

WISCONSIN ADMINISTRATIVE REGISTER

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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 (4)

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

4. Rules adopted amending ss. ATCP 81.50 (2), 81.51 (2), and 81.52 (2), relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or “not graded.” It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin’s dairy industry plays a major role in our state’s economy. Approximately \$3 billion or 90% of Wisconsin’s milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state’s economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state’s dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998
Effective Date: August 8, 1998
Expiration Date: January 4, 1999
Hearing Date: September 14, 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
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Hearing Date: May 29, 1998
Extension Through: November 16, 1998

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

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

(Uniform Multifamily Dwellings, Ch. ILHR 66)

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
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Expiration Date: November 14, 1998

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 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

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
Hearing Date: August 31, 1998
Extension Through: December 10, 1998

EMERGENCY RULES NOW IN EFFECT

Commerce

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

Rules adopted creating **ch. Comm 118**, relating to the Wisconsin Promise Challenge Grant Program.

Finding of Emergency

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated \$424,000 for fiscal year 1998–99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from \$3,000 to \$15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

Publication Date: September 12, 1998
Effective Date: September 12, 1998
Expiration Date: February 9, 1999

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
Extension Through: October 31, 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
Hearing Date: September 24, 1998

EMERGENCY RULES NOW IN EFFECT

Health and Family Services (Community Services, Chs. 30—)

Rule was adopted amending s. **HFS 94.24 (2)(e)**, relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

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

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in

written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999

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
Extension Through: November 30, 1998

2. 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
Hearing Date: September 29, 1998

3. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead–based paint hazards.

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:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal

funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.
- Revises how worker-safety training is received by requiring that worker-safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead-based paint activities.

Accreditation

- Adds a mandatory hands-on skills assessment for hands-on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker-safety training, followed by a 16-hour worker course, with an additional 16-hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no-expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker-homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice

requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: August 29, 1998

Effective Date: August 29, 1998

Expiration Date: January 25, 1999

4. Rules adopted revising **ch. HFS 124**, relating to designation of critical access hospitals.

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:

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105–33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; provide inpatient care for a patient for a period not to exceed 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i – 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital. The rule changes are being made by emergency order to prevent the imminent closing of several rural hospitals and the consequent loss of readily accessible hospital services for people in the rural areas served by those hospitals.

Publication Date: September 12, 1998

Effective Date: September 12, 1998

Expiration Date: February 9, 1999

Hearing Date: October 13, 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. 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

3. 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

4. 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

5. 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

6. Rules adopted revising **s. NR 10.01 (1)**, relating to the 1998 migratory game bird season.

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. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rulemaking procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 15, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–Water Regulation, Chs. NR 300–)

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

Finding of Emergency

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

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

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

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

Publication Date: April 1, 1998
Effective Date: April 1, 1998
Expiration Date: August 29, 1998
Hearing Dates: May 27 and 28, 1998
Extension Through: October 27, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–Remediation, Chs. NR 700–)

Rules adopted creating **ch. NR 749**, relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

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 that in order for the Department to facilitate the cleanup and redevelopment of many contaminated sites that could adversely affect public health, safety or welfare, fee revenue must be generated immediately in order to timely fill the program revenue positions which were authorized in the recent budget bill.

Finding of Emergency

Publication Date: September 19, 1998
Effective Date: September 19, 1998
Expiration Date: February 16, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental school choice program.

Finding of Emergency

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

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998–99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996–97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: August 5, 1998
Effective Date: August 5, 1998
Expiration Date: January 1, 1999
Hearing Date: October 13, 1998

2. Rules adopted creating **ch. PI 38**, relating to grants for peer review and mentoring.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the

public welfare. A statement of the facts constituting the emergency is:

Under s. 115.405 (2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998–99 school year. since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: October 20, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

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

ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Technology for Educational Achievement in Wisconsin (TEACH) initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly enacted s. 196.2 18(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department) and Technology for Educational Achievement (TEACH) in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program. Section 9141 of Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats.

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

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

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

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

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

◆ Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any

other classroom equipment or personnel costs associated with scheduling.

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

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

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

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

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

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

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

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

Exemption From Finding of Emergency

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

Publication Date: February 27, 1998

Effective Date: February 27, 1998

Expiration Date: July 26, 1998

Hearing Date: May 5, 1998

Extension Through: November 22, 1998

- Rules were adopted amending s. PSC 4.30 (4) (a) and (5) (a) and (b), relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission’s review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission’s review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect

immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: July 17, 1998

Effective Date: July 17, 1998

Expiration Date: December 14, 1998

EMERGENCY RULES NOW IN EFFECT

Revenue

Rules adopted amending s. Tax 2.39 and creating s. Tax 2.395, relating to the use of an alternative apportionment method.

Finding of Emergency

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

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

Publication Date: September 29, 1998

Effective Date: September 29, 1998

Expiration Date: February 26, 1999

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
Extension Through: December 26, 1998

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted revising **ch. Trans 328**, relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is that new federal hazardous material rules include intrastate transportation. Within the revised rules are exceptions allowed for farm operations, the use of certain nonspecification packages and permanently mounted nonspecification nonbulk metal tanks used to transport flammable liquids in intrastate commerce. The exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998 allowing those exceptions. Failure to implement the allowed exceptions would have a negative impact on the state agricultural community as well as other businesses who would benefit from them.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 5, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **ss. HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

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:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

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

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

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:

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

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

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATCP 77 – Relating to evaluation of laboratories that analyze milk and water.

Description of policy issues:

Preliminary objectives:

Revise the laboratory evaluation rule to more equitably assess the fees paid by laboratories in relation to the services they receive and the costs to the Department in certifying laboratories.

Preliminary policy analysis:

This rule will help to focus evaluation efforts for milk and water laboratories, to better serve the needs of the State and the customers of the evaluation program, and will equitably assess fees necessary for the recovery of costs of the program.

The primary customers of the laboratory evaluation program are Wisconsin dairy plants which sell milk into interstate commerce. As a prerequisite to the interstate shipment of milk, dairy plants must comply with testing requirements to assure the quality and safety of the milk supply. Testing must be performed in laboratories that are approved by the shipping state.

The safety of public and private water supplies is measured in part by effective laboratory testing of water. The water laboratory evaluation program provides assurance to the state and laboratory customers that water testing is performed appropriately and accurately.

This rulemaking proposes to increase and more equitably distribute fees. The laboratory evaluation program is totally funded by user fees. The proposed rule seeks to apportion fees equitably to offset the costs of the program. The objective is to have the fee more closely reflect the cost of evaluation for individual laboratories.

Policy alternatives:

Policy alternatives relate primarily to the funding of the laboratory evaluation program and the assessment of fees. These alternatives are rather limited because 1995 Wis. Act 27 requires the Department to promulgate rules to offset the cost of the certification of laboratories.

Currently, the laboratory evaluation program is totally funded by user fees. Funding could be shifted to include general purpose revenue (GPR); however, since the benefits of the laboratory evaluation program accrue primarily to the dairy industry by fulfilling requirements for interstate sale of milk, a shift toward greater GPR funding does not seem appropriate.

