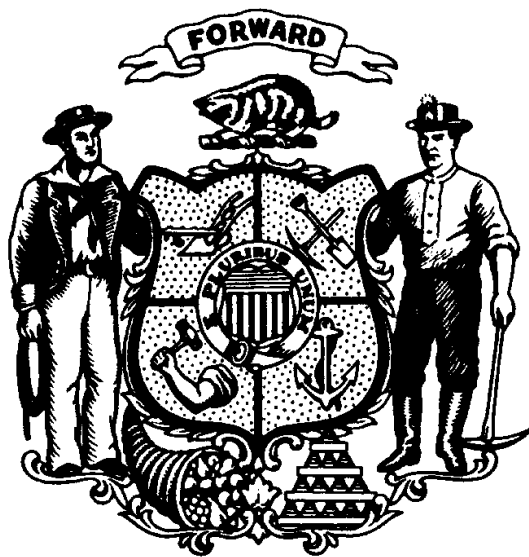


WISCONSIN ADMINISTRATIVE REGISTER

No. 516



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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (3)

Agriculture, Trade & Consumer Protection

1. Rules adopted creating **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 ImportsImport 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

2. 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

3. 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
Extension Through: March 4, 1999

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.

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|---------------------------|---------------------------|
| Publication Date: | April 21, 1998 |
| Effective Date: | April 21, 1998 |
| Expiration Date: | September 18, 1998 |
| Hearing Date: | May 29, 1998 |
| Extension Through: | January 15, 1999 |

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
Extension Through: January 12, 1999

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
Extension Through: January 25, 1999

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: February 8, 1999

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

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules were adopted amending s. DOC 328.21, relating to absconders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender.

Publication Date: December 3, 1998
Effective Date: December 3, 1998
Expiration Date: May 2, 1999

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
Extension Through: February 4, 1999

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 contract 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 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
Hearing Date: December 17, 1998

EMERGENCY RULES NOW IN EFFECT (3)

Health and Family Services

(Health, Chs. HSS/HFS 110—)

1. 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 Risk-Sharing 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

Extension Through: January 26, 1999

2. 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.

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| Publication Date: | August 29, 1998 |
| Effective Date: | August 29, 1998 |
| Expiration Date: | January 25, 1999 |
| Hearing Dates: | November 30, December 1, 7 & 9, 1998 |

3. 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
Extension Through: January 26, 1999

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
Extension Through: January 22, 1999

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 the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rulemaking procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

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

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection-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 of 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
Hearing Dates: January 4, 5, 6 & 7, 1999
 [See Notice this Register]

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 exempted 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

EMERGENCY RULES NOW IN EFFECT (2)

Regulation & Licensing

1. 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
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: December 17, 1998

2. Rules adopted creating chs. RL 140 to 142, relating to the registration of music, art and dance therapists.

Finding of Emergency

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration if it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

- (1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.
- (2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.

(3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

Publication Date: November 29, 1998
Effective Date: December 1, 1998
Expiration Date: April 30, 1999
Hearing Date: January 12, 1999
 [See Notice this Register]

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 preservation 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
Hearing Date: December 11, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11-59)

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

Finding of Emergency

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

Beginning on October 1, 1998, recently enacted provision in **ch. 48, Stats.**, require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions

are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

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

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

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate

preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

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

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

STATEMENTS OF SCOPE OF PROPOSED RULES

Chiropractic Examining Board

Subject:

Chir Code – Relating to use of limited liability in chiropractic practice.

Description of policy issues:

Objective of the rule:

Clarify that the statutes and rules administered by the Chiropractic Examining Board do not prohibit a chiropractor from practicing in or as a limited liability organization under the laws of this state, including chs. 178 and 183 and subch. XIX of ch. 180, Stats.

Policy analysis:

In the last four years, Wisconsin law has changed to recognize two new types of business organizations in which the vicarious liability of the members and partners is limited. Since January 1, 1994, Wisconsin has permitted use of the limited liability company (LLC) and since December 1995, the limited liability partnership (LLP). Nothing in this rule or the laws under which a lawyer or law firm is organized shall relieve a lawyer from personal liability for any acts, errors or omissions of the lawyer arising out of the performance of professional services.

The law regulating the practice of chiropractic in Wisconsin does not specifically prohibit or authorize a chiropractor to organize a chiropractic practice as a limited liability company or limited liability partnership. The rule proposed would provide a clear statement of the Board's position as to whether it is permissible for a chiropractor to organize a practice under any of the limited liability organizations recognized in current state law.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 446.03 and 446.04, Stats.

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

60 hours.

Corrections

Subject:

DOC Code – Relating to a rule promulgation and amendment to allow the Department of Corrections to search an offender's residence for an offender who is deemed to be in violation of probation or parole supervision.

Description of policy issues:

Description of the objectives of the proposed rule:

The objective of the rule is to provide for public protection and promote accountability of offenders that have absconded from community supervision. The present rule allows the Department of Corrections to search an offender's residence for contraband when reasonable grounds exist and supervisory approval is obtained. The rule amendment will enlarge the search authority to allow searches of an offender's residence for an offender deemed to be in violation of probation or parole supervision. The rule amendment enables the Department to utilize its search authority in such a way as to protect victims and the public at large.

Statutory authority for the rule:

Section 973.10, Stats. – Control and supervision of probationers

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

The Department estimates that it will take 40 hours to develop the rule, including drafting, cost estimates, public hearings, and complying with rule-making requirements.

Health and Family Services

(Community Services, Chs. HFS 30--)

Subject:

Ch. HFS 58 – Relating to eligibility for the Kinship Care Program.

Description of policy issues:

Description of objectives:

The objective of the rules is to assist counties and tribes in determining whether a child and an adult relative who serves as the child's caretaker meet the eligibility requirements for the Kinship Care Program under s. 48.57 (3m) (am), Stats. The rules will provide guidance on determining, among other criteria, whether there is a need for the living arrangement, whether the living arrangement is in the best interests of the child and whether the child meets the jurisdictional criteria.

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

Under this program, a Kinship Care relative may apply to a county department of social services or human services or a tribal agency for a monthly payment of \$215 to assist in caring for a child. The application for payment will be approved if the county department or tribal agency determines that there is a need for the child to reside with that relative, that the living arrangement is in the child's best interests, that CHIPS or JIPS jurisdiction exists or might exist in the future and that certain other conditions are met. The rules will replace general policies issued by numbered memo to implement the current requirements at s. 48.57 (3m) (am), Stats.

Statutory authority:

Section 48.57 (3m) (ar), Stats., as created by 1997 Wis. Act 237.

