

# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 494**



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## EMERGENCY RULES NOW IN EFFECT

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*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.*

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### EMERGENCY RULES NOW IN EFFECT

#### **Department of Agriculture, Trade & Consumer Protection**

Rule adopted creating **s. ATCP 139.04 (11)**, relating to prohibiting the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

#### **Finding of Emergency**

(1) On June 2, 1995, the United States Environmental Protection Agency ("EPA") issued a final rule prohibiting the use of HC-12a, a hydrocarbon-based refrigerant containing liquified petroleum gas, as a refrigerant in mobile air conditioning systems. EPA prohibited HC-12a, and a predecessor product called OZ-12, because of safety risks associated with the use of flammable refrigerants in mobile air conditioning systems. According to EPA, the manufacturer of HC-12a did not provide adequate information to demonstrate that the product was safe when used in a mobile air conditioning system.

(2) Despite the current EPA rule, at least one company is currently engaged in manufacturing and distributing HC-12a for use in motor vehicle air conditioning systems. The Idaho manufacturer argues that EPA lacks jurisdiction to regulate the sale of its product. HC-12a is currently being offered, distributed or promoted for sale at wholesale and retail outlets in Wisconsin and surrounding states, for use as a refrigerant in mobile air conditioning systems.

(3) HC-12a is a highly flammable substance, as defined by the American Society of Testing and Materials (ASTM) standard test procedure for refrigerants, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of HC-12a or its predecessor, OZ-12, in mobile air conditioning systems is inconsistent with standards adopted by the Society of Automotive Engineers.

According to those standards, refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

(4) At least 13 states have enacted legislation prohibiting the sale of refrigerants for use in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

(5) HC-12a and other hydrocarbon-based refrigerants, when sold for use in motor vehicle air conditioning systems, present a serious risk to public health and safety for the following reasons:

(a) Motor vehicles and mobile air conditioning systems are not currently designed to use flammable refrigerants, or to prevent hazards associated with flammable refrigerants.

(b) Refrigerants in mobile air conditioning systems commonly leak into the engine compartments or passenger compartments of motor vehicles. Leaking refrigerant is often routed into the passenger compartment through the air distribution system from the evaporator. Hydrocarbon refrigerants, which are heavier than air, will tend to accumulate in low or confined spaces of a motor vehicle.

(c) Hydrocarbon refrigerants are flammable at low concentrations.

(d) Internal components of a motor vehicle provide many potential sources of ignition for flammable refrigerants. Passenger activities, such as smoking, may also create ignition sources.

(e) Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers. Automotive technicians who test for leaks, or who repair or service mobile air conditioning systems containing flammable refrigerants, are also at risk.

(6) The risk to public health and safety cannot be adequately addressed by product packaging or labeling, for the following reasons:

(a) The use of flammable hydrocarbon-based products in motor vehicle air conditioning systems is inherently hazardous. That hazard will not be materially altered by mere packaging or labeling.

(b) Use is hazardous to persons who are not aware that the refrigerant is present, and have not have seen or read the product label.

(c) Current product labels for HC-12a already contain a warning statement that the contents are under pressure and are extremely flammable. Current labels direct use by qualified personnel only, and list other cautions and instructions when recharging a mobile air conditioning system with this substitute refrigerant. These label statements do not materially alter the hazard inherent in the use for which the product is sold. There are few if any protective actions which a customer or technician could take to reduce the hazards associated with use of the product.

(d) There are no automotive industry standards which would allow a flammable refrigerant to be used in a motor vehicle air conditioning system as currently designed.

(7) Flammable hydrocarbon-based refrigerants, including HC-12a, OZ-12, and other refrigerants containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons, pose a serious risk to public health and safety when sold for use as refrigerants in mobile air conditioners. At this time, the public health and safety can only be protected by keeping these products out of the channels of commerce in this state. The department can and should adopt rules, under ss. 93.07(1) and 100.37(2), Stats., prohibiting the sale of such products in this state.

(8) Pending the adoption of rules according normal administrative rulemaking procedures, it is necessary to adopt

emergency rules under s. 227.24, Stats., to protect the public health, safety and welfare.

**Publication Date:** October 9, 1996  
**Effective Date:** October 9, 1996  
**Expiration Date:** March 8, 1997  
**Hearing Date:** November 15, 1996

## **EMERGENCY RULES NOW IN EFFECT**

### *Department of Commerce*

Rules adopted repealing **ch. DOD 13** and creating **ch. Comm 113**, relating to the annual allocation of volume cap.

#### **Finding of Emergency**

The Department of Commerce 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:

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately \$260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

**Publication Date:** December 30, 1996  
**Effective Date:** December 30, 1996  
**Expiration Date:** May 29, 1997  
**Hearing Date:** February 13, 1997

## **EMERGENCY RULES NOW IN EFFECT**

### *Department of Corrections*

Rules adopted creating **s. DOC 309.05 (2)(d)**, relating to inmate mail.

#### **Finding of Emergency**

The Department of Corrections finds 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:

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

**Publication Date:** August 15, 1996  
**Effective Date:** August 15, 1996  
**Expiration Date:** January 12, 1997  
**Hearing Dates:** January 10, 13 & 14, 1997  
**Extension Through:** March 12, 1997

## **EMERGENCY RULES NOW IN EFFECT**

### *Health & Family Services*

**(Management, Policy and Budget, Chs. HSS 1--)**

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court-ordered substitute care.

#### **Exemption From Finding of Emergency**

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

#### **Analysis**

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court-ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court-ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court-ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court-ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or



assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

**Publication Date:** January 22, 1997  
**Effective Date:** January 22, 1997  
**Expiration Date:** June 21, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Health and Family Services* (Health, Chs. HSS 110--)

Rules adopted creating **ch. HFS 125**, relating to do-not-resuscitate bracelets to alert emergency health care personnel.

#### 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:

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do-not-resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do-not-resuscitate order in effect if the patient has on his or her wrist a do-not-resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do-not-resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., created by Wis. Act 200, permits the Department to establish procedures by rule for emergency health care personnel to use in following do-not-resuscitate orders, and s. 154.27, Stats., as created by Wis. Act 200, requires the Department to establish by rule a uniform standard for the size, color and design of do-not-resuscitate bracelets.

These rules are being published by emergency order because while most Wis. Act 200 provisions have taken effect and do-not-resuscitate orders are being written for patients who are qualified, as defined in s. 154.17 (4), Stats., as created by Wis. Act 200, and request the order, without rules that establish a uniform standard for the bracelets the Department cannot approve bracelets. If the bracelet is not approved by the Department, it cannot be affixed. In the absence of a DNR bracelet on the wrist of a person in cardiac or respiratory arrest, emergency health care personnel ordinarily cannot know that a DNR order is in effect, and so must initiate cardiopulmonary resuscitation which in some cases will contravene a DNR order.

The rules establish a uniform standard for do-not-resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do-not-resuscitate orders.

**Publication Date:** January 18, 1997  
**Effective Date:** January 18, 1997  
**Expiration Date:** June 17, 1997  
**Hearing Date:** March 19, 1997

[See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT

### *Health & Social Services*

#### (Economic Support, Chs. HSS 200--)

Rules adopted creating **s. HSS 201.135**, relating to time limits on benefits for AFDC recipients participating in the JOBS program.

#### Exemption From Finding of Emergency

The Legislature in s. 275 (3) of 1995 Wis. Act 289 directed the Department to promulgate the rule required under s. 49.145 (2) (n), stats., as created by Wis. Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency. The rule will take effect on October 1, 1996.

#### Analysis Prepared by the Department of Workforce Development

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wis. Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145 (2) (n), Stats., as created by 1995 Wis. Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141 (2) (b), Stats., as created by 1995 Wis. Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to count toward the 60-month limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which proves that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the Federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) Training Program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria county or tribal economic support agency would use to determine whether an extension of the 60 month time limit should be granted. The Department retains the right

to review an economic support agency's decisions related to extensions.

**Publication Date:** September 30, 1996  
**Effective Date:** October 1, 1996  
**Expiration Date:** February 28, 1997  
**Hearing Date:** November 19, 1996

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Commissioner of Insurance*

1. Rule adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in 1996–97 premium rates for the health insurance risk-sharing plan.