Laboratory evaluation fees could remain at the current level. If fees remain at the current level and the laboratory evaluation program continues to be totally funded by the program revenue (PRO) generated by these fees, the laboratory evaluation program will become increasingly under-funded and will cease to operate.

Laboratory evaluation fees could be increased and assessed in a more equitable manner. This approach is the most prudent from a management perspective and best meets the needs of this program's primary customer, Wisconsin's dairy industry.

Statutory authority:

The Department proposes to develop rules governing the evaluation and certification of milk and water laboratories under authority of ss. 93.07(1), 93.12(5) and 93.12(7), Stats.

The rules would interpret s. 93.12, Stats.

Staff time required:

The Department estimates that it will use approximately 0.5 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 will assign existing staff to develop this rule.

Insurance, Commissioner of

Subject:

SS. Ins 17.01, 17.275 and 17.28 – Relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1999, confidential claims records, adding physician specialties and a late fee for late filing of certificates of insurance.

Description of policy issues:

A statement of the objective of the proposed rule:

To establish the annual fees which participating health care providers must pay to the patients compensation fund as required by statute for the fiscal year beginning July 1, 1999 and to further define which fund claims records are to be kept confidential in accordance with open records law in s. Ins 17.275 and to add certain physician specialties to those listed in s. Ins 17.28 (3) (c) and to impose a late fee on insurers and self-insurers who are late in filing certificates of insurance under s. Ins 17.28 (5).

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:

Existing policies are as set forth in the statutes cited in the next section and in the rules themselves; while insurance industry and health care provider input will be considered, no new or alternate policies are contemplated at this time.

Statutory authority for the rule:

Sections 601.41 (3), 655.004, 655.23 (3) (b), (c) and (4), 655.27 (3) and 655.61, Stats.

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

80–130 hours estimated state employee time to promulgate these rules; other resources will include the review and recommendation of the Board's actuarial committee based on the analysis and recommendations of the fund's actuaries and the Director of State Courts.

Insurance, Commissioner of

Subject:

SS. Ins 51.01 and 51.60 – Relating to risk-based capital requirements for health insurers.

Description of policy issues:

A statement of the objective of the proposed rule:

Currently Wisconsin requires life and property and casualty insurers to maintain certain risk-based capital levels. Health insurers will, under this rule, be required to conform to standards recently developed by the National Association of Insurance Commissioners (NAIC) for that purpose. The objective is to establish solvency standards for health insurers in order to increase protections for Wisconsin citizens who are covered by health insurance.

Statutory authority for the rule:

SS. 623.11 & 601.42, Stats.

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

40 hours.

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

Subject:

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

Description of policy issues:

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

This rule sets total allowable commercial harvest limits for lake whitefish caught in Lake Michigan. Commercial and sport fishers will be affected and will be interested in the issue.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Department biologists periodically review the harvest limits for commercial fish species in light of new information about fish population levels. The overall harvest limits determine the quotas allocated to individual fishers. Currently, data on lake whitefish in Lake Michigan are being reviewed, utilizing data collected in 1997 and 1998. A recommendation to increase, decrease, or retain the current harvest limit for whitefish will be made by November 1, 1998.

Although Department biologists process samples, analyze data, and develop recommendations regarding changes in harvest limits as quickly as possible, the rule-making process often delays adjustments, whether they be up or down. In order to expedite quota adjustments, in anticipation of a change one way or the other, the Department is now initiating the process. The specific recommendation will be presented to the Natural Resources Board in December.

Statutory authority:

SS. 29.085, 29.33 and 227.11, Stats.

Anticipated time commitment:

The anticipated time commitment is 23 hours. One public hearing is proposed to be held in January, 1999 at Sturgeon Bay.

Natural Resources (Remediation & Redevelopment, Chs. NR 700--)

Subject:

Chs. NR 700–series – Relating to the definition of people eligible to participate in the Voluntary Party Liability Exemption process, s. 292.15, Stats., and Interim Guidance Authorization.

Description of policy issues:

The Department proposes to codify the eligibility criteria for participating in the Voluntary Party Liability Exemption Program, s. 292.15, Stats. In the 1997–99 state budget, the legislature changed the definition of persons eligible to participate in this program from “purchaser” to “voluntary party.” Under s. 292.15 (1) (f), Stats., a voluntary party is a person who did not “intentionally or recklessly cause the release of a hazardous substance on the property.” The proposed rule would define the terms “intentionally caused” and “recklessly caused.” References to the liability exemption in ch. NR 700, Wis. Adm. Code, will be amended as well, to reflect the change in terminology from “purchaser,” to “voluntary party.”

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

Policy issues that will be addressed include:

- A determination of what actions, in the context of environmental protection and regulation, constitute “intentional” or “reckless” actions that result in the release of a hazardous substance;

- An analysis of how staff workload will be affected; and
- The potential fiscal impact of expanding the class of individuals eligible for the liability exemption.

Interested parties are likely to include environmental consultants, Petroleum Marketers of Wisconsin, Wisconsin Manufacturers and Commerce, local units of government, and various environmental advocacy groups.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Historically, “purchasers” were eligible to participate in the s. 292.15, Stats., liability exemption program. In the 1997–99 budget, the Legislature expanded the class of persons eligible to participate to include all who did not “intentionally or recklessly cause the release of a hazardous substance on the property.” Rules are necessary in order to give staff and interested parties guidelines for making this determination. Draft Interim Guidance has been developed which, pending Natural Resources Board approval, will be used by staff while rulemaking proceeds.

Statutory authority:

S. 292.15 (1) (f) , Stats.

Anticipated time commitment:

The anticipated time commitment is 286 hours. Five public hearings are proposed to be held in January, 1999 at Waukesha, Green Bay, Eau Claire, Superior and Madison.

Public Instruction

Subject:

S. PI 3.03 (6) (b) – Relating to alternative teaching permits.

Description of policy issues:

Rationale for proposed rule development:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Originally, the permit could be issued only in the subject areas of mathematics and science. Now, the initial 2–year permit may be issued to a person who holds a bachelor’s degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area that is current and compatible with modern curricula. The applicant must also successfully complete 100 hours of formal instruction.

The rules will modify provisions relating to alternative teaching permits.

Describe the objective(s) of the proposed rule:

To expand permit subject areas to include engineering, music, art, foreign language, and computer science in addition to the subject areas of mathematics and science.

To determine what an individual must do to demonstrate to the satisfaction of the state superintendent competency in the subject area that is current and compatible with modern curricula.

To specify what an individual must do to receive an initial 2–year permit and to renew a permit for 5 years.

To eliminate several restrictive requirements.

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

There will be an assessment device used to determine an applicant’s competency in content areas compatible with modern curricula as required by statute.

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

The Department will contract for the 100 hours of training to be provided to permit applicants.

Describe policy alternatives:

- Require applicants to follow the same procedures as regularly licensed teachers.