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

It is anticipated that it will take the primary author 24 to 30 hours to develop the rules in preparation for Department review. In addition, the Department will ask two or three other staff in the responsible Bureau for review (1–2 hours). That same review will be requested of 5 to 7 county department and tribal agency staff. The time of the primary author will be further dependent upon the need to revise the rule following various review and approval steps in the promulgation process.

Insurance, Commissioner of

Subject:

S. Ins 2.80 – Relating to valuation of life insurance policies.

Description of policy issues:

A statement of the objective of the rule:

On December 16, 1997, the Commissioner created s. Ins 2.80, Wis. Adm. Code, in order to adopt the 1995 National Association of Insurance Commissioners (“NAIC”) valuation of life insurance policies model regulation, or “XXX”. This rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation to promote more uniform adoption by the states. This proposed rule would incorporate that revised model regulation. The Office of the Commissioner of Insurance (OCI) intends to use an emergency rule to delay implementation of the rule set to take effect on January 1, 1999, to allow time to adopt the latest NAIC version.

A statement of the statutory authority for the rule:

Sections 601.41 (3), 623.02 and 623.06, Stats.

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

The actual rule is being or will be developed by the NAIC and industry ad hoc committee. The time required of OCI staff to draft and promulgate the rule should be less than 40 hours.

Insurance, Commissioner of**Subject:**

Chs. Ins 13 and 50 – Relating to changing financial and other requirements for town mutual insurers.

Description of policy issues:

A statement of the objective of the rule:

To update rules to account for price inflation, statutory changes and current economic and business conditions applicable to town mutual insurers.

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

Some current rule policies concerning town mutual insurers need to be updated for the reasons stated above, an increase in the minimum surplus requirements and expanding the exemption from annual CPA audits are being considered, additional suggested changes may arise during the rule-making process.

A statement of the statutory authority for the rule:

Sections 600.01 (1) (b) 5., 601.41 (3) and 623.11, Stats.

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

100 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Chiropractic Examining Board

Rule Submittal Date

On November 18, 1998, the Wisconsin Chiropractic Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to referral of patients to other health care practitioners.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 7, 1999 at 1400 East Washington Ave., Room 179A at 10:00 a.m.

Contact Person

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

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

Chiropractic Examining Board

Rule Submittal Date

On December 1, 1998, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to definitions, applications, examinations, temporary permits and renewal.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 7, 1999 at 1400 East Washington Avenue, Room 179A at 10:00 a.m.

Contact Person

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

Health and Family Services

Rule Submittal Date

On November 25, 1998, the Wisconsin Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 48.685 (4), (5), (6) (b) and (c) and (7) (a) and (b), 50.065 (1) (d) and (f), (5), (6) (b) and (c) and (7) (a) and (b), Stats., as created by 1997 Wis. Act 27 and amended by 1997 Wis. Act 237, and s. 227.11 (2), Stats.

The proposed rule affects ch. HFS 12, relating to caregiver background checks.

Reason for rules, intended effects, requirements:

These are the replacement permanent rules for emergency rules now in effect that implement ss. 48.685 and 50.065, Stats., as created by 1997 Wis. Act 27, by requiring background checks conducted in a uniform manner on all persons who apply to the Department or have received from the Department a license, certification, registration or approval to operate an entity that provides care or treatment to people needing the care or treatment, or who propose to reside at an entity, or who apply to an entity for employment at the entity or propose to contract with the entity to provide services for clients or are employed by the entity or are under contract with the entity to provide those services.

The order also includes requirements for conducting background checks in the same uniform manner on all persons who apply to a county department or a private child-placing agency for a license to operate a foster home for children or for an adoption home study or who are operating a foster home. Finally, the order includes requirements for school boards establishing or contracting for a day care program under s. 120.13 (14), Stats., to conduct background checks in the same uniform manner on persons who are to be employed in an established program or who propose to contract with the school board to provide a day care program.

Checking the background of a person involves:

- 1) Having that person fill out a Department-prescribed background information form; and
- 2) Checking at least 5 sources, including criminal history records, to find out if the person has been convicted of a serious crime, has a pending charge for a serious crime, is the subject of a finding of having abused or neglected a client or child or of having misappropriated a client's property or there is something about the person's professional credential that prevents the person from providing adequate care.

For the sake of protecting persons from harm who depend on others for daily care or treatment, the Department and other agencies may not give regulatory approval to a person and an entity may not hire or contract with a person to provide care to clients if the person has some specified action or inaction in his or her background that constitutes a bar to regulatory approval, employment by the entity or residence as a nonclient at the entity. For some offenses in a person's background the bar is permanent; for others the bar continues until the person demonstrates that he or she is rehabilitated.

Similar emergency rules are in effect.

Forms:

Section HFS 12.12 (1) (d) Rehabilitation Review Application
(EXS 263)

Section HFS 12.12 (2) (d) 5. Rehabilitation Review Reporting
Form (under development)

Section HFS 12.20 (1) (a) and (b) Background Information
Disclosure (HFS 64)

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.;
approval of rules in final draft form by DHFS Secretary; and

legislative standing committee review under s. 227.19, Stats.

Contact People

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

Linda Dawson
Office of Legal Counsel
Telephone (608) 266–0355

or

Don Dorn
Division of Children and Family Services
Telephone (608) 266–0415

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

► (reprinted from November 30, 1998 *Wis. Adm. Register*.)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on a proposed permanent rule amending ch. ATCP 81, Wis. Adm. Code, relating to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

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 December 18, 1998 for additional written comments.

Copies of Rule and Contact Person

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 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 4, 1998** either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

Hearing Information

| <u>Date & Time</u> | <u>Location</u> |
|--|--|
| December 11, 1998 Friday 10:00 a.m. – 12:00 p.m. (noon) | Mtg. Rm. 2, 3rd Floor Outagamie Co. Adm. Bldg. 410 S. Walnut St. APPLETON, WI 54911 |

(Access for handicapped persons is available through the Human Services Building entrance on the north side of the building.)

| | |
|---|---|
| December 16, 1998 Wednesday 10:00 a.m. – 12:00 p.m. (noon) | Conference Rm. 111 First Floor Iowa Co. Courthouse 222 N. Iowa St. DODGEVILLE, WI 53533 |
|---|---|

(Access for handicapped persons is available at the back entrance on the west side of the building.)

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

Statutory authority: ss. 97.09 (1) and 97.177 (1), (2) and (4)
Statutes interpreted: ss. 97.09 and 97.177

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or

sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This proposed rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under the proposed rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be "evenly distributed" and "small." Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be "evenly distributed," without the added emphasis on "small." Wisconsin grade B has no requirement for mechanical openings to be "evenly distributed."

