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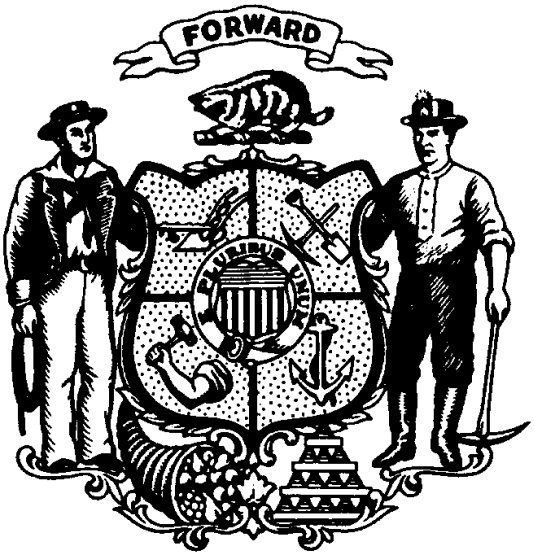

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EMERGENCY RULES NOW IN EFFECT

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**
Hearing Date:	**November 11, 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**

Expiration Date: **September 18, 1998**

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)

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

Finding of Emergency and Rule Analysis

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. 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**
Hearing Date: **November 30, 1998**
[See Notice this Register]

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 (2)

Health & Family Services

(Management, Technology & Finance, Chs. HFS 1−−)
(Health, Chs. HFS 110−−)

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129,** relating to reporting and investigating caregiver misconduct.

Finding of Emergency

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

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April

1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community−based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow−up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department−regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

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

2. Rules adopted creating **ch. HFS 12,** relating to caregiver background checks.

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:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child−placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employes or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employes and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child−placing agency is required to provide it to a foster home or treatment foster home applicant or pre−adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employe or prospective employe having or expected to have access to any of its clients. If the background information form returned to an entity by an employe or prospective employe indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contact with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

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

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 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 crimogenic 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**
Hearing Dates: **November 30, December 1, 7 & 9, 1998**
[See Notice this Register]

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 (5)

Natural Resources

(Fish, Game, etc., Chs. NR 1−−)

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

Exemption From Finding of Emergency

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

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.

2. Establishes time frame for making reservations.

Publication Date: **December 15, 1997**
Effective Date: **April 1, 1998**
Expiration Date: **April 1, 1999**
Hearing Date: **January 12, 1998**

2. Rules adopted 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**

3. 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**

4. 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**

5. 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 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 modi. 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−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 (3)

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 fo 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**

3. Rule adopted revising **s. PI 3.03 (6) (b) 3.**, relating to alternate teaching permits.

Finding of Emergency

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

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual 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 may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

Publication Date: **November 1, 1998**
Effective Date: **November 1, 1998**
Expiration Date: **March 31, 1999**

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. 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**

2. Rules adopted creating **ch. PSC 187,** relating to Sewer Main Extension: Cost Recovery.

Exemption From Finding of Emergency

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempt4d the commission from finding of emergency required by s. 227.24, Stats.

Publication Date: **November 1, 1998**
Effective Date: **November 1, 1998**
Expiration Date: **March 31, 1999**
Hearing Date: **January 8, 1999**
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Regulation & Licensing

Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

Exemption From Finding of Emergency

The Department of Regulation and Licensing 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:

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department

offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to developed administrative rules which must be in effect on the effective date of the new regulation.

Publication Date: **November 1, 1998**
Expiration Date: **November 1, 1998**
Effective Date: **March 31, 1999**

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

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

Veterans Affairs

Rules adopted amending **s. VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate perseveration of the public peace, health, safety or welfare. A statement of the facts considering the emergency is:

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 treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures. Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

Publication Date: **October 12, 1998**
Effective Date: **October 12, 1998**
Expiration Date: **March 11, 1999**

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**

STATEMENT OF SCOPE OF PROPOSED RULES

Corrections

Subject:

Ch. DOC 306 − Relating to security at correctional institutions and to conforming to current law, technology, terminology, and requirements of institutional operations.

Description of policy issues:

Statement of the objective of the proposed rule:

Some provisions of the Department of Corrections administrative rules relating to security procedures at correctional institutions have not been updated since the rules were created in 1980. With over 18 years of experience working with the rule, the Department proposes to update the rule.

Statement of the existing relevant policies and new policies proposed and analysis of policy alternatives:

Chapter DOC 306 relates to voluntary confinement of inmates, inmate counts, institution use of force, institution use of firearms, institution use of incapacitating agents, use of mechanical restraints for transportation of inmates, use of mechanical restraints to immobilize inmates, duty of staff regarding escapes, institution escape plans, searches of institution grounds, periodic searches of the entire institution, searches of inmate living quarters, searches of inmates, searches of visitors to an institution, searches of institution staff, factors to consider to determine if searches are necessary, reports of contraband seized, use of test results as evidence in disciplinary hearings, disturbance plans, and emergency plans.

The Department plans to review and revise these existing rules to ensure that they conform to existing law, technology, terminology and the requirements of institutional operations. With over 18 years of experience with the rule, the Department plans to revise the rule to increase safety for inmates, institution staff and the general public.

Statutory authority for the rule:

SS. 301.02, 301.03 (2), 302.07 and 227.11, Stats.

Staff time required:

The Department of Corrections anticipates that 150 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rulemaking requirements. Other than staff time, it is anticipated that the resources to develop the rule will be minimal.

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 October 21, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATCP 75, Wis. Adm. Code, relating to license exemption for retail food establishments located in licensed restaurants.

Agency Procedure for Promulgation

A public hearing is required and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review. 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:

Tom Leitzke
Division of Food Safety
Telephone (608) 224−4711

or

Attorney Karl Marquardt
Telephone (608) 224−5031

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On October 22, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATCP 139, Wis. Adm. Code, relating to bicycle helmets and drawstrings on children's clothing.

Agency Procedure for Promulgation

A public hearing is required and the Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review . The Division of Trade and Consumer Protection is primarily responsible for promulgation of this rule.

Contact Person

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

Rose Perrizo
Division of Trade and Consumer Protection
Telephone (414) 266−1239

or

Attorney Teel Haas
Telephone (608) 224−5032

Commerce

Rule Submittal Date

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

Analysis

The proposed rule affects ch. Comm 118, relating to the Wisconsin Promise Challenge grant program.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be scheduled. The agency unit responsible for the promulgation of the proposed rule is the Division of Community Development.

Contact Person

Any questions or comments may be directed to:

Richard Meyer
Department of Commerce
Telephone (608) 266−3080

Employe Trust Funds

Rule Submittal Date

As required by s. 227.14 (4m), Stats., on October 28, 1998, the Wisconsin Department of Employe Trust Funds submitted a proposed administrative rule to the Wisconsin Legislative Council Staff for review under s. 227.15, Stats.

Analysis

A rule is proposed creating s. ETF 10.55, concerning the proper reporting of creditable service, earnings and participating employes of instrumentalities of two or more units of government when the joint instrumentality does not qualify as a separate employer for WRS purposes.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and and has been scheduled for November 30, 1998, beginning at 3:00 p.m. The

Department of Employe Trust Funds Legal Services staff are primarily responsible for promulgation of this rule.

Contact Person

Any questions or comments may be directed to:

Robert Weber, Chief Counsel
Department of Employe Trust Funds
P. O. Box 7931
Madison, WI 53707

Telephone (608) 266−5804
FAX (608) 267−0633

Health & Family Services

Rule Submittal Date

On October 19, 1998, the Wisconsin Department of Health and Family Services referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 227.11 (2), 250.04 (7), 254.167, 254.172, 254.176 (1) and (3) and 254.178 (2), Stats.

This order affects ch. HFS 163, relating to certification for the identification, removal and reduction of lead−based paint hazards.

Reason for rules, intended effects, requirements

This order revises the Department's rules for certification of persons whose work involves removing or containing lead−based paint hazards, and for accreditation of training courses for those persons. These are replacement permanent rules for emergency rules now in effect.

The emergency rule order brought the Department's rules into compliance with U.S. Environmental Protection Agency (EPA) conditions for EPA approval of the Wisconsin lead certification program under ss. 254.167, 254.172, 254. 176 and 254. 178, Stats., and added a worker−homeowner discipline. The permanent order in addition adds fees for lead (Pb) company certification and homeowner−worker certification, two types of certification added in the emergency order; adds fees for course reaccreditation; adds fees for principal instructor and guest instructor approval; and adjusts current fees.

Forms

HFS 163.10 (3) (c) 1. −− Regulation worksheet (for inspector, risk assessor, supervisor)

HFS 163.10 (3) (c) 3. and 4. −− Application for individual certification, and affidavit of education and experience

HFS 163.10 (8) (b) −− Certification exam registration form

HFS 163.10 (8) (c) −− Application for individual recertification (same as application for certification)

HFS 163.11 (5) −− Form to document completion of worker−safety training (in application for certification)

HFS 163.12 (3) (a) and (b) −− Application for company certification (different parts of form are for governmental and non−governmental)

HFS 163.12 (6) −− Application for renewal of company certification (same form as for certification)

HFS 163.13 (6) −− Form for submitting a summary of a lead identification activity

HFS 163.14 (5) −− Form for notifying the Department of abatement project

HFS 163.21 −− Application for course accreditation

HFS 163.21 (7) and 163.24 (3) −− Application for instructor approval

HFS 163.23 (3) −− Application for renewal of course accreditation

HFS 163.24 (2) −− Application for training manager approval

HFS 163.24 (4) −− Application for guest instructor approval

HFS 163.25 (3) −− Course schedule notification form

Agency Procedure for Promulgation

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

Contact Person

Gail Boushon
Division of Public Health
Telephone (608) 267−2289

Health & Family Services

Rule Submittal Date

On October 26, 1998, the Wisconsin Department of Health and Family Services referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 51.61 (9) and 227.11 (2) (a), Stats.

This order affects s. HFS 94.24 (2) (d) 1. d. and (e), relating to routine personal searches and random searches of the rooms and personal belongings of ch. 980, Stats., patients and patients in the maximum security facility at Mendota Mental Health Institute.

Reason for rules, intended effects, requirements

This order permits staff at the Wisconsin Resource Center to conduct random searches of the rooms and personal belongings of ch. 980, Stats., patients, and to conduct routine personal searches of ch. 980, Stats., patients. It also permits staff at the Mendota Mental Health Institute to do the same for residents of the maximum security facility there.

The occasion for the rule change was a lawsuit in which a patient at the Wisconsin Resource Center challenged the practice there of staff making random searches of the rooms and personal belongings of ch. 980, Stats., patients, claiming that it violated s. HFS 94.24 (2) (e). The court handling the case was expected to rule in favor of the patient. The Department, in response, temporarily suspended the practice and then modified the rule in question by emergency order. This is the replacement permanent order.

Section HFS 94.24 (2) (e) is being amended to permit random searches of ch. 980, Stats., patient rooms and personal belongings for security and treatment reasons. The permanent order also amends s. HFS 94.24 (2) (d) 1. d. to authorize routine personal searches of these patients for the same reasons. A "personal search" is defined as including the patient's pockets, frisking his or her body, examining the patient's shoes and hat and visually inspecting the patient's mouth. The current rule authorizing routine personal searches does not specifically authorize personal searches of ch. 980, Stats., patients.

Agency Procedure for Promulgation

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

Contact Person

Jim Yeadon
Division of Care and Treatment Facilities
Telephone (608) 266−5525

Public Instruction

Rule Submittal Date

On October 29, 1998, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. PI 3.03 (6) (b) 3., relating to alternative teacher permits.

Agency Procedure for Promulgation

A public hearing is required and public hearings will be scheduled. The Division for Learning Support: Instructional Services is primarily responsible for promulgation of this rule.

Contact Person

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

Peter Burke, Director
Teacher Education, Licensing and Placement
Telephone (608) 266−1879

Public Service Commission

Rule Submittal Date

On October 30, 1998, the Wisconsin Public Service Commission submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. PSC 100, relating to rules for wholesale merchant plants.

At its open meeting of October 29, 1998, the Commission approved proposed rules to create a new subchapter to ch. PSC 100. The proposed rules are expected to:

1) Describe the showing that an applicant is required tomake for the Commission to grant approval to own, control, or operate a wholesale merchant plant;

2) Establish screening tests and safe harbors for proposed wholesale merchant plant projects, including projects in which an affiliated interest is a passive investor and over which the affiliated interest is not able to exercise control or influence, and projects in which the affiliated interest's ownership interest is less than 5 percent;

3) Describe the Commission's analytical process in making its determination and the factors it uses in making its finding; and

4) Allow an interested person to request a hearing on an application under s. 227.42, Stats.

Agency Procedure for Promulgation

A public hearing is required and a public hearing is tentatively scheduled for January 19, 1999.

Contact Person

If you have any substantive questions regarding the proposed rules, you may contact:

Robert D. Norcross
Telephone (608) 267−9229

If you have any questions regarding the Commission's internal processing of the proposed rules, you may contact:

Leon M. Swerin
Telephone (608) 267−3589

Public Service Commission

Rule Submittal Date

On October 30, 1998, the Wisconsin Public Service Commission submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. PSC 117, relating to rules for assignment of costs and opportunity sales.

At its open meeting of October 29, 1998, the Commission approved proposed rules to create ch. PSC 117. The proposed rules are intended to establish requirements and procedures for the Commission, in setting rates for retail electric service, to reflect the assignment of costs, and the treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve.

Agency Procedure for Promulgation

A public hearing is required and a public hearing will be scheduled once the Commission receives the Legislative Council Staff report.

Contact Person

If you have any substantive questions regarding the proposed rule, you may contact:

Robert D. Norcross
Telephone (608) 267−9229

If you have any questions regarding the Commission's internal processing of the proposed rule, you may contact:

Kevin B. Cronin
Telephone (608) 267−9203

Regulation and Licensing

Rule Submittal Date

On November 2, 1998, the Wisconsin Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 227.11 (2), Stats., and s. 440.03 (14) (d), as created by 1997 Wis. Act 261.

The proposed rule−making order creates chs. RL 140 to 142, relating to the registration of music, art and dance therapists.

Agency Procedure for Promulgation

A public hearing is required and will be held on December 8, 1998 at 10:00 a.m. in Room 180 at the Department offices located at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

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

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14(4m), Stats., that on October 30, 1998, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends s. Tax 11.68, relating to the sales and use tax treatment of construction contractors.

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

On October 29, 1998, the Wisconsin Department of Transportation submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 102, relating to operator's licenses and identification cards.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for December 2, 1998. The organizational unit primarily responsible for promulgation of the proposed rule is the Division of Motor Vehicles.

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

On October 29, 1998, the Wisconsin Department of Transportation submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 200, relating to location for placement of utility work signs.

Agency Procedure for Promulgation

A public hearing is not required. The organizational unit primarily responsible for promulgation of the proposed rule is the Division of Transportation Infrastructure Development.

Contact Person

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

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

Veterans Affairs

Rule Submittal Date

On October 28, 1998, the Wisconsin Department of Veterans Affairs submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects s. VA 2.01 (2) (b) 2., relating to the denture cap for the health care aid grant program. The proposed rule increases the expenditure cap for dentures under the health care aid grant program to 25% of the annual program appropriation.

Agency Procedure for Promulgation

A public hearing is required, and will be scheduled for December 11, 1998. The Division of Veterans Programs is primarily responsible for preparing the rule.

Contact Person

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

John Rosinski
Chief Legal Counsel
Telephone (608) 266−7916

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from October 31, 1998 *Wis. Adm. Register*)**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed department rule related to licensing fees charged to license livestock markets, livestock dealers and livestock truckers, registration fees charged to the keepers of farm−raised deer, fees charged for a permit to operate an approved feedlot and the fee charged to an accredited veterinarian for interstate health certificate or certificate of veterinary inspection forms (proposed chs. ATCP 10 and 11, Wis. Adm. Code). The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **November 30, 1998**, for additional written comments. An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **November 9, 1998**, either by writing to Lynn Jarzombeck, P. O. Box 8911, Madison, WI 53708−8911, or by calling 608−224−4883. TTY users call 608−224−5058.

Hearing Information

November 16, 1998 **Monday** **commencing at 5:30 p.m.**	**Dept. of Agriculture, Trade and Consumer Protection** **Board Room** **2811 Agriculture Drive** **Madison, WI**
Handicapped accessible	
November 17, 1998 **Tuesday** **commencing at 5:30 p.m.**	**Dept. of Agriculture, Trade and Consumer Protection** **3610 Oakwood Hills Parkway** **Eau Claire, WI**
Handicapped accessible	
November 18, 1998 **Wednesday** **commencing at 2:30 p.m.**	**District State Office Bldg.** **Room 152B** **200 N. Jefferson St.** **Green Bay, WI**
Handicapped accessible	

Written comments will be accepted until **November 30, 1998**.

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

Statutory authority: ss. 93.06 (1g), 93.07(1), 95.55(3), 95.68(8), 95.69(8), 95.71(8), and 95.715(2)(d)

Statutes interpreted: ss. 93.06(1g), 95.55(3), 95.68(4), 95.69(4), 95.71(5), and 95.715(2)(a)

This rule changes the fees charged for obtaining a livestock market license, a livestock dealer license, a livestock trucker license, a livestock vehicle registration, an approved feedlot permit and forms to be used by accredited veterinarians for interstate health certificates or certificates of veterinary inspection. It also removes the provisions in current rules which eliminate the registration fee for farm−raised deer after December 31, 1998, and exempts owners of certified accredited tuberculosis−free farm−raised deer herds from paying registration fees. In each instance the statutes either direct the department to establish fees by rule, or establish a fee which will apply unless the department specifies a different fee by rule.