### Exemption From Finding of Emergency

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

#### 1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (“HIRSP”) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP's operating and administrative costs. This rule adjusts the premium rates for the period of October 1, 1996 through June 30, 1997, based upon a recalculation of costs and subsidy payments for the 1996–1997 fiscal year. This adjustment represents a 12% reduction in premium payments for the both the non-subsidized major medical and medicare plans for person under age 65. The rates for low-income persons entitled to a premium reduction under s. Ins 18.07 (5) (b) are not affected.

**Publication Date:** September 4, 1996  
**Effective Date:** October 1, 1996  
**Expiration Date:** February 28, 1997  
**Hearing Date:** November 8, 1996

2. A rule adopted creating **s. Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal “Kassebaum–Kennedy” law, P.L. 104–191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax

deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

**Publication Date:** December 20, 1996  
**Effective Date:** January 1, 1997  
**Expiration Date:** May 31, 1997

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Natural Resources*

#### (Fish, Game, etc., Chs. NR 1—)

1. Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

### Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

**Publication Date:** November 18, 1996  
**Effective Date:** November 18, 1996  
**Expiration Date:** See section 12m, 1996 Wis. Act 296  
**Hearing Date:** January 14, 1997

2. Rules adopted revising **chs. NR 25 and 26**, relating to the Lake Superior fisheries management plan.

### Finding of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

**Publication Date:** November 18, 1996  
**Effective Date:** November 28, 1996  
**Expiration Date:** April 27, 1997  
**Hearing Date:** December 17, 1996

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Transportation*

1. Rules adopted revising **ch. Trans 76**, relating to general transportation aids.

## Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles*, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

**Publication Date:** October 25, 1996  
**Effective Date:** October 25, 1996  
**Expiration Date:** March 24, 1997  
**Hearing Date:** December 16, 1996

2. Rules adopted revising **ch. Trans 117**, relating to occupational driver's license.

## Finding of Emergency

1995 Wis. Act 269 rewrote state law regarding the issuance of occupational licenses. That Act goes into effect on November 1, 1996. Absent this emergency rule making, the Department will lack rule authority necessary to administer the new law. This emergency rule will permit the Department to issue occupational licenses until the permanent rule establishing procedures for issuing occupational licenses are in place. Therefore, the Department of Transportation finds that an emergency exists and that the rule is necessary.

**Publication Date:** November 1, 1996  
**Effective Date:** November 1, 1996  
**Expiration Date:** March 31, 1997  
**Hearing Date:** November 26, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

**(Economic Support, Chs. DWD 11–59)**

Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

## 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:

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an

emergency rule allows the implementation of the new schedule immediately.

**Publication Date:** December 30, 1996  
**Effective Date:** December 30, 1996  
**Expiration Date:** May 29, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

**(Labor Standards, Chs. ILHR 270–279)**

Rules adopted revising **ch. ILHR 272**, relating to the minimum wage.

## 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:

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employees in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employees would be subjected to confusion and uncertainty in the calculation and payment of wages.

**Publication Date:** August 28, 1996  
**Effective Date:** October 1, 1996  
**Expiration Date:** February 28, 1997  
**Hearing Date:** December 17, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

**(Wage Rates, Chs. ILHR 290–294)**

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

## Finding of Emergency

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

1995 Wis. Act 213 made a number of major changes to the laws which require the department to determine prevailing wage rates for state and local public works projects. In place of a case-by-case investigations, the Department of Workforce Development is required to conduct an annual survey of employers and issue prevailing wage rate determinations for all trades or occupations in all areas of the state throughout the year based on the survey data. The statutes also provide that members of the public, employers, local governmental units and state agencies may ask the DWD to review prevailing wage rate determinations under a number of specified circumstances.

This emergency rule establishes deadline and appeal criteria for the process that will be used to compile the 1996 survey results and consider requests for review. The use of an emergency rule for this purpose will benefit the public, employers local governments units and state agencies by giving them clear information as to the procedures to be followed, and it will also help the DWD to meet the statutory requirement that prevailing wage rates be compiled and issued promptly.

**Publication Date:** December 11, 1996  
**Effective Date:** December 11, 1996  
**Expiration Date:** May 10, 1997



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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Administration*

#### **Subject:**

Ch. Adm 1 – Amending rules regarding parking.

#### **Description of policy issues:**

*Description of the objective of the proposed rule:*

The objective of the proposed rule is to update and clarify the parking regulations on state property, pursuant to s. 16.843, Stats.

*Description of policy issues:*

The current rule clarifies the Department's authority and responsibilities relating to the operation and parking of motor vehicles on Department-controlled property.

The Department proposes to make a number of minor changes to update and clarify current rule language and to improve operations related to parking on state-controlled property.

#### **Statement of the statutory authority for the rule:**

Sections 16.004 (1), 16.843 (2) and 227.11, Stats.

#### **Staff time required:**

The Department estimates 20 hours to promulgate this rule.

### *Agriculture, Trade & Consumer Protection*

#### **Subject:**

Ch. ATCP 130 – Relating to telemarketing sales.

#### **Description of policy issues:**

*Preliminary objectives:*

Adopt federal telemarketing rules under state law to provide more effective protection for Wisconsin consumers.

Harmonize state and federal regulations related to telemarketing and other electronic marketing, and 3 day right to cancel.

Apply telemarketing rules, when appropriate, to other forms of interactive electronic communications.

*Preliminary policy analysis:*

Telemarketing sales practices have resulted in widespread abuse. Clear and consistent laws are needed to protect consumers and honest businesses. The Federal Trade Commission recently adopted telemarketing rules under 16 CFR 310 to protect consumers against telemarketing fraud.

The federal rules include provisions related to:

- ☛ Disclosures to consumers.
- ☛ Prize promotions.
- ☛ Misrepresentations.
- ☛ Unauthorized payment.
- ☛ Credit card laundering.
- ☛ Abusive practices.
- ☛ Repeated unwanted calls.
- ☛ Calling time restrictions.
- ☛ Recordkeeping.

The Wisconsin Department of Agriculture, Trade & Consumer Protection has authority, under Wisconsin's "Little FTC Act," to adopt similar rules under state law.

This would have the following advantages:

☛ It would provide more effective protection, and more effective redress, for Wisconsin consumers. Few Wisconsin consumers will ever complain to the Federal Trade Commission, and there are limitations on state enforcement of federal rules.

☛ It would harmonize state and federal law, and help eliminate potential inconsistencies between the new federal rules and current state regulations. The federal rules do not preempt state regulations.

☛ It would make the rules more accessible and intelligible to Wisconsin consumers and businesses.

☛ It would clarify the application of consumer protection laws, and improve public administration of those laws.

*Policy alternatives:*

\* Do nothing. This would expose regulated businesses to unclear and potentially inconsistent legal requirements, provide less effective protection for consumers, and impair the administration of consumer protection programs.

\* Incorporate federal rules by reference, without redrafting them according to state drafting standards. In 59 Op. Atty. Gen. 31 (1970), the Attorney General held that Wisconsin administrative rules may not just incorporate federal laws by reference, but must publish them in full. The federal rules do not comply with state rule drafting standards. By redrafting the federal rules according to state standards, the Department can make the rules more accessible and easier to understand. The Department can also harmonize the rules with other state laws, such as ch. ATCP 127, Wis. Adm. Code (home solicitation selling) and s. 134.74, Stats., (prize notices).

#### **Statutory authority :**

The Department proposes to develop telemarketing sales rules under authority ss. 93.07 (1) and 100.20 (2), Stats. The rules would interpret s. 100.20, Stats., and other applicable laws administered by the Department.

#### **Staff time required:**

The Department estimates that it will use approximately 1.5 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, coordinating Advisory Council discussions, and communicating with affected people and groups. The Department believes that, in the long run, the rule will save staff time and increase program efficiency. The Department will assign existing staff to develop this rule.

### *Agriculture, Trade & Consumer Protection*

#### **Subject:**

Ch. ATCP 90 – Relating to fair packaging and labeling.

Ch. ATCP 91 – Relating to methods of sale of commodities.

#### **Description of policy issues:**

*Preliminary objective:*

Current Department rules under chs. ATCP 90 and 91, Wis. Adm. Code, regulate how consumer commodities are packaged and sold. These rules prevent fraud and deception, and help consumers make informed value comparisons and purchase decisions. The Department proposes to modify chs. ATCP 90 and ATCP 91 to incorporate existing federal standards and nationally recognized compliance testing procedures. The Department also proposes to clarify the current rules so they will be easier to understand and follow.