- Require applicants to only complete 100 hours of formal instruction, without an assessment of an applicant's ability to teach in his or her subject area; however, without a formal assessment, there will be no system in place to determine if the individual is competent to teach in the subject area in which he or she will receive a permit as required by statute. This will hold individuals receiving a permit to a lower standard than regularly licensed teachers.

Statutory reference/authority:

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

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

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

Transportation

Subject:

Ch. Trans 200 – Relating to location and placement of signs on public highways.

Description of policy issues:

Description of the objective of the rule:

This rule-making will amend ch. Trans 200, relating to the location and placement of signs on public highways, by specifying the locations for placement of (orange) warning signs indicating the beginning and ending of a utility work area, as mandated by the enactment of 1997 Wis. Act 277, Section 8m.

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

The Department's Utility Accommodation Policy currently provides guidance to utilities in establishing appropriate signing for utility work zones. The Federal Manual of Uniform Traffic Control Devices (MUTCD) also provides appropriate guidance to utilities in this area.

This rule-making will provide the necessary guidance to the utility industry in how to establish a utility work zone in such a manner as to qualify the work zone for enforcement under the "Double Fines" law.

Statutory authority for the rule:

1997 Wis. Act 277, Section 8m.

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

1 Engineer @ 4 hours for development, review and rework

1 Engineer @ 1 hour and 1 Manager @ 1 hour to review draft

Veterans Affairs

Subject:

S. VA 2.01 (2) (b) – Relating to the expenditure limitation for dentures under the health care aid grant program.

Description of policy issues:

Objective of the rule:

The rule amendment will remove the current \$50,000 expenditure limitation for dentures and index the expenditure cap to 25% of the annual appropriation authority for the health care aid grant.

Policy analysis:

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code, the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures. The amendment will permit the Department to address this health care need.

Statutory authority:

Section 45.35(3), Stats.

Estimate of the amount of time and other resources necessary to develop the rule:

Approximately 1 staff hour.

Workforce Development

Subject:

Chs. DWD 55 and 56 – Relating to certified child care.

Description of policy issues:

Description of the objective of the rule:

Implement the statutory changes that have been made to the statutes relating to child care in connection with Wisconsin Works and the relative responsibilities of the Department of Workforce Development and the Department of Health and Family Services.

Policy analysis:

The proposed rule will place into effect requirements for background reviews and decisions on day care certification, employment, contracting, and nonclient residents living in the provider's home. In addition, the rules on the administration of child care funds will be amended to reflect the statutory changes in this area that have occurred with the enactment of the Wisconsin Works (W-2) program.

Statutory authority:

Section 49.155 (1m) (d), Stats.

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

Less than 40 hours of state employee time will be necessary to develop the rule.

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 September 15, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection submitted a proposed rule affecting ch. ATPCP 77 to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. ATPCP 77, Wis. Adm. Code, relating to certification of laboratories engaged in public health testing of milk, water and food.

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 Food Safety is primarily responsible for promulgation of this rule.

Contact Person

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

Laura Traas
Division of Food Safety
Telephone (608) 224-4700

or

Attorney Karl Marquardt
Telephone (608) 224-5031

Revenue

Rule Submittal Date

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

Analysis

The proposed rule order amends ss. Tax 11.19 and 11.70, relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Agency Procedure for Promulgation

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

Contact Person

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

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

Transportation

Rule Submittal Date

In accordance with s. 227.14 (4m), Stats., on September 29, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 31 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 31, relating to excursion permits on state-owned rail lines.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for October 27, 1998. The organizational unit responsible for the promulgation of the proposed rule is the Division of Infrastructure Development, Bureau of Railroads and Harbors.

Contact Person

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

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

Transportation

Rule Submittal Date

In accordance with s. 227.14 (4m), Stats., on September 21, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 510 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 510, relating to the eligibility of TEA projects.

Agency Procedure for Promulgation

A public hearing is not required. The organizational unit responsible for the promulgation of the proposed rule is the Division of Investment Management, Bureau of Planning, Economic Development Section.

Contact Person

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

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

NOTICE SECTION

Notice of Proposed Rule

Administration

Notice is hereby given that pursuant to ss. 16.004(1), 16.358(2) and 227.11, Stats., and interpreting s. 16.358, Stats., and according to the procedures set forth in s. 227.16(2)(e), Stats., the Department of Administration will adopt the following rule as proposed in this notice without a public hearing unless, within 30 days after publication of this notice, on **October 15, 1998**, the Department of Administration is petitioned for a public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Proposed Order of the Department of Administration

The Wisconsin Department of Administration proposes an order to repeal Adm ss.19.04, 19.05(6) and 19.06; to renumber ss. Adm 19.05(5), (7), (8) and (9), 19.07 and 19.08; to renumber and amend Adm ss. 19.05(intro.), (1), (2), (3) and (4), and 19.06(intro.), (1) and (2); to amend ss. Adm 19.02(6), and to create ss. Adm 19.02(7), 19.05 and 19.08(1)(a), (b), (2), and (3) of the Wis. Adm. Code.

Analysis prepared by the Department of Administration

Statutory Authority: ss. 16.004(1), 16.358(2) and 227.11

Statute Interpreted: s. 16.358

Section 16.358, Stats., was created in 1991 authorizing the Department of Administration to adopt and administer Ch. Adm 19. This chapter establishes the requirements for the award of Community Development Block Grant funds to local units of government.

The creation of s. Adm 19.08 is proposed in order to comply with the amendments to s. 16.358 as created in 1997 Wis. Act 27. Section Adm 19.05(6) is deleted in order to remove a subjective element from the evaluation criteria. The other changes are not substantive but are made for the purposes of clarification of existing language.

Initial Regulatory Flexibility Analysis

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

Contact Person

Donna Sorenson, (608) 266–2887
Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702

Text of Rule

SECTION 1. Adm 19.02(6) is amended to read.

(6) “~~Program area~~” “Target area” means the area of a community which has a greater proportion of LMI households than the community as a whole. An eligible applicant may choose to designate the entire community as a ~~program target~~ area.

SECTION 2. Adm 19.02(7) is created to read.

(7) “Unfunded application” means a CDBG application which receives an insufficient point score in the evaluation process to receive funding in a program year.

SECTION 3. Adm 19.04 is repealed.

SECTION 4. Adm 19.05 (intro), (1), (2), (3) and (4) are renumbered Adm 19.04(intro), (1), (2), (3) and (4) and amended to read.

19.04 Evaluation Criteria. Applicants shall be compared and rated by the department based upon the department’s evaluation of the proposal’s consistency with s. 16.31, Stats., 24 CFR part 570, and the scoring criteria in the CDBG application package. Applicants shall ~~also~~ be compared and rated by the department based on the applicant’s discussion and documentation of relevant evaluation criteria including, but not limited to, the following:

(1) ~~Program Target~~ Target area need as defined by the department in the CDBG application package.

(2) The percentage of program ~~benefit~~ funds directed toward households with the lowest income.