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

Rules relating to cheese grading, packaging and labeling are contained in ch. ATCP 81, Wis. Adm. Code. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This rule amends ch. ATCP 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. This rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$3120 will be incurred by the Department for permanent rule development.

Long – Range Fiscal Implications

None anticipated.

Initial Regulatory Flexibility Analysis

See page 28 of the November 30, 1998 *Wis. Adm. Register*.

Notice of Hearing

Chiropractic Examining Board

Notice is hereby given that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 446.04 (1), (4) and (5), Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise chs. Chir 1 to 9, relating to definitions, applications, examinations, temporary permits and renewal.

Hearing Information

| <u>Date & Time</u> | <u>Location</u> |
|---|---|
| January 7, 1999 Thursday 10:00 a.m. | Room 179A 1400 East 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 **January 21, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

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

Statute interpreted: s. 446.04 (1), (4) and (5)

In this proposed rule-making order the Chiropractic Examining Board is modifying clinical examination to practical examination demonstrating clinical competence to reflect the actual nature of the examination. Rather than having a specific passing grade, which may change, the rule is amended to indicate that to pass the examination each applicant shall receive a grade determined by the Board to represent minimum competence to practice.

If after review of a failed examination the applicant's application shall be deemed incomplete, the applicant may be reexamined. If reexamination is not available within 6 months of the date of the examination the applicant failed, then the applicant may request a hearing. The section on cheating on examinations is expanded to include violation of rules of conduct or otherwise acting dishonestly. A section is created indicating an otherwise qualified applicant with disabilities shall be provided with reasonable accommodations to comply with the Americans With Disabilities Act. In ch. Chir 2 certificate of education is replaced with official certified transcript for consistency with ch. Chir 3. Notes are created to indicate where an individual may obtain information regarding approved institutions and programs relating to licensure by endorsement. The requirement that an applicant submit a current passport-type photograph for admission to the examination is repealed since photographs no longer are a useful check of personal identification. Testing administration firms and Department proctors routinely require a picture ID, usually a driver's license, at the examination site. Requiring that an applicant send a picture also creates unnecessary administrative processing for staff. Chapter Chir 7, access to public records, is repealed, as that is addressed in s. 19.35, Stats.

Text of Rule

SECTION 1. Chir 1.01 and 1.02 (intro.) are amended to read:

Chir 1.01 Authority. The rules in chs. Chir 1 to ~~40~~ **11** are adopted under authority in ss. 15.08 (5) (b), 227.11 (2) and ch. 446, Stats.

Chir 1.02 Definitions. As used in chs. Chir 1 to ~~40~~ **11**:

SECTION 2. Chir 2.02 (intro.) and (1) are amended to read:

Chir 2.02 Applications. An applicant for the practical examination demonstrating clinical competence for license as a chiropractor shall make application on a form prescribed by the board at least 30 days prior to the date of the next scheduled examination and shall also submit:

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

SECTION 3. Chir 2.02 (2) is repealed.

SECTION 4. Chir 2.02 (3) is amended to read:

Chir 2.02 (3) A An official certified transcript sent directly to the board from a college or university accredited by an accrediting body nationally recognized by the secretary of the federal department of education, or a post-secondary technical college showing completion by the applicant of a minimum of 60 credits in post-secondary academic education as specified in s. 446.02 (2), Stats.

SECTION 5. A Note following Chir 2.02 (3) is created to read:

Note: Accrediting bodies nationally recognized by the secretary of the Federal Department of Education include the New England Association of Schools and Colleges, the Middle States Association of Colleges and Schools, the North Central Association

of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, and the Western Association of Schools and Colleges.

SECTION 6. Chir 2.02 (4), (5), (6) (intro.), (a) and (b) are amended to read:

Chir 2.02 (4) A An official certified transcript sent directly to the board from a chiropractic college accredited by the commission on accreditation of the council on chiropractic education, or approved by the board, ~~sent directly to the board by the college.~~

(5) Proof of successful completion of the initial licensure examinations of the national board of chiropractic examiners.

(6) Applications for an initial license to practice chiropractic in this state received on and after July 1, 1998, shall include all of the following:

(a) ~~A certificate of education signed and sealed by the chancellor, dean or registrar of~~ An official certified transcript sent directly to the board from a college or university accredited by an accrediting body nationally recognized by the secretary of the federal department of education, stating that the applicant has graduated from that college or university with a bachelor's degree; ~~and~~

(b) ~~A certificate of professional education signed and sealed by the chancellor, dean or registrar of~~ An official certified transcript sent directly to the board from a college of chiropractic accredited by the council on chiropractic education and approved by the board stating that the applicant has graduated from the college with the degree of doctor of chiropractic.

SECTION 7. Chir 2.02 (7) is created to read:

Chir 2.02 (7) An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 8. Chir 2.025, 2.03 (1), (2) (title), (2) (intro.) and (2) (b) are amended to read:

Chir 2.025 Time for completing applications and taking examination. An application is incomplete until all materials described in s. Chir 2.02 shall be filed with the board. All application materials described in s. Chir 2.02 shall be filed with the board within one year from the date the first item is filed. If an application is incomplete for more than one year, or if an applicant fails to take an examination within one year from the date the application is complete, the applicant shall begin the application process anew in order to take the practical examination demonstrating clinical competence for a license as a chiropractor.

Chir 2.03 (1) STATE LAW EXAMINATION. An applicant shall pass an examination on state laws including but not limited to ch. 446, Stats., and chs. Chir 1 ~~through 7~~ to 11.

(2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL EXAMINATION COMPETENCE. An applicant shall pass each part of a clinical practical examination demonstrating clinical competence which includes the following parts:

(b) X-ray interpretation.

SECTION 9. Chir 2.04 (title), 2.04 and 2.05 are amended to read:

Chir 2.04 Unauthorized assistance or cheating on examinations. The board may withhold the score, grade, deny release of grades or deny issuance of a credential of an applicant who gives or receives unauthorized assistance during the state law or clinical practical examination demonstrating clinical competence, who violated rules of conduct of an examination, or who otherwise cheated or acted dishonestly respecting an examination. The board may consider this applicant for retesting at a future time.

Chir 2.05 Controls. The board chairperson or, examiner, or examination provider personnel may announce time limits and other necessary controls prior to the examinations. A valid driver's license bearing the applicant's photograph or an official photo identification card shall be required for admission to all examinations.

SECTION 10. Chir 2.07 (2), (3) (title) and (3) are amended to read:

Chir 2.07 (2) STATE LAW EXAMINATION. To pass the state law examination, each applicant shall receive a grade ~~of 75 or above~~

determined by the board to represent minimum competence to practice.