*Preliminary policy analysis:*

Current rules under chs. ATCP 90, Wis. Adm. Code, establish fair packaging and labeling standards for consumer commodities. Among other things, ch. ATCP 90 addresses:

- Declaration of product identity.
- Declaration of responsibility.
- Labeling of net quantity.
- Special packages and commodities.
- Nutritional Labeling.
- Obtaining enforcement samples for testing.

Current rules under ch. ATCP 91, Wis. Adm. Code, spell out required methods of sale (e.g., by weight, measure or count) for various commodities, including:

- Bulk commodities.
- Fresh fruits and vegetables.
- Meat, poultry, seafood and cheese.
- Non-food items, including firewood, roofing materials, and polyethylene.

The Department proposes to update and clarify chs. ATCP 90 and 91. Rule amendments may address the following subjects, among others:

- Definitions of "single serving," "tare" and "net weight."
- Method of sale of certain commodities.
- Selling practices.
- Procedures for checking the net contents of packaged goods.
- Clarification of "ready to eat" items.
- New product innovation.
- Procedures for selecting enforcement samples and inspection lots.

*Policy alternatives:*

■ **Do nothing.** Although the current rules have worked reasonably well, certain portions of the rules are outdated and may conflict with current federal standards. A failure to update the current rules may also erode protection for consumers, in that the rules may fail to keep pace with current industry practices.

■ **Repeal chs. ATCP 90 and ATCP 91.** Both rules currently prohibit unfair methods of sale and labeling, providing important protection for consumers while ensuring fair competition among businesses. Repeal would eliminate that protection.

**Statutory authority :**

The Department is considering amendments to ch. ATCP 90 (Fair Packaging and Labeling) under authority of ss. 93.07 (1) and (4), 97.42 (4) (j), 98.07 (3) and (4), and 100.20 (2), Stats. The Department is considering amendments to ch. ATCP 91 (Methods of Sale of Commodities) under authority of ss. 93.07 (1) and 98.07 (3) and (4), Stats.

**Estimate of staff time required:**

The Department estimates that it will use approximately 0.5 FTE staff time to develop these rules. This includes research, drafting, preparing related documents, holding public discussions, and communicating with affected persons and groups. The Department will use existing staff to develop these rules.

### ***Agriculture, Trade & Consumer Protection***

**Subject:**

Ch. ATCP 30 – Relating to atrazine pesticides; use restrictions.

**Description of policy issues:**

*Preliminary objectives:*

Regulate the use of atrazine herbicides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect groundwater sampling results obtained during the past year. Re-number and reorganize current rule, as necessary.

*Preliminary policy analysis:*

Under the Wisconsin Groundwater Law, ch. 160, Stats., the Department must regulate the use of pesticides to assure compliance with groundwater standards established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3µg/liter for atrazine and its chlorinated metabolites.

Under s. 160.25, Stats., the Department must prohibit atrazine uses that result in groundwater contamination levels which violate the DNR enforcement standard. The Department must prohibit atrazine use in the area where the groundwater contamination has occurred unless the Department determines, to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Current rules under ch. ATCP 31 prohibit the use of atrazine in 96 designated areas (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the past year, the Department has identified additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with the Groundwater Law, the Department must take further action to prohibit or regulate atrazine use in the areas where these wells are located. The Department proposes to amend ch. ATCP 30, to add or repeal prohibition areas or take other appropriate regulatory action in response to the new groundwater findings.

*Policy alternatives:*

**No change.** If the Department takes no action, the current version of the ch. ATCP 30 atrazine rule (promulgated in March, 1997) would continue to apply; however, the Department would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly-discovered contaminated areas, nor would it meet the Department's obligations under the Groundwater Law. Conversely, the Department would be unable to repeal the current restrictions on atrazine use where indicated by groundwater findings.

**Statutory authority:**

The Department proposes to revise ch. ATCP 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Stats.

**Estimate of staff time required:**

The Department estimates that it will use approximately 0.6 FTE staff to develop this rule. This includes investigation, drafting, preparing related documents, coordinating Advisory Committee meetings, holding public hearings and communicating with affected people and groups. The Department will use existing staff to develop this rule.

### ***Agriculture, Trade & Consumer Protection***

**Subject:**

Ch. ATCP 42 – Relating to commercial feed.

**Description of policy issues:**

*Preliminary objectives:*

Revise commercial feed rule to permit alternative labels for certain commercial feeds.

*Preliminary policy analysis:*

The Department regulates the manufacture and distribution of commercial feed under s. 94.72, Stats. The Department recently completed comprehensive revisions of its feed rules under ch. ATCP 42, Wis. Adm. Code. The new rules were published on October 1, 1996, with a delayed effective date of October 1, 1997. Among other things, the new rules spell out labeling requirements for "mill-formulated" feed.

Feed industry representatives recently informed the Department that some of the new labeling requirements will pose unforeseen problems for small feed mills. The Department proposes to remedy these problems by modifying some portions of the new rules. The modifications will give feed mills more labeling options, and make it easier for small feed mills to comply. The Department believes that the changes will adequately protect farmers and other feed purchasers.

*Policy alternatives:*

☞ Do nothing. New feed rules will take effect on October 1, 1997. These rules, if not modified to provide additional labeling options, may create an unnecessary hardship for small feed mills. The Department believes that it can accommodate the concerns of the small feed mills without undermining protection for farmers and other feed purchasers.

**Statutory authority:**

The Department proposes to modify ch. ATCP 42, under authority of ss. 93.07 and 94.69, Stats.

**Estimate of staff time required:**

The Department estimates that it will use approximately 0.1 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, coordinating Advisory Council discussions, and communicating with affected people and groups. The Department will assign existing staff to develop this rule.

## ***Educational Approval Board***

**Subject:**

EAB Code – This scope statement explains the Educational Approval Board's [EAB's] plans to promulgate a major revision in its administrative rules. This revision will include modifying some existing material, deleting much material and creating new material to conform to EAB's new direction. This statement is written in compliance with the procedural requirements of 1995 Wis. Act 106 (AB 264) governing the process used to develop new administrative rules.

**Description of policy issues:**

*Introduction:*

The Educational Approval Board has two major functions.

1) It is Wisconsin's "State Approving Agency," administering veterans' education in more than 180 colleges, universities, technical colleges, hospitals, proprietary and career schools and high schools.

2) The EAB also oversees for-profit post-secondary schools, in state nonprofit post-secondary educational institutions (which began operating after January 1, 1992) and all out-of-state nonprofit colleges.

To protect Wisconsin consumers and to promote quality education programs, the EAB requires schools to meet operating and program standards and to be accountable for results.

**Staff:**

✓ Approve applications for licenses, programs and teaching locations;

✓ Review advertising material;

✓ Check catalogues and enrollment agreements;

✓ Document administrative capacity and financial stability;

✓ Monitor performance results; and

✓ Make regular on-site visits.

*Background:*

In 1995-96 the EAB reoriented its philosophical and policy underpinnings, shifting focus from strict procedural compliance (with an emphasis on operations) to concern with educational quality, program results and the general role of private education. It restructured its oversight around two guiding principles:

☞ Protecting students; and

☞ Ensuring quality programming.

It also moved, correspondingly, to simplify its requirements and procedures by focusing on:

▶ Institutional Stability — determining that schools are financially and administratively stable;

▶ Progress & Completions — evaluating how well schools are preparing students for the labor market; and

▶ Consumer Protection — ensuring that necessary policies and procedures are in place to protect students.

*Objectives:*

The principal objectives of the proposed rules modification are:

● Regulatory simplification; and

● Increased accountability.

Working in tandem, these two purposes will reduce organizational and procedural requirements, thereby striking a better balance between external regulation and institutional responsibility. While there is still a need to set standards for the sector, the rules need to recognize the maturation of the EAB and the schools under its purview. The current rules emanate from a different time and educational environment; an environment in which explicitly prescribed operational and programmatic requirements seemed the only way to ensure adequate protection for consumers.

Thus, current rules emphasize reviewing "educational inputs" (i.e., ensuring that schools have the requisite procedural and operating principles in place). While defensible for the time, this approach has ceased to be an effective way to ensure quality. The rules modification, instead, emphasizes gauging "outcomes" to determine that schools are doing what it is they are intended and designed to do. While it retains basic requirements and key indicators to ensure that consumer protections remain in place and that schools have sound organizational structures, it scales back on regulatory and compliance detail and simplifies procedures. Doing so gives schools greater flexibility, while at the same time increasing accountability. The result is less burden on schools and more efficient oversight by the EAB.