(3) The extent to which program funds are directed to areas that are most in need ~~and to communities that can most effectively use the funds.~~

(4) The extent to which housing needs in the community and in the ~~program target~~ area have been adequately documented.

SECTION 5. Adm 19.05(6) is repealed.

SECTION 6. Adm 19.05(5), (7), (8) and (9) are numbered Adm 19.04(5), (6), (7) and (8).

SECTION 7. Adm 19.06 is repealed.

SECTION 8. Adm 19.05 is created to read.

Adm 19.05 Application process. The department shall make funds available annually as those funds are made available by the federal department of housing and urban development. To receive funds under this program, an eligible applicant shall do all of the following:

(1) Submit an application which is complete and in the format required by the department.

(2) Resubmit an unfunded application as described in Adm 19.08, and in a format and with supporting documentation as required by the department.

SECTION 9. Adm 19.07 and Adm 19.08 are renumbered Adm 19.06 and Adm 19.07.

SECTION 10. Adm 19.08 is created to read.

Adm 19.08 Resubmitted applications. (1) An applicant for funds shall be eligible to receive funds in the CDBG program year following the year for which the applicant submits an unfunded application, without having to submit another application for that following year if all of the following apply:

(a) The applicant is an eligible applicant under the terms of the program.

(b) The applicant submits a request to resubmit in a format as required by the department.

(2) The resubmitted application will not be reevaluated, but shall retain the score received in the original application competition.

(3) An unfunded application may be resubmitted under sub. (1) only once.

Fiscal Estimate

There is no state fiscal effect.

Notice of Hearing

Chiropractic Examining Board

Notice is hereby given that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 446.01 (2), Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Chir 4.05 (2) (f), (g) and (h), relating to techniques, ancillary procedures or instruments prohibited in the practice of chiropractic.

Hearing Information

Date & Time:	Location:
November 19, 1998 Thursday 9:30 A.M.	Room 180 1400 East Washington Ave. MADISON, WI

Written Comments

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

Office of Administrative Rules
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **December 4, 1998** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

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

Statute interpreted: s. 446.01 (2)

Changes are made to a rule of the Chiropractic Examining Board that currently prohibits "network chiropractic" in order to reflect a decision of the Dane County Circuit Court in the case of *Innate Intelligence, Inc. et. al v. Wisconsin Chiropractic Examining Board, et. al.* No. 95-CV-713. In that case the court declared that s. Chir 4.05 (2) (f), (g) and (h) are unenforceable because the rule prohibits "network chiropractic" without defining the term. In a decision from the bench, apart from its objection to prohibiting "network chiropractic," the court found no objection to the remainder of s. Chir 4.05 (2) (f), (g) and (h).

This proposed order deletes the term "network chiropractic" from the rule. The order also inserts the word "spiritual" before "comfort" and "well being" in s. Chir 4.05 (2) (h) to clarify that the rule would prohibit representing a chiropractic practice as a means of attaining spiritual growth, spiritual comfort or spiritual well-being.

Text of Rule

SECTION 1. Chir 4.05 (2) (f), (g) and (h) are amended to read:

Chir 4.05 (2) (f) ~~Network chiropractic, or any~~ Any practice system, analysis, method or protocol which does not include the competent assessment, evaluation or diagnosis of the condition to be treated before beginning treatment of the patient.

(g) ~~Network chiropractic, or any~~ Any practice system, analysis, method or protocol which relies upon diagnostic methods that are not generally recognized or accepted within the profession or which do not have scientific validity.

(h) ~~Network chiropractic, or any~~ Any practice system, analysis, method or protocol which is represented as a means of attaining spiritual growth, spiritual comfort or spiritual well-being.

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
Office of Administrative Rules
Department of Regulation and Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Telephone (608) 266-0495

Notice of Hearing

Department of Military Affairs

Notice is hereby given that pursuant to ss. 21.25, 20.465(4)(g), and 227.11(2)(a), Stats., and interpreting ss. 21.25 and 20.465(4)(g), Stats., the Department of Military Affairs will hold public hearings to consider Ch. DMA 1 relating to the Badger Challenge program for disadvantaged youth. The public hearing is scheduled as follows:

Hearing Information

November 4, 1998	Dept. of Military Affairs
Wednesday	Auditorium
Beginning at 10:00 a.m.	2400 Wright Street
	Madison, WI 53708

Persons making oral statements are requested to submit their comments in writing either at the time of the hearing or no later than November 6, 1998. Persons unable to make an oral statement may submit written comments which will have the same weight and effect as oral statements presented at the hearings. All written comments should be submitted to COL Andrew Schuster, Department of Military Affairs, 2400 Wright Street, Madison, WI 53708, and must be received no later than **November 6, 1998**.

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Department of Military Affairs

Statutory Authority: ss. 21.25, 20.465 (4) g), 227.11 (2) (a)

Statutes Interpreted: ss. 21.25, 20.465 (4) (g)

Plain Language Summary

This administrative rule establishes procedures for the Badger Challenge program. The Badger Challenge is a state-funded program for disadvantaged youth designed to promote positive lifestyle changes. The rule establishes procedures and eligibility requirements for the Badger Challenge program. The procedures require a two phase program. Phase I is a six-week residential stay and Phase II is a twelve-month post residential mentoring phase.

The rule establishes criteria under which the Department of Military Affairs may assess fees to the family of a participant, to the county of the participant through the Youth Aids Grant Fund, and from other related agencies or entities.

Text of Rule

SECTION 1. Chapter DMA 1 is created to read:

**Chapter DMA 1
Badger Challenge**

DMA 1.01 Purpose. The Badger Challenge is a disadvantaged youth program to promote positive lifestyle changes through an environment that fosters productive and positive changes through challenging individual and team opportunities.

DMA 1.02 Definitions. In this chapter:

(1) “Cadet” means young men and women that meet the eligibility criteria in s. DMA 1.04 and who have been accepted into the Badger Challenge program.

(2) “Department” means the Wisconsin department of military affairs.

(3) “Director” means the director of the Badger Challenge program.

(4) “Disadvantaged youth” means men and women that meet the eligibility criteria in s. DMA 1.04.

(5) “Mentor” means an adult volunteer participating in the 12 month post residential mentoring phase.

DMA 1.03 Procedures.

(1) The department shall administer the Badger Challenge for disadvantaged youth.

(2) The department shall employ a director to oversee all operations of the Badger Challenge program.

(3) The Badger Challenge shall be a 2 phase program. Phase I shall be a 6 week residential stay. Phase I is staffed by trained military personnel, civilian counselors, state certified teachers, and other professionals. Phase II shall be a 12 month post residential mentoring phase. Phase II matches Badger Challenge graduates with mentors from his or her home town.

(4) The department shall develop and make available application materials as necessary for recruitment.

(5) The application deadline is one month prior to the start date of the program.

(6) The department shall interview applicants prior to a determination regarding acceptance into the program.