Chir 2.07 (3) ~~PRACTICAL EXAMINATION DEMONSTRATING CLINICAL EXAMINATION COMPETENCE.~~ To pass the ~~clinical practical examination demonstrating clinical competence.~~ an applicant shall receive a grade of 75 or above determined by the board to represent minimum competence to practice on each part of the examination.

SECTION 11. Chir 2.08 and 2.09 (1) are amended to read:

Chir 2.08 Announcement of results. Examination results shall be released to the ~~candidate~~ applicant after all papers are graded and the results have been approved by the board.

Chir 2.09 (1) In case of failure of an applicant on the clinical examination, all grades below ~~75 passing~~ shall be reviewed by the board or by 2 members designated by the chairperson.

SECTION 12. Chir 2.10 (1) (intro.), (a), (b), (c) and (3) are amended to read:

Chir 2.10 (1) An applicant wishing to claim examination error must file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

- (a) The applicant's name and address;
- (b) The type of license applied for;
- (c) A description of the perceived error, including specific questions or procedures claimed to be in error; ~~and.~~

(3) If the decision does not result in the applicant passing the examination, the applicant's application shall be deemed incomplete, and the applicant may be reexamined. If reexamination is not available within 6 months of the date of the examination which the applicant failed, the applicant may request a hearing under s. RL 4.05 1.07.

SECTION 13. Chir 2.11 (2) (title), (2) and (3) are amended to read:

Chir 2.11 (2) ~~PRACTICAL EXAMINATION DEMONSTRATING CLINICAL EXAMINATION COMPETENCE.~~ An applicant who fails the clinical practical examination demonstrating clinical competence due to the failure of one part of the examination may retake the failed part only. An applicant who fails the clinical practical examination demonstrating clinical competence due to the failure of 2 or more parts of the clinical practical examination shall be required to retake the entire clinical practical examination demonstrating clinical competence.

(3) **LIMITATION ON REEXAMINATION.** If an applicant does not pass all parts of the examinations under subs. (1) and (2) within 2 years of the first attempt, the applicant shall retake and pass the entire clinical practical examination demonstrating clinical competence and state law examination in order to be licensed.

SECTION 14. Chapter Chir 3 (title), 3.01 (title) and 3.01 are amended to read:

Chapter Chir 3

LICENSURE REGISTRATION AND RENEWAL

Chir 3.01 Registration of license and renewal. Every person granted a license as a chiropractor shall be deemed registered for the current registration period. ~~Registrants Licensees~~ shall qualify biennially for certificates of renewal of registration of license.

SECTION 15. Chir 3.02 (1) (b) is amended to read:

Chir 3.02 (1) (b) The fee ~~specified in~~ required under s. 440.08 (2) (a), Stats.

SECTION 16. A Note following Chir 3.03 (1) (c) 3. is created to read:

Note: Accrediting bodies nationally recognized by the secretary of the federal Department of Education include the New England Association of Schools and Colleges, the Middle States Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Northwest Association of Schools and

Colleges, the Southern Association of Colleges and Schools, and the Western Association of Schools and Colleges.

SECTION 17. Chir 3.03 (1) (e) and (f) are amended to read:

Chir 3.03 (1) (e) Has successfully completed a ~~clinical practical examination demonstrating clinical competence~~ which, in the board's judgment, is substantially equivalent to the practical examination demonstrating clinical competence administered by the board.

(f) Has successfully completed the special purpose examination in chiropractic, if the applicant has not taken the ~~examination initial licensure examinations~~ of the national board of chiropractic examiners.

SECTION 18. Chir 3.03 (2) (intro.) and (b) are amended to read:

Chir 3.03 (2) **APPLICATION PROCEDURE.** Each applicant shall file a completed, ~~notarized~~ application on forms provided by the board. The application shall include all of the following:

(b) The fee ~~specified in~~ required under s. 440.05 (1), Stats.

SECTION 19. Chir 3.03 (2) (c) is repealed.

SECTION 20. Chir 3.03 (2) (e), (f), (g) and (h) are amended to read:

Chir 3.03 (2) (e) A certified transcript verifying that the applicant has a bachelor's degree from a college or university accredited by an accrediting body nationally recognized by the secretary of the United States department of education ~~verifying a bachelor's degree~~ if the applicant first applies for any license to practice chiropractic in any jurisdiction on or after July 1, 1998. The transcript shall be sent directly to the board by the college or university.

(f) Verification of successful completion of a clinical practical examination demonstrating clinical competence. The verification shall be forwarded directly to the board from the state that administered the examination.

(g) Proof of successful completion of the special purpose examination in chiropractic ~~in lieu of or~~ the examination of the national board of chiropractic examiners. The proof of completion shall be forwarded directly to the board from the institution that administered the examination.

(h) Proof of successful completion of the state law examination ~~with a grade of 75 or above.~~

SECTION 21. Chir 3.03 (2) (k) is created to read:

Chir 3.03 (2) (k) An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 22. Chir 3.035 (1) (intro.), (b) and (3) are amended to read:

Chir 3.035 (1) The board may grant a temporary permit to practice chiropractic to any chiropractor who files an application prescribed by the board, pay the fee ~~specified in~~ required under s. 440.05 (6), Stats., and meets each of the following conditions:

(b) The applicant will be practicing chiropractic only as a chiropractor for participants in an athletic or artistic performing arts event, or as an instructor in a specific chiropractic education seminar approved for continuing education by the board.

(3) A chiropractor holding a temporary permit to practice chiropractic may not use the temporary permit to provide relief services or practice coverage for the practice of any chiropractor licensed in this state. All temporary permits issued by the board shall bear the legend "limited to sporting or artistic performing arts events and approved educational purposes."

SECTION 23. Chir 4.05 (1) (a), (b) 1., 2., 3. and (c) are amended to read:

Chir 4.05 (1) (a) Obstetrics and abortions, except nothing in this paragraph may be construed to prevent the practice of chiropractic as described in s. Chir 4.03 during a patient's pregnancy;

(b) 1. Surgery;

2. Subcutaneous administration of substances;

3. Acupuncture by needle insertion or laser application;

(c) Colonic irrigation;

SECTION 24. Chir 4.05 (2) (a) and (b) are amended to read:

Chir 4.05 (2) (a) ~~Acuclips;~~

(b) ~~Pfeiffer technique; and~~

SECTION 25. Chir 6.02 (18) is amended to read:

Chir 6.02 (18) Obtaining or attempting to obtain a license through fraud or misrepresentation, or making any material misstatement, omission or falsification in connection with an application for license, registration or renewal.

SECTION 26. Chir 6.02 (30) is created to read:

Chir 6.02 (30) Giving or receiving unauthorized assistance, violating rules of conduct, or otherwise cheating or acting dishonestly respecting any examination required for the granting of a license or registration to practice chiropractic.

SECTION 27. Chapter Chir 7 is repealed.