Farm-Raised Deer Registrations

Under s. 95.55(3), Wis. Stats., the department is required to specify, by rule, the fee for registration for a person keeping farm−raised deer. The current rule, ATCP 10.652(5)(a) Wis. Admin. Code, establishes a fee of $50 if the person keeps no more than 15 farm−raised deer. If the person keeps more than 15 farm−raised deer, the fee is $100. The current rule indicates that these fees do not apply after December 31, 1998, and they do not apply if the herd is certified as an accredited tuberculosis−free herd by the department. In addition, a person who holds a valid registration on December 31, 1998, is not required to apply for annual renewal of the registration, rather the registration remains in effect until suspended or revoked by the department.

Under this proposed rule, the fee of $50 for a person who keeps no more than 15 farm−raised deer and $100 for a person who keeps more than 15 farm−raised deer is unchanged. However, the exemption from payment of the fee after December 31, 1998, and the exemption from payment of the fee if the herd is certified as an accredited tuberculosis−free herd are removed. People who keep farm−raised deer will be required to register and pay the fee annually. The department needs to continue collecting these fees to enable the department to continue to assist the industry in disease control efforts, and to protect the dairy industry from diseases which might be transmitted from farm−raised deer to dairy cattle.

Livestock Markets Licenses

Livestock market license fees are currently established by s. 95.68(4), Wis. Stats., and s. 12.02(2m), Wis. Admin. Code. A livestock market, other than an equine market, which holds 5 or more sales per year is required to pay an annual fee of $150. A livestock market, other than an equine market, which holds fewer than 5 sales per year is required to pay an annual fee of $75. An equine market is required to pay an annual fee of $100. In addition, the holder of a livestock market license is required to pay an annual fee of $5 for each livestock vehicle registered by the livestock market licensee. The statute authorizes the department to change these fees by rule.

Under this proposed rule, the annual fee for a livestock market, other than an equine market, which holds 5 or more sales in a year is $225. The annual fee for a livestock market, other than an equine market, which holds fewer than 5 sales in a year is $115. The annual fee for an equine market is $150. The annual fee to register each livestock vehicle is $10.

The department needs this fee increase to permit it to continue its efforts to control the potential spread of animal disease through the marketing system.

Livestock Dealer Licenses

Livestock dealer license fees are currently established by s. 95.69(4), Wis. Stats., and s. ATCP 12.03(2m) Wis. Admin. Code. Under these provisions, a livestock dealer pays an annual fee of $75 for the license and an annual fee of $5 for each livestock vehicle registered. The statute authorizes the department to change these fees by rule.

Under this proposed rule, the livestock dealer will be required to pay an annual license fee of $115 for the license and an annual fee of $10 for each livestock vehicle registered.

The department needs this fee increase to permit it to continue its efforts to control the potential spread of animal disease through the dealers' operations. It particularly needs this to enable it to conduct random records checks among dealers to assure that the department

will be able to use dealer records to complete a traceback of all animals which have been in contact with an animal that has been identified as an animal infected with serious contagious diseases like tuberculosis or brucellosis.

Livestock Trucker Licenses

Livestock trucker license fees are currently established by s. 95.71(5), Wis. Stats., and ATCP 12.04(2m), Wis. Admin. Code. Under these provisions a livestock trucker pays an annual fee of $20 for the license and an annual registration fee of $5 for each livestock vehicle registered. The statute specifically authorizes the department to change these fees by rule.

Under this proposed rule, the livestock trucker would be required to pay an annual license fee of $30 and an annual registration fee of $10 for each livestock vehicle registered.

The department needs this fee increase to permit it to monitor trucker activities to assure they handle animals humanely and maintain records which may play a crucial role in the traceback of disease should the need arise.

Approved Feedlot Permits

The current approved feedlot permit fee is established by ATCP 11.14(2) Wis. Admin. Code under the authority of s. 95.751(2)(d), Wis. Stats. The person holding or seeking an approved feedlot permit pays an annual fee of $50.

Under this proposed rule, the permit fee for an approved feedlot would be $75.

The department needs this fee increase to permit it to continue its efforts to assure that no disease is introduced to Wisconsin's animal industry from animals imported to or kept in an approved feedlot.

Interstate Health Certificate Forms

Under s. 93.06(1g) Wis. Stats., the department may furnish veterinarians with forms which are to be used by them to issue interstate health certificates or certificates of veterinary inspection. The statute provides that the charge for these blank forms will be $2 unless the department specifies a different fee by rule.

Under this rule, the fee for forms to be used for interstate health certificates or certificates of veterinary inspection will be $3 per form.

The department needs this fee increase to offset the increased cost of monitoring the interstate shipment of animals.

Fiscal Estimate

(See page 33 of the October 31, 1998 *Wis. Adm. Register*.)

Initial Regulatory Flexibility Analysis

(See page 33 of the October 31, 1998 *Wis. Adm. Register*.)

Copies of Rule

A copy of the rule to be considered may be obtained, free of charge, from:

Animal Health Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P. O. Box 8911
Madison, WI 53708−8911

Notice of Hearing

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from October 31, 1998 *Wis. Adm. Register*)**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules (proposed s. ATCP 75.015(7)(c)2, Wis. Adm. Code) relating to license exemption for retail food establishments located in licensed restaurants. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until **November 13, 1998**, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224−4700. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by November 6, 1998, either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608− 224−4712), or by contacting the message relay system (TTY) at 608−224−5058. Handicap access is available at the hearing.

Hearing Information

November 11, 1998	**Department of Agriculture,**
Wednesday	**Trade & Consumer Protection**
1:00 p.m. until 3:00 p.m.	**Conference Room 172**
	2811 Agriculture Drive
	P.O. Box 8911
	Madison, WI 53708

Handicapped accessible

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

Statutory authority: ss. 93.07 (1), 97.30(5) and 227.24

Statutes interpreted: ss. 97.30 and 254.64

The Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores under s. 97.30, Stats. The Wisconsin department of health and family services (DHFS) currently licenses and inspects restaurants under s. 254.64, Stats.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate licensing and inspection by DATCP and DHFS. This rule amends current DATCP rules to eliminate duplicate licensing and inspection, starting with the license year that begins on July 1, 1998. DHFS is adopting a similar rule. Both agencies have adopted temporary emergency rules pending adoption of these "permanent" rules.

Under current DATCP rules, a person who operates a restaurant and food store at the same location is exempt from a food store license if (1) the person holds a restaurant permit from DHFS and (2) non−meal food sales at the restaurant−food store comprise no more than 25% by dollar volume of all food sales from that location.

This rule expands the current exemption. Under this rule, the operator of a combined restaurant−food store is exempt from a food store license if (1) the operator holds a restaurant permit from DHFS and (2) non−meal food sales comprise less than 50% of all food sales at the combined location. DHFS is adopting reciprocal rules that will exempt, from restaurant permit requirements, food stores licensed by DATCP whose meal sales comprise less than 50% of all food sales.

Fiscal Estimate

(See page 34 of the October 31, 1998 *Wis. Adm. Register*.)

Initial Regulatory Flexibility Analysis

(See page 35 of the October 31, 1998 *Wis. Adm. Register*.)

Notice of Hearing

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from October 31, 1998 *Wis. Adm. Register*)**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed amendments to chapters ATCP 2, 40, 42, 45, 50, 92, 100, 109, 118 (JUS 2), 121 and 161, Wis. Adm. Code, relating to technical and remedial rule changes pertaining to farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **December 10, 1998** for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of Legal Counsel, 2811 Agriculture Drive, Box 8911, Madison, WI 53708−8911, or by calling (608−225−5023. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **November 20, 1998** either by writing to Margaret Maly, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608−224−5023) or by contacting the message relay system (TTY) at **608−224−5028**. Handicap access is available at the hearing.

Hearing Information

December 3, 1998 **Thursday** **9:00 a.m.**	**Department of Agriculture,** **Trade & Consumer Protection** **Board Room** **2811 Agriculture Drive** **Madison, WI**

Written comments will be accepted until **December 10, 1998.**

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

Statutory Authority: ss. 92.05(3)(c), 93.07(1), 93.47(2), 93.50(2)(f),
94.64(9), 94.65(9), 98.245(7)(a)1. and 344.576(3)(c)

Statutes Interpreted: ch. 92 and ss. 93.46, 93.47, 93.50, 94.64, 94.65,
98.245(7)(a) , and 344.576(3)

This rule makes the following organizational and drafting changes to rules currently administered by the Department of Agriculture, Trade and Consumer Protection (DATCP):

• It renumbers ch. ATCP 2 (Farm Mediation and Arbitration Program) to ATCP 162. This reflects an organizational change in which the farm mediation and arbitration program was transferred from the secretary's office to the marketing division in DATCP.

• It repeals ch. ATCP 45 (Sustainable Agriculture Program), and incorporates the sustainable agriculture program as part of the agricultural development and diversification (ADD) grant program under ch. ATCP 161. This reflects an organizational change in which the sustainable agriculture program was transferred from the agricultural resource management division to the marketing division in DATCP. It also reflects budget legislation contained in 1997 Wis. Act 27, which merged the sustainable agriculture program with the ADD grant program.

• It updates technical standards currently incorporated by reference in ch. ATCP 40 (Fertilizer and Related Products), ATCP 42 (Commercial Feed) and ATCP 50 (Soil and Water Resource Management). It also expands some ATCP 50 technical standards for cost−shared conservation projects, to reflect new USDA technical standards. The department will request permission from the Attorney General and Revisor of Statutes to incorporate the updated technical standards by reference, as required under s. 227.21, Stats.

• It implements s. 98.245(7), Stats., which requires owners of liquid LP gas meters to register those meters with the department. The statute requires a one−time registration fee of $25. This rule incorporates the statutory fee.

• It implements s. 98.245(4), Stats., which requires temperature compensation in all liquid measurement of LP gas deliveries. 1995 Wis. Act 183 eliminated an exemption for deliveries of less than 100 gallons made directly to mobile fuel tanks. This rule modifies current DATCP rules accordingly.

• It updates obsolete addresses and cross−references in ch. ATCP 109 (Freezer Meat and Food Service Plans) and ATCP 121 (Referral Selling Plans).

• It renumbers and retitles ch. JUS 2 (Notice of Renter Liability; Rental of Passenger Vehicles) to ATCP 118 (Car Rentals; Notice of Renter Liability), and makes nonsubstantive drafting changes. The Legislature transferred responsibility for the car rental notice law under subch. V of ch. 344, Stats., from the Department of Justice to DATCP. This rule change reflects that transfer of responsibility.

Fiscal Estimate

These technical changes will have no fiscal impact on the department or local units of government.

Initial Regulatory Flexibility Analysis

This rule has no direct effect on small businesses in Wisconsin.

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from October 31, 1998 *Wis. Adm. Register*)**

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules amending or repealing applicable sections of HSS 165, and the repeal and recreation of Chapter ATCP 77, Wis. Adm. Code, relating to certification of laboratories engaged in public health testing of milk, water and food. The hearing will be held at multiple locations via video−conference at the time and places shown below. The public is invited to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **December 1, 1998**, for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture drive, PO Box 8911, Madison, WI 53708−8911, or by calling (608) 224−4700. Copies will also be available at all locations for the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **November 1, 1998** either by writing to Debbie Mazanec, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, (608) 224−4712, or by contacting the message relay system (TTY) at (608) 224−5058. Handicap access is available at all hearing locations.

Hearing Information

The hearing is scheduled for video−conference participation from each of the four locations.

Date and Time: Thursday, November 12, 1998, 10:00 a.m. until 1:00 p.m.

Locations:

Madison
State of Wisconsin
Department of Agriculture, Trade and Consumer Protection Building
2811 Agriculture Drive
Madison, Wisconsin
Room 472

Eau Claire
State of Wisconsin
State Office Building
718 Clairemont Avenue
Eau Claire, Wisconsin
Room 139

Green Bay
State of Wisconsin
State Office Building
200 North Jefferson
Green Bay, Wisconsin
Room 618

Milwaukee
State of Wisconsin
State Office Building
819 North 6th Street
Milwaukee, Wisconsin
Room 542

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

Statutory authority: ss. 93.07(1) and 93.12(3), (5) and (7)

Statutes interpreted: ss. 93.06(7) and (8), 93.08, 93.12, 93.14, 93.15, 93.16 and 97.12, Stats.

The 1995−97 biennial budget act, 1995 Wis. Act 27, transferred much of the administration of Wisconsin's laboratory certification program from the Department of Health and Family Services ("DHFS") to the Department of Agriculture, Trade and Consumer Protection ("DATCP").

Under this program, DATCP is now responsible for certifying laboratories that test milk, food and drinking water for compliance with public health standards. (DHFS retains jurisdiction over certain public health laboratories, such as medical laboratories.) Laboratory certification helps ensure that public health lab tests are accurate and reliable.

This rule is the foundation for the lab certification program now located in DATCP. This rule does not make major changes in the current lab certification program. However, this rule streamlines and clarifies current rules so they will be easier to read and understand. This rule repeals former DHFS lab certification rules under ch. HFS 165, Wis. Adm. Code. It also repeals and recreates DATCP's interim lab certification rules under ch. ATCP 77, Wis. Adm. Code.

Coverage

Under s. 93.12, Stats., and this rule, DATCP must certify laboratories that perform certain tests on milk, water or food, to determine compliance with federal, state or local public health standards. This rule specifies the tests for which a laboratory must be certified. Both private and public laboratories must be certified under this rule. However, certification is not required for any of the following:

- The United States government.
- Water testing by the state of Wisconsin laboratory of hygiene.
- Milk testing by DATCP.
- An educational institution that operates a laboratory solely for teaching or academic research purposes, and does not test milk, water or food for human consumption .
- A person who operates a laboratory solely to conduct quality control tests on food or water sold by that person, provided that the tests are not required by statute, rule or ordinance.

Scope of Certification

DATCP must certify a laboratory on an annual basis. An annual certification expires on December 31 of each year. A person who operates 2 or more laboratories must obtain a separate certification for each lab. DATCP must specify, in its certification, the tests which the laboratory is certified to perform.

Applying for Certification

A laboratory must apply to DATCP for certification, and must pay an annual certification fee of $216 per test. If DATCP certifies a lab to perform a test for less than a full year, the lab must pay a certification fee of $18 for each full month of certification.

DATCP must act on a certification application within 40 calendar days after it receives a complete application. A laboratory may apply, at any time, for certification to perform additional tests. A certified laboratory must file an annual renewal application by December 31 of each year.

Granting and Withdrawing Certification

DATCP may certify a laboratory that complies with this rule. DATCP may conditionally certify a laboratory pending action to correct deficiencies which DATCP has identified. DATCP may summarily suspend a conditional certification if the laboratory fails to correct the deficiencies within the time specified by DATCP.

Laboratory Facilities

A laboratory must have adequate facilities, equipment and supplies to perform the tests for which DATCP certifies that laboratory. A laboratory must also maintain the facilities, equipment and supplies in proper working condition. This rule establishes some specific facility and maintenance requirements. Under this rule, a laboratory must notify DATCP whenever the it remodels lab facilities or installs new equipment that materially affects the performance of certified tests.

Laboratory Procedures

A certified laboratory must perform tests according to recognized methods. This rule incorporates, by reference, authoritative lab manuals which spell out those recognized methods. As required under s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate these manuals by reference in this rule.

Laboratory Administrator

A certified laboratory must designate an administrator who personally supervises the operations of the laboratory. The administrator or a designated agent of the administrator must be present at the laboratory during daytime business hours, and must do all of the following on behalf of the lab operator:

Supervise the lab and its compliance with this rule.

Review and approve the lab's certification applications to DATCP.

Supervise the procurement and maintenance of lab facilities, equipment and supplies.

Facilitate DATCP inspections of the lab.

Notify DATCP of changes in lab facilities or personnel that affect the lab's certification.

Notify lab customers if DATCP suspends or revokes the lab's certification.

Report lab test results to the appropriate regulatory agency, if required by law.

Supervise lab recordkeeping.

Laboratory Analysts

Analysts who perform tests at a certified laboratory must be proficient in performing those tests. Whenever DATCP first certifies a laboratory, or performs its biennial inspection of a certified laboratory, DATCP must evaluate the proficiency of all the analysts who are then performing tests for which the lab is certified. DATCP evaluates the analysts by watching them perform the tests.

DATCP may not certify a laboratory to test milk or water unless DATCP specifically certifies the proficiency of at least one analyst to perform each test for which the lab is certified. (This is different from DATCP's general evaluation lab analysts, described above.) DATCP must follow specific federal procedures when certifying individual milk or water analysts, and must maintain a list of certified analysts. An analyst's certification remains in effect until the analyst leaves the lab, or until DATCP suspends or revokes the analyst's certification.

A laboratory must notify DATCP if the lab no longer has certified analysts on staff to perform milk or water tests. A laboratory must also notify DATCP whenever the lab assigns a new analyst to perform any test for which the lab is certified.

Inspecting a Laboratory

DATCP must inspect a laboratory at all of the following times:

- Before certifying the laboratory for the first time.
- At least once every 2 years after it certifies the laboratory.
- Before certifying the laboratory to perform a test for which it was not previously certified.

DATCP may inspect a laboratory whenever any of the following occurs:

- The laboratory materially alters its facilities, equipment or procedures.
- The laboratory assigns a new analyst to perform a test for which the lab is currently certified.
- DATCP concludes that an inspection is necessary to determine whether the lab complies with this rule.

Milk and Water Laboratories; Proficiency Evaluation

A laboratory certified to test milk or water must undergo an annual lab proficiency evaluation. In an annual lab proficiency evaluation, the laboratory must examine samples prepared by an approved evaluator. The contents of the samples are known to the evaluator, but not to the laboratory. The evaluator must rate the laboratory's proficiency (not the proficiency of individual analysts) by comparing the laboratory's results to the known contents of the samples, and must report those results and ratings to DATCP.