Note: Badger Challenge application materials are available by phoning (800) 292-9464, extension 3, or (608) 242-3450. Application materials can also be obtained by writing to, Badger Challenge, 2400 Wright Street, Madison, WI 53704-0587. Information can also be obtained through the Badger Challenge web site at www.badgerchallenge.com or at the badger challenge email address: badgerchallenge@badgerchallenge.com

DMA 1.04 Eligibility. Young men and women must meet the following criteria to be eligible for the Badger Challenge.

(1) Young men and women from the ages of 14 to 16.

(2) Be considered “at risk” of not graduating from high school.

(3) Be free of drugs.

(4) Shall not have any adult status felony offenses.

(5) Must have a strong desire to improve themselves in this demanding program.

(6) Must be willing to attend. Those who are unwilling or forced to attend, will not be accepted into the program.

DMA 1.05 Fees.

(1) The department may assess and collect a reasonable fee from persons participating in the Badger Challenge program as specified in s. 21.25 (2), Stats., for administering the Badger Challenge program.

(2) The department may assess a fee to the family of a participant.

(3) The department may ask the county of the participant to provide funding from their Youth Aids Grant Fund.

(4) The department may assess a fee from other related agencies or entities as appropriate.

(5) Fees collected under s. 21.25 (2), Stats., shall be credited to the appropriation under s.20.465 (4) (g), Stats.

Initial Regulatory Flexibility Analysis

The Badger Challenge administrative rule required under s. 21.25 (1), Stats., will not impact small business. The Badger Challenge is a program for disadvantaged youth. This rule allows the Badger Challenge program to assess fees, however, the program does not impose any fees or regulation on small business.

Fiscal Estimate

The Badger Challenge Program was created by 1997 Wis. Act 237, as codified in s. 21.25, Stats. As part of that legislation, the Wisconsin Department of Military Affairs was required to promulgate an Administrative Rule for the administration of said program.

Section 21.25 (2), Stats., provides that the Department may assess and collect a reasonable fee from persons participating in the program. Said fees are to be credited to the appropriation created under s. 20.465 (4) (g), Stats.

Currently, the annual sum of \$330,000 general purpose revenue is appropriated under s. 20.465 (4) (b), Stats., to operate the Badger Challenge Program.

Notice of Hearing**Department of Transportation**

Notice is hereby given that pursuant to ss. 85.075, 85.08(2)(g) and 85.16(1), Stats., and interpreting ss. 85.08(2)(k) and 85.15, Stats., the Department of Transportation will hold a public hearing in **Room 144-B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 27th day of October, 1998, at 10:00 AM**, to consider the amendment of ch. Trans 31, Wis. Adm. Code, relating to Excursion Permits on State–Owned Rail Lines.

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

The public record on this proposed rule making will be held open until close of business on **November 6, 1998**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Ron Adams, Wisconsin Department of Transportation, Bureau of Railroads and Harbors, P.O. Box 7914, Madison, Wisconsin 53707-7914.

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutory authority: ss. 85.075, 85.08(2)(g) and 85.16(1)

Statutes interpreted: ss. 85.08(2)(k) and 85.15

General Summary of Rule. 1991 Wis. Act 269, ss. 548 and 551, effective May 1, 1992, authorized the Department to issue permits to operate rail passenger excursion trains on state–owned railroad lines. This proposed rule amends the Department’s policies and procedures relating to the operation of excursion trains on state–owned railroad lines.

The Department promulgated a rule establishing requirements and procedures for applying for a permit to operate an excursion train on state–owned railroad lines, as well as application and inspection fees in 1995.

The existing rule ensures public safety by requiring operators and sponsors to provide safe equipment; to operate an excursion train on safe track, bridges, and grade crossings; to perform necessary inspections; and to develop plans to handle medical emergencies.

This proposed rule:

- Expands the definition of excursion trains to include a broader category of railroad recreational vehicles.
- Increases application and inspection fees for permits to operate on state–owned railroad lines.
- Alters the time limits for the Department to grant or deny applications for permits.
- Requires applicants to provide additional information when requesting permits, including plans for maintenance, environmental protection and cleanup, and control of vegetation.

Fiscal Impact

The rule will increase revenues for application and inspection fees by about \$3,000 per year.

Initial Regulatory Flexibility Analysis

The rule will have an adverse effect on a limited number of small businesses. These businesses will be required to modify or operate equipment used to provide excursion trips so that human waste is not discharged onto the rail corridor. The rule will increase the application and inspection fee for a permit.

Copies of Rule

Copies of this rule may be obtained, free of charge, upon request to the Bureau of Railroads and Harbors, P.O. Box 7914, Madison, WI 53707–7914, or by calling Ron Adams at (608) 267–9284. Alternate formats of the rule will be provided upon request.

Contact Person

Persons having questions about the rule may write or call Ron Adams, Wisconsin Department of Transportation, Bureau of Railroads and Harbors, P.O. Box 7914, Madison, Wisconsin 53707–7914, telephone (608) 267–9284. Legal questions may be addressed to Charles M. Kernats, Wisconsin Department of Transportation, Office of General Counsel, P.O. Box 7910, Madison, Wisconsin 53707–7910, telephone (608) 266–8810.

Notice of Proposed Rule

Transportation

Notice is hereby given that pursuant to the authority of ss. 84.185 (4), and 227.11, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 510 without public hearing unless, within 30 days after publication of this notice on **October 15, 1998**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Copies of Rule and Contact Person

Questions about this rule and any petition for public hearing may be addressed to:

Dennis Leong
Bureau of Planning, Economic Development Section
Division of Investment Management
Room 901
P. O. Box 7913
Madison, WI 53707–7913
Telephone (608) 267–9910

Copies of this proposed rule are available upon request, without cost, by contacting Dennis Leong.

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: s. 84.185 (4)
Statute interpreted: s. 84.185

General Summary of Proposed Rule:

This proposed rule will amend ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) program. The rule change will delete language related to the eligibility of TEA projects which requires that a TEA project be at least 25% of the total transportation facility improvement cost. The not “less than 25%” rule excluded economic development projects based upon the size of a transportation improvement project. TEA projects were unintentionally and often unfairly excluded when projects generated a small number of jobs given the larger scope of the transportation improvement. The elimination of these small job creation projects puts an unnecessary burden on communities with limited financial resources and on those communities that wanted to use the TEA funds to leverage other financial commitments to help pay for needed infrastructure improvements.

Fiscal Estimate

This proposed rule will have a positive impact on all local governments since they will not be eliminated from TEA grant program based upon the overall size of the transportation facility improvement. Small and rural communities will be able to secure grants based upon the number of new jobs created by a business in the community and not be disqualified based upon the size of the transportation improvement project. State transportation dollars used to fund the TEA grant program will not be negatively impacted since grant awards are based upon the number of jobs created by businesses and not on the size of the transportation project.

Initial Regulatory Flexibility Analysis

This proposed rule will benefit many small businesses eligible under the TEA grant program. Small businesses such as manufacturers, wholesalers, distributors, etc. will be eligible to apply for needed infrastructure projects which promote better traffic circulation, improve accessibility to highway, rail, harbor and airport facilities and help to improve the overall transportation efficiency for the business and the local community.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin, Department of Transportation, by s. 84.185 (4), Stats., the Department of Transportation hereby proposes an order to amend a rule interpreting s. 84.185, Stats., relating to eligibility of TEA projects.