SECTION 28. Chir 9.04 (6) is amended to read:

Chir 9.04 (6) Provides a list to the board ~~every three months~~ 45 days prior to every trimester or academic quarter of the chiropractors in Wisconsin who will be acting as preceptors in the program.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Chiropractic Examining Board

Notice is hereby given that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ss. 446.01 (2) and 446.03 (5), Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Chir 4.03; and to create s. Chir 6.03, relating to referral of patients to other health care practitioners.

Hearing Information

| <u>Date & Time</u> | <u>Location</u> |
|---|---|
| January 7, 1999 Thursday 10:00 a.m. | Room 179A 1400 East 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 **January 21, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

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

Statutes interpreted: ss. 446.01 (2) and 446.03 (5)

A chiropractor has a responsibility recognized under common law to determine whether a patient presents a problem that is treatable through chiropractic means and refrain from further chiropractic treatment if the patient's condition will not be responsive to chiropractic treatment. This responsibility was recognized in *Kerkman v. Hintz*, 142 Wis. 2d 404, 418 N.W.2d 795 (1988) and is codified in this rule.

In the *Kerkman* decision and more recently in *Goldstein v. Janusz Chiropractic Clinics, S.C.*, 218 Wis. 2d 683, 582 N.W.2d 78, (Ct. App. 1998) rev. den. 220 Wis. 2d 364 (1998) the courts have relied on the description of the practice of chiropractic in s. Chir 4.03, Wis. Adm. Code, to limit the responsibility and liability of a chiropractor who does not refer a patient to a medical doctor.

In this rule the description of the practice of chiropractic is amended to:

1) Recognize that chiropractors treat body tissues other than those adjacent to the spine; and

2) That diagnosis by a chiropractor involves using chiropractic science and the principles of education and training common to the chiropractic and medical professions.

This rule establishes a duty requiring a chiropractor to advise a patient to consult another appropriate health care provider if the chiropractor determines that correct treatment for the patient is outside the practice of chiropractic or if the chiropractor knows or should know that he or she does not have the skill, knowledge or facilities to treat the patient's condition. As established in this rule, the responsibility of a chiropractor to advise a patient to consult another appropriate health care provider is broader than the duty recognized in the *Kerkman* decision.

Text of Rule

SECTION 1. Chir 4.03 is amended to read:

Chir 4.03 Practice. The practice of chiropractic is the application of chiropractic science in the adjustment of the spinal column, skeletal articulations and ~~adjacent tissue~~ other body tissues which includes diagnosis and analysis to determine the existence of spinal subluxations and associated nerve energy expression and the use of procedures and instruments preparatory and complementary to treatment of the spinal column, skeletal articulations and ~~adjacent tissue~~ other body tissues. Diagnosis and analysis involves the use of chiropractic science as described in s. Chir 4.02 and the principles of education and training common to the chiropractic and medical professions and may include physical examination, specimen analysis, drawing of blood, blood-analysis and the use of x-ray and other instruments.

SECTION 2. Chir 6.03 is created to read:

Chir 6.03 Duty to evaluate and refer. (1) A chiropractor shall determine whether a patient presents a condition which is treatable by the practice of chiropractic and refrain from chiropractic treatment if the chiropractor knows, or should know, that a patient's condition will not be responsive to chiropractic treatment.

(2) A chiropractor shall advise his or her patient to consult another appropriate health care provider if the chiropractor determines during diagnosis and analysis or treatment of a patient that the correct treatment for the patient's condition is outside the practice of chiropractic as described in s. Chir 4.03.

(3) A chiropractor shall advise his or her patient to consult another appropriate health care provider if the chiropractor knows, or should know, that he or she does not have the skill, knowledge, or facilities to treat the patient's condition.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Pharmacy Examining Board

Notice is hereby given that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2g) (b), Stats., and interpreting s. 450.035 (1g) and (1r), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Phar 7.10, relating to pharmacists administering by injection a drug product or device in the course of teaching a patient self-administration techniques.

Hearing Information

| <u>Date & Time</u> | <u>Location</u> |
|--|---|
| January 13, 1999 Wednesday 9:30 a.m. | Room 179A 1400 East 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:

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

Written comments must be received by **January 27, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

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

Statute interpreted: s. 450.035 (1g) and (1r)

This proposed rule-making order of the Pharmacy Examining Board creates s. Phar 7.10 to implement s. 450.035 (1r), Stats., as created by 1997 Wis. Act 68. The new statute authorizes

pharmacists to administer by injection to patients prescribed drug products or devices in the course of teaching self-administration techniques to patients. An example is the administration of insulin to a patient for the purpose of instructing the patient on appropriate techniques for future self-administration by the patient.

Under the statute, the Pharmacy Examining Board is directed to promulgate rules establishing requirements and procedures for pharmacists desiring to engage in the administration of drugs or devices. To assist the Board in this endeavor, a Pharmacist Advisory Council was created under the statutes consisting of two pharmacists, a physician and a nurse. [Section 450.025, Stats.] The statute requires the Pharmacist Advisory Council to make a unanimous recommendation to the Board respecting proposed rules, and the Board is authorized to promulgate rules that are identical to those recommended by the Pharmacy Advisory Council. [Section 450.02 (2g) (b), Stats.]

These proposed rules have been recommended to the Board by a unanimous vote of the Pharmacy Advisory Council, and have been approved for promulgation by the Board in the exact and identical language and form recommended, as required under the statute.

The rule sets forth three basic conditions that must be fulfilled in order for a pharmacist to administer by injection a prescribed drug product or device. First, a pharmacist must complete 12 hours in a course of study and training approved by the American Council on Pharmaceutical Education or the Board in injection techniques, emergency procedures and recordkeeping. This is intended to assure that a pharmacist receives appropriate training in injecting prescription drugs, as well as in the recognition of and appropriate procedures to be followed in the event of an emergency, such as an allergic reaction to the injection. The source for this requirement is that which is statutorily mandated for pharmacists to administer vaccines, under s. 450.035 (2), Stats. The Board believes that similar training is necessary for a pharmacist to administer by injection a prescription drug as is the case in administering vaccines (e.g., flu shots).

The second condition is that the pharmacist would be required to carry liability insurance of not less than \$1,000,000 for each occurrence and \$2,000,000 for all occurrences in any one policy year. Again, this condition is drawn from the statutory language regarding the administration of vaccines [s. 452.035 (2t), Stats.]. The Board believes it to be in the interests of the public that pharmacists carry liability insurance to the same extent for the administration by injection of prescription drugs as the legislature has required by statute for the administration of vaccines.