*Policies:*

A. SCHOOL APPROVAL

1. Policy:

The EAB is empowered to approve various categories of private post-secondary schools and to ensure they meet certain operating standards. The criteria are listed in rule. Approval is contingent on schools' documenting that they meet applicable operational, procedural and programmatic guidelines.

2. New:

The proposed rules modification simplifies, clarifies and makes more understandable the requirements schools must meet. Standards are codified in such a way as to permit the EAB to collapse many individual applications (i.e., for new school, new program, etc.) into a more easily comprehensible Single Application.

The various modifications emphasize the need for schools to focus on outcomes and establish their own, monitorable, methods for self-evaluation and continuous improvement. There are also modifications to the bonding requirement which sets a clearer standard for all schools, while adding the ability to reduce the burden on schools upon evidence of institutional and programmatic stability. The modifications seek to strike a balance between prudent oversight, over-rigidity and lax oversight.

3. Alternatives:

The chief alternative to the proposed modifications would be to retain the current level of detail, or enact an even more radical removal of requirements. The latter would further reduce oversight, but could pose a risk to consumers and threaten program quality. Individuals would suffer increased financial loss and inadequate job preparation and make Wisconsin a magnet for fly-by-night schools. The fact is that abuses still occur. As a whole, benefits from external management.

## B. PROGRAM APPROVAL

### 1. Policy:

One key to EAB's role is ensuring that schools have high quality instructional programs able to give students marketable skills and knowledge. The EAB has historically carried out this responsibility by contracting for third-party evaluation of programs and requiring that schools transmit syllabi, books, lesson plans, etc. While this method often identified programmatic weaknesses, its intrinsic problems have grown as the for-profit sector has matured. The procedure, moreover, never lent itself, at all, to the review of college-level programs.

Problem areas include:

- ◆ Difficulty in locating expert program evaluators;
- ◆ Time delay in reviewing programs;
- ◆ Ignoring the process (and the quality of the process) schools used to develop programs;
- ◆ Requiring review of even minor program changes; and
- ◆ Difficulty in evaluating/assessing cutting edge/innovative programs.

### 2. New:

The proposed rules modification simplifies the program approval/evaluation process by placing more responsibility with the individual school to engage in and document quality program development. It also assumes that EAB itself could readily assess programs with better information about the developmental process provided by schools. This will speed up approval of programs.

The changes give schools an incentive for continuous improvement by deleting the requirement for review of minor program modifications: i.e., affecting less than 25% of content. They also clarify and improve procedures for EAB's evaluation of innovative programs (a previous failing) and set new standards for Distance Education. The changes streamline the process for reviewing how schools develop programs.

### 3. Alternatives:

The rules modification tries to maintain reasonable assurance that programs are high quality without putting schools through unnecessary and burdensome work and time demands. More responsibility is given to schools, rather than have the EAB second-guess schools' program development. The changes streamline the process by emphasizing review of how schools develop programs, instead of re-evaluating every step of the program development process. The alternative to this balancing of needs and realities would be either maintenance of the current top-down evaluation procedure, or abrogation of any responsibility to ensure that Wisconsin residents are receiving high quality programs in the private education sector.

## C. FEES

### 1. Policy:

The EAB receives no General Purpose Revenue. It charges schools fees to support its activities.

Statutes direct that EAB:

- \* Set fees by rule;
- \* Collect fees "... sufficient to cover all costs that the board incurs," and
- \* Establish "a variable fee structure based on the size of a school."

Major categories of fees include:

- Fees connected to reviewing applications for various school actions, like: opening a new school, starting a new program, revising a program;
- Fees for amending incomplete and non-complying applications; and,

- Fees for renewing yearly approval (including a fixed fee of \$500 and a variable fee which is a percentage levied on each school's annual gross revenue).

It is important to note that there are two main sorts of functions the EAB carries out which have a direct relation to fees:

EAB staff do direct hands-on work with school applications. These functions are tied, pretty directly, to fees.

However, there are many generic functions which the EAB performs which cannot be connected to a specific school action and it is these activities which largely rely on the variable renewal payment. These include:

- ☛ Monitoring/visiting schools;
- ☛ Responding to consumer inquiries;
- ☛ Responding to information requests;
- ☛ Sending applications to/dealing with schools and potential schools which do not become approved;
- ☛ Tracking law breakers;
- ☛ Working with out-of-compliance schools;
- ☛ Responding to school closures;
- ☛ Responding to complaints;
- ☛ Policing the 'bad apples,' and so on.

While the fee structure has adequately supported the agency, it has become too complex and unwieldy for both the EAB and the schools.

Problem areas include:

- The level of fees charged for opening a new school and starting a new program have not fully covered actual agency costs;
- The inclusion of out-of-state colleges produced needless complexity in charging amending fees various sorts of programs (B.A., M.A., etc.);
- Charging for even minor program modifications has stifled ongoing program improvement; and,
- The variable fee based on size of school changed annually and suffered from the undercharging in categories noted above.

### 2. New:

The proposed rules modification greatly simplifies the fee structure, makes the variable renewal fee more predictable and does a better job of setting fees based on actual agency costs. The proposed changes increase fees for new school and new program approval to account for more intensive up-front work. They remove one category of program approval fee entirely and give schools the flexibility to change less than 25% of program content. They also greatly streamline fees for dealing with incorrect and incomplete applications by replacing roughly 30 levels of fee with two simple fees.

Finally, the proposed modification adds some predictability to the variable renewal fee. While it still levies a percentage fee on gross revenue (as a way to account for differences in school size), it establishes a procedure to set the variable fee for a two-year period.

### 3. Alternative:

The fact that the EAB receives no General Purpose Revenue, and is dependent for its support on fees charged to the schools it oversees, limits options. Charging rates for specific actions, such as opening a new school or starting a new program, at a level high enough to support all the EAB's responsibilities would be unfair to the few so charged and would be incapable of generating enough money to support the agency. Similarly, relying on a variable fee tied to gross revenue to support most of the agency's activities would place an undue burden on the larger schools.

There is also the problem of how best to 'police' or regulate the sector by carrying out conducting those activities not directly connected to a particular school's operation. As noted above, many of the EAB's generic activities deal with governing the sector as a whole and protecting the state from fly-by night schools. In states where an EAB-like function is not performed, or performed poorly, the consumer and the labor market suffer.



The EAB carries out a generic oversight role, in essence ensuring consumer protection and program quality, for a major educational sector and the schools so affected should be expected, in total, to pay for the oversight. Short of providing General Purpose Revenue to underwrite this function, which was done for years and which other states still do (and which would provide fee relief to schools), the real options are limited.

#### D. ADVERTISING

##### 1. Policy:

Consistent with the context out of which EAB and its rules grew, the stipulations, criteria and standards governing advertising are extremely detailed and prescriptive. The level of exactitude has been extreme, with the defense that consumers are vulnerable to all sorts of potential fraud and misrepresentation. The rules' attempt to account for nearly all sorts of potential abuse created confusion which schools have found burdensome and which has resulted in a very time-consuming role for EAB staff.

##### 2. New:

The new rules modification streamlines the guidelines schools must follow to produce honest and ethical advertising. It relies more on broad categories of acceptable and unacceptable behavior and removes levels of detail which really do not further the goal of ensuring that consumers are given information with which they can make informed decisions.

##### 3. Alternatives:

The chief alternative to the rules modification would be to remove more strictures governing the nature of advertising. The problem with this approach is that it would leave too many consumers vulnerable and, likely, result in increased complaints and the need for remedial action. We continue to see schools which, occasionally, become overzealous in their claims and statements; this reinforces the notion that guidelines are warranted, though with the proviso that schools need more flexibility than they have had in the past to market themselves.

#### E. BONDING

##### 1. Policy:

Statutes require that schools under the EAB's oversight must hold surety bonds as a way to protect students against undue financial loss. Current rules set the bond limit at \$25,000, but give the Board the ability to adjust this upward and/or downward depending upon the risk posed to students by a given school. Individual school bond requirements have been set by policy derived from this rule: the basic criteria being that the greatest risk to students was a school closure and that the greatest financial risk of such a closure was when a school held the maximum amount of up-front paid tuition (i.e., commonly called 'unearned' tuition). Based on past experience, schools have been required to post bonds equal to 125% of the highest point of their unearned tuition.