DATCP, or another evaluator approved by DATCP, must evaluate a lab's proficiency in performing milk or food tests. The Wisconsin state lab of hygiene, or another evaluator approved by DATCP, must evaluate a lab's proficiency in performing water tests.

DATCP must approve lab evaluation procedures. A laboratory is not required to undergo an annual proficiency evaluation for any test unless DATCP has approved an evaluation procedure for that test. An evaluation procedure must include standards for all of the following:

- The evaluator's preparation of test samples.
- The lab's examination of test samples.
- Deadlines for examining test samples and reporting test results.
- The evaluator's review and rating of operator proficiency.

This rule specifies evaluation procedures for milk and water tests. To pass an annual milk test evaluation, a laboratory must accurately test at least 80 percent of the samples provided by the evaluator. To pass an annual water test evaluation, a laboratory must accurately test at least 90 percent of the samples provided by the evaluator.

Laboratory Records

A laboratory must keep complete records related to all of the following:

- The training, experience and proficiency testing of analysts.
- Laboratory evaluations.
- Laboratory policies and procedures.
- Laboratory facilities, equipment and supplies, including records related to procurement, calibration, testing and maintenance.
- Quality control procedures and monitoring.
- Tests performed at the laboratory, including the nature of the test, the person for whom the test is performed , the assigned analysts, the test methods used, the date and time of testing, and the test results obtained.
- Test reports filed with the department and other government agencies.

A laboratory must keep these records for at least 5 years, and must make them available for inspection and copying by DATCP upon request. A laboratory may not falsify any records.

Notice to DNR and Lab of Hygiene

Pursuant to s. 93.12(5), Stats., the department has given notice of this rule to the department of natural resources and the state laboratory of hygiene.

Fiscal Estimate

(See page 38 of the October 31, 1998 *Wis. Adm. Register*.)

Initial Regulatory Flexibility Analysis

(See page 38 of the October 31, 1998 *Wis. Adm. Register*.)

Notice of Hearings

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules (proposed s. ATCP 139.05 (3)), relating to bicycle helmets and drawstrings on children's clothing at the times and places shown below.

Written Comments

The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **February 15, 1999**, for additional written comments.

Copies of Rule and Contact Person

Interested persons may obtain a free copy of these rules from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 10930 W. Potter Road, Suite C, Milwaukee, WI 53226, at (414) 266−1239. Copies will also be available at the public hearings.

An interpreter for the hearing−impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **December 21, 1998**, either by writing to Judy Jung, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608) 224−4972, or by contacting the message relay system (TTY) at (608) 266−4399 to forward your call to the Department at (608) 224−5058. Handicap access is available at the hearings.

Hearing Information

Four hearings are scheduled:

Date & Time	Location
January 11, 1999 **Monday** **10:00 a.m.**	**Board Room, DATCP** **2811 Agriculture Dr.** **MADISON, WI 53704** **Handicapped accessible**
January 12, 1999 **Tuesday** **10:00 a.m.**	**Conference Room, DATCP** **Milwaukee Regional Office** **10930 W. Potter Rd., Ste. C** **Milwaukee, WI 53226−3450** **Handicapped accessible**
January 13, 1999 **Wednesday** **10:00 a.m.**	**1st Flr. Conference Rm., DATCP** **Eau Claire Regional Office** **3610 Oakwood Hills Pkwy.** **Eau Claire, WI 54701−7754** **Handicapped accessible**
January 14, 1999 **Thursday** **10:00 a.m.**	**Conference Rm. 152B, DATCP** **Green Bay Regional Office** **200 N. Jefferson St.** **Green Bay, WI 54301**

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

Statutory authority: ss. 93.07 (1), 100.20 (2) and 100.42 (2)

Statutes interpreted: ss. 93.07 (1), 100.20 (2) and 100.42

The Department of Agriculture, Trade and Consumer Protection currently administers s. 100.42, "Product Safety," Wis. Stats., and ch. ATCP 139, "Hazardous Substances," Wis. Adm. Code. This rule creates new provisions concerning bicycle helmets and drawstrings in children's clothing and makes other technical changes to the rule.

Rule Coverage

This rule changes the title of ch. ATCP 139 to better reflect the contents of the rule, adds an explanatory note to the beginning of the Chapter to explain the statutory authority for the rules, and creates new provisions concerning bicycle helmet safety standards and drawstrings in children's clothing.

Title of Chapter

The title of ch. ATCP 139 will change from "Hazardous Substances," to "Consumer Product Safety." The new title is more inclusive and better describes the contents of the chapter, which includes rules on labeling requirements of certain hazardous substances as well as rules which ban the sale of items which have been determined to be unsafe.

The Department anticipates that in the future it will be beneficial to create rules about other consumer product safety issues, beyond just "hazardous substances." Therefore, it would be helpful to change the title of the rule chapter to better reflect the current contents of the chapter, as well as future contents.

New Explanatory Note

The current rule includes a "Note" that provides some history on the rule, but the current "Note" does not include any information about the statutory authority for the rule or what penalties and remedies apply to violations of the rule.

It has become standard practice in the Department to provide an explanatory "Note" at the beginning of each rule that identifies the statutory authority for the rule and the statutory references for the penalties and remedies that apply to violations of the rule. This information is often requested by attorneys in the private sector who are trying to interpret the rule for a client. The new "Note" will bring this rule into conformity with the Department's other rules and will provide basic information that is helpful to others who interpret the rule.

Bicycle Helmet Safety Standards

Deaths and injuries caused by bicycle accidents are becoming a greater safety concern nationwide. The federal Consumer Product Safety Commission (CPSC) indicates that each year about 900 people are killed in bicycle−related accidents −− 200 of which are children. About 60% of all the deaths from bicycle accidents involve head injuries. In addition, another 500,000 people are injured each year in bicycle−related accidents and require medical treatment, usually in hospital emergency rooms.

Research shows that bicycle helmets are effective in substantially reducing the number of head injuries caused by bicycle accidents. Accordingly, the CPSC has promulgated safety standards for all bicycle helmets sold in the United States after March 10, 1999.

Current Department rules do not provide any kind of safety standards for bicycle helmets sold in Wisconsin. This rule adopts the Safety Standard for Bicycle Helmets created by the CPSC and bans and prohibits from sale in Wisconsin any bicycle helmet manufactured or imported after March 10, 1999, that does not meet all the federal CPSC safety standards.

Drawstrings in Children's Clothing −− Safety Standards

Since 1996 the CPSC has been concerned about the safety hazards created by drawstrings in children's clothing. In 1996 the CPSC published voluntary "Guidelines for Drawstrings on Children's Outerwear," but no mandatory rules or standards have been created by the CPSC.

The Department believes the CPSC's recommended guidelines are helpful, but do not adequately address the safety problem posed by drawstrings in children's clothing. To make children's clothing safer, this rule extends the CPSC standards for drawstrings on children's outerwear to all children's clothing. This rule bans and prohibits from sale in Wisconsin all children's clothing, size 2T−16, which uses drawstrings.

Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection has administered and enforced ch. ATCP 139, Wis. Adm. Code, since its inception in 1978. These rules ban certain toys and other articles intended for use by children that present a mechanical hazard or unreasonable risk of personal injury or illness. These proposed rules add two items to that category: bicycle helmets that do not meet the Federal safety standard and children's clothing, sized 2T to 16, that uses drawstrings.

The Department currently investigates reports of injuries related to consumer products and also monitors the marketplace for other consumer product safety concerns. The Department assumes these proposed rules will help decrease the number of incidents involving injuries or deaths that require Department intervention. The Department anticipates that it can absorb the workload associated with enforcement of these rules with existing program resources.

Existing staff responsible for administering the Department's consumer protection and consumer product safety laws will absorb the initial workload to provide publicity and education about the rules.

Based on these assumptions, the Department believes there is no fiscal effect associated with amendment of this rule.

Initial Regulatory Flexibility Analysis

Proposed amendments to s. ATCP 139.05 (3), Wis. Adm. Code

Consumer Product Safety

The current rule, s. ATCP 139.05, Wis. Adm. Code, bans and prohibits from sale certain types of toys and other articles intended for use by children that present a mechanical hazard and unreasonable risk of personal injury or illness. The rule lists products such as, toys with small components that may be ingested or toys with sharp protrusions that may cause lacerations, and the rule finds that the public health and safety can be protected only by keeping these kinds of products out of the channels of commerce. The proposed amendments to s. ATCP 139.05 (3) add two items to this list of products −− bicycle helmets that do not meet the federal safety standards and children's clothing sized 2T to 16 with drawstrings.

The Department believes that the impact of these amendments will have little or no effect on small businesses in regard to the sale of bicycle helmets and children's clothing without drawstrings.

Bicycle Helmets

Under the Children's Bicycle Helmet Safety Act of 1994, the Federal Consumer Product Safety Commission (CPSC) is issuing a safety standard that will require all bicycle helmets to meet impact−attenuation and other requirements. The standard includes requirements specifically applicable to children's helmets and requirements to prevent helmets from coming off during an accident.

The Federal rule is effective March 10, 1999, and applies to bicycle helmets manufactured after that date. Interim mandatory standards went into effect in 1995 and will continue to apply to bicycle helmets manufactured from 1995 until March 10, 1999, inclusive. Firms have had the option of marketing and selling helmets meeting the new standard before its effective date.

The Federal rule was announced in 1998 to give small businesses adequate time to adjust their inventories and prepare to purchase new products. Since the new standard allows for the continued sale of inventory manufactured before March 1999 which meets the 1995 safety standards, there will be no impact on small businesses as they deplete old inventory. Adopting this federal standard into the Wisconsin Administrative Code will incorporate all applicable dates for sale of new and old inventory and harmonize State and Federal law.

Drawstrings on Children's Clothing

In 1996 the Federal Consumer Product Safety Commission (CPSC) issued guidelines to prevent children from strangling or becoming entangled in drawstrings. These guidelines recommended that manufacturers and retailers provide clothing with alternative closures, such as snaps, buttons, velcro and elastic, rather than drawstrings. CPSC also recommended that consumers purchase children's clothing with these alternative closures and remove all drawstrings from children's clothing already in their possession.

The proposed rule amendment will ban the sale of children's clothing, sized 2T to 16, manufactured after **June 1, 1999**, that has drawstrings anywhere on the garment. Because the majority of manufacturers are voluntarily following the Federal guidelines and retailers have adjusted their inventories to provide children's clothing meeting the guidelines, then these proposed rules should have no significant impact on small businesses in Wisconsin.

This amendment will also address the sale of children's clothing still in inventory as of **June 1, 1999**, which does not meet the new rule requirements. For all such children's clothing, manufacturers and retailers will be allowed to market and sell these articles as long as all drawstrings have been removed from the garments prior to sale. Most children's clothing currently meets the proposed rule, and therefore, any products affected by this amendment would constitute a small percentage of inventory. The Department anticipates minimal impact on Wisconsin businesses.

Since 1985 there have been 20 deaths and 43 injuries to children involving drawstrings. Because drawstrings on children's clothing are a hidden hazard that can lead to deaths and injuries, the interest of public safety far outweighs any potential cost to small businesses as a result of the proposed rule.

Based on the information above, the Department does not expect the proposed rules to have a significant adverse impact on small businesses.

Notice of Hearing

Commerce

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

Notice is hereby given that pursuant to ss. 1901 (1z), 1997 Wis. Act 237 and 227.24 (4), Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules creating ch. Comm 118, relating to the Wisconsin Promise Challenge Grant Program.

Hearing Information

The public hearing will be held as follows:

Date & Time	Location
November 30, 1998 **Monday** **Beginning at** **9:00 a.m.**	**Room 3B, 3rd Floor** **WHEDA Bldg.** **201 W. Washington Ave.** **MADISON, WI**

Written Comments

Interested people are invited to appear at the hearing and present comments on the proposed rules. People making oral presentations are requested to submit their comments in writing. People submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **October 31, 1998**, to permit submittal of written comments from people who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

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

Analysis

Statutory authority: section 1901 (1z), 1997 Wis. Act 237.

Statute interpreted: section 1901 (1z), 1997 Wis. Act 237.

On July 16, 1998, 1997 Wis. Act 237 took effect. The Act created section 1901 (1z), 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 county wide 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 under−served 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 grant money received. In addition the law specifies conditions on the use of grant monies and requires documentation on the number of under−served 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 promulgated an emergency rule in order to make these funds and the grant program available as quickly as possible, so that countywide consortiums may provide the five fundamental resources to under−served youth. The 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 and took effect on September 12, 1998. Commerce has decided to adopt the emergency rule as a permanent rule, subject to public hearing review and comment pursuant to ss. 227.17 and 227.24 (4), Stats.

Pursuant to section 1901 (1z), 1997 Wis. Act 237, the National Community Service Board (Board) attached to Commerce has authority to award grants for the Wisconsin Promise Challenge Grant Program. Ch. Comm 118, titled "Wisconsin Promise Challenge Grant", is being created to establish the criteria the Board and the Department will use to issue the grants.

This chapter includes the same definitions contained in the Statutes necessary to implement the law. In addition, the rules delineate the amount of grants available based on the number of under−served youth targeted and the amount of money the countywide consortium must have available in order to be eligible for a grant, setting forth the information required on the grant application and reporting requirements.

Contact Person

Thomas Devine, Executive Director
Dept. of Commerce
Telephone (608) 261−6716

Initial Regulatory Flexibility Analysis

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

Under the law, countywide consortiums may be composed of a combination of individuals, public agencies, nonprofit organizations and other persons, so it is feasible that some combinations of countywide consortiums could qualify as a small business.

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

General business, organizational, typing, accounting and bookkeeping skills may be needed to administer the awarded grants and furnish the required reports.

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

None.

Fiscal Estimate

Section 1901 (1z) of 1997 Wis. Act 237 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 under−served 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 grant money received. In addition the law specifies conditions on the use of grant monies and requires documentation on the number of under−served youths who received the five fundamental resources and the positive outcomes and result of those efforts.

Under the law, countywide consortium is defined to mean a combination of individuals, public agencies, nonprofit organizations and other persons who have agreed to participate in a joint effort to coordinate and document progress within the county in which those individuals, public agencies, nonprofit organizations and other persons operate toward providing the five fundamental services. Due to the unlimited number of variations of establishing countywide consortiums, as well as the size of the population of youth served, it is impossible at this time to determine the precise fiscal impact this law will have on a public agency in local government. The law and rules clearly allow local government to participate in choosing and deciding what type of countywide consortiums, including public agencies, they will accept and whether they choose to make public funds available to match the grant.

No funds were made available to the Departments to administer the law, so the agencies must absorb the costs to administer the law.

Long−Range Fiscal Implications:

The funds appropriated under the law are available only for the current fiscal year.

Copies of Rule

A copy of the proposed rules may be obtained without cost from Richard Meyer, Department of Commerce, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266−3080 or (608) 264−8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearing

Employe Trust Funds

In accord with s. 227.16 (1), the Wisconsin Department of Employe Trust Funds will hold a public hearing to discuss a proposed rule, which creates s. ETF 10.55, Wis. Adm. Code relating to the proper reporting of creditable service, earnings and participating employes of instrumentalities of two or more units of government when the joint instrumentality does not qualify as a separate employer for WRS purposes.

Hearing Information

November 30, 1998	**Dept. of Employe Trust Funds**
Monday	**Conference Room 2A**
3:00−4:30 PM	**801 West Badger Road**
	Madison, Wisconsin

Written Comments

The record will be held open until **4:30 p.m. on December 2, 1998**, for the receipt of any written comments from persons unable to attend the public hearing. Written comments should be addressed to Robert F. Weber, Chief Counsel, Department of Employe Trust Funds, P.O. Box 7931, Madison, Wisconsin, 53707−7931.

Contact Person & Copies of Rule

For copies of the proposed rule, which are available free upon request, and for other information about this rule, please contact: Robert F. Weber, Chief Counsel, Department of Employe Trust Funds, P.O. Box 7931, Madison, Wisconsin, 53707−7931. Telephone: (608) 266−5804. FAX: (608) 267−0633.

Analysis of the Proposed Rule Prepared by the Department of Employe Trust Funds

Authority for rule: ss. 40.03 (2)(i) and 40.22 (5)

Statute interpreted: s. 40.02 (17), (22)

Employes who meet the qualifications of "participating employes" as defined by s. 40.22, Stats., are covered by the Wisconsin Retirement System (WRS). They are granted "creditable service" under the WRS as provided by s. 40.02 (17), Stats. A percentage of their "earnings," as defined s. 40.02 (22), Stats., are contributed to the Public Employe Trust Fund to pay for their retirement benefits as those benefits are accrued.

Under state law, some local units of government are permitted to join together to create joint instrumentalities. A newly created unit of government may have the option of choosing whether its employes will be covered by the WRS, but only if the unit is separate and distinct from other employers and is so recognized by the Social Security Administration. It is possible for two or more WRS participating employers to create a joint instrumentality which is not recognized as a separate unit of government for purposes of Titles II and XVIII of the federal Social Security Act and for WRS purposes. One example would be a joint library district. This rule specifies (1) how to determine whether an employe of the instrumentality qualifies as a participating employe under the WRS and (2) how to apportion responsibility among the participating employers for payment of the employer−required contributions and for reporting earnings and services rendered by the employe. Included in this rule is provision for the possibility that the joint instrumentality is created by two or more local units of government, including one or more units which are not participating employers under the WRS. The rule codifies responsibility for (1) reporting affected participating employes and their earnings and service, and (2) making required contributions to the Department of Employe Trust Funds.

The rule will specify that an employe of a joint instrumentality, which itself is not a separate and distinct "employer" for WRS purposes, is a participating employe under the Wisconsin Retirement System if any of the units of government forming the joint instrumentality is a participating employer under s. 40.21, Stats., unless the employe is excluded by s. 40.22 (2), Stats.