Third, the pharmacist would be required to adopt written procedures respecting the administration by injection of a prescription drug product or device in teaching self-administration techniques to patients. This is intended to assure uniformity in training techniques and procedures utilized by a pharmacist respecting each of his or her patients.

Finally, the proposed rule does not apply to the administration of vaccines. However, a "Note" is created to provide the statutory reference regulating the administration of vaccines for the reader's convenience.

Text of Rule

SECTION 1. Phar 7.10 is created to read:

Phar 7.10 Administration of drug products and devices other than vaccines. A pharmacist may administer a drug product or device in the course of teaching a patient self-administration techniques except a pharmacist may not administer by injection a prescribed drug product or device unless he or she satisfies each of the following:

(1) The pharmacist has successfully completed 12 hours in a course of study and training, approved by the American council on pharmaceutical education or the board, in injection techniques, emergency procedures and recordkeeping.

(2) The pharmacist has in effect liability insurance against loss, expense and liability resulting from errors, omissions or neglect in the administration by injection of prescribed drug products or devices in an amount that is not less than \$1,000,000 for each occurrence and \$2,000,000 for all occurrences in any one policy

year. The pharmacist shall maintain proof that he or she satisfies this requirement and, upon request, shall provide copies of such proof to the department or board.

(3) The pharmacist has written procedures regarding the administration by injection of a prescribed drug product or device in the course of teaching self-administration techniques to a patient.

Note: To administer a vaccine a pharmacist must meet the requirements in s. 450.035, Stats.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to ss. 115.28 (7) and 227.11 (2) (a), Stats., and interpreting s. 118.192, Stats., the Department of Public Instruction will hold public hearings as follows to consider emergency and proposed permanent rules affecting ch. PI 3, relating to alternative teacher permits.

Hearing Information

The hearings will be held as follows:

| Date & Time | Location |
|--|--|
| January 4, 1999 Monday 4:00 p.m. – 6:00 p.m. | Rm. 041 GEF #3 Building 125 South Webster St. MADISON, WI |
| January 5, 1999 Tuesday 4:00 p.m. – 6:00 p.m. | Auditorium Administration Bldg. 5525 West Vliet St. MILWAUKEE, WI |
| January 6, 1999 Wednesday 4:00 p.m. – 6:00 p.m. | Auditorium West High School 966 Shawano Ave. GREEN BAY, WI |
| January 7, 1999 Thursday 4:00 p.m. – 6:00 p.m. | Auditorium South Middle School 2115 Mitscher Ave. EAU CLAIRE, WI |

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Peter Burke, Director, Teacher Education, Licensing and Placement, at (608) 266-1879 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

A copy of the proposed rule and the fiscal estimate may be obtained by writing to:

Lori Slauson
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster St.
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **January 13, 1999**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Dept. of Public Instruction

Section 115.28 (7), Stats., requires the State Superintendent of Public Instruction to license all teachers for the public schools and to make rules establishing standards of attainment for licensure. The rules modify provisions relating to alternative teaching permits.

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

In addition to the statutory requirements above, before a person may attend the 100 hours of training, the rules require applicants to be subject to background investigations.

Successful completion of the 100 hours of training shall be demonstrated by receiving a passing score on a standardized examination that certifies the applicant's competency to teach in the subject area in which he or she will receive a permit.

After the applicant has successfully completed the 100 hours of training, an initial permit shall be issued for a 2-year period and may be renewed for 5 years if the permit holder successfully teaches during the 2-year permit period. Subsequent renewals will be based on rule requirements under s. PI 3.03 (1) (b).

Finally, an initial permit holder:

- Must be supervised by a teacher holding a regular license.
- May not be hired to remove a regularly licensed teacher.

These rules were promulgated as emergency rules effective **November 1, 1998**.

Fiscal Estimate

Due to changes made under 1997 Wis. Act 237, the rules relating to alternative teaching permits are being modified to expand the permit subject areas to include engineering, music, art, foreign language, and computer science. Originally, the permit could be issued only in the subject areas of mathematics and science. The Department must provide for a 100 hour training program for applicants to complete before a permit may be issued. The Department must also determine whether an applicant is competent in the subject area that is current and compatible with modern curricula.

When the training program was first required to be offered for mathematics and science in 1992, the Department contracted with the Milwaukee Public Schools to provide the training. At that time, two people registered to participate in the program and one person completed the program. The cost of providing the 100 hours of training was \$2,500.

Before an applicant could take the 100 hours of training, he or she had to complete the National Teacher Exam (NTE). In 1992, the Department had to validate the test in the areas of mathematics and science for a total cost of \$10,000. At that time the Department absorbed most of the cost of validating the tests and offering the training program because of the prohibitive costs to applicants.

Now that the permit subject areas have been expanded to a total of seven subject areas, the NTE must again be validated at a minimum cost of \$3,000 per subject area for a total of \$21,000. Although the NTE is no longer required to be taken by statute, the Department will still require that applicants take the test to determine whether an applicant is competent to teach in the subject area. The Department will absorb the costs of validating these tests.

The Department is in the process of soliciting bids from higher education institutions and professional associations to plan and provide an appropriate alternative training program. If an appropriate training program cannot be contracted, the Department will have to develop the training.

If the Department provides the training it could cost up to \$2,000 in order to develop an appropriate program. The Department will charge applicants an appropriate fee to cover the costs of the training program as provided for under statute.

The cost of taking the training may be prohibitive to potential applicants if only one or two individuals apply for the training. After the applicant completes the training, he or she will have to take the NTE at a cost of \$60 per subject area.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing

Public Service Commission

Notice is hereby given that the Public Service Commission will hold a public hearing at **1:30 p.m. on January 8, 1999 in the Amnicon Falls Hearing Room (Room 1300) at the Public Service Commission Building, 610 North Whitney Way, Madison, WI.**, to consider the creation of ch. PSC 183, relating to requirements for joint local water authorities.

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 the staff person noted below.

Questions regarding the hearing may be directed to Douglas Sorge at (608) 267-3799.

Comments

Notice is further given that the Commission requests comments on this proposed rulemaking. 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-178. 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

Analysis Prepared by the Public Service Commission of Wisconsin

Pursuant to the legislature's authorization in s. 66.0735(8), Stats., as created by 1997 Wis. Act 184, the Public Service Commission is submitting to the Legislative Council for review the following administrative rules setting forth requirements to be met by joint local water authorities seeking to construct projects requiring the issuance of bonds. A hearing for January 8, 1999, is also being scheduled on these proposed rules. The rules set forth standards in the following areas:

PSC 183.01. Application of rules. Provides that these rules apply to joint local water authorities, but not to public utilities.

PSC 183.02. Definitions. Defines a number of key terms contained in this chapter: "authority," "certificate," and "project."