##### 2. New:

While the current policy does provide maximum protection to all students, it places an undue financial and administrative burden on many schools. The proposed modification sets the 125% of highest point of unearned tuition as a base bond amount, but clarifies under what specific circumstances (using specific stability measures) an individual school can have its bond amount reduced. While ensuring continued protection for students in schools which appear financially and administratively shaky, this approach is more flexible, equitable and realistic. It relies on staff expertise and experience to judge school stability using definite benchmarks. The modification also shifts the required \$2,000 solicitor bond to dedicated coverage under the school bond — thus avoiding unneeded work from all parties concerned.

##### 3. Alternative:

The major policy alternative to the bond requirement is for the state to authorize the establishment of a Tuition Protection Fund: such a fund utilizes proportional pay-ins by schools to a fund which can be used to indemnify students. It saves schools money in the long run and retains adequate protection for students.

#### F. REFUNDS

##### 1. Policy:

The EAB gives students the ability to recoup money in the event that the program they entered does not meet their expectations. Beyond a basic three-day cooling off period which allows students to walk away from enrollment with minimal financial loss, the rules provide for partial refunds — i.e., to allow students to recoup tuition for classes not yet taken, if they stop attending class.

##### 2. New:

The proposed rules modification retains necessary protections with far less complexity. While students have been able to get refunds, the current partial refund procedures try to account for matriculation in various sorts of programs: short, long, correspondence, etc. The concept was to tailor refunds to the length and cost of particular programs. This placed a tremendous burden on staff and schools. Often staff would have to utilize intricate calculations to figure out a partial refund for a given student.

The proposed rules modification establishes a single procedure for partial refunds to replace the current case-by-case scenario. This should make it much easier for all concerned to deal with a withdrawal from a program and save many hours of EAB staff time. It also removes the concept of 'passive' withdrawal, or the belief that students should be considered to have ceased participation (and hence be eligible for partial refund) if they simply stop attending class; this causes harm to schools acting in good faith with students.

##### 3. Alternative:

Students occasionally leave programs. Because education, especially geared pretty directly to preparation for work, is often a matter of trial and error and experimentation, students should not be penalized for making a poor initial choice. This concept is at the root of the partial refund and the only alternative to the proposed change would be to retain the current complexity, or set a few simple refund dollar amounts. The former would remain unwieldy and the latter would, at times, be unfair to some students and some schools.

#### G. COMPLAINTS

##### 1. Policy:

Over the years the EAB has received a steady volume of student complaints. Current rules authorize EAB investigation, but the overall complaints process and actual procedures have really emanated from past practice and precedent. While complaints have been handled appropriately, the lack of detailed rule has placed too much of a reliance on policy.

##### 2. New:

The proposed rules modification delineates procedures for the EAB to follow in handling complaints. It emphasizes mediation and negotiation at the school level, but authorizes state investigation, if necessary. The changes also clarify how student and school need to interact prior to and during EAB intervention. In general, the new policy clarifies how complaints should be handled.

##### 3. Alternative:

Maintenance of the current, extremely terse, rules regarding complaints leaves claimants and schools vulnerable to case-by-case decision-making. Less detail does not seem possible and greater detail, or reliance (for instance, only on the courts) would seem to negate the ability and interest of the EAB to promote student-school negotiation.

#### H. RECORDS

##### 1. Policy:

Current rules contain minor requirements for records maintenance and progress reports to students. The EAB's shift from concern with educational inputs to assessing outcomes puts a new premium on data. Because schools will be more accountable for their success, it will be necessary for them to document performance — and performance cannot be documented without clear data. This is a different operational philosophy than that previously held by the EAB which placed undue attention on how a school was structured and not what it did.

2. New:

The proposed rules modification creates a new chapter dealing specifically with records. It lists what schools must collect and retain, includes requirements for reporting to students and requires annual report data. Finally, it details what will happen to records in the event a school closes — this eventuality occurs with some regularity and has been handled through convention and historical practice. The result has been periodic difficulty in ensuring that records exist so that students have perpetual access to grades and can, in certain cases, claim financial recompense from surety companies, if a school should close.

3. Alternative:

Because of the current absence of detail, the chief alternative to the new policy would be maintenance of the status quo, which places fewer requirements on for-profit schools regarding data than is commonly accepted by the public sector. If the EAB is to move in the direction of gauging performance, it needs to be able to review outcomes.

*Major impacts of proposed rules changes:*

1. New School Application:

Simplifies required material and more clearly outlines requirements schools must meet.

2. Catalog Requirements:

Simplifies what must be put in a catalog and more clearly enables schools to use information from a New School Application as part of the catalog — requires inclusion of outcome data.

3. New/Revised Program Application:

Lodges responsibility for describing program with the schools — reduces EAB's re-evaluation of work schools have already completed. Also, adds new methodology for dealing with innovative programs. Removes the prior distinctions between *revised* and *substantially revised* programs; program changes which affect less than 25% of content are accepted as normal/continuous improvement.

4. Outcomes & Evaluation:

Adds a new requirement for schools to have self-evaluation procedures and be able to document their continuous improvement [covered in Catalog requirements].

5. Distance Education:

New comparability requirements are established to ensure that various forms of distance education maintain high quality.

6. Bonding:

Requirements are made clearer: schools must post bonds meeting 125% of their highest point of unearned tuition; however, there are *new* stability criteria by which schools can have their bond obligation reduced. Also shifts the solicitor bond requirement under the school bond.

7. Complaints:

The complaints process codifies previous policy and past practice; also emphasizes importance of mediation and reconciliation.

8. Advertising:

Simplifies 'truthful' advertising standards.

9. Enrollment:

Prescribes content of enrollment documents and clarifies enrollment cancellation procedures.

10. Records:

Establishes a new chapter EAB 7, delineating what records schools must keep. Also, outlines steps to take when a school goes out of business.

11. Refunds:

Simplifies procedures for partial refunds — replacing much detail with a generic formula. Also, removes the notion of 'constructive intent to withdraw,' which meant once a student only stopped going to class for a specific time period it was presumed he/she had withdrawn and a partial refund was in order.

12. Fees:

The proposed rules modification parallels the overall regulatory simplification by simplifying the fee structure. The changes remove one category of program approval fee entirely and give schools the flexibility to change less than 25% of program content. They also greatly streamline fees for dealing with incorrect and incomplete applications by replacing roughly 30 levels of fee with two simple fees. The changes do a better job of setting fees based on actual agency costs.

The changes increase fees for new school and new program approval to account for more intensive up-front work. Finally, they simplify and add predictability to the variable, or second, renewal fee. While it still levies a percentage fee on gross revenue (as a way to account for differences in school size), it establishes a procedure to set the variable fee for a two-year period.

Program Change Under 25%	No fee
Name Change	No fee
Amending Fee	Replace many fees for noncompliance, incomplete and different program types with two fees: \$200 for simple changes and \$1,000 for complex
Fixed (1 <sup>st</sup> ) Renewal Fee	Raise to \$1,000
Variable (2 <sup>nd</sup> ) Renewal Fee	Set for a two-year period at a time; no fee for gross revenue under \$50,000
New School	Raise by \$500
New/Revised Program	Raise by \$600

**Statutory authority:**

Section 38.51 (3), Stats., gives the EAB authority to "promulgate rules and establish standards necessary to carry out its purpose." Further s. 38.51 (10), Stats., directs that "The board shall promulgate rules to establish fees . . . [that such fees] be sufficient to cover all costs that the board incurs in examining and approving proprietary schools . . . [that it] give consideration to establishing a variable fee structure based on the size of a proprietary school . . . [and that it] specify a fee to accompany all applications."

**Estimate of time to develop rules:**

During the past two years, the EAB has been engaged in a process of re-engineering:

→ Analyzing its policies and procedures; and

→ Working with many schools and its Advisory Group to improve and simplify how it conducts business.

The actual preparation and development of the new rules, including any public hearings and ongoing feedback should take no more than 120 hours of staff time.

## ***Employe Trust Funds***

### **Subject:**

ETF Code – Due dates for employer reports and remittances required under ch. 40 of the statutes.

### **Description of policy issues:**

#### *Objectives of the rule:*

Repeal s. ETF 10.63 (1) (f), dealing with Social Security reporting. Section ETF 10.63 (1) (f) should be repealed because the Department is no longer involved in the administration of Social Security wage reporting. Create a rule to identify due dates for monthly reports and remittances for non-retirement programs administered by the Department. Add to the rule, for Wisconsin Retirement System reporting, that the annual report of wage detail is due on or before January 31 of the year following the end of the reporting period.