In determining whether an employe is not expected to work at least one−third of what is considered full time employment by Wis. Adm. Code s. ETF 20.015, Stats., the employe's work for the joint instrumentality shall be considered as a whole, without regard for the number of separate units of government which created the joint instrumentality or any agreement among them apportioning responsibility for the retirement contributions. Thus, a librarian working 900 hours per year for a joint library district created by six towns and villages, at least one of which is a participating employer, would qualify as a participating employe under the WRS.

Among the units of government which formed the joint instrumentality, each unit which is a participating employer under s. 40.21, Stats., shall report each employe of the joint instrumentality who qualifies as a participating employe to the DETF as its own employe. Each participating employer shall transmit as required contributions to the DETF the same percentages of the employe's earnings as is required for its other employes.

The amount of earnings to be reported by each participating employer with respect to an employe of the joint instrumentality shall be determined by first determining the gross amount paid to the employe for services rendered to the joint instrumentality which would qualify as "earnings" under s. 40.02 (22), Stats., if the joint instrumentality were itself the employer, then prorating the earnings among the employer which created the joint instrumentality. If the proration is not specified by the agreement establishing the joint instrumentality, it shall be in accord with the agreed proration of other expenses. If no such proration is provided in the agreement, each employer shall report as earnings the total amount divided by the number of units of government forming the joint instrumentality.

The employe's hours of service shall be handled in the same manner for creditable service purposes. Thus, if the librarian worked 1,800 hours annually and was paid $20,000 per year by a joint library district created by a town and a village, both of which are participating employers, and they had agreed to split the expenses, with the town paying 80% and the village 20%, then the town would report 1,440 hours of service and $16,000 in earnings, while the village reported 360 hours of service and $4,000 in earnings, with each making the associated contributions. If the village was not a participating employer, it would have no obligation whatsoever, while the town's responsibilities would be exactly the same.

The policies intended to be codified by this rule−making are:

1.Each participating employer in a joint instrumentality (which is not itself a separate employer for WRS purposes) ought to be responsible for its share of the retirement benefits of the employes of the instrumentality who meet the qualifications for participating employes.

2.What that share should be is initially best determined by the units of government forming the joint instrumentality, but if they fail to address the issue, then their appropriate share will be determined by assuming each unit is equally responsible.

3.The employe of such a joint instrumentality should not be penalized by the number of different units of government which formed the instrumentality. So, for example, a librarian working more than 600 hours per year for a joint library district should be treated the same for WRS purposes regardless of the number of towns and villages which formed the joint library district.

Fiscal Estimate

The Wisconsin Retirement System (WRS) is funded by contributions paid by participating employes and their participating state, municipal and local government employers. See s. 40.05, Stats. The rule does not expand the liabilities of any employer or employe, as it codifies current existing policy and interpretations of law. However, it is possible that some employers who will revise their understanding of the WRS reporting or qualification requirements based upon the clarifications in this rule and will consequently report previously unreported employes. Contributions and interest may be due for earnings which should previously have been reported. See s. 40.06 (5), Stats. The proposed rule may therefore result in changes to the amounts of required contributions from affected employers. The Department estimates that there are very few affected employers.

Initial Regulatory Flexibility Analysis

This rule affects only a retirement program open exclusively to qualifying employes of the state, counties (except Milwaukee County) and municipalities which have elected to participate under s. 40.21, Stats. The rule affects only the participating governmental units which additionally create a joint instrumentality which is not sufficiently independent to qualify as an employer in its own right, and the employes of these joint instrumentalities. The Department therefore anticipates that the provisions of this proposed rule will have no direct adverse impact on small businesses.

Notice of Hearings

Health & Family Services
(Health, Chs. HFS 110−−)

Notice is hereby given that, pursuant to ss. 227.11 (2), 250.04, 254.167, 254.172, 254.176 (1) and (3) and 254.178 (2), Stats., the Department of Health and Family Services will hold public hearings to consider the repeal and recreation of ch. HFS 163, Wis. Adm. Code, relating to certification for the identification, removal and reduction of lead−based paint hazards, accreditation of training courses that prepare individuals for certification, and approval of training course managers, principal instructors and guest instructors, and the emergency rules now in effect on the same subject.

Hearing Information

The public hearings will be held:

Date & Time	Location
November 30, 1998 **Monday** **Beginning at** **10:00 a.m.**	**Room 179A** **Washington Square Bldg.** **1414 E. Washington Ave.** **MADISON, WI**
December 1, 1998 **Tuesday** **Beginning at** **10:00 a.m.**	**County Board Room** **Room 2560** **Eau Claire Co. Courthouse** **721 Oxford Avenue** **EAU CLAIRE, WI**
December 7, 1998 **Monday** **Beginning at** **10:00 a.m.**	**Room 120** **State Office Building** **141 NW Barstow Street** **WAUKESHA, WI**
December 9, 1998 **Wednesday** **Beginning at** **10:00 a.m.**	**Building 2, Room 2327** **Northeast Wis. Tech. College** **2740 W. Mason St.** **GREEN BAY, WI**

The public hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health and Family Services

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. In addition, the Department is given broad public health protection responsibilities and authority under s. 250.04, Stats. The

Department's rules for certification to perform lead abatement, other lead hazard reduction and lead management activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code.

On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek U.S. Environmental Protection Agency (EPA) authorization and approval under 40 CFR 745, Subparts L and Q, of the Wisconsin lead training and certification program. 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, so the Department proceeded to revise ch. HFS 163 to comply with EPA requirements for program authorization and approval. Work practice standards, which are required by EPA, were then developed, reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

On August 29, 1998, the Department published an emergency order revising ch. HFS 163 to qualify the state lead training and certification program for EPA approval. For EPA approval, the following major revisions were made to ch. HFS 163:

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, the emergency order established 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.

This order includes replacement permanent rules for the emergency rules published on August 29, 1998. In addition, this order makes the following changes in ch. HFS 163.

• The rules are reordered and renumbered to improve the logical flow of information and wording and format revisions are made to clarify, but not change, current policy.

• Fees are added for the following: worker−homeowner certification, lead (Pb) company certification, principal instructor approval and renewal of approval, guest instructor approval and renewal of approval, course accreditation and reaccreditation.

• Fees are reduced for the following: project designer and risk assessor certification, and initial course accreditation application.

• Fees are increased for the following: supervisor certification and certification examination registration.

• An additional 3 months are allowed to complete refresher training when training expires within the 3−month period prior to expiration of certification.

• Principal instructor qualifications are revised to require certification in fewer disciplines and allow an instructor to receive credit for taking a course that the instructor also teaches. In exchange, principal instructors are required to attend 2 meetings with Department staff within a 3−year period.

• The length of time that some approvals are in effect is revised to simplify procedures. Lead (Pb) company certification and guest instructor approval expire annually on November 1. Course accreditation allows for either a 2−year or a 4−year term. Principal instructor approval may be granted for a maximum of 12 months, not to exceed the date the instructor's qualifying certification expires.

Contact Person

To find out more about the hearings or hearing locations, to request a copy of the rules, or to submit comments, write or phone:

Gail Boushon
Asbestos and Lead Unit, Room 117
1414 East Washington Ave.
Madison WI 53703−3043

Telephone: (608) 261−6876, or
266−1511 if you are hearing impaired
Fax: (608) 266−9711

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

Written comments on the proposed rules received at the above address no later than **Monday, December 21, 1998**, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The permanent order adds fees for worker−homeowner certification, lead (Pb) company certification, principal instructor approval and renewal, guest instructor approval and renewal and course accreditation and reaccreditation. It reduces fees for project designer and risk assessor certification, and application for initial course accreditation, and increases fees for supervisor certification and certification exam registration.

Due to the small numbers of program participants and certification fee exemptions for local government, the fee revisions are expected to result in a modest increase in program revenues of $27,000 in SFY 00. This amount is based on the following assumptions: 200 new company fees @ $50; 15 new worker−homeowner fees @ $25; 450 supervisor fees @ $25 increase; 75 risk assessors fees @ $75 decrease; 1 initial course

application fee @ $250 reduction; 19 initial course renewal fees @ $250; 13 refresher course renewal fees @ $125; 5 principal instructor application fees @ $50;120 principal instructor renewal fees @ $25; 5 guest instructor application fees @ $50; 60 guest instructor renewal fees @ $10.

The revised rules do not increase current state workload and are not expected to increase state costs.

Local governmental agencies are exempt from certification fees, but pay the certification examination registration fee, which increases from $25 to $50 in the revised rules. The increase, however, is not expected to affect most local governmental agencies because the majority of government employees who would have been affected by the rate increase have already taken the certification examination. A certified individual does not have to retake the exam unless certification lapses for more than 12 months. The fee will primarily affect a governmental agency when staff turns over and the new employe is not certified.

This fiscal estimate assumes minimal program growth by SFY 00. The Department in its 1999−01 Biennial Budget submission requested increased expenditure authority based on assumptions for high growth in the program, which included the passage of additional federal and state mandates, and was made to allow for compliance with federal grant requirements. However, if these new requirements do no pass, the program will remain at a low or no growth level for the biennium. The most up−to−date information as of mid−October is that it is unlikely that new state and federal mandates will pass.

Initial Regulatory Flexibility Analysis

These rules will affect small businesses as defined in s. 227.114 (1) (a), Stats. Of the 200 non−government lead (Pb) companies currently identified by the Department, for which certification is new, an estimated 75% have fewer than 25 employes. For this reason, lead company certification fees were established at $50, which is just sufficient to cover the administrative costs of certification.

The certification fee for nongovernment lead risk assessors is reduced because most are self−employed and have difficulty recovering the cost. However, the certification fee for lead supervisors, which has not changed since the program began in 1993, has been increased from $100 to $125 to reflect increased costs to administer and enforce certification.

Seven training providers offer accredited courses in this state. Three of them are nonprofit unions providing training to their members. The other 4 are small businesses, 2 providing training on a limited basis and 2 providing a full range of courses. The current rules provide for a one−time course accreditation application fee of $750 per initial course and $250 per refresher course. The revised rules reduce the one−time course accreditation application fee to $500 per initial course and $125 per refresher course. The reduction in the application fees is intended to reduce the initial impact of new accreditation fees. The revised rules require reaccreditation of a course every 2 years and payment of an accreditation fee of $500 per initial course and $250 per refresher course for each 2−year accreditation period.

The 4 private training providers have about 10 approved instructors under contract. The instructors are required by the revised rules to annually apply for reapproval and to pay initial and reapproval fees. The annual reapproval requirement and fee are new. The initial approval fee of $50 and lower reapproval fees are offset by a reduction in training and certification requirements.

Chapter HFS 163 was revised to allow the Department to apply to the U.S. Environmental Protection Agency (EPA) for authorization and approval of the Department's lead training and certification program. Within the flexibility allowed by EPA regulations, the Department developed rules that would cause minimal difficulty for small businesses. Forms collect the minimum information needed to support the program and approved alternative forms may be used. Certification, accreditation, approval and training time periods (terms) were established that would be as simple and easy to track as allowed under EPA regulations.

Notice of Hearing

Public Service Commission

The Wisconsin Public Service Commission of Wisconsin (Commission) proposes an order to create ch. PSC 179, Wis. Adm. Code, relating to whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement.

Hearing Information

Notice is hereby given that the Commission will hold a public hearing for the purpose of obtaining comments from interested parties on the proposed rules. The hearing will be held according to the following schedule:

December 8, 1999	**Amnicon Falls Hrg. Room**
Tuesday	**PSC Bldg. (Room 1300)**
9:00 a.m.	**610 North Whitney Way**
	Madison, WI

The examiner may continue the hearing at such times and places as necessary to complete the hearing.

Notice is further given that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building and the building has some wheelchair accessible rest rooms. Any person with a disability who needs additional accommodations should contact Nick Linden at (608) 266−8950.

Written Comments

Notice is further given that any person may submit written comments on the proposed rules. The hearing record will be open for written comments from the public effective immediately, until January 11, 1999, at noon (**January 8, 1999**, **at noon**, if filed by fax).

All written comments on the rules must include a reference on the filing to docket 1−AC−181 and be addressed to Lynda Dorr, Secretary to the Commission.

If filing by mail, courier or hand delivery: Address comments to:

Lynda L. Dorr
Secretary to the Commission
Public Service Commission
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707−7854

Industry parties should submit an **original and 20 copies**. Members of the general public need only file an original. File by **January 11, 1999, at noon.**

If filing by fax: Send fax comments to (608) 266−3957. Address comments to Lynda Dorr, Secretary to the Commission. Fax filing cover sheets **MUST** state "**Official Filing**," the docket number (1−AC−181), and the number of pages (limited to 20 pages for fax comments). File faxes by **January 8, 1999, at noon.**

File by one mode only.

Contact People

Questions regarding the hearing may be directed to Examiner Jeffry J. Patzke at (608) 266−7165. Other questions on this matter should be directed to Nick Linden, Assistant Administrator, Telecommunications Division, at (608) 266−8950.

Analysis Prepared by the Public Service Commission

Statutory authority: ss. 196.02 (1) and (3), 196.199(2), and 227.11(2)

Statutes interpreted: ss. 196.199 (3) and 196.26 (1) (a) 3.

The federal Telecommunications Act of 1996 (Act) and 1993 Wis. Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors which allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act.

Courts have held and s. 196.199(2)(a), Stats., created by 1997 Wis. Act 218, effective January 1, 1999, provides that the state also has the right to enforce existing agreements. As part of its enforcement power, the Commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement. The 1997 Wis. Act 218 establishes a procedure for the expedited investigation of complaints about a party's failure to comply with an interconnection agreement when the alleged failure has a significant adverse effect on the other party's ability to provide telecommunications service to its customers.

Section 196.199(2) (c), Stats., requires that the Commission promulgate rules specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the complaining party's ability to provide telecommunications services to its customers. This rule specifies the minimum factors which the Commission must consider when determining whether there is a significant adverse effect which justifies an expedited investigation. These factors include:

- The ability of customers or potential customers to obtain or continue to receive uninterrupted telecommunications service from the provider of his/her choice;
- Whether and to what degree any loss or damage due to an alleged failure to comply with the agreement can be remedied without an expedited proceeding under s. 196.199, Stats. This factor recognizes that there may be times when, for example, no amount of money can remedy the damage and times when, even if money can remedy the damage, only an expedited process can result in the remedy's being available soon enough;
- Whether either party is put in a better or worse business or financial position as a result of the failure to comply with the agreement; and
- The effect on competition.

Other statutory provisions require or allow the Commission to develop administrative rules concerning alternate dispute resolution and other issues involved in the enforcement of interconnection agreements. A later rule packet rule will address these remaining, broader areas of disputes between providers and alternate dispute resolution.

Text of Rule

SECTION 1. Chapter PSC 179 is created to read:

Chapter PSC 179

TELECOMMUNICATIONS DISPUTE RESOLUTION

PSC 179.01 Purpose. Chapter PSC 179 implements s. 196.199 (2) (c), Stats., which requires the commission to specify by rule the requirements for determining in certain cases whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers.

PSC 179.02 Definitions. In this chapter:

(1) "Commission" means the public service commission.

(2) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, telecommunications provider, governmental agency, or other entity which is provided with retail or wholesale telecommunications service, or both, by a party to an interconnection agreement. "Customer" does not include a party.

(3) "Essential telecommunications services" has the meaning given in s. PSC 160.03.

(4) "Interconnection agreement" means an agreement that is subject to approval by the commission under 47 USC 252 (e), except that it does not include an agreement to which a commercial mobile radio service provider, as defined in s. 196.01 (2g), Stats., is a party.

(5) "Party" means a signatory to a particular interconnection agreement.

(6) "Telecommunications provider" means any person who provides telecommunications service.

(7) "Telecommunications service" has the meaning given in s. 196.01 (9m), Stats.

PSC 179.03 Significant adverse effect. In determining if a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers under ss. 196.199 (3) (a) and 196.26 (1) (a) 3., Stats., the commission shall consider at least the following factors:

(1) The ability of a customer or potential customer to obtain or continue to receive uninterrupted telecommunications service, especially essential telecommunications services, from the telecommunications provider of that customer's choice;

(2) Whether and to what degree any loss or damage to an allegedly aggrieved party or its customer or potential customer resulting from the alleged failure to comply with an interconnection agreement can be remedied without an expedited proceeding under s. 196.199, Stats.; and

(3) Whether and to what degree the alleged failure to comply with an interconnection agreement:

(a) Frustrates or enhances the planning or execution of a party's business plan, marketing effort, or service or product introduction, or any combination thereof;

(b) Causes or threatens to cause a delay in or barrier to a party's market entry or a delay in the growth of its market share, or both;

(c) Damages or threatens to damage the reputation of a party;

(d) Damages or threatens to damage the ability of a party to effectively compete;

(e) Harms or threatens to harm the financial health of a party; or

(f) Favors a party's obtaining or retaining of customers, or both.

Environmental Analysis

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

Initial Regulatory Flexibility Analysis

This rule may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. These small telecommunications utilities, of which there are 79 in Wisconsin, like other telecommunications providers (both large and small), may be parties to interconnection agreements about which dispute arise.

The statute implemented by this rule provides an expedited process for resolving such disputes where "significant adverse effect" is alleged. The statute does not allow for different treatment of small telecommunications utilities. This rule outlines the factors the Commission will consider in determining whether "significant adverse effect" exists.

Any adverse impact on small telecommunications utilities is expected to be minimal. In fact, this rule and the statute it implements were intended to expedite the resolution of disputes and therefore will benefit small telecommunications utilities involved in such disputes.

The agency has considered the methods in s. 227.114(2), Stats., for reducing the impact of the rules on small businesses. However,

this rule does not impose any new compliance requirements or any new reporting, bookkeeping, or other procedural compliance requirements. Therefore, the impact reduction methods are not really applicable.

Fiscal Estimate

These rules have no fiscal impact independent of that of the legislation which mandates them.