PSC 183.03. Requirements of joint local water authorities before proceeding to issue bonds for a project. Specifies the information which must be submitted by a joint local water authority in order to receive Public Service Commission approval to construct a project which requires bonding.

PSC 183.04. Commission review of information submitted. Specifies the course of conduct to be followed by the Public Service Commission in considering an application to construct a project by a joint local water authority, including a 90-day limitation on Commission action.

Text of Rule

Pursuant to authority vested in the Public Service Commission by ss. 66.0735(8) and 227.11(2), Stats., and interpreting those provisions, the Public Service Commission proposes to adopt as rules ch. PSC 183, Wis. Adm. Code, as follows:

SECTION 1. Chapter PSC 183 is created to read::

Chapter PSC 183 JOINT LOCAL WATER AUTHORITIES

183.01 Application of rules. The rules in ch. PSC 183 shall apply to joint local water authorities as defined by s. 66.0735, Stats. The rules do not apply to any public utility.

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

(1) "Authority" means joint local water authority as defined by s. 66.0735, Stats.

(2) "Certificate" means a specific formal authorization granted by the commission pursuant to s. 66.0735(8), Stats.

(3) "Project" has the meaning of s. 66.0735(2)(g), Stats.

183.03 Requirements for joint local water authorities before proceeding to issue bonds for a project.

(1) Every authority shall submit the following information in an application for a certificate of public convenience and necessity that is required before the authority may issue bonds:

(a) A description of the project for which bonds are being issued, including a map showing proposed and existing facilities, and the location of floodplain areas.

(b) Information concerning applicable environmental factors for affected lands, such as land use zoning, forest lands, rivers, streams and wetlands.

(c) Any other environmental screening information that the commission staff requests.

(d) The purpose and necessity of the project, with supporting data including project start and end dates.

(e) The effect of the project on quality and reliability of service.

(f) A brief description and analysis of the alternatives to the project.

(g) The cost of the project by major plant categories or functions.

(h) The proposed method of financing the project including all terms and conditions.

(i) The estimated annual operating costs of the project, by major expense categories and functions.

(j) A description of and the original cost of any property being replaced, by major plant categories or functions.

183.04 Commission review of information submitted.

(1) Upon receipt of an application for a certificate identified in s. PSC 183.02 (2), the commission shall review the application and:

(a) determine if the proposal in the application requires a hearing. After the hearing, or after the determination that no hearing is required,

(b) issue a certificate of public convenience and necessity pursuant to s. 66.0735(8)(c), Stats., or

(c) deny the application for a certificate of public convenience and necessity pursuant to s. 66.0735(8)(b), Stats.

(2) The Commission shall grant or deny the application within 90 days of the date the application is received, unless extended by the Commission for good cause.

Fiscal Estimate and Initial Regulatory Flexibility Analysis

There will be no adverse fiscal impact of these proposed rules on state or local units of government. In an effort to minimize the impact of the rules on small businesses, as defined in s. 227.114(1)(a), Stats., the Commission requested and received input from a number of municipalities, as well as their professional associations. The Commission sees no burden at all on small businesses as a result of these rules since these rules require compliance only by municipalities. Additional input on this issue is invited by correspondence or by appearance at the hearing.

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.

Notice of Hearing Regulation and 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 adopting emergency rules, chs. RL 140 to 142, relating to the registration of music, art and dance therapists.

Hearing Information

| <u>Date & Time</u> | <u>Location</u> |
|---|---|
| January 12, 1999 Tuesday 10:00 a.m. | Room 179A 1400 East 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 **January 19, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and 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), Stats.

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.

Copies of Rule and Contact Person

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

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

Notice of Hearing Revenue

Notice is hereby given, pursuant to s. 71.80(1)(c), Stats., and s. 71.25(14)(b), Stats., as created by 1997 Wis. Act 299, that Department of Revenue will hold a public hearing at the time and place indicated below, to consider the revision of ch. Tax 2, relating to the use of an alternative apportionment method.

Hearing Information

December 28, 1998
Monday
10:00 a.m.

Room #207, GEF 3
125 South Webster Street
Madison, Wisconsin

Handicap access is available at the Butler Street entrance of the building.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than **January 11, 1999**, and will be given the same consideration as testimony presented at the hearing.

Contact Person

Mark Wipperfurth
Department of Revenue
125 South Webster Street
P.O. Box 8933
Madison, WI 53708-8933
(608) 266-8253

Analysis by the Department of Revenue

Statutory authority: ss. 71.80(1)(c), and 71.25(14)(b), as created by 1997 Wis. Act 299

Statute interpreted: s. 71.25(14)

SECTION 1. Tax 2.39(3)(a)(intro.) is amended, to exclude corporations that qualify for the use of an alternative apportionment method from the rule relating to the general apportionment method.

A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

SECTION 2. Tax 2.395 is created, to address the use of an alternative apportionment method. This alternative was created by s. 2r, 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

Text of Rule

SECTION 1. Tax 2.39(3)(a)(intro.) is amended to read:

Tax 2.39(3)(a)(intro.) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04(8) and 71.25(10), Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25(14), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04(1) and (4) or 71.25(5)(b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04(10) or 71.25(11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

Note to Revisor: Insert the following note after the first note at the end of Tax 2.39(3):

Note: See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations.

SECTION 2. Tax 2.395 is created to read:

Tax 2.395 Alternative method of apportionment. (1) DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of part or all of its property and employes to one or more subsidiaries in exchange for 100% of the subsidiary's stock.

(b) "Corporation" means a corporation for profit that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23(1) or (2), Stats.

(c) "Subsidiary" means a corporation that files an application under this section with a corporation that directly or indirectly owns 100 % of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25(6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have owed if corporate restructuring had not occurred and results in at least \$2 million of additional Wisconsin tax liability.

Note: This definition applies only for purposes of s. 71.25(14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23(1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation together with its subsidiary may file an application on or before January 1, 2000 to use an alternative method of apportionment under this section if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25(10)(a), Stats., a public utility as defined in s. 71.25(10)(b), Stats., or a tax-option corporation as defined in s. 71.34(2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) The corporation retains direct or indirect ownership of 100% of the subsidiary's stock and the subsidiary has not been engaged in business in or outside this state since the date of its incorporation.

(d) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25(6), Stats., would result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) CONTENT OF THE APPLICATION. The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the present method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is being audited by the department at the time of the application.

Note: The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708-8933.

(4) ALTERNATIVE METHODS OF APPORTIONMENT. The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.

2. If the customer receives the benefit of the service in more than one state, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25(14)(c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. (a) Except as provided in par. (b), once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the alternative apportionment method is no longer appropriate as determined under sub. (7)(b).