#### *Policy analysis:*

Currently, s. ETF 10.63 (1) (e) prescribes due dates for state agencies to submit reports and remittances pertaining to the Wisconsin Retirement System for non-teaching employes. Section ETF 10.63 (1) (f) is obsolete since it pertains to Social Security reporting, which is no longer administered by the Department. Section ETF 10.63 (1) (g) provides that all other reports and remittances are due on the last working day of the month following the end of the reporting period.

More precise due dates are needed to provide the Department with a more certain basis to administer non-retirement programs established under ch. 40 of the Wisconsin Statutes. These programs include the state and local public employers' group health, life, and income continuation programs, the Employe Reimbursement Account Program, and the Deferred Compensation Program. Some of these programs have contractual remittance requirements which differ from the general due date provided in s. ETF 10.63 (1) (g).

In addition, the current rule does not specifically address annual reporting of wage detail.

This information is critical to reliable funding analysis and to prompt and accurate payment of benefits.

#### *Policy alternatives to the proposed rule:*

There is no alternative to the rule, since s. 40.06 (1) (a), Stats., requires the Department fix the time limit for reporting. Section 40.06 (2) and (3), Stats., reference the consequences when the due date is not complied with.

### **Statutory authority for rule-making:**

Sections 40.03 (1) (m) and (2) (i) and (ig), 40.06 (1) (a), (2) and (3), Stats.

### **Estimate of staff time required:**

The Department estimates that state employes will spend 30 hours to develop this rule.

## ***Employe Trust Funds***

### **Subject:**

ETF Code – Wisconsin Retirement System (WRS) annuitants who are rehired by a participating employer.

### **Description of policy issues:**

#### *Objectives of the rule:*

Amend the definition of re-hired annuitants in s. ETF 20.02 (1) to include reference to the requirements for retirement annuity entitlement enacted by 1995 Wis. Act 302. Repeal s. ETF 20.02 (2) as this language is no longer appropriate due to changes made in s. 40.26, Stats. Repeal s. ETF 20.02 (3) (a) 2. because a rehired annuitant no longer needs to exceed the earnings limit. Amend s. ETF 20.02 (3) (a) 3. by removing the last clause pertaining to exceeding the earnings limit. Repeal s. ETF 20.02 (3) (b) which references earnings limits. Repeal s. ETF 20.02 (4) and (5), as these sections no longer apply.

#### *Policy analysis:*

1995 Wis. Act 302, enacted to ensure WRS compliance with federal tax law concerning qualified retirement plans, removed the requirement that a WRS annuitant who is rehired in an eligible position exceed an earnings limit before re-enrolling as an active employe in the WRS.

Chapter 96, Laws of 1981, effective January 1, 1982, provided retirement coverage for annuitants who met the eligibility criteria. These rehired annuitants could continue to receive their retirement annuity while also being reported to the WRS. If they exceeded their earnings limit, the annuity would be cancelled. Since Wis. Act 13 effective July 1, 1989 for teachers and effective January 1, 1990 for non-teachers, employers were required to monitor earnings limits for WRS annuitants. Once the earnings limit was exceeded in WRS qualifying employment, the annuity was cancelled and the employe was reported as an active WRS participating employe. Wis. Act 152, effective April 23, 1992, allowed annuitants who exceeded their earnings limit while working for a WRS participating employer to elect to participate in WRS. As a result of 1995 Wis. Act 302, a rehired annuitant is no longer required to exceed the earnings limit in order to qualify to participate in the WRS. The rehired annuitant can elect to participate in WRS at any time after being rehired in a WRS-eligible position.

#### *Policy alternatives to the proposed rule:*

None. The existing rule was written to interpret Act 152 and is now largely obsolete.

### **Statutory authority for rule-making:**

Section 40.03 (1) (m) and (2) (i), Stats.

### **Staff time required:**

The Department estimates that state employes will spend 4 hours to revise this rule.

## ***Natural Resources***

### **Subject:**

SS. NR 46.12, 46.18 and 46.30 – Relating to annual adjustment of the timber stumpage values in s. NR 46.30, amending ss. NR 46.12 and 46.18 to obtain ownership information and deadlines for management plans, and replacing the Department's administrative area map, due to reorganization.

### **Description of policy issues:**

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

The stumpage rate changes are an annual process and not a policy issue.

Changes in the deed requirements for new petitions will resolve legal issues for future contracts under the Managed Forest Law. The policy of requiring parcel identification numbers and more documentation will clear up problems on ownership. The Wisconsin Woodland Owners Association, the Forest Tax/Stewardship Newsletter, and the hearing notification will be used to keep landowners informed.

The submission of late management plans by non-Department foresters and landowners has developed a policy issue for the DNR foresters having to resolve last minute problems. The private forestry consultants will be kept informed.

The administrative areas map is not a policy change, but a rule updating.

#### *Explain the facts that necessitate the proposed change:*

Requiring landowners to furnish documentation, including the "parcel identification number" (PIN) is a policy change necessitated by rules governing the recording of legal documents at the county level. The forest tax laws require the recording of legal "orders" and the Department must spend a great deal of time searching out the PIN numbers when the landowners could supply them.

The establishment of a deadline for the submission of management plans will resolve the problem of late plans. The Department must review, resolve any problems and approve the plans submitted by landowners and consultant foresters and still meet statutory deadlines for the issuance of orders entering new lands.

The changing of the administrative areas map or stumpage rates is not a change in past policy.

**Statutory authority for rule-making:**

Sections 77.06 (2), 77.91 (1) and 227.11 (2) (a), Stats.

**Anticipated time commitment:**

The Department estimates that the time commitment will be 41.5 hours. One public hearing will be scheduled for May, 1997, in Wausau.

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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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### **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.*

#### **Corrections**

##### **Rule Submittal Date**

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on February 5, 1997, the Department of Corrections submitted proposed ch. DOC 309 to the Wisconsin Legislative Council Staff.

##### **Analysis**

The subject matter of the proposed ch. DOC 309 relates to inmate visitation.

##### **Agency Procedure for Promulgation**

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The Division of Adult Institutions is the organizational unit primarily responsible for promulgation of this rule.

##### **Contact Person**

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

Deborah Rychlowski  
Telephone (608) 266-8426

#### **Health & Family Services**

##### **Rule Submittal Date**

On February 14, 1997, the Department of Health & Family Services submitted proposed ch. HSS 148 to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

##### **Analysis**

*Statutory authority:* Section 255.06 (2) (a) and (3), 1993-94 Stats.

The subject matter of the proposed ch. HSS 148 relates to rural counties participating in the Wisconsin Breast Cancer Screening Project.

##### **Reason for Rules, Intended Effects, Requirements:**

This order repeals ch. HSS 148. Chapter HSS 148 identifies the 12 rural counties in the state that have the highest incidence of women with late-stage breast cancer. Section 255.06, Stats., until amended by 1995 Wis. Act 27, required the Department to have rules that specified those counties so that grants could be made to applying hospitals, nonprofit corporations and public agencies willing to provide mammography services to women 40 years of age or older in those counties. Now the state funds for breast cancer screening are combined with federal funds for breast and cervical cancer screening for low-income older women and distributed statewide, using a population-based formula rather than earmarking the funds for use in 12 rural counties. In this connection, Act 27 deleted a reference to the 12 counties as well as the directive that the Department specify those counties by rule.

##### **Agency Procedure for Promulgation**

Notice published without public hearing unless petition for public hearing is received; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

##### **Contact Person**

Gale Johnson, Division of Health  
Telephone (608) 261-6872

#### **Natural Resources**

##### **Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [WM-5-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

##### **Analysis**

The proposed rule affects chs. NR 10 and 15, relating to hunting and trapping.

##### **Agency Procedure for Promulgation**

A public hearing is scheduled to be held on April 14, 1997.

##### **Contact Person**

Todd Peterson, (608) 267-2948  
Bureau of Wildlife Management

#### **Natural Resources**

##### **Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [FH-10-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

##### **Analysis**

The proposed rule affects chs. NR 20 and 26, relating to sport fishing and fish refuges.

##### **Agency Procedure for Promulgation**

A public hearing is scheduled to be held on April 14, 1997.