The federal Telecommunications Act of 1996 (Act) and 1993 Wis. Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors which allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act.

Courts have held and s. 196.199(2) (a), Stats., effective January 1, 1999, provides that the state also has the right to enforce existing agreements. As part of its enforcement power, the commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement. 1997 Wis. Act 218 established a procedure for the expedited investigation of complaints about a party's failure to comply with an interconnection agreement when the alleged failure has a significant adverse effect on the other party's ability to provide telecommunications service to its customers.

Section 196.199(2) (c), Stats., requires that the commission promulgate rules specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the complaining party's ability to provide telecommunications services to its customers. This rule specifies the minimum factors which the commission must consider when determining whether there is a significant adverse effect which justifies an expedited investigation.

Other statutory provisions require or allow the Commission to develop administrative rules concerning alternate dispute resolution and other issues involved in the enforcement of interconnection agreements. A later rule will address these remaining, broader areas of disputes between providers and alternate dispute resolution.

The Commission has already received and expects to continue to receive complaints and petitions to resolve disputes under interconnection agreements. There is no way to quantify with any accuracy how much work will result from enforcement of agreements. Therefore, the PSC intends to absorb the workload created as a result of this administrative rule, just as the Commission stated in its prior fiscal estimate relating to the statutory changes.

Notice of Hearing

Public Service Commission

Notice is hereby given that the Public Service Commission will hold a public hearing at the time and place indicated below to consider the creation of ch. PSC 186, relating to standards for water or sewer service in mobile home parks.

Hearing Information

January 7, 1999	**Amnicon Falls Hrg. Room**
Thursday	**PSC Bldg. (Room 1300)**
9:00 a.m.	**610 North Whitney Way**
	Madison, WI

Notice is further given that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (lobby) on the Whitney Way side of the building. Any person with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267−9766.

Written Comments

Notice is further given that the Commission requests comments on this application. Any party that desires to file comments should submit **an original and 15 copies** addressed as noted below. Comments are due at the Commission no later than **noon on January 14, 1999**. Comments filed by FAX are due no later than **noon on January 13, 1999**. Fax filing cover sheets must state **"Official Filing"** and the number of pages (limit 20 pages). All correspondence should reference docket number 1−AC−172. File by one mode only.

Address comments to:

Lynda L. Dorr
Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707−7854

FAX: (608) 266−3957

Contact Person

Questions regarding the hearing may be directed to Jeff Kitsembel, P.E., at (608) 266−5739.

Analysis Prepared by the Public Service Commission

Statutory authority : ss. 196.498 (2) and 227.11(2)

Statutes interpreted: ss. 196.498 (2) and 227.11(2)

Pursuant to the legislature's instruction in s. 196.498 (2), Stats., as created by 1997 Wis. Act 229, the Public Service Commission is submitting to the Legislative Council for review the following administrative rules establishing standards for the provision of water or sewer service in mobile home parks. A hearing for January 7, 1999, is also being scheduled on these proposed rules. The rules set forth standards in the following areas:

Section PSC 186.11. Statutory authority for and applicability of the rules.

Section PSC 186.12. Definitions. Defines a number of key terms contained in this chapter.

Section PSC 186.13. General requirement of reasonable service. Requires that mobile home park operators or contractors provide mobile home park residents with "reasonably adequate" water and sewer service.

Section PSC 186.14. Free or discriminatory service prohibited. Prohibits mobile home park operators or contractors from offering mobile home park residents free water or sewer service or service at a rate different from that offered to other residents.

Section PSC 186.21. Records of service interruptions. Requires mobile home park operators or contractors to keep records of water or sewer service outages lasting more than one hour and affecting more than 25% of mobile home park residents.

Section PSC 186.22. Information available to customers. Requires mobile home park operators or contractors to provide mobile home park residents with written notice – if requested – of the rules concerning deposits, payment options, disconnection and dispute procedures.

Section PSC 186.31. Reasonableness of water or sewer rates. Requires mobile home park operators or contractors to provide water and sewer service at reasonable rates, defined as:

1) Not more than 1.5 times the wholesale rate at which the water is purchased;

2) Not more than 1.5 times the water rates charged by a Class D water utility, if the mobile home park operator or contractor owns the water supply facilities. The sewer service charge may not exceed 2.5 times the water charge.

3) These limits may be exceeded on a showing of necessity to meet financial requirements.

Section PSC 186.32. Billing Methodology. Bills may be calculated via the following methods:

1) Metered;

2) Flat;

3) Residential equivalent units;

4) Any other reasonable method.

Section PSC 186.33. Billing. Sets forth the required contents of each water or sewer bill.

Section PSC 186.34 Deposits for water and sewer service. Sets forth the conditions under which a deposit for new or continued service may be requested and the amount of the deposit −− not more than the highest estimated bills for a two−month period. A deposit must be refunded after 12 consecutive months of prompt payment.

Section PSC 186.35. Disconnection and refusal of service. Sets forth the reasons and conditions under which water or sewer service can be disconnected or refused, including notification requirements, and the reasons and conditions under which sewer service may not be disconnected, such as during medical emergencies. The contents of a disconnection notice are specified, as well as procedures under which a resident may dispute a disconnection notice.

Section PSC 186.36. Deferred payment agreement. Requires mobile home park operators or contractors to offer residents deferred payment agreements to pay outstanding bills and sets forth the factors to be considered in setting a deferred payment agreement, including required terms and conditions.

Section PSC 186.37. Dispute procedures. Sets forth procedures to be followed to resolve disputes raised by mobile home park occupants regarding requests for a deposit, guarantee, service disconnection, billing, or any other matter in dispute. After a required investigation by the mobile home park operator or contractor, review by the public service commission staff and the commission itself is provided for.

Section PSC 186.38. Complaint procedures. Sets forth procedures to be followed to resolve more general complaints with respect to the adequacy of water or sewer service.

Section PSC 186.41. General construction requirements. Requires that water and sewer systems constructed by mobile home park operators or contractors comply with all federal, state and local requirements.

Section PSC 186.51. Meters. Requires that all water meters in mobile home parks be in good working condition and meet PSC standards.

Section PSC 186.61. Meter testing facilities and equipment. Requires all mobile home park operators or contractors who provide metered water service to own meter testing equipment and facilities, or to provide these by contract.

Section PSC 186.62. Testing of mobile home park occupant meters. Sets forth the manner in which mobile home park water meters must be tested – by comparison of its accuracy with the accuracy of a known "standard" meter.

Section PSC 186.63. Test flows. Sets forth the required test flow for meter testing – the standard of s. PSC 185.65.

Section PSC 186.64. Required tests of mobile home park occupant meters. Sets forth the times at which mobile home water meters must be tested:

1) Before initial use, if not certified by the vendor;

2) On complaint or request;

3) When damaged; and

4) On removal.

Section PSC 186.65. Dispute tests. Requires mobile home park owners or contractors to test meters on customer request.

Section PSC 186.66. Remote outside meter (ROM) system test. Requires the testing of remote outside meters at the same time that inside meters are tested.

Section PSC 186.71. Quality of water. Requires mobile home park owners or contractors to provide residents with drinking water which meets state and federal quality standards.

Section PSC 186.72. Adequacy of water supply. Requires mobile home park owners or contractors to furnish mobile home park occupants with a continuous and adequate supply of water.

Section PSC 186.73. Pressure standards. Requires the water supply system of any mobile home park to meet all federal, state and local pressure standards.

Section PSC 186.74. Flushing mains. Requires the flushing of dead−end mains and other low−flow portions of water distribution systems in mobile home parks as needed to ensure water quality.

Section PSC 186.75. Interruptions of service. Requires mobile home park operators or contractors to make all reasonable efforts to prevent service outages and to provide park residents with notice of planned outages.

Section PSC 186.76. Maintenance of water or sewer laterals. Provides that the thawing of a mobile home park occupant's lateral shall be at the occupant's expense, unless the freeze−up results from an operator−initiated disconnect or a deficiency in the mobile home park distribution system. Sets forth other requirements for the maintenance of water or sewer laterals.

Environmental Analysis

This is a Type III action under s. PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11,Stats., nor an environmental assessment is required.

Initial Regulatory Flexibility Analysis

In an effort to minimize the impact of the rules on small businesses, as defined in s. 227.114 (1) (a),Stats., the Commission has met with and received input from a number of mobile home park owners as well as the Wisconsin Manufactured Housing Association. Additional input on this issue is invited by correspondence or by appearance at the hearing.

Fiscal Estimate

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

Text of Rule

Chapter PSC 186

STANDARDS FOR WATER OR SEWER SERVICE IN MOBILE HOME PARKS

Subchapter I. General

PSC 186.11 Authorization for and application of rules. (1) Chapter PSC 186 is part of the Wisconsin administrative code and constitutes a general order of the public service commission, the issuance of which is authorized by s. 196.498 (2), Stats.

(2) Chapter PSC 186 is designed to effectuate and implement s. 196.498, Stats.

(3) The requirements of ch. PSC 186 shall be observed by all mobile home park operators and all mobile home park contractors who supply water or sewer service, or both, to mobile home park residents. Subchapter III is not applicable to mobile home park operators or mobile home park contractors who include the costs associated with water or sewer service in their rental fees.

(4) Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations, and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual mobile home park contractors, mobile home park operators, water or sewer services which are different from those provided in this chapter and which fulfill the intent of this chapter.

(5) The manner of enforcing this chapter is prescribed in s. 196.498(4), (5) and (6), Stats., and such other means as provided in statutory sections administered by the public service commission.

(6) In case of emergency, where public interest requires immediate action without waiting for compliance with the specific

terms of this chapter, immediate corrective action shall be taken by the mobile home park contractor or mobile home park operator, which action, however, shall be subject to review by the public service commission.

PSC 186.12 Definitions. The following terms as used in this chapter mean:

(1) "Ability to pay" means a mobile home park occupant's financial capacity to meet the mobile home park occupant's water or sewer service obligation.

(2) "Actual meter read" means a reading obtained by the mobile home park operator or mobile home park contractor or other party upon physical inspection of the meter or remote outside meter (ROM).

(3) "Commission" means public service commission of Wisconsin.

(4) "Complaint" has the meaning given in s. 196.26(1), Stats.

(5) "Deferred payment agreement" means an arrangement between a mobile home park operator or mobile home park contractor and a mobile home park occupant for payment of a delinquent amount or deposit in installments.

(6) "Denied or refused service" means that a mobile home park operator or mobile home park contractor has refused to provide water or sewer service to a present or future mobile home park occupant or premises.

(7) "Disconnection" means an event or action taken by the mobile home park operator or mobile home park contractor to terminate or discontinue the provision of water or sewer service, but does not include a mobile home park occupant−requested termination of service.

(8) "Dispute" means a statement or question by a mobile home park occupant alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action committed or created by a mobile home park operator or mobile home park contractor, or failure of a mobile home park operator or mobile home park contractor to meet its obligation to supply water or sewer service.

(9) "General service charges" means charges billed to the mobile home park occupant by the mobile home park operator or mobile home park contractor and intended to recover the cost of supplying water or sewer service. The expenses typically recovered by general service charges are operation and maintenance expense, taxes, depreciation or debt service. Expenses such as late payment charges, non−sufficient funds check charges, or reconnection charges are not typically recovered through general service charges but are separate, additional charges applied to the mobile home park occupant's account.

(10) "Manufactured home" has the meaning given in s. 101.91(2), Stats.

(11) "Meter" means an instrument installed to measure the volume and/or rate of flow of water delivered through it.

(12) "Mobile home" has the meaning given in s. 101.91 (1), Stats.

(13) "Mobile home park" has the meaning given in s. 196.01(3p), Stats.

(14) "Mobile home park contractor" has the meaning given in s. 196.01 (3q), Stats.

(15) "Mobile home park occupant" has the meaning given in s. 196.01 (3s), Stats.

(16) "Mobile home park occupant−requested termination" is cessation of service at the request of the mobile home park occupant.

(17) "Mobile home park operator" has the meaning given in s. 196.01 (3t), Stats.

(18) "Percent registration" means the ratio of the meter registration divided by the actual volume or rate of flow, stated as a percentage. Stated more simply for domestic (volumetric) meters, this is the percentage of the water delivered through a meter which the meter actually registers.

(19) "Prompt payment" means payment prior to the time when a mobile home park operator or mobile home park contractor could issue a notice of disconnection for nonpayment of an amount not in dispute.

(20) "Protective service emergency" means a threat to the health or safety of a resident because of the infirmities of aging, mental retardation, other developmental or mental disabilities, or like infirmities incurred at any age, or the frailties associated with being very young.

(21) "Remote outside meter" (ROM) means an analog device attached to a building structure which displays the reading of the base meter through electronic pulses sent from the base meter. Remote outside meters are considered part of the mobile home park operator or mobile home park contractor's metering configuration.

(22) "Voucher agreement" means a payment agreement guaranteed by a third party who has access to or control over the benefits and finances of a public assistance recipient.

Note: Examples of some public assistance are:

a) Wisconsin Works (W2) and Temporary Assistance to Needy Families (TANF) restrictive payment arrangements;

b) General relief voucher payment systems.

PSC 186.13 General requirement. Every mobile home park operator and every mobile home park contractor which provides water or sewer service to the occupants of its mobile home park shall furnish reasonably adequate service and facilities as required by this chapter.

PSC 186.14 Free or discriminatory service prohibited. No mobile home park operator or mobile home park contractor may provide water or sewer service at a rate different from that provided to all other occupants of its mobile home park.

Subchapter II. Records and Available Information

PSC 186.21 Records of service interruptions. Each mobile home park operator or mobile home park contractor shall maintain a record of each interruption of service which results from a failure or disruption of the mobile home park water supply or sewer collection system lasting more than one hour or affecting more than 25 percent of the mobile home park occupants showing the date and time it began, the duration, the cause, and the approximate number of mobile home park occupants affected.

Note: See also s. PSC 186.75, Interruptions of service.

PSC 186.22 Information available to customers. (1) Each mobile home park operator or mobile home park contractor shall have available and provide upon request, to the mobile home park occupant making the request, written notice of the rules on deposits, payment options including deferred payment agreements, disconnection, and dispute procedures. Each mobile home park operator or mobile home park contractor shall also provide a written notice to all new mobile home park occupants of the rules on deposits, payment options, disconnection, and dispute procedures as required above. Such notice shall contain a reply procedure to allow mobile home park occupants an opportunity to advise the mobile home park operator or mobile home park contractor of any special circumstances, such as the presence of infants or elderly persons or the use of human life−sustaining equipment, and to advise the mobile home park operator or mobile home park contractor to contact a specific third−party agency or individual prior to any disconnection action being taken.

(2) Where a second language is common in a particular mobile home park, the mobile home park operator or mobile home park contractor shall reasonably accommodate a request by a mobile home park occupant to provide rules pertaining to billing and credit in that second language unless the mobile home park operator or mobile home park contractor can demonstrate that accommodating such a request will cause undue hardship.

Subchapter III. Rates, Service and Billing

PSC 186.31 Reasonableness of water or sewer rates. (1) A mobile home park operator or mobile home park contractor may

establish general service charges for water or sewer service in one of the following ways:

(a) If a mobile home park operator or mobile home park contractor purchases water or sewer service on a wholesale basis and resells such service to the occupants of the mobile home park, the water or sewer charge to a mobile home park occupant may not exceed 1.5 times the wholesale charges incurred for service rendered to that occupant.

(b) If a mobile home park operator or mobile home park contractor owns the water supply facilities or the sewerage treatment facilities which serve the mobile home park, the water charge to a mobile home park occupant may not exceed 1.5 times the average amount charged for a similar level of water utility service furnished by Wisconsin Class D water public utilities. The charge for sewer service may not exceed 2.5 times the charge for water service. Information relative to the rates of Wisconsin Class D water public utilities is available from the commission.

(c) A mobile home park operator or mobile home park contractor may establish water or sewer rates in excess of those set forth in sub. (a) or sub. (b) if the mobile home park operator or mobile home park contractor can provide written documentation which demonstrates that higher charges are necessary to meet the reasonable costs associated with all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair or depreciation of the water or sewer system and for the payment of all or part of the principal and interest of any indebtedness associated with providing water or sewer service at a reasonable cost.

PSC 186.32 Billing methodology. Bills may be based on one of the following methods:

(1) Metered,

(2) Flat rate,

(3) Residential equivalent units,

(4) Any other method that can be shown to reasonably allocate costs among mobile home park occupants.

PSC 186.33 Billing. (1) For each bill provided by the mobile home park operator or mobile home park contractor, the mobile home park occupant's receipt shall show the following information:

(a) The service address;

(b) The present and last preceding meter readings if service is metered;

(c) The present and last preceding meter reading dates if service is metered;

(d) The number of units consumed if service is metered;

(e) Clear itemization of the amounts included in the bill for the present billing period and any unpaid balance from previous billing periods, including any late payment charges.

(2) Estimated bills shall be distinctly marked as such, if service is on a metered basis.

(3) Any partial payments received should be applied to the mobile home park occupant's account in the following order:

(a) Current water and sewer service;

(b) Current deferred payment agreement;

(c) Water and sewer service arrears;

(d) Miscellaneous water and sewer charges;

(e) All other charges.

(4) Upon mobile home park occupant request, or at the discretion of the mobile home park operator or mobile home park contractor, partial payments may be allocated differently than set forth above provided that such allocation does not result in a disconnection of service or the imposition of a late payment penalty which would not have occurred under the allocation methodology set forth above.

(5) The mobile home park operator or mobile home park contractor may make late payment charges to any portion of mobile home park occupant's water and sewer service bill that is not paid in full based on the order of payment application as provided in par. (3), within 20 days following issuance of the bill. The late payment charge shall not exceed one percent per month.

(6) (a) If a mobile home park operator or mobile home park contractor initiates a late payment charge, the new charge shall apply only to water and sewer service provided after the effective date of initiation.