(b) Notwithstanding par. (a), the aggregate of the corporation's and the subsidiaries' Wisconsin tax liability shall be the greater of the Wisconsin tax liability calculated using the approved alternative apportionment or the Wisconsin tax liability calculated as if the corporate restructuring had not taken place.

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT.

(a) 1. If the department upon audit or review finds that the use of the apportionment method prescribed in s. 71.25(6), Stats., does not result in an unfair representation of the degree of business activity in this state for the first taxable year for which an alternative method of apportionment was approved, the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats.

2. If the department upon audit or review finds that the use of the alternative apportionment method in subsequent taxable years is no longer appropriate as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats., for each of the subsequent taxable years.

(b) In determining whether a corporation may continue to use the alternative method of apportionment, the department shall look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25(6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub. (8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment method, in a subsequent taxable year the corporation may request a new alternative method of apportionment. The department shall submit the new proposed alternative method of apportionment to the co-chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25(14)(c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub.(6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25(6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material relative to its business activity. The returns shall be filed with the department's audit bureau.

Note: The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708–8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

Note: Section Tax 2.395 interprets s. 71.25(14), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

Under provisions of 1997 Wisconsin Act 299, corporations may request, and the Department may approve, an alternative method of apportionment of income in the event of a corporate restructuring that would result in unfair representation of the degree of business activity in the state. The alternative method may not result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll and property.

Before granting a request for alternative apportionment, Act 299 requires the Department to promulgate rules specifying the circumstances in which alternative apportionment may be granted and the kinds of alternatives that may be authorized. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998, and corporations must request use of an alternative method on or before January 1, 2000.

Alternative Apportionment of Income

The rule specifies that certain corporations that are party to a restructuring that results in an unfair representation of business activity in the state may apply for an alternative apportionment method and specifies the required content of the application.

The rule defines an unfair representation of business activity as combined net tax liability of the parent and subsidiaries that exceeds 200% of the net tax liability the parent corporation would have computed if it had not contributed business operations to the subsidiaries and that results in at least \$2 million of additional tax liability. Calculations are based on data from the most recently filed tax return prior to July 1, 1998.

Under the rule, the Department may authorize the following alternative methods of apportionment:

1. Excluding one or more of the property, payroll or sales factors.
2. Weighting the factors differently (generally factors are weighted as 50% sales, 25% payroll and 25% property).
3. Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. Sales are allocated to the location where the customer receives the benefit of the service; multi–state benefit is allocated proportionately to each state.
4. Including one or more additional factors.
5. Allowing different methods of apportionment for the parent and subsidiaries corporations.
6. Allowing a parent and subsidiary corporations to compute net tax liability as though the group were one taxpayer by adding apportionable income and factors and eliminating intercompany transactions.

7. Allowing any other apportionment method that will fairly represent business activity in the state.

The rule specifies that the aggregate of the corporations' and the subsidiaries' Wisconsin tax liability is the greater of the Wisconsin tax liability calculated using the alternative apportionment method or the tax liability calculated using the standard apportionment method as if the corporate restructuring had not occurred. These calculations and the calculations using the standard method of apportionment after corporate restructuring must be filed for each taxable year with the returns of the corporation and subsidiaries to the Department's Audit Bureau. This last calculation measures the change in tax revenues attributable to the provision.

Once granted, the alternative apportionment method continues in subsequent years until revoked. If upon audit or review the Department finds that the use of the standard apportionment method no longer results in unfair representation of the degree of business activity in the state, the corporation and subsidiaries must recalculate their Wisconsin tax liabilities for each year the alternative method was used and unfair representation did not exist.

Once the alternative method is granted, unfair representation of business activity continues to exist if there is a substantial amount of difference between the tax liability calculated under the standard

apportionment method and the tax liability had the restructuring not occurred. If a substantial difference in tax liability does not exist for three consecutive years, the corporation may no longer use the alternative apportionment method.

If the Department terminates the alternative method, the corporation may request and the Department will resubmit the proposed alternative method to the co-chairpersons of the joint committee for review of administrative rules.

Fiscal Effect

Since the determination to grant an alternative apportionment method is based on projections of income of restructured corporations, the Department does not have actual data to estimate the fiscal effect of this provision. Because a change in a corporation's apportionment ratio could either raise or lower its tax, the fiscal effect could be positive or negative in any given year. Discussions with other states that have similar provisions indicate that corporations seek changes in apportionment ratio in limited instances, which implies a small fiscal effect. However, apportionment ratio changes can have a substantial effect on a corporation's tax liability, so that the change in any year could be significant.

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.

Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board (CR 98–30):

An order affecting chs. A–E 1 to 10, relating to the registration and regulation of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors.
Effective 02–01–99.

Commerce (CR 98–106):

An order creating s. Comm 69.18 (2) (a) 2.c., relating to the exemption of elevator access to certain areas within government–owned or –operated buildings or facilities.
Effective 01–01–99.

Commerce (CR 98–109):

An order affecting ch. ILHR 57, subch. II, relating to the exemption of accessibility requirements for certain multilevel, multifamily dwelling units.
Effective 01–01–99.

Insurance, Commissioner of (CR 98–78):

An order affecting ss. Ins 6.58 and 6.59 and ch. Ins 28, relating to the requirements for continuing education for insurance intermediaries.
Effective 02–01–99.

Insurance, Commissioner of (CR 98–79):

An order affecting ss. Ins 6.59 and 6.61 and ch. Ins 26, relating to the application process and requirements of prelicensing education for insurance agents.
Effective 02–01–99.

Insurance, Commissioner of (CR 98–80):

An order affecting s. Ins 4.10, relating to changes in the requirements for the Wisconsin Insurance Plan.
Effective 01–01–99.

Natural Resources (CR 98–45):

An order affecting ss. NR 113.05, 113.07, 113.09 and 113.11, relating to septage management.
Effective 02–01–99.

Natural Resources (CR 98–84):

An order affecting chs. NR 12 and 19, relating to the wildlife damage abatement and claims program (WDACP).
Effective 02–01–99.

Natural Resources (CR 98–86):

An order amending s. NR 20.037 (2), relating to readjustment of daily bag limits for walleye in response to tribal harvest.
Effective 02–01–99.

Natural Resources (CR 98–95):

An order amending ss. NR 25.02 (25) and 25.05 (1) (d), relating to commercial fishing for chubs on Lake Michigan.
Effective 02–01–99.

Natural Resources (CR 98–96):

An order affecting ss. NR 46.15, 46.16 and 46.17, relating to the definition of “human residence” as it pertains to the forest tax law landowners.
Effective 01–02–99.

Transportation (CR 98–31):

An order affecting ch. Trans 29, relating to accommodating utility facilities on state–owned railroad corridors.
Effective 02–01–99.

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