions–Savings & Loan (CR 98–4)

S. DFI–SL 13.03 – Creating an exception to the required 90% down payment or private mortgage insurance rule for loans made to comply with the federal Community Reinvestment Act.

Summary of Final Regulatory Flexibility Analysis:

This rule will provide an exception for all S&Ls – including S&Ls covered in the definition of "small business" under s.227.1 14(1)(a), Stats. from requiring at least a 10% down payment for a mortgage loan. The rule allows a loan up to 100% of the real estate security if the loan is to meet the objectives of the federal Community Reinvestment Act. Exempting small businesses from this rule would be contrary to this objective and not in the best interests of the public.

Summary of Comments:

No comments were reported.

4. Health & Family Services (CR 97–98)

Ch. HFS 139 – Qualifications of public health professionals employed by local health departments.

Summary of Final Regulatory Flexibility Analysis:

These rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to the Department, to local governments that operate health departments, to local boards of health that govern health departments, to local public health departments, and to persons applying for appointment as, or who are employed as, a local health officer, public health sanitarian, director of an environmental health program, public health nurse or director of a general public health nursing program with a local public health department.

Summary of Comments:

No comments were reported.

5. Health & Family Services (CR 97–132)

Ch. HFS 140 – administrative rules relating to required services of local health departments.

Summary of Final Regulatory Flexibility Analysis:

These rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to the Department, to local governments that operate health departments, to local boards of health that govern health departments and to local public health departments.

Summary of Comments:

No comments were reported.

6. Health & Family Services (CR 97–135)

Ch. HFS 173 – Tattooing and body piercing.

Summary of Final Regulatory Flexibility Analysis:

Most of the estimated *125* tattoo, body–piercing and combination tattoo and body– piercing establishments in Wisconsin are small businesses as "small business" is defined ins. 227.114 (1)(a), Stats.

Sections 252.23 and 253.24, Stats., prohibit persons from doing tattooing or body piercing or operating a tattooing or body–piercing establishment unless licensed by the Department, and direct the Department to promulgate rules setting standards and procedures for the annual issuance of licenses, standards for the performance of tattooing and body piercing and standards for tattooing and body–piercing establishments. The rules and their enforcement are intended to help protect the health and safety of patrons of tattoo and body–piercing establishments.

The standards included in the rules are minimal standards for protecting public health and safety. They do not at this time include performance standards.

Summary of Comments by Legislative Standing Committees:

No comments were received.

7. Health & Family Services (CR 98–46)

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

Summary of Final Regulatory Flexibility Analysis:

These rule amendments will affect all grocery stores and pharmacies that are approved vendors under the WIC Program, as well as Department WIC staff and local WIC project staffs. Most of the 1111 approved vendors are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

The rule amendments move back the standard dates for expiration and reauthorization of biennial vendor authorizations by two months, from December 31/January 1 to October 31/November 1, as a convenience for vendors. For vendors the end of the calendar year is their busiest time of year. To become reauthorized a vendor must fill out lengthy application materials and receive training. There will usually be more time for this at another time of year.

No comments were received from small businesses during public review of the rule changes.

No new reporting, bookkeeping or other procedures are required for compliance with the rule changes.

No other measures or investments must be undertaken by small businesses to comply with the rule changes.

Summary of Comments by Legislative Standing Committees:

No comments were received.

8. Hearing & Speech Examining Board (CR 98–12)

Chs. HAS 1–6 – Hearing instrument specialists.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

9. Natural Resources (CR 97–140)

Ch. NR 10 – Bear hunting.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule regulates individuals; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the previous Senate Agriculture and Environmental Resources Committee and the current Senate Environment and Energy Committee. There were no comments or recommendations.

10. Natural Resources (CR 97–151)

Ch. NR 10 – Deer hunting and bonus anterless deer permits.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules relate to hunting and are applicable to individual hunters and impose no compliance or reporting requirements for small businesses. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

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

11. Natural Resources (CR 98–25)

Ch. NR 166 – Safe drinking water loan program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule is a loan program and does not regulate small businesses. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Environment Committee and the Senate Environment and Energy Committee. There were no comments or recommendations.

12. Public Instruction (CR 98–10)

Ch. PI 36 – Full–time and part–time open enrollment.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

13. Public Instruction (CR 98–11)

Ch. PI 40 – Youth options program.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

14. Regulation & Licensing (CR 98–8)

Chs. RL 11 to 25 – Real estate brokers and real estate salespersons.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

15. Transportation (CR 98–40)

Ch. Trans 276 – Allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

16. Veterans Affairs (CR 98–37)

Chs. VA 1–4, Health care aid grant, retraining grant, primary mortgage loan, economic assistance loan, consumer loan and veterans assistance programs.

Summary of Final Regulatory Flexibility Analysis:

This rule is not expected to have an adverse impact on small businesses.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

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

Executive Order 338. Relating to a Proclamation of a State of Emergency.

Executive Order 339. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half−Staff as a Mark of Respect for the Late Deputy Sheriff Michael Villiard of the Sawyer County Sheriff's Office.

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