(b) If a customer disputes a bill for utility service and does not pay the disputed bill in full within 20 days following issuance of the bill, the late payment charge shall be applied only to that portion of the disputed bill later found to be correct and payable to the mobile home park operator or mobile home park contractor.

(7) A mobile home park occupant, or other responsible party who uses water and sewer service but does not apply for it, may be billed an estimated or actual amount at a later date for service used prior to the time of application. The mobile home park operator or mobile home park contractor shall have reasonable grounds to establish responsibility for the backbilling. Failure to pay charges resulting from this backbilling may result in disconnection of service. The mobile home park operator or mobile home park contractor shall inform the mobile home park occupant of the right to dispute the billing through the dispute procedures set forth in s. PSC 186.37.

(8) (a) All new mobile home park occupants are required to make an application for service. The mobile home park operator or mobile home park contractor may require that either a verbal or written application be made. The mobile home park operator or mobile home park contractor shall establish a written policy for obtaining the information. The mobile home park operator or mobile home park contractor may require the mobile home park occupant to provide:

1. Name or names of parties responsible for bill payment;

2. Address where service is to be provided;

3. Address of residence immediately prior to application.

(b) Except as provided in s. PSC 186.35, water and sewer service shall not be disconnected or refused for refusal to provide any information other than that specified in par. (a).

PSC 186.34 Deposits for water or sewer service. (1) NEW SERVICE. (a) A mobile home park operator or mobile home park contractor may require a deposit as a condition of new or continued water or sewer service. The amount of the required deposit shall not exceed the highest estimated gross bill for any consecutive two−month period selected by the mobile home park operator or mobile home park contractor.

(b) A deposit under this section shall not be required if the mobile home park occupant provides the mobile home park operator or mobile home park contractor with information showing that the mobile home park occupant's gross quarterly income is at or below 200 percent of federal income poverty guidelines.

(c) A mobile home park operator or mobile home park contractor shall inform the mobile home park occupant of the mobile home park occupant's right to enter into an installment plan for payment of the deposit amount. Under the installment plan, the deposit amount shall be paid to the mobile home park operator or mobile home contractor in no more than three equal monthly installments.

(2) REFUND. The mobile home park operator or mobile home park contractor shall refund the water or sewer deposit of a mobile home park occupant after 12 consecutive months of prompt payment.

(3) ARREARAGES. (a) Any arrearage owed by a mobile home park occupant may be deducted from the mobile home park occupant's water or sewer deposit.

(b) If the mobile home park operator or mobile home park contractor deducts a water or sewer arrearage from a mobile home park occupant's deposit, it may require the mobile home park occupant to bring the water or sewer deposit up to its original amount. Failure of the mobile home park occupant to do so within 20 days of mailing a written request for payment is a ground for disconnection.

PSC 186.35 Disconnection and refusal of service. (1) (a) In no circumstances shall the cumulative time before notice of disconnection be less than 20 days after the date of issuance of the

bill. An account may be deemed delinquent for the purpose of disconnection after such period has elapsed.

(b) At least 8 calendar days prior to disconnection, the mobile home park operator or mobile home park contractor shall give a written notice of disconnection.

(c) When a mobile home park occupant, either directly or through the commission, disputes a disconnection notice, the mobile home park operator or mobile home park contractor shall investigate any disputed issue and shall attempt to resolve that issue. During this investigation, water or sewer service shall not be disconnected over this matter.

(d) If a disputed issue cannot be resolved pursuant to s. PSC 186.37(1), the mobile home park operator or mobile home park contractor shall inform the mobile home park occupant of the right to contact the commission.

(2) Water or sewer service may be disconnected or refused for any of the following reasons:

(a) Failure to pay a delinquent account or failure to comply with the terms of a deferred payment agreement (see s. PSC 186.36);

(b) Failure to comply with deposit arrangements as specified in s. PSC 186.34;

(c) Diversion of service around the meter;

(d) Refusal or failure to permit authorized mobile home park operator or mobile home park contractor personnel access to the base meter or remote register;

(e) Use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if the mobile home park occupant has first been notified and provided with reasonable opportunity to remedy the situation;

(f) Failure to comply with Wisconsin statutes, commission rules, or commission orders pertaining to water or sewer service;

(g) Failure to pay costs or fees incurred by and awarded to the mobile home park operator or mobile home park contractor by a court of law, for pursuit of collection of water or sewer bills, or failure to pay extraordinary collection charges associated with water or sewer service;

(h) Use of a device that unreasonably interferes with communications or signal services used for reading meters.

(3) A mobile home park operator or mobile home park contractor may disconnect water or sewer service without prior notice where a dangerous condition exists for as long as the condition exists. Upon disconnection, the mobile home park operator or mobile home park contractor shall provide the mobile home park occupant a written explanation of the dangerous condition.

(4) Service may be discontinued with a written 24−hour notice for nonpayment of a bill covering surreptitious use of water or sewer.

(5) A mobile home park operator or mobile home park contractor may disconnect water or sewer service, without notice, where it has reasonable evidence that water or sewer service is being obtained by potentially unsafe devices or potentially unsafe methods that stop or interfere with the proper metering of the water or sewer service.

(6) Water or sewer service may not be disconnected or refused for any of the following reasons:

(a) Failure to pay the account of another mobile home park occupant as guarantor of that account;

(b) Failure to pay charges arising from any underbilling occurring more than one year prior to the current billing;

(c) For the intentional removal or eviction of a tenant from rental property;

(d) If a heat advisory or warning has been declared by the national weather service for a geographic area which includes the mobile home park.

(7) Between the dates of November 1 and April 15 of each year, a mobile home park operator or mobile home park contractor may disconnect residential water service, unless water service is a necessary part of a mobile home's heating system.

(8) (a) Notwithstanding any other provision of this section, a mobile home park operator or mobile home park contractor may not disconnect service or refuse to reconnect service to a residential mobile home park occupant if disconnection will aggravate an existing medical or protective services emergency of the occupant, a member of the mobile home park occupant's family or other permanent resident of the premises where service is rendered and if the mobile home park occupant conforms to the procedures described in par. (b).

(b) A mobile home park operator or mobile home park contractor shall postpone the disconnection of service, or reconnect the service if disconnected, for up to 21 days to enable the mobile home park occupant to arrange for payment, if the mobile home park occupant produces a licensed physician's statement or notice from a public health, social services, or law enforcement official which identifies the medical or protective services emergency and specifies the period of time during which disconnection shall aggravate the circumstances. During the period of continued service, the mobile home park operator or mobile home park contractor and mobile home park occupant shall work together to develop resources and make reasonable payment arrangements in order to continue the service on a permanent basis. Postponements may be granted if there is evidence of reasonable communication between the mobile home park operator or mobile home park contractor and mobile home park occupant in attempting to make arrangements for payment.

(c) During the period service is continued under the provisions of this subsection, the mobile home park occupant shall be responsible for the cost of residential water or sewer service. However, no action to disconnect that service shall be undertaken until expiration of the period of continued service.

(d) If there is a dispute concerning an alleged existent medical emergency, either party shall have the right to an informal review by the commission staff. During the informal review, residential water or sewer service shall be continued, provided that the mobile home park occupant has submitted a statement or notice as set forth in par. (b).

(9) (a) A mobile home park operator or mobile home park contractor shall not disconnect service unless written notice by first class mail is sent to the mobile home park occupant or personally served upon a responsible party at least 8 calendar days prior to the first date of the proposed disconnection except as provided in pars. (3) and (4). If the billing address is different from the service address, notice shall be posted at the service address not less than 5 days before disconnection. The notice shall contain: (1) the date of the notice; (2) the proposed date of disconnection; and (3) that, if feasible, the mobile home park occupants may apply to the mobile home park operator or mobile home park contractor to accept responsibility for future bills and avoid disconnection of service. Refusal or acceptance of the application for service is subject to those conditions set out in this chapter. If disconnection is not accomplished on or before the 15th day after the first notice date, a subsequent notice shall be left on the premises not less than 24 hours nor more than 48 hours prior to the disconnection unless the mobile home park occupant and the mobile home park operator or mobile home park contractor agree to extend the 15−day time period. If disconnection is not accomplished on or before the 30th day after the original eight−day disconnection notice was issued, the mobile home park operator or mobile home park contractor shall issue a new eight−day disconnection notice prior to proceeding with the disconnection of water or sewer service.

(b) The mobile home park operator or mobile home park contractor shall make a reasonable effort to have a personal or telephone contact with the residential mobile home park occupant prior to disconnection. If a contact is made, the mobile home park operator or mobile home park contractor shall review the reasons for the pending disconnection of service and explain what actions shall be taken to avoid disconnection.

(c) The mobile home park operator or mobile home park contractor shall keep a record of these contacts and contact attempts.

(d) When a residential mobile home park occupant, either directly or through the commission, disputes a disconnection notice

under s. PSC 186.37, the mobile home park operator or mobile home park contractor shall investigate any disputed issue and shall attempt to resolve that issue. During this investigation, water or sewer service shall not be disconnected over this matter.

(e) If a disputed issue cannot be resolved, the mobile home park operator or mobile home park contractor shall inform the mobile home park occupant of the right to appeal to the commission.

(f) A disconnection notice shall contain the following information:

1. The name and address of the mobile home park occupant and the address of the service, if different;

2. A statement of the reason for the proposed disconnection of service and that disconnection shall occur if the account is not paid, or if arrangement is not made to pay the account under deferred payment agreement, or if other suitable arrangements are not made, or if equipment changes are not made. If disconnection of service is to be made for default on a deferred payment agreement, the notice shall include an explanation of the acts of the mobile home park occupant which are considered to constitute default;

3. A statement that the mobile home park occupant shall communicate immediately upon receipt of the notice with the mobile home park operator's or mobile home park contractor's designated office, listing a telephone number, if the mobile home park occupant disputes the notice of delinquent account, if the mobile home park occupant wishes to negotiate a deferred payment agreement as an alternative to disconnection, if any resident is seriously ill, or if there are other extenuating circumstances, such as the presence of infants or young children in the household, the presence of aged, or persons with disabilities in the household, the presence of residents who use life support systems or equipment or residents who have mental retardation or other developmental or mental disabilities;

4. A statement that residential water or sewer service shall be continued for up to 21 days during serious illness if the account holder submits a statement or notice pursuant to sub. (10);

5. A statement that the mobile home park occupant may appeal to the commission staff in the event that the grounds for the proposed disconnection or the amount of any disagreement remains in dispute after the mobile home park occupant has pursued the available remedies with the mobile home park operator or mobile home park contractor.

(10) Service shall not be disconnected on a day, or on the day immediately preceding a day, when the business offices of the mobile home park operator or mobile home park contractor are not available to the mobile home park occupants for the purpose of transacting all business matters, unless the mobile home park operator or mobile home park contractor provides personnel which are readily available to the mobile home park occupant 24 hours per day to evaluate, negotiate, or otherwise consider the mobile home park occupant's objection to the disconnection as provided under s. PSC 186.37, and proper service personnel are readily available to restore service 24 hours per day.

(11) Notwithstanding any other provision of this chapter, water or sewer service may not be refused because of a delinquent account if the mobile home park occupant or applicant provides a deposit as a condition of future service, as governed by s. PSC 186.34, or a voucher agreement. If the guarantor has agreed to be responsible for payment of all future bills, the mobile home park occupant shall be notified of the billing arrangement and of the ability to reject the proposed arrangement.

PSC 186.36 Deferred payment agreement. (1) A mobile home park operator or mobile home park contractor shall offer deferred payment agreements to mobile home park occupant accounts for water or sewer service. The term of the deferred payment agreement shall not extend past the termination date of the lease in effect for the mobile home park occupant.

(2) Every deferred payment agreement entered into due to the mobile home park occupant's inability to pay the outstanding bill in full shall provide that service not be discontinued if the mobile home park occupant pays a reasonable amount of the outstanding bill, agrees to pay the remaining outstanding balance in installments, and agrees to pay the current bill by the due date.

(3) For purposes of determining reasonableness in sub. (2), the mobile home park operator or mobile home park contractor shall consider the mobile home park occupant's ability to pay, including the following factors:

(a) Size of the delinquent account;

(b) Mobile home park occupant's water and sewer service payment history;

(c) Time that the debt has been outstanding;

(d) Reasons why the debt has been outstanding;

(e) Any other relevant factors concerning the circumstances of the mobile home park occupant such as household size, income, and necessary expenses.

(4) A deferred payment agreement offered by a mobile home park operator or mobile home park contractor shall set out all terms and conditions of the agreement. If the mobile home park operator or mobile home park contractor and the mobile home park occupant cannot reach agreement on the terms and conditions of the deferred payment agreement, the mobile home park occupant shall be informed of the right to ask the commission to review the agreement being offered. The mobile home park occupant shall be informed that signing the agreement does not affect the responsibility of the mobile home park occupant to pay for current service or meet the payment schedule set out in the agreement. Allowing any bill for current service or any payment under the agreement to become delinquent places the mobile home park occupant in default of the agreement.

(5) If an applicant for mobile home park water or sewer service or current mobile home park occupant has not fulfilled terms of a deferred payment agreement and there has not been a significant change in the mobile home park occupant's ability to pay since the agreement was negotiated, the mobile home park operator or mobile home park contractor shall have the right to disconnect pursuant to disconnection of service rules (s. PSC 186.35), and under such circumstances, it shall not be required to offer subsequent negotiation of a deferred payment agreement prior to disconnection.

(6) Any payments made by a mobile home park occupant solely in compliance with a deferred payment agreement, and not as part of a payment for other mobile home park services, shall first be considered as payment toward the deferred payment agreement, with any remainder credited to the current bill. Payments made to satisfy a current bill for mobile home park service, which may include a portion for a deferred payment agreement, shall be credited as set forth in s. PSC 186.33 (3).

(7) If a deferred payment agreement cannot be reached because the mobile home park occupant's offer is unacceptable to the mobile home park operator or mobile home park contractor, the mobile home park operator or mobile home park contractor shall inform the mobile home park occupant why the mobile home park occupant's offer was not acceptable.

PSC 186.37 Dispute procedures. (1) Whenever the mobile home park occupant disputes the mobile home park's request for a deposit, or advises the mobile home park's designated office prior to the disconnection of service that all or any part of any billing as rendered is in dispute, or that any matter related to the disconnection or refusal of service is in dispute, the mobile home park operator or mobile home park contractor shall:

(a) Investigate the dispute promptly and completely;

(b) Advise the mobile home park occupant of the results of the investigation;

(c) Attempt to resolve the dispute;

(d) Provide the opportunity for mobile home park occupants, at the discretion of the mobile home park operator or mobile home park contractor, per s. PSC 186.36 (1), to enter into a deferred payment agreement when reasonable in order to resolve the dispute.

(2) (a) After the mobile home park occupant has pursued the available remedies with the mobile home park operator or mobile home park contractor, the mobile home park occupant may request that the commission staff informally review the disputed issue and recommend terms of settlement.

(b) A request for informal review may be made in any reasonable manner such as by written or telephone request directed to the commission. Either by telephone or written request, the commission staff may request the mobile home park operator or mobile home park contractor to investigate the dispute.

(c) A mobile home park operator or mobile home park contractor shall respond to the commission staff's request for an investigation promptly. Based on information provided by the mobile home park operator or mobile home park contractor and the mobile home park occupant, the commission staff shall make an informal determination for settlement of the dispute and communicate that determination to both parties. Either party to the dispute may request and receive the commission staff determination, and the basis for it, in writing. Commission staff shall inform any mobile home park occupant disputing an informal determination of the right to pursue a formal review.

(d) There shall be at least 7 calendar days between the date the commission staff telephones or mails written notice of terms of settlement after informal review and any disconnection.

(3) (a) After informal review, any party to the dispute may make a written request for a formal review by the commission. To avoid disconnection pending a formal review, the mobile home park occupant shall request a formal review by the commission, in writing, within 7 calendar days of the issue of the informal determination. All other requests for formal review shall be made within 30 calendar days of the date the commission staff telephones or provides written notice of terms of the settlement after informal review. If written confirmation is requested, the 30−day period begins from the date of that mailing.

(b) The commission shall base its determination on the request for formal review and commission staff's informal dispute file. Within 45 calendar days from the time that a request for formal review is made, commission staff shall provide the commission with a memorandum based on the information it has received from the mobile home park operator or mobile home park contractor and the mobile home park occupant. A copy of the commission staff memorandum shall be provided to the parties 15 calendar days prior to consideration by the commission. Either party to the dispute may file a response to the commission staff's memorandum. These comments shall be filed with the commission 2 working days prior to the date scheduled for consideration by the commission. The commission shall inform both parties of its decision.

(4) Either party to the dispute may request that the commission reconsider its formal determination under this section. Such requests shall comply with s. 227.49, Stats., and shall be received by the commission within 20 days of mailing of the commission's determination. A request for reconsideration shall include any additional information or arguments that the party believes were not considered in the original dispute. The commission may review and reaffirm its original decision, issue a new decision, or decide to hold hearing on the matter for the gathering of additional information.

(5) (a) If the commission decides to conduct a formal hearing under sub. (4) on the dispute, the commission may impose conditions on the granting of a formal hearing. Failure to meet these conditions before hearing shall constitute waiver of the dispute by the mobile home park occupant.

(b) The hearing shall conform to the procedures of ss. 196.26 to 196.34, Stats.

(c) Any such hearing shall be held not less than 10 days following a notice of hearing and a decision thereon shall be rendered following the conclusion of the hearing.

(6) Mobile home park water or sewer service shall not be disconnected or refused because of any disputed matter while the disputed matter is being pursued in accordance with the provisions of this section. The mobile home park operator or mobile home park contractor shall inform the mobile home park occupant that pursuing a disputed matter does not relieve the mobile home park occupant of the obligation of paying charges which are not in dispute, prevent disconnection of water or sewer service for nonpayment of undisputed charges, or prevent the application of the late payment charge to amounts in dispute and later determined to be correct.