##### **Contact Person**

Tim Simonson, (608) 266-5222  
Bureau of Fisheries Management & Habitat Protection

#### **Natural Resources**

##### **Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [SW-15-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

##### **Analysis**

The proposed rule affects ch. NR 538, relating to solid waste management—beneficial use of industrial waste.

##### **Agency Procedure for Promulgation**

Public hearings are scheduled to be held on March 19, 20, 25 and 27, 1997.

##### **Contact Person**

Joe Traynor, (608) 267-3534  
Bureau of Waste Management

**Natural Resources****Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [ER-9-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 10 or 27, relating to protective status for the timber rattlesnake.

**Agency Procedure for Promulgation**

Public hearings are scheduled to be held on March 18, 19 and 20, 1997.

**Contact Person**

Robert Hay, (608) 267-0849  
Bureau of Endangered Resources

**Natural Resources****Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [ER-1-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 18, relating to falconry.

**Agency Procedure for Promulgation**

A public hearing is scheduled to be held on March 11, 1997.

**Contact Person**

Sumner Matteson, (608) 266-1571  
Bureau of Endangered Resources

**Natural Resources****Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [WM-4-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 10, relating to hunting and trapping—housekeeping changes.

**Agency Procedure for Promulgation**

A public hearing is scheduled to be held on March 11, 1997.

**Contact Person**

Todd Peterson, (608) 267-2948  
Bureau of Wildlife Management

**Natural Resources****Rule Submittal Date**

On February 7, 1997, the Department of Natural Resources submitted Natural Resources Board Order No. [DG-6-97] to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 809, relating to safe drinking water.

**Agency Procedure for Promulgation**

Public hearings are scheduled to be held on March 11 and 13, 1997.

**Contact Person**

Mark Nelson, (608) 267-4230  
Bureau of Drinking Water and Groundwater

**Optometry Examining Board****Rule Submittal Date**

On February 10, 1997, the Optometry Examining Board submitted to the Legislative Council Rules Clearinghouse a proposed rule-making order revising the Opt Code.

**Analysis**

*Statutes authorizing promulgation:* ss. 15.08 (5) (b), 227.11 (2) and 449.18 (7), Stats.

*Statutes interpreted:* ss. 449.01, 449.04, 449.05 (2), 449.06, 449.07 (1), 449.08 and 449.18 (4), Stats.

In this proposed rule-making order, the Optometry Examining Board amends s. Opt 1.03 to clarify that an optometrist may direct unlicensed persons working under the optometrist's direct supervision to perform remediable procedures as well as routine visual screenings. Section Opt. 4.01 is amended to include a note to clarify the examination requirements for reciprocal applicants. Section Opt 6.04 (3) is amended to clarify that in lieu of submitting certificates of attendance directly to the Board, optometrists who hold TPA certificates issued under s. 449.18, Stats., will be required to sign a statement at the time of renewal certifying that the continuing educational coursework has been completed.

Section Opt 1.02 (5m) is created to include a definition of "remediable procedure." Section Opt 5.08 (2) (c) is created to permit optometrists to accept written verification of examination findings from a licensed optometrist or ophthalmologist obtained within the 90 day period immediately preceding the date of a patient's visit, in lieu of conducting a minimum visual examination. Section Opt 5.15 is created to further define that it is unprofessional conduct for an optometrist to engage in any practice or conduct which constitutes a substantial danger to the health, welfare, or safety of a patient or the public or to engage in conduct in the practice of optometry which evidences a lack of knowledge or ability to apply professional principles or skills.

The Board amends various sections throughout the rules relating to:

- Clarity;
- Streamlining application and renewal procedures;
- Proper placement in the rules; and
- Punctuation.

Several provisions are amended in ch. Opt 6 to reflect that a signed statement, certifying that the continuing education coursework has been completed, is sufficient for purposes of renewing a credential, and that licensees will be required to retain certificates of attendance for a specific period of time and to provide them to the Board upon request. And, finally, changes are made to several notes.

**Agency Procedure for Promulgation**

A public hearing will be scheduled.

**Contact Person**

Pamela Haack, Rules Center Coordinator  
Telephone (608) 266-0495

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## NOTICE SECTION

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### Notice of Hearings

#### *Agriculture, Trade & Consumer Protection*

► (Reprinted from Mid-February, 1997 Wis. Adm. Register)

Notice is hereby given that pursuant to ss. 100.20(2) and 227.16, Stats., the state of Wisconsin Department of Agriculture, Trade and Consumer Protection will hold public hearings at the times and places indicated below. At these hearings the department will consider revisions to ch. ATPC 124, Wis. Adm. Code, relating to price comparison advertising. Public comment is being sought on the department's rule proposal. Following the public hearings, the hearing record will remain open until **April 1, 1997** for additional written comments. An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **March 5, 1997** either by writing to Kevin LeRoy, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4934) or by TDD at 608/224-5058.

#### Hearing Information

**March 12, 1997**  
**Wednesday**  
 commencing at 1:00 p.m.

**Milwaukee Regional Division of  
 Trade & Consumer Protection Office**  
 10930 W. Potter Road, Suite C  
 Wauwatosa, WI 43187

Handicapped accessible

**March 13, 1997**  
**Thursday**  
 commencing at 1:00 p.m.

**Dept. of Agriculture, Trade &  
 Consumer Protection**  
**Conference Room 411**  
**2811 Agriculture Drive**  
**Madison, WI**

Handicapped accessible

**March 14, 1997**  
**Friday**  
 commencing at 1:30 p.m.

**Green Bay Regional Division of the  
 Trade & Consumer Protection Office**  
**Room 152B**  
**200 N. Jefferson**  
**Green Bay, WI 54301**

Handicapped accessible

Written comments will be accepted until **April 1, 1997**.

#### **Analysis prepared by the Wisconsin Department of Agriculture, Trade and Consumer Protection**

Statutory authority: s. 100.20 (2)

Statute interpreted: s. 100.20

This rule amends the department's price comparison advertising rules under ch. ATPC 124, Wis. Adm. Code. This rule creates new definitions, and gives advertisers greater flexibility to compare their current selling prices to competitors' prices that are more than 90 days old.

##### Current Rules

The Department of Agriculture, Trade and Consumer Protection is responsible for regulating unfair and deceptive advertising practices under s. 100.18, Stats. (Deceptive Advertising Law) and s. 100.20, Stats. ("Little FTC Act"). The department is also responsible, under s. 120.20, Stats., for regulating unfair methods of competition in business and trade practices in business. Under s. 100.20, Stats., the department has adopted rules to regulate price comparison advertising.

The department adopted the ch. ATPC 124 price comparison advertising rules in 1974 and amended the rules in 1978. Chapter ATPC 124 regulates advertisements in which sellers make specific saving claims for consumer property or services which the sellers are offering for sale: e.g., "50% off," "\$40 value for only \$10," "Was \$50, now only \$25," "introductory offer 50% off," or "\$35, compare elsewhere at \$75".

Under the current ch. ATPC 124 rules, a price comparison claim must be based on one of the following:

- A price at which the seller sold or offered the property or services in the past.
- A price at which a competitor sold or offered the property or services in the past.
- A price at which the seller will offer the property or services for sale in the future.

Currently, ch. ATPC 124 prohibits a seller from making a price comparison claim based on a competitor's price that is more than 90 days old. For example, under the current rule, a business that distributes a yearly catalogue which compares its prices with those of a competitor cannot distribute its catalogues in Wisconsin without violating ch. ATPC 124.

##### Proposed Rule Amendments

By limiting competitor price comparisons to 90 days before the advertisement, the current rules effectively prevent some businesses who, as a regular method of competition, provide competitor price comparisons beyond the 90-day limit. The proposed rule allows these businesses to offer their goods to consumers in Wisconsin without eliminating standards that assure truthful and fair practices.

The proposed rule would permit a seller to make a price comparison claim based on a competitor's price that is up to two years old while maintaining some safeguards against false or deceptive price comparisons. Under the proposed rule, sellers who wish to compare their price to a competitor's price that is older than ninety days must disclose the method or basis of the comparison in a way that allows the consumer to comprehend to true meaning of the comparison.

The proposed rule provides a definition of "trade area". In the current rules, this phrase is not defined, although it is referred to as the "trade area in which the price comparison is made." This wording has caused confusion as to whether, for example, a business can compare its prices with the prices offered in another state if the advertisement is also circulated in that state. The department believes that the original intent of the drafters was to define "trade area" broadly so as to allow comparisons with prices offered in other states in which the advertisement is circulated. The proposed rule makes it clear that a "trade area" includes areas outside of Wisconsin where the advertisement is also circulated, and that a business can compare a price offered in Wisconsin with prices offered in another state if the advertisement is also circulated in that state.