SECTION 1. Trans 510.05 is amended to read:

Trans 510.05 Evaluation of eligibility. Applications passing the initial screening shall be evaluated based on the criteria in s. 84.185 (2) (b), Stats., and this chapter. Determination of the eligibility of an application for funding shall be documented in an evaluation report and shall be based on how well the application satisfies the criteria in s. 84.185 (2) (b), Stats., and this chapter. ~~Applications shall be ineligible for funding if the criteria in this chapter would result in a grant ceiling of less than 25% of the reviewed transportation facility improvement cost.~~

Notice of Hearing

Technical College System Board

Notice is hereby given that pursuant to ss. 38.04 (11) (a) 2., 38.04 (14) (a), and 227.11 (2), Stats., and interpreting ss. 38.04 (11), 38.12 (5), 38.12 (5m), 38.12 (7), 38.14 (3), 38.28, Stats., the Wisconsin Technical College System Board will hold a public hearing at a time and place indicated later in this notice, to consider the amendment of rules relating to General District Policies; District Budget, Audit and Finance; Contract for Services; and High School Student Reporting Requirements.

Hearing Information

Date & Time:

October 27, 1998
Tuesday
1:30 p.m.

Location:

WTCBSB Board Room
310 Price Place
Madison, WI

Analysis Prepared by the Technical College System Board

Statutory authority: ss. 38.04 (11) (a) 2., 38.04 (14) (a), and 227.11(2)

Statutes interpreted ss. 38.04 (11), 38.12 (5), 38.12 (5m), 38.12 (7), 38.14 (3), 38.28

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

TCS 6.05 requires that each WTCS district board adopt, at a minimum, certain policies and procedures on procurement. In general, such policies and procedures must require:

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

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

The proposed rule amendment would:

- 1) Increase the level for competitive bid or selection procedures to procurements in excess of \$25,000;
- 2) Increase the solicitation of written quotes levels to procurements between \$10,000 and \$25,000 and require quotes from at least 3 vendors; and
- 3) Increase the small procurement level to \$10,000.

The \$10,000 competitive bid level for public construction contracts would remain unchanged.

This proposal would bring the WTCS district procurement thresholds more in–line with current federal and state regulations. The federal standard for competitive procurement is now \$100,000. The current purchasing law applicable to state agencies requires competitive procurement when the estimated cost of the transaction exceeds \$25,000 and a simplified procedure established by the state Department of Administration is used for transactions of \$25,000 or less (essentially quotes from at least 3 vendors without any formal bid procedures). TCS 6.05 also requires that all procurements within a 30–day period from a single contractor or from multiple contractors (involving similar procurements) be considered in the aggregate in determining the method of procurement used by the district. The proposed amendment would replace this 30–day aggregation rule with a requirement that a district board’s procurement policies include an annual review to determine if a more competitive procurement process should be used in succeeding years. This review would be conducted based on a report that aggregates multiple purchases of similar goods, supplies and services procured without competitive bids or selection procedures. The district board would be required to take formal action on this report and such action would have to be reflected in the board’s minutes.

TCS 6.05 allows sole source procurement in certain circumstances including where cooperative purchasing under s. 16.73, Stats., is utilized. Such cooperatives involve joint purchasing agreements among a group of municipalities or between the state Department of Administration and a group of municipalities. The proposed rule amendment would modify the list of sole source procurements to include cooperative purchasing associations recognized by the State Director as having procurement policies that are substantially equivalent to those of the WTCS.

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

District budget, audit and finance—Accounting standards (TCS 7.03). The current rule requires WTCS districts to comply with accounting standards established by the National Council on Governmental Accounting (NCGA) and incorporates these standards into the rule by reference to the source document. At the time this rule was promulgated (September 1983), the NCGA was the authoritative source of generally accepted accounting principles for state and local governments. However, shortly thereafter, the authority to establish governmental accounting standards was transferred to the Governmental Accounting Standards Board (GASB). The proposed rule amendment would recognize this change in authority by adopting and incorporating by reference the GASB accounting standards.

Contract for services—Reporting standards (TCS 8.06). The current rule interprets s. 38.14 (3) (e), Stats., which requires each WTCS district board to submit to the WTCS Board a report identifying all contracts under which the district board provided services. However, the rule reflects the statutory language prior to 1989 which required each district board to submit its contract report monthly and on forms provided by the WTCS Board. 1989 Wis. Act 31 changed the requirement to an annual report due by December 1st and specified that the report be submitted in a form determined by the WTCS Board. The proposed rule amendment would eliminate the monthly reporting requirement; establish the December 1st annual reporting date; specify that the report would be submitted electronically, in the format specified by the Board; and clarify the contents of the report.

High school student reporting requirements (TCS 9). The current rule interprets s. 38.04 (11) (a) 2., Stats., by requiring WTCS districts to annually, by June 15, submit a report to the WTCS Board on the number of high school students participating in the compulsory school attendance, postsecondary options and technical preparation programs. However, the budget for WTCS districts operates on a fiscal year basis ending June 30 of each year of the biennium. Furthermore, s. 38.04 (11) (a), Stats., directs the WTCS Board to establish common use of the fiscal year for both operations and data reporting. Therefore, the June 15th reporting date is not compatible with the closing dates established for WTCS data reporting purposes. The proposed rule amendment would change the annual reporting date to August 15th.

TCS 9 also requires each WTCS district to report the number of high school students enrolled in a secondary course for which advanced standing or transcribed credit may be granted by the college under the technical preparation program; however, advanced standing is not automatic for high schools students and may not be granted unless the student applies for admission to a technical college and specifically requests advance standing based on the course being taken by that student. Similarly, transcribed credit is granted at the time of completion of the course. The proposed rule amendment would clarify that WTCS districts would report high school student participation in advanced standing and transcribed credit courses once these forms of credit have been granted to the student by the technical college.

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

Text of Rule

SECTION 1. TCS 6.05 (2) (intro.) is repealed and recreated to read:

TCS 6.05 (2) POLICIES AND PROCEDURES. Each district board shall adopt procurement policies and procedures, that, at a minimum:

SECTION 2. TCS 6.05(2)(a) (title) is created to read:

TCS 6.05(2) (a) Delegation. Identify those employees, by functional title, who are responsible for administering the district's procurement policy.

SECTION 3. TCS 6.05 (2) (b) (title) is created to read:

TCS 6.05 (2) (b) Code of conduct. Establish a procurement code of conduct that shall, except as provided under s. 946.13, Stats., prohibit any employee involved in procurement from having a financial interest in any procurement, and prohibit any employee involved in procurement from receiving any gratuity or other financial gain from any contractor.