PSC 186.38 Complaint procedures. (1) Mobile home park occupants may complain to the commission concerning adequacy of supply, general condition of the mobile home park's water distribution system, sewer collection system or sewer treatment system, the mobile home park operator's or mobile home park contractor's billing methodology, or any other general concern.

(2) The methodology for resolving complaints will be as set forth in s. PSC 186.37.

Subchapter IV. Engineering

PSC 186.41 General construction requirements. (1) Water or sewer systems owned by a mobile home park operator or mobile home park contractor shall be constructed and maintained so as to comply with the applicable requirements of all federal, state or local agencies, including the Wisconsin department of commerce and Wisconsin department of natural resources.

(2) If water service is supplied by a mobile home park operator or mobile home park contractor on a metered basis, service may not be supplied to any mobile home park occupant from facilities which are downstream from another mobile home park occupant's meter.

Subchapter V. Customer Meters, Accuracy Requirements

PSC 186.51 Meters. All meters used for measuring the quantity of water delivered to a mobile home park occupant shall be in good working condition. They shall be adequate in size and design for the type of service measured and shall be accurate to the standard specified in ch. PSC 185.

Subchapter VI. Meter Testing

PSC 186.61 Meter testing facilities and equipment. Each mobile home park operator or mobile home park contractor billing for water or sewer service on a metered basis shall own or provide, through contract or otherwise, adequate equipment and facilities to provide for testing all of its water meters.

PSC 186.62 Testing of mobile home park occupant meters. (1) The test of any mobile home park occupant's meter shall consist of a comparison of its accuracy with that of a standard of known accuracy. Where the test standard consists of a previously calibrated reference or service meter, the test results for the mobile home park occupant meter shall be adjusted to compensate for the inaccuracies of the reference meter at the particular flow rates.

(2) Meters shall be tested before repair ("As Found") and after repair ("As Left"), if applicable.

(3) Meters not meeting the accuracy or other requirements of ch. PSC 185 shall be repaired or rebuilt to meet those requirements before further use.

PSC 186.63 Test flows. The required test flow and "normal test flow limits" are as listed in ch. PSC 185. The stated test flows apply for both "As Found" and "As Left" tests.

PSC 186.64 Required tests of mobile home park occupant meters. Meters shall be tested by the mobile home park operator or mobile home park contractor at the following times:

(1) Before use if the meter has not been tested or certified to be accurate;

(2) Upon mobile home park occupant request or dispute (see s. PSC 186.65);

(3) When damaged or otherwise suspected of being inaccurate;

(4) Upon removal.

PSC 186.65 Dispute tests. Each mobile home park operator or mobile home park contractor shall promptly make an accuracy test of any metering installation upon request of a mobile home park occupant. If less than six months has elapsed since the last meter test, the mobile home park operator or mobile home park contractor is not obligated to test the meter unless there is evidence that the meter is damaged or otherwise registering incorrectly. When a

meter test is performed upon request of the mobile home park occupant, an amount equal to 50 percent of the estimated cost of the meter test shall be advanced to the mobile home park operator or mobile home park contractor by the mobile home park occupant. This amount shall be refunded if the test shows the meter to be overregistering by more than 2 percent. A report giving the results of such test shall be made to the mobile home park occupant and a complete original test record shall be kept on file by the mobile home park operator or mobile home park contractor for six months following the test date. Upon request, the test shall be made in the presence of the mobile home park occupant during normal business hours.

PSC 186.66 Remote outside meter (ROM) system tests. The ROM system, if used, shall be tested each time the associated meter is tested. If the total recorded consumption of the ROM agrees with that of the base meter, no further testing of the ROM system is needed.

Subchapter VII. Operating Requirements

PSC 186.71 Quality of water. (1) Mobile home park operators or mobile home park contractors shall provide water of such quality that it complies with state and federal requirements for drinking water.

(2) Each water supply system shall be designed and operated so that the water supplied to all mobile home park occupants is reasonably free from objectionable taste, color, odor, and sand or other sediment.

PSC 186.72 Adequacy of water supply. Each mobile home park operator or mobile home park contractor shall furnish a continuous and adequate supply of water to its mobile home park occupants.

PSC 186.73 Pressure standards. The pressure of any mobile home park water supply system shall meet all applicable federal, state or local requirements such as those set forth by the Wisconsin Department of Commerce or Wisconsin Department of Natural Resources.

PSC 186.74 Flushing mains. If practical, dead−end mains, or other low flow portions of distribution systems, shall be flushed as needed to eliminate or minimize complaints from mobile home park occupants arising from an objectionable condition of water due to lack of circulation.

PSC 186.75 Interruptions of service. (1) Each mobile home park operator or mobile home park contractor shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the mobile home park operator or mobile home park contractor shall endeavor to re−establish service with the shortest possible delay consistent with safety to its employees, mobile home park occupants, and the general public.

(2) Reasonable notice shall be given to mobile home park occupants of planned interruptions of service.

PSC 186.76 Maintenance of water or sewer laterals. (1) Thawing of a mobile home park occupant's frozen lateral shall be at the mobile home park occupant's expense unless:

(a) The freeze−up is a direct result of a disconnect initiated by the mobile home park operator or mobile home park contractor and the disconnection occurs during a time when conditions are such that freeze−up could reasonably be expected to occur or;

(b) The freeze−up is a result of a deficiency in the mobile home park distribution or collection system.

(2) All other maintenance of water or sewer laterals shall be at the expense of the mobile home park operator or mobile home park contractor unless the water or sewer lateral is physically damaged by the activities of the mobile home park occupant or by the discharge of improper materials into the sewer lateral by the mobile home park occupant. Improper materials include, but are not limited to, such materials as: any flammable or explosive liquids, solids, or gases; wastes having a pH lower than 5.0 or in excess of 10.0; or solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in the lateral.

Notice of Hearing

Public Service Commission

Notice is hereby given that the Public Service Commission will hold a public hearing at the time and place indicated below to consider the creation of ch. PSC 187, relating to sewer main extension cost recovery.

Hearing Information

January 8, 1999	**Amnicon Falls Hrg. Room**
Friday	**PSC Bldg. (Room 1300)**
9:00 a.m.	**610 North Whitney Way**
	Madison, WI

Notice is further given that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (lobby) on the Whitney Way side of the building. Any person with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267−9766.

Written Comments

Notice is further given that the Commission requests comments on this application. Any party that desires to file comments should submit **an original and 15 copies** addressed as noted below. Comments are due at the Commission no later than **noon on January 14, 1999**. Comments filed by FAX are due no later than **noon on January 13, 1999**. Fax filing cover sheets must state **"Official Filing"** and the number of pages (limit 20 pages). All correspondence should reference docket number 1−AC−173. File by one mode only.

Address comments to:

Lynda L. Dorr
Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707−7854

FAX: (608) 266−3957

Contact Person

Questions regarding the hearing may be directed to Mr. Thomas J. McDonald at (608) 266−7236.

Analysis Prepared by the Public Service Commission

Statutory authority : ss. 66.076 (1) (b), 227.11(2) and 227.24 and 1997 Wis. Act 213, section 5

Statutes interpreted: s. 66.076 (1) (b) and 1997 Wis. Act 213, section 5

Pursuant to the legislature's instruction in s. 66.076 (1) (b), as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is submitting to the Legislative Council for review – and at the same time adopting as emergency rules −− the following administrative rules establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer. A hearing for January 8, 1999, is also being scheduled on these proposed rules. The rules set forth standards in the following areas:

Section PSC 187.01. Purpose. Provides the statutory authority for and purpose of the rules.

Section PSC 187.02. Definitions. Defines a number of key terms contained in this chapter: "developer," "developer contribution," "person," "sewerage project," "sewer main," "sewer service lateral," and "subdivision."

Section PSC 187.03. Application of the rules. Specifies those persons to whom the rules apply – "any person who connects a sewer

service lateral or main extension into a sewer main for which there has been a developer contribution, and whose property is outside of the subdivision or commercial development of the developer who made the developer's contribution."

Section PSC 187.04. Notice. Requires the municipality in which a sewerage project is located to inform a person who wishes to connect of the requirements of this chapter, i.e., that the developer who constructed the project must be paid.

Section PSC 187.05. Determining refund fees. Sets forth the formula for calculating the cost to be paid by a person seeking to connect to a developer−financed sewerage project within three years of the original construction.

Environmental Analysis

This is a Type III action under s. PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11,Stats., nor an environmental assessment is required.

Initial Regulatory Flexibility Analysis

In an effort to minimize the impact of the rules on small businesses, as defined in s. 227.114 (1) (a), Stats., the Commission has met with and received input from a number of municipalities, as well as their professional associations, and the Wisconsin Builders Association. These persons and groups indicate that there should be no unusual burdens on small business other than the burden of the legislation itself. The rules seek to minimize the burden on all parties by imposing a three−year limitation period on the obligation to pay a developer for the costs of a sewerage project to which a person seeks to connect. Additional input on this issue is invited by correspondence or by appearance at the rulemaking hearing.

Fiscal Estimate

There will be minimal adverse fiscal impact of these proposed rules on state or local units of government.

Text of Rule

Chapter PSC 187

SEWER MAIN EXTENSION: COST RECOVERY

PSC 187.01 Purpose. The purpose of this chapter is to carry out the legislative directive in s. 66.076 (1) (b), Stats.—to adopt rules setting forth the method of determining payment to a developer by a person connecting an extension into a sewerage project for which the developer is paying or has paid.

PSC 187.02 Definitions. The following terms as used in this chapter mean:

(a) "Commercial development" means a building, business park, mall, plant, or other facility or location where business, commerce, or manufacturing is transacted.

(b) "Developer" is a person who constructs or creates a subdivision.

(c) "Developer contribution" is plant or capital contributed by a developer to a sewerage project.

(d) "Person" means an individual, group, association, partnership, company, or corporation.

(e) "Sewer main" means sewer pipe installed to transport sewage from the sewer service lateral to the wastewater collection system or wastewater treatment plant.

(f) "Sewer service lateral" means the pipe installed from a customer's building to the sewer main.

(g) "Sewerage project" means that portion of a sewer main which has been financed by a developer contribution and which connects the remainder of the municipal sewerage system and the developer's subdivision or commercial development. It also includes any pumping facilities located within the development which have the capacity to serve outside the development.

(h) "Subdivision" has the meaning of s. 236.02(12), Stats.

PSC 187.03 Application. This chapter applies to any person who connects a sewer service lateral or sewer main extension into a sewer main for which there has been a developer contribution, and whose property is outside of the subdivision or commercial development of the developer who made the developer's contribution. A person making a sewer service lateral connection to or sewer main extension from a previously installed sewer main extension for which a developer is paying or has paid shall pay to the developer a fee as defined under s. PSC 187.05. This rule does not apply to a combined water and sewer utility under s. 66.077, Stats. This rule does not apply to limit any sewerage service charges or other means of collecting costs of providing wastewater treatment service as permitted under s. 66.076, Stats., by governing bodies owning wastewater facilities or portions thereof for which no developer contribution has been made.

PSC 187.04 Notice. The municipality in which a sewerage project is located for which a developer is paying or has paid shall inform a person who wishes to connect into a sewer main of the requirements of this chapter.

PSC 187.05 Determining refund fees. (1) Where the cost of the sewer main extension is to be collected through special assessment by the municipality against the abutting property, the procedures set forth under the assessment statutes shall apply, and no additional customer contribution for the cost of the sewer main extension will be required and no refund will be made to the developer.

(2) When a new sewer service lateral or sewer main is extended from an existing sewer main, which was not financed by developer contributions, the new sewer service lateral or sewer main extension shall not be subject to this chapter.

(3) Where the developer is paying, or has paid, all or part of the cost of a sewer main extension, part of the contribution may be refundable. If a person whose property is outside of the development connects via a sewer service lateral or sewer main extension to a developer−financed sewer main within three years of the date of completion of the developer's sewer main installation, the person shall pay to the developer the following:

(a) *Sewer main extension.* The developer shall be refunded a percentage of the costs of the original sewerage project calculated using the Diameter Squared, Length of Sewer Main method, where

$$\text{Refund (\$)} = C \times P$$

C = the cost of the original sewerage project paid by the developer ($)

$$P = [L_2 \times (D_2)^2] \div [L_1 \times (D_1)^2];$$

when $P \geq 0.50$, set $P = 0.50$
(*i.e. P may never be greater than 0.50 in calculating the refund)*

L_1 = Lineal feet of sewer main installed with the original sewerage project

D_1 = Diameter in inches of sewer main L_1

L_2 = Lineal feet of sewer main installed with new sewer main extension

D_2 = Diameter in inches of sewer main L_2

Note: Where multiple sewer main diameters are involved, calculating "P" requires summing the individual products of each length of sewer main multiplied by its respective diameter squared.

As additional sewer main extensions are made, the cost of the original sewerage project shall be redistributed on the basis of proportionality by expanding the Diameter Squared, Length of Sewer Main Method. Reimbursement to the original developer shall never exceed 50% of the original sewerage project cost. No refunds

will be made for sewer main extensions that do not directly connect to the sewer mains serving the original development.

(b) *Sewer service lateral connection.* A percentage of the costs of the original sewerage project that lies outside of the actual subdivision or commercial development shall be refunded to the developer. These costs exclude sewer infrastructure within the development. The percentage refunded shall be equal to the ratio of the front footage of the property abutting the sewer main to four times the overall length of the extension up to the development. This amount will be refunded to the original developer.

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2) , Stats., and s. 440.03 (14) (d), Stats., as created by 1997 Wis. Act 261, and interpreting s. 440.03 (14), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create chs. RL 140 to 142, relating to the registration of music, art and dance therapists.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 8, 1998 **Tuesday** **10:00 a.m.**	**Room 180** **1400 E. Washington Ave.** **MADISON, WI**

Written Comments

Interested persons are invited to present information at the hearing. Persons 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 the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **December 22, 1998** to be included in the record of rule−making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and s. 440.03 (14) (d), Stats., as created by 1997 Wis. Act 261.

Statute interpreted: s. 440.03 (14)

In this proposed rule−making order, the Department of Regulation and Licensing creates chs. RL 140 to 142, which establish requirements for the registration of music, art and dance therapists.

Chapter RL 140 sets forth the authority of the Department to promulgate the proposed rules. The proposed rules also include definitions for the terms “practice of art therapy,” “practice of dance therapy” and “practice of music therapy.”

Chapter RL 141 sets forth the requirements for obtaining a registration as a music, art or dance therapist. In addition, the rules contain the requirements for renewal of a registration.

Chapter RL 142 establishes the scope of practice for music, art and dance therapists. The rules identify appropriate practice, including techniques and general procedures, which music, art and dance therapists must follow, as well as prohibited practices.

Text of Rule

SECTION 1. Chapters RL 140 to 142 are created to read:

Chapter RL 140

AUTHORITY, INTENT AND DEFINITIONS

RL 140.01 Authority and purpose. The rules in chs. RL 140 to 142 are adopted by the department pursuant to ss. 227.11 (2) and 440.03 (14) (d), Stats., to govern the registration of music, art and dance therapists.

RL 140.02 Definitions. As used in chs. RL 140 to 142, unless the context otherwise requires:

(1) “Department” means the department of regulation and licensing.

(2) “Practice of art therapy” means the specialized, professional and therapeutic use of art media, images, the creative art process, and client responses to the created art productions as reflections of an individual’s development, abilities, personality, interests, concerns, and conflicts. Art therapy practice is based on knowledge of human development and theories which are implemented in the full spectrum of models of assessment and treatment including educational, cognitive, transpersonal, and other therapeutic means of reconciling emotional conflicts, fostering self−awareness, developing social skills, managing behavior, solving problems, reducing anxiety, aiding reality orientation, and increasing self−esteem. Art therapists serve individuals, couples, families and groups. The practice may include elements of other art forms.

(3) “Practice of dance therapy” means the specialized, professional and therapeutic use of movement and dance. This is a process which furthers the emotional, cognitive, social and physical integration of the individual. The practice may include elements of other art forms. The practice includes, but is not limited to, the following:

(a) Consultation with clients to determine the nature of a client’s problem.

(b) Assessment of clients to determine their suitability for dance therapy.

(c) Explanation to clients of the nature of dance therapy.

(d) Facilitation of dance therapy sessions using methods and techniques in accordance with goals determined by the client and therapist.

(e) Discussion with clients regarding the process and results of dance therapy.

(f) Documentation.

(4) “Practice of music therapy” means the specialized, professional, therapeutic use of music in the service to individuals with needs in mental health, physical health, habilitation, rehabilitation, special education, self−care or personal growth. The purpose of music therapy is to assist and empower individuals to attain or maintain their maximum level of functioning and highest quality of life. The practice may include elements of other art forms. In the delivery of music therapy services, music therapists are required to follow general procedures that include all of the following:

(a) Referral and acceptance.

(b) Assessment of current functioning level and condition.

(c) Professional program planning.

(d) Therapeutic implementation and intervention.

(e) Documentation.

(f) Termination of services.

(5) “Registrant” means a person who is granted a registration as a music, art or dance therapist by the department.

Chapter RL 141

APPLICATION

RL 141.01 Application for registration. An individual applying for registration as a music, art or dance therapist shall submit all of the following to the department:

(1) An application on a form provided by the department.

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

(2) The fee required under s. 440.05 (1), Stats.

(3) Subject to ss. 111.321, 111.322 and 111.335, Stats., evidence satisfactory to the department that he or she does not have an arrest or conviction record.

(4) Written verification transmitted directly to the department by the appropriate organization stating that the applicant:

(a) If applying for registration as a music therapist, is certified, registered or accredited as a music therapist by the certification board for music therapists, national music therapy registry, American music therapy association or by another national organization that certifies, registers or accredits music therapists.

(b) If applying for registration as an art therapist, is certified, registered or accredited as an art therapist by the art therapy credentials board or by another national organization that certifies, registers or accredits art therapists.

(c) If applying for registration as a dance therapist, is certified, registered or accredited as a dance therapist by the American dance therapy association or by another national organization that certifies, registers or accredits dance therapists.

RL 141.02 Renewal of registration. (1) Registrations for music, art and dance therapists expire on October 1 of each odd−numbered year. In order to renew a registration on or before the renewal date, the registrant shall submit all of the following to the department:

(a) A renewal application on a form provided by the department.

(b) The renewal fee required under s. 440.08 (2) (a), Stats.

(c) A signed statement contained on the renewal application certifying that the certification, registration or accreditation as a music, art or dance therapist, as appropriate, granted to him or her by the appropriate organization identified under s. RL 141.01 (4), has not been revoked.

(2) A registrant who fails to renew his or her registration by the renewal date may renew the registration by satisfying the requirements under sub. (1) and paying the late renewal fee required under s. 440.08 (3), Stats.

Note: The first registration renewal date for music, art and dance therapists will be October 1, 2001.

RL 141.03 Accommodations relating to a disability. A qualified applicant with a disability shall be provided with reasonable accommodations requested in connection with the completion of an application for registration or renewal of a registration as a music, art or dance therapist.

Chapter RL 142

SCOPE OF PRACTICE

RL 142.01 Music therapy. (1) PRACTICE. Practice shall be performed in accordance with the generally accepted standards recognized by the profession including, but not limited to, the following:

(a) *Techniques.* Techniques used in the practice of music therapy include, but are not limited to, music improvisation techniques, receptive music listening, use of rhythm to assist with and enhance motor planning, song writing, lyric discussions and memory recall, music and imagery, music performances, learning through music, fine motor manipulation of instruments, active participation in the music making process and sensory stimulation.

(b) *Treatment plans.* Treatment plans may be designed to help clients attain and maintain the maximum level of functioning; comply with federal, state, facility and agency regulations; delineate the type, frequency and duration of music therapy involvement; identify objectives and goals and specify procedures for attaining the objectives and goals; provide for periodic evaluation and appropriate modifications as needed or comply with infection control procedures.

(2) GENERAL PROCEDURES. In the delivery of music therapy services, music therapists shall follow general procedures that include all of the following:

(a) Referral and acceptance.

(b) Assessment.

(c) Program planning.

(d) Implementation.

(e) Documentation.

(f) Termination of services.

RL 142.02 Art therapy. (1) PRACTICE. Practice shall be performed in accordance with the generally accepted standards recognized by the profession including, but not limited to, the following:

(a) *Objectives.* Art therapy alleviates distress and reduces physical, emotional, behavioral, and social impairment while supporting and promoting positive development through the use of art media.

(b) *Technique.* The practice of art therapy includes, but is not limited to, the use of art media to assess, treat and rehabilitate patients with mental, emotional, physical, or developmental disorders.

(2) GENERAL PROCEDURES. In the delivery of art therapy services, art therapists shall follow general procedures that include all of the following:

(a) Assessment.

(b) Development of patient treatment plans, goals and objectives.

(c) Case management services.

(d) Therapeutic interventions and treatment.

(e) Documentation.

(f) Termination of services.

RL 142.03 Dance therapy. (1) PRACTICE. Practice shall be performed in accordance with the generally accepted standards recognized by the profession including, but not limited to, the following:

(a) *Objectives.* The goal of dance therapy includes, but is not limited to, the therapeutic use of dance and involvement in order to enhance and promote psychological growth, contribute to assessment information, and aid creative, cognitive, emotional and motor development.

(b) *Techniques.* The practice of dance therapy includes, but is not limited to, the use of movement, nonverbal and verbal modalities.

(2) GENERAL PROCEDURES. In the delivery of dance therapy services, dance therapists shall follow general procedures that include all of the following:

(a) Consultation with clients to determine their suitability for therapy.

(b) Assessment.

(c) Explanation to clients of the nature of therapy.

(d) Facilitation of dance therapy sessions.

(e) Discussion with clients regarding the process and results of therapy.

(f) Documentation.

RL 142.04 Prohibited practices. In the practice of music, art and dance therapy, the following without limitation because of enumeration, are prohibited practices:

(1) Practicing beyond the scope of practice of music, art or dance therapy as provided in this chapter.

(2) Failing to practice music, art or dance therapy within the scope of the registrant's competence, education, training or experience.

(3) Knowingly permitting any professional staff to provide music, art or dance therapy that exceeds that person's competence, education, training or experience.

(4) Failing to refer a client to a health care practitioner for treatment beyond the qualifications or scope of practice of the music, art or dance therapist, when indicated.

(5) Misrepresenting the scope of practice of music, art or dance therapy to a client or to the public.

(6) Misrepresenting qualifications, education, credentials or professional affiliations to a client or to the public.

(7) Failing to inform a client about contraindications of music, art or dance therapy.

(8) Providing music, art or dance therapy when benefits cannot reasonably be expected.

(9) Guaranteeing the results of services offered, except that reasonable statements relating to prognosis and progress may be made.

(10) Failing to inform a client, or the client's authorized representative, of the purpose, nature and effects of assessment and treatment.

(11) Failing to avoid dual relationships, sexual misconduct or relationships with clients that may impair one's objectivity or create a conflict of interest. Dual relationships include, but are not limited to, treating employees, supervisees, students, friends or relatives.

(12) Using an individual in research or as the subject of a teaching demonstration without obtaining the individual's informed consent.

(13) Failing to assign credit to an individual who contributed to clinical services, publications, or presentations in proportion to the individual's contribution.

(14) Engaging in conduct likely to deceive, defraud, or harm an individual or the public in the course of the practice of music, art or dance therapy.

(15) Advertising in a manner which is false, deceptive or misleading.

(16) Subject to ss. 111.321, 111.322 and 111.34, Stats., practicing music, art or dance therapy while the registrant's ability to practice is impaired by a mental or physical disorder, alcohol or other drugs.

(17) Subject to ss. 111.321, 111.322 and 111.335, Stats., being convicted of an offense the circumstances of which substantially relate to the practice of music, art or dance therapy.

(18) Failing to maintain the confidentiality of all client information, unless consent is given by the client or disclosure is required by law or court order.

(19) Knowingly placing false information in a client's records.

(20) Failing to provide appropriate access to client records when requested by the department or its representative.

(21) Knowingly providing false information to the department.

(22) Making a material misstatement on an application for registration or for renewal of a registration.

(23) Violating any rule adopted by the department relating to the practice of music, art or dance therapy.

(24) Violating any term, provision or condition of any order issued by the department.

(25) After a request by the department, failing to cooperate in a timely manner with the department's investigation of complaints filed against the applicant or registrant. There is a rebuttable presumption that a registrant or applicant who takes longer than 30 days to respond to a request made by the department has not acted in a timely manner under this paragraph.

Fiscal Estimate

These rules implement 1997 Wis. Act 261, relating to the registration of music, art and dance therapists. The costs associated with this legislation have been enumerated in the agency's biennial budget request.

The Department is estimating that there will be 200 registrants. Annual revenues from these registrants are estimated to be $4,100. Costs associated with the regulation include the expenses of two meetings of the Secretary's Advisory Committee per year at $1,488 annually, postage costs of $1,200 and printing costs of $420.

The Department is not aware of any local government costs.

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 Rules 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

Transportation

Notice is hereby given that pursuant to s. 343.055(5), Stats., and interpreting s.343.16(2)(e), Stats., the Department of Transportation will hold a public hearing in **Room 115−B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 2nd day of December, 1998, at 9:00 AM,** to consider the amendment of ch. Trans 102, Wis. Adm. Code, relating to Operator's Licenses and Identification Cards.

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 **December 2, 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 Karen Schwartz, Department of Transportation, Bureau of Driver Services, Room 351, P. O. Box 7993, Madison, WI 53707−7993.

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: s. 343.055(5)

STATUTES INTERPRETED: ss. 343.055(5) and 343.16(2)(e)

General Summary of Proposed Rule. This proposed rulemaking proposes to make routine updates to the driver licensing provisions of the administrative code. The changes are as follows:

• Update references to licenses and restriction cards to reflect the fact that the Division of Motor Vehicles is now producing driver licenses in a new manner that contain digital images of drivers. For example, provisions related to restriction cards are repealed because the Department no longer issues restriction cards under the new system.

• Update provisions, where appropriate, to reflect the fact that this new technology will allow the Department to issue photo licenses by mail in appropriate situations, such as to annually update farm service restrictions on a license. Provides authority for the Department to cancel licenses issued by mail if the driver does not surrender his or her prior license.

• Prohibits the Department from issuing a person a first regular driver license in Wisconsin if the Department's computer database is not operational and the person's driver record cannot be checked.

• Reflects the fact that driver licenses are now issued for 8 years rather than for 4 years.

• Modifies the lists of acceptable identification documents.

Fiscal Effect

The Department anticipates no fiscal effect from this proposed rulemaking.

Initial Regulatory Flexibility Analysis

This proposed rulemaking will have no effect on small businesses.

Preparation and Copies of Proposed Rule

Preparation of this proposed rule was done by Karen Schwartz. Copies of the rule may be obtained upon request, without cost, by writing to Karen Schwartz or by calling (608) 266−0054. Hearing−impaired individuals may contact the Department using TDD (608) 266−3096. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Proposed Rule

Transportation

Notice is hereby given that pursuant to the authority of 1997 Wis. Act 277, section 8m, and s. 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 creating s. Trans 200.055 without public hearing unless, within 30 days after publication of this notice , on **November 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.

Questions about this rule and any petition for public hearing may be addressed to Bob Fasick, Division of Infrastructure Development, Room 501, P. O. Box 7986, Madison, Wisconsin 53707−7986, telephone (608) 266−3438.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: 1997 Wis. Act 277, Section 8m

STATUTE INTERPRETED: s. 340.01(73m), Stats.

General Summary of Proposed Rule. 1997 Wis. Act 277, Section 8m, mandates the Department to establish by administrative rule the specifications for the locations for placement of signs indicating the beginning and ending of a utility work area for the purposes of enforcing the "double fines" law. This rule making will create s. Trans 200.055 to specify the locations for the placement of these warning signs.

Section 1 of the Act states that a "utility work area" means the entire section of roadway between the first advance warning sign of work on a utility facility ... and an 'END UTILITY WORK' sign. Advance warning signs are diamond shaped (square with one diagonal vertical) having a black symbol or message on an orange background. The proper location of a warning sign depends on all of the following:

♦ Posted speed limit and traffic volume.

♦ Character of the highway (freeway, expressway, 2−lane highway, or local collector or arterial).

♦ Topography and layout of the road and hazard.

♦ Weather and light conditions.

♦ Available sight distance.

Distances may be shown on the sign itself; for example, "UTILITY WORK 1500 FT."

Therefore, this proposed rule states that uniform guidance for the placement of warning signs is contained in the Wisconsin Manual on Uniform Traffic Control Devices (MUTCD), as required by s. 84.02(4)(e), Stats. These advance warning and end utility signs shall be placed in accordance with the Wisconsin MUTCD. The Department has also developed specific work zone traffic control diagrams in its Utility Accommodation Policy that are derived from the Wisconsin MUTCD. Local highway agencies may also have specific work zone traffic control diagrams derived from the Wisconsin MUTCD for use on their own highways.

Fiscal Effect

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college system district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Initial Regulatory Flexibility Analysis

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

Copies of Rule

Copies of this proposed rule can be obtained upon request, free of charge, by writing to Bob Fasick, Wisconsin Department of Transportation, Division of Transportation Infrastructure Development, P. O. Box 7986, Room 501, Madison, WI 53707−7986, or by calling (608) 266−3438.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin, department of transportation, by 1997 Wis. Act 277, section 8m, the department of transportation hereby proposes to amend a rule interpreting s. 340.01(73m), Stats., relating to the location for placement of utility work signs.

SECTION 1. Trans 200.01 is amended to read:

TRANS 200.01 Purpose. The purpose of this chapter is to interpret and implement ss. 86.19, 86.191, 86.195, 86.196, 340.01(73m), 346.41~~,~~ and 346.503, Stats., relating to erection and maintenance of signs on public highways and signs related to reserved parking spaces for handicapped persons. This chapter does not apply to signs erected and maintained on property beyond the limits of a public highway, except signs related to reserved parking spaces for handicapped persons.

SECTION 2. Trans 200.055 is created to read:

TRANS 200.055 Warning signs for utility work areas. The first advance warning sign and the "END UTILITY WORK" sign shall be placed in accordance with the Wisconsin manual on uniform traffic control devices, the department's utility accommodation policy, or any other work zone traffic control guidance that has been accepted for regular use by the department with respect to the state trunk highway system, or a county, town, or municipality with respect to highways under their jurisdiction.

NOTE: Authority for the Manual on Uniform Traffic Control Devices is found at s. 84.02(4)(e), Stats. Section 227.01(13)(d), Stats., also states that the Department is exempt from rulemaking with regard to use of highways that is made known to the public by means of signs or signals. A copy of the Department's Utility Accommodation Policy may be obtained, without cost, by writing to the Division of Transportation Infrastructure Development, Bureau of Highway Operations, P. O. Box 7986, Room 501, Madison, WI 53707−7986.

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

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

Commerce (CR 98−103):
Chs. Comm 51, 52, 54, 56, 58 and 64 − Relating to an update of adopted NFPA Standards in the Building Code.

Commerce (CR 98−126):
Chs. Comm 5, 50 and 65 and ss. Comm 2.32, 66.60 and 70.04 − Relating to construction site erosion control.

Financial Institutions−−Savings Institutions (CR 98−137):
SS. DFI−SB 1.03 and 15.01 and DFI−SL 1.03 and 15.01 − Relating to codifying a policy authorizing savings banks and savings and loan associations to invest in limited liability companies.

Health and Family Services (CR 97−47):
Ch. HFS 127 − Relating to the operation of rural medical centers.

Health and Family Services (CR 98−108):
Ch. HFS 119 − Relating to the Health Insurance Risk−Sharing Plan (HIRSP).

Health and Family Services (CR 98−134):
SS. HFS 124.02 and 124.37 to 124.41 − Relating to critical access hospitals.

Hearing and Speech Examining Board (CR 98−115):
SS. HAS 1.01, 2.01 and 3.02 and chs. HAS 6, 7 and 8 − Relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Insurance, Commissioner of (CR 98−98):
SS. Ins 3.27, 3.39 and 3.46 − Relating to revising the requirements for Medicare supplement policies to comply with recent federal and state laws and revising the definition of advertising for health insurance.

Natural Resources (CR 97−152):
Subch. VII of ch. NR 47 − Relating to the administration of the private forest landowner grant program.

Natural Resources (CR 98−42):
Ch. NR 749 − Relating to the assessment and collection of fees providing assistance on the remediation and redevelopment of contaminated lands.

Natural Resources (CR 98−94):
S. NR 20.08 (10) − Relating to fishing tournament permitting.

Public Instruction (CR 98−112):
Ch. PI 35 − Relating to the Milwaukee parental school choice program.

Public Instruction (CR 98−113):
Ch. PI 38 − Relating to grants for peer review and mentoring.

Regulation & Licensing (CR 98−107):
Ch. RL 8 and Appendix I of ch. RL 8 − Relating to issuance and use of administrative warnings.

Regulation & Licensing (CR 98−116):
Chs. RL 90 to 94 − Relating to the practice of massage therapy and bodywork.

Regulation & Licensing (CR 98−132):
Chs. RL 80, 81 and 83 to 87 − Relating to real estate appraisers.

Revenue (CR 98−67):
S. Tax 11.56 − Relating to the printing industry.

Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board (CR 98−53):
S. SFC 1.02 (intro.) and ch. SFC 8 − Relating to continuing education requirements for renewal of social worker certificates.

Transportation (CR 98−111):
Ch. Trans 197 − Relating to charges for submission of proof of insurance.

Transportation (CR 98−121):
S. Trans 231.01 (9) and ch. Trans 233 − Relating to division of land abutting a state trunk highway or connecting highway.

Transportation (CR 98−122):
Ch. Trans 210 − Relating to the major highway project numerical evaluation process.

Transportation (CR 98−125):
Ch. Trans 57 − Relating to standards for airport siting.

Transportation (CR 98−131):
Ch. Trans 400 − Relating to the Wisconsin Environmental Policy Act.

Transportation (CR 98−140):
Ch. Trans 309 − Relating to ambulance inspection.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Agriculture, Trade and Consumer Protection (CR 98−1):
An order revising ch. ATCP 134, relating to residential rental practices.
Effective 01−01−99.

Commerce (CR 98−65):
An order affecting ch. ILHR 47, relating to the petroleum environmental cleanup fund.
Effective 01−01−99.

Commerce (CR 98−74):
An order affecting ch. Comm 115, relating to the community−based economic development program.
Effective 01−01−99.

Health & Family Services (CR 98−87):
An order amending s. HFS 196.03 (11r), relating to the exemption of food service operations providing "incidental food service" from being regulated as restaurants.
Effective 12−01−98.

Natural Resources (CR 98−85):
An order repealing and recreating s. NR 10.01 (1) (b), (g) 1. a. to k., 2. and 3., (u) 1. and 2. and (v), relating to the 1998 migratory game bird season.
Effective 01−01−99.

Pharmacy Examining Board (CR 98−16):
An order affecting chs. Phar 1 to 8, 10, 12, 13 and 14, relating to pharmacists and pharmacies.
Effective 01−01−99.

Veterinary Examining Board (CR 98−9):
An order affecting chs. VE 1 to 10, relating to veterinarians and veterinary technicians.
Effective 01−01−99.

Workforce Development (CR 98−88):
An order amending s. DWD 80.60, relating to employer self−insurance under the worker's compensation program.
Effective 01−01−99.

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