SECTION 4. TCS 6.05 (2) (c) (title) is created and (2) (c) is amended to read:

TCS 6.05 (2) (c) Competitive bids. Require that all procurements where the total cost exceeds \$10,000 ~~\$40,000~~ and public construction under ~~par. (4) ss. 38.18 and 62.15(1), (11) and (14), Stats.~~, where the total cost exceeds \$10,000 be accomplished through the use of competitive bids except as provided by ~~polices and procedures adopted under~~ par. (d) and (e) and (i) of this subsection.

SECTION 5. TCS 6.05 (2) (d) (title) is created and (2) (d) is amended to read:

TCS 6.05(2) (d) Sole source procurement. Provide for sole source procurement where the district board determines that there is only one source for the required supply, service, equipment or construction item; where the required supply, service, equipment or construction item is to be purchased from another governmental body; or where cooperative purchasing under s. 16.73, Stats., is utilized or a cooperative purchasing association is recognized by the state director that has a competitive purchasing process that is substantially equivalent to the minimum requirements set forth in this section. The district board may delegate the power for authorizing sole source procurement to the district director who may with the approval of the district board redelegate this responsibility to other employees of the district.

SECTION 6. TCS 6.05(2)(e) (title) is created to read:

TCS 6.05 (2) (e) Competitive selection. Provide for competitive selection procedures in lieu of competitive bids for procuring the services of accountants, physicians, lawyers, dentists, and other providers of services where the district board determines that competitive selection in lieu of competitive bids is in the best interest of the district.

SECTION 7. TCS 6.05 (2) (f) (title) is created and (2) (f) is amended to read:

TCS 6.05(2) (f) Solicitation of written quotes. Except as ~~required~~ provided under ~~par. (4) (d), (e), and (i) of this subsection,~~ require that all procurements where the total cost equals or exceeds \$3,000 ~~\$10,000~~ and does not exceed \$10,000 ~~\$25,000~~ be accomplished through the solicitation of written quotations from a minimum of ~~2~~ 3 contractors or proposed contractors.

SECTION 8. TCS 6.05 (2) (g) (title) is created and (2) (g) is amended to read:

TCS 6.05 (2) (g) Procurements less than \$10,000. Establish a procedure for all procurements where the total cost is less than \$3,000 ~~\$10,000~~.

SECTION 9. TCS 6.05 (2) (h) is repealed and (2) (h) is recreated to read:

TCS 6.05 (2) (h) Annual review. Require an annual review, based on a report that aggregates multiple purchases of similar goods, supplies, and services of all procurements made under ~~par. (f) and (g) of this subsection,~~ to determine if a more competitive procurement process should be used in succeeding years. The district board shall take formal action on this report and such report shall be reflected in the district board's proceedings.

SECTION 10. TCS 6.05 (2) (i) (title) is created to read:

TCS 6.05 (2) (i) Emergency procurement. Establish a procedure for emergency procurements where there exists a threat to the continued operation of the district or to the health, safety or welfare of students, employees or residents of the district. Emergency

procurements shall be evidenced by a written determination of the basis of the emergency and the selection of a particular contractor.

SECTION 11. TCS 6.05 (2) (j) (title) is created and (2) (j) (intro.) is amended to read:

TCS 6.05 (2) (j) Records required. Require that records be created and retained for all procurements where the total cost equals or exceeds \$3,000 ~~\$10,000~~. These records shall include:

1. The rationale for the method of procurement.
2. The rationale for selection or rejection of any contractor or proposed contractor.
3. The basis for the cost or price.

SECTION 12. TCS 6.05(2) (k) (title) is created to read:

TCS 6.05 (2) (k) Audits. Establish a procedure for audit and oversight of all procurements.

SECTION 13. TCS 6.05 (2) (L) is repealed and (2) (L) is recreated to read:

TCS 6.05 (2) (L) Disclosure of evaluation criteria. Require that evaluation criteria related to bids and competitive selection procedures be disclosed in the specifications provided to prospective vendors.

SECTION 14. TCS 6.05 (2) (m) (title) is created and (2) (m) is amended to read:

TCS 6.05 (2) (m) Adherence to federal regulations. Require that all federally funded procurements ~~funded by federal funds~~ be made ~~in accordance with~~ according to the appropriate federal regulations.

SECTION 15. TCS 7.03 (1) and (4) are amended to read:

TCS 7.03 (1) ADOPTION OF STANDARDS BY REFERENCE. Pursuant to s. ~~227.025~~ 227.21, Stats., the attorney general and revisor of statutes have consented to the incorporation by reference of ~~Statement 1, Governmental Accounting and Reporting Principles, The National Council on Governmental Accounting, Municipal Finance Officers Association of the United States and Canada, 180 North Michigan Avenue, Chicago Illinois 60604 the Codification of Governmental Accounting and Financial Reporting Standards, Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116.~~

TCS 7.03(4) Standards under sub. (1) may be obtained by contacting the ~~Municipal Finance Officers Association of the United States and Canada, 180 North Michigan Avenue, Chicago, Illinois 60604 Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116.~~

SECTION 16. TCS 8.06 (1) is amended to read:

TCS 8.06 (1) ~~Monthly,~~ The district board shall submit to the board a report as required under s. 38.14 (3) (e), Stats.

SECTION 17. TCS 8.06 (2) is amended to read:

TCS 8.06 (2) Annually by ~~August 31~~ December 1 and ~~on forms provided in a form determined~~ by the board the district board shall report to the board the reimbursed and non-reimbursed costs for each accounting function, the type of service rendered under each contract, and if the contract involves instruction for credit, ~~the number of students served under each contract and the total credits granted course, section, and location number of each course offered~~ under each contract.

SECTION 18. Chapter TCS 9 (title) is amended to read:

Chapter TCS 9

DISTRICT REPORTING OF STUDENT PARTICIPATION STUDENTS PARTICIPATING IN COMPULSORY SCHOOL ATTENDANCE, POSTSECONDARY YOUTH OPTIONS AND TECHNICAL PREPARATION PROGRAMS: REQUIREMENTS AND PROCEDURES

SECTION 19. TCS 9.01 is amended to read:

TCS 9.01 Purpose. This chapter establishes ~~standards~~ the format and procedures pursuant to s. 38.04(11)(a)2., Stats., for districts to report the number of students participating in district courses under ~~the compulsory education provisions of s.~~

~~ss. 118.15(1) (b), (cm) and (d), 118.34, and 118.55(7r), Stats., and the number of students participating in the postsecondary enrollment options program under the provisions of s. 118.37, Stats., and the number of students participating in technical preparation programs under s. 118.34, Stats., including the number of courses taken for advanced standing in a technical college district's associate degree or vocational diploma program and for postsecondary credit.~~

SECTION 20. TCS 9.02 (7) is amended to read:

TCS 9.02(7) "~~Postsecondary enrollment Youth~~ options program" means enrollment under the provisions of s. ~~118.37~~ 118.55(7r), Stats.

SECTION 21. TCS 9.03(1) (intro.) is amended to read:

TCS 9.03 (1) Annually, by ~~June~~ August 15, technical college districts shall compile a report for the board containing the data elements of sub. (2) to report participation in technical college courses or programs for the following students:

SECTION 22. TCS 9.03 (1) (a) is amended to read:

TCS 9.03 (1) (a) Students attending a technical college of the district under the compulsory school attendance provisions of s. ~~118.15(1) (b), (cm) and (d), Stats.~~

SECTION 23. TCS 9.03 (1) (b) is amended to read:

TCS 9.03 (1) (b) Students attending a technical college of the district under the ~~postsecondary enrollment youth~~ options program provisions of s. ~~118.37, Stats.~~

SECTION 24. TCS 9.03 (1) (c) 1. is amended to read:

TCS 9.03 (1) (c) 1. Students ~~enrolled in~~ who have completed a secondary course, authorized through an articulation agreement, for which advanced standing ~~may be~~ has been granted by a technical college district under the technical preparation program, s. ~~118.34, Stats.~~

SECTION 25. TCS 9.03 (1) (c) 2. is amended to read:

TCS 9.03(1)(c)2. Students ~~enrolled in a secondary~~ who have completed a postsecondary course for which transcribed credit ~~may be~~ has been granted by the technical college and the school district under the technical preparation program provisions of s. ~~118.34, Stats.~~

SECTION 26. TCS 9.03 (3) is repealed and recreated to read:

TCS 9.03 (3) Collection of personally identifiable information under sub. (2) shall be used solely for determining student

participation in technical college courses or programs under ss. 118.15 (1) (b), (cm) and (d), 118.34, and 118.55 (7r), Stats., including those courses taken for advanced standing in a technical college district's associate degree or vocational diploma program and for postsecondary credit.

Written Comments

The public record on this proposed rule will be held open until the close of business on **Friday, October 30, 1998**. Written comments from people unable to attend the public hearing or who want to supplement testimony offered at the hearing may be submitted for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the Contact Person listed below. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

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

Contact Person

Questions concerning these rules may be directed to:

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

It is the policy of the WTCSB to provide accommodations to people with disabilities which may affect their ability to access or participate in WTCSB activities. People may request assistance or accommodation for the scheduled public hearing by contacting Mr. Garza at (608) 267-9540, or accessing the TTY line at (608) 267-2483 on or before **October 22, 1998**.

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

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

Accounting Examining Board (CR 98–91):

SS. Accy 3.05, 3.055 and 7.035 – Relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant (CPA) after December 31, 2000.

Commerce (CR 98–106):

S. Comm 69.18 (2) (a) – Relating to the exemption of elevator access to certain areas within government–owned or –operated buildings or facilities.

Dentistry Examining Board (CR 98–77):

Ch. DE 2 and ss. DE 1.02, 5.02, 6.01 and 11.11 – Relating to dentists and dental hygienists.

Employe Trust Funds (CR 98–101):

S. ETF 50.48 (4) (c) – Relating to the administration of the long–term disability insurance program.

Natural Resources (CR 98–45):

SS. NR 113.05, 113.07, 113.09 and 113.11 – Relating to septage management.

Natural Resources (CR 98–84):

Chs. NR 12 and 19 – Relating to the wildlife damage abatement program and the wildlife damage claim program.

Natural Resources (CR 98–86):

S. NR 20.037 (2) – Relating to readjustment of daily bag limits for walleye in response to tribal harvest.

Natural Resources (CR 98–95):

SS. NR 25.02 (25) and 25.05 (1) (d) – Relating to commercial fishing for chubs on Lake Michigan.

Natural Resources (CR 98–96):

SS. NR 46.15 (9) and 46.16 (8) – Relating to the definition of human residence as it pertains to forest tax law landowners.

Transportation (CR 98–102):

S. Trans 157.05 (1) and (2) – Relating to titling of vehicles held by trusts.

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.

Commerce (CR 98–52):

An order repealing and recreating ch. Comm 87, relating to the private sewage system replacement or rehabilitation grant program (Wisconsin Fund).
Effective 02–01–99.

Commerce (CR 98–61):

An order creating ch. Comm 119, relating to the mining economic development grants and loans program.
Effective 12–01–98.

Commerce (CR 98–62):

An order affecting ch. Comm 106, relating to the Wisconsin Development Fund.
Effective 12–01–98.

Commerce (CR 98–63):

An order affecting ch. Comm 116, relating to the rural economic development program.
Effective 12–01–98.

Commerce (CR 98–64):

An order affecting ch. Comm 114, relating to the Wisconsin minority business finance program.
Effective 12–01–98.

Funeral Directors Examining Board (CR 98–57):

An order affecting chs. FD 1 to 5, relating to the practice of funeral directors.
Effective 12–01–98.

Health & Family Services (CR 98–47):

An order amending s. HFS 196.03 (22) (e) to (f) and creating s. HFS 196.03 (22) (g) and Note, relating to exemption of concession stands at locally–sponsored sporting events from being regulated as restaurants.
Effective 11–01–98.

Insurance, Commissioner of (CR 98–58):

An order amending s. Ins 2.30, relating to adopting additional annuity mortality tables.
Effective 01–01–99.

PUBLIC NOTICE

Public Notice

*Financial Institutions
(Division of Securities)*

Order Designating as Licensees Certain Investment Adviser Representatives who as of July 9, 1998 were Qualified in Wisconsin on the Basis of Having Met the Examination Requirement of s. 551.32 (4), Wis. Stats.

(1) **WHEREAS**, prior to July 9, 1998, a person representing an investment adviser subject to licensure under s. 551.31(3), Wis. Stats., was required to be qualified to represent the investment adviser to transact business in this state on the basis of having met the examination requirement of s. 551.32 (4), Wis. Stats;

(2) **WHEREAS**, under legislation in 1997 Wis. Act 316 ("Act 316") an "investment adviser representative," as defined in s. 551.02 (7m), Wis. Stats., must comply with the licensing requirement in either s. 551.31(3m), Wis. Stats., or 551.31 (4) (b), Wis. Stats.;

(3) **WHEREAS**, with respect to a person described in paragraph (1) who became subject to the investment adviser representative definition and licensing requirements of Act 316 upon effectiveness thereof, it was not intended that such a person would need to become licensed prior to the May 1, 1999 date prescribed for license renewal; however, no provision was made in Act 316 to designate such a person as a licensee for purposes of s. 551.31(3m) or 551.31(4) (b), Wis. Stats., through April 30, 1999 (unless the license is sooner withdrawn, terminated, suspended or revoked), at which time the license is subject to renewal.

NOW THEREFORE, pursuant to s. 551.63 (1) and (2) of the Wisconsin Uniform Securities Law, IT IS HEREBY ORDERED as follows:

(A) A person described in paragraph (1) of this Order who became subject to the investment adviser representative definition and licensing requirements of Act 316 upon effectiveness thereof is designated a licensee for purposes of s. 551.31(3m) or 551.31(4)(b), Wis. Stats., (whichever is applicable) and related administrative rules thereunder through April 30, 1999, unless the license is sooner withdrawn, terminated, suspended or revoked.

Copies of the Order

Copies of the Order are available free of charge by writing to:

Division of Securities
Dept. of Financial Institutions
P. O. Box 1768
MADISON, WI 53701

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