The proposed rules also provide definitions of "disclose". By providing a definition of "disclose" the proposed rule clarifies what an advertiser must do to meet the notice requirements contained in the rule.

#### **Initial Regulatory Flexibility Analysis**

The Department expects the new rule's effect on small business to be minimal. The new rule is less restrictive than the current rule. Very few businesses use competitors' prices from a period beyond 90 days old in their ads. Those that do will need to disclose the method or basis for the comparison in their advertisement.

This new rule could potentially have some effect on the competitive retail environment. This rule will allow retailers to make

certain price comparison claims which are not currently allowed. This could harm some business but help others. The effect on the retail environment is difficult to accurately predict, although it is likely that some small business will find it difficult to compete with businesses who were previously unable to market their products in Wisconsin because of their price comparison methods.

### **Fiscal Estimate**

It is anticipated that this rule will have no significant fiscal impact on the department

### **Copies**

A copy of the rule to be considered, the Initial Regulatory Flexibility Analysis and the Fiscal Estimate may be obtained, free of charge, from the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, Trade and Consumer Protection Division, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708, or by calling (608)224-4934.

## **Notice of Hearing**

### **Health & Family Services (Health, Chs. HSS 110--)**

Notice is hereby given that, pursuant to ss. 154.19 (3) (a) and 154.27, the Department of Health and Family Services will hold a public hearing to consider the creation of ch. HFS 125, Wis. Adm. Code, relating to do-not-resuscitate (DNR) bracelets to alert emergency health care personnel of do-not-resuscitate orders, and the emergency rules now in effect on the same subject.

### **Hearing Information**

The public hearing will be held:

<b>March 19, 1997</b>	<b>Room 291</b>
<b>Wednesday</b>	<b>Washington Sqr. Office Bldg.</b>
<b>From 10:00 a.m.</b>	<b>1414 East Washington Ave.</b>
<b>to 2:00 p.m.</b>	<b>MADISON, WI</b>

*The hearing site is fully accessible to people with disabilities.*

### **Analysis Prepared by the Dept. of Health & Family Services**

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do-not-resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do-not-resuscitate order in effect if the patient has on his or her wrist a do-not-resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do-not-resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., permits the Department to establish procedures by rule for emergency health care personnel to use in following do-not-resuscitate orders, and s. 154.27, Stats., requires the Department to establish by rule a uniform standard for the size, color and design of do-not-resuscitate bracelets.

The rules establish a uniform standard for do-not-resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do-not-resuscitate orders.

### **Contact Person**

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

Barbara Arneson, EMS Section  
Telephone (608) 267-7147 or,  
if you are hearing impaired, (608) 266-1511 (TDD)  
Bureau of Public Health  
P. O. Box 309  
Madison, WI 53701-0309

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

Written comments on the proposed rules received at the above address no later than **March 26, 1997** will receive the same consideration as testimony presented at the hearing.

### **Fiscal Estimate**

The rules will not affect the expenditures or revenues of state government or local governments. They will not add to the costs of state regulation of acute care hospitals or licensing of ambulance service providers or emergency medical technicians. Local governments are not involved in setting or enforcing the standard for do-not-resuscitate bracelets or in establishing procedures for emergency health care personnel to follow in complying with do-not-resuscitate orders. Although local governments operate 81 ambulance companies and 16 acute care hospitals and the emergency health care personnel employed by them will be obligated by the rules, the standard and procedures that the rules establish will not add to the costs of making emergency health care services available.

### **Initial Regulatory Flexibility Analysis**

The rules will affect emergency medical technicians (EMTs), first responders and emergency health care facility personnel as well as hospitals that have emergency rooms and ambulance service providers that employ EMTs. There are some 450 ambulance service companies in Wisconsin. Only about 25 of the ambulance service companies are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. None of the hospitals are small businesses by that definition.

The rules establish uniform standards for do-not-resuscitate bracelets worn by qualified patients for each of whom a do-not-resuscitate order has been written by a physician under s. 154.19 (1), Stats., and procedures for emergency health care personnel to follow in honoring do-not-resuscitate orders. There are no new reporting or bookkeeping requirements in the rules and no new professional skills are necessary to comply with the new rules.

## **Notice of Hearing**

### **Health & Family Services (Health, Chs. HSS 110-199)**

Notice is hereby given that, pursuant to ss. 254.176(1) and (3), 254.178(2) and 227.24(1), Stats., the Department of Health and Family Services will hold a public hearing to consider emergency rules published on February 18, 1997, relating to the addition of standards for certification of lead management service providers and accreditation of lead management training courses to ch. HSS 163, the Department's rules for certification of lead (Pb) workers and supervisors engaged in lead abatement and lead hazard reduction activities and accreditation of training courses in lead abatement and lead hazard reduction.



## Hearing Information

March 18, 1997  
 Tuesday  
 Beginning at 10:00 a.m.

Rm. 179, Washington Square Bldg.  
 1414 E. Washington Avenue  
 (77 N. Dickinson door is closest to  
 Rm. 179)  
 Madison

The public hearing site is fully accessible to people with disabilities.

## Analysis Prepared by the Department of Health and Family Services

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. Exposure in adults may result in damage to the kidneys, the central nervous system in general, and 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 have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. Of 41,418 Wisconsin children under 6 years of age screened for lead from July 1, 1994 through June 30, 1995, 25% tested positive for lead in their blood.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint 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, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate results and to protect building occupants.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management activities. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department adopted ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses.

The emergency order published by the Department on February 18, 1997, amends ch. HSS 163, Wis. Adm. Code, to require accreditation of lead inspector, risk assessor and project designer training courses effective February 18, 1997, and to require certification of lead inspectors, risk assessors and project designers beginning April 19, 1997. The revision of ch. HSS 163 incorporates lead management training and certification criteria from the U.S. Environmental Protection Agency's lead training and certification regulations at 40 CFR Part 745, Subparts L and Q. In addition, references to "lead abatement or HUD-funded lead hazard reduction" have been changed to add lead management services. The order also adds fees for accreditation of lead training courses and fees for certification of lead inspectors, risk assessors, and project designers.

## Contact Person

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

Gail Boushon  
 Asbestos and Lead Unit, Room 117  
 1414 East Washington Avenue  
 Madison WI 53703-3044  
 Telephone: (608) 266-5280  
 or 266-1511 if you are hearing impaired  
 Fax: (608) 266-9711

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

Written comments on the proposed rules received at the above address no later than **March 26, 1997**, will be given the same consideration as testimony presented at the hearing.

## Fiscal Estimate

Although s. 254.176(2)(e), Stats., requires fees for certification, it exempts State and local employees who must be certified in order to perform duties within the scope of their employment from the certification fees. Therefore, certification fees are not imposed on State and local government agencies.

In addition, proposed new training requirements should not adversely affect State and local government agencies, because government employees have been provided opportunity to attend Department-sponsored, EPA-funded lead management training in Wisconsin.

By certifying lead management professionals, the Department will have access to \$1.5 million, and the City of Milwaukee to \$5 million, in federal HUD grants to fund lead hazard reduction activities in Milwaukee and across Wisconsin.

Certification fees of \$150 per lead management professional for an estimated 71 lead professionals are projected to increase program revenues by \$10,650 annually. Training course accreditation application fees for a projected 10 initial courses and 10 refresher courses are expected to increase program revenues by \$10,000 annually.

Currently authorized staff will handle any increase in workload that may result from these rules. At this time, the lead training and certification program is funded by federal EPA grants.

## Notice of Hearings

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

Notice is hereby given that pursuant to ss. 29.175(1), 29.415 and 227.11(2)(a), Stats., interpreting s. 29.175(1) and 29.415, Stats., the Department of Natural Resources will hold public hearings on either the creation of s. NR 10.02(9) or ss. NR 27.03(3)(c)1m. and 27.06(5), Wis. Adm. Code, relating to timber rattlesnakes. Currently, the timber rattlesnake receives no protection from being taken, nor is its take regulated. This rattlesnake is a special concern species in Wisconsin and has been proposed as a candidate for federal listing as a threatened species. The Department is considering protection by either including the timber rattlesnake as a protected wild animal under s. NR 10.02 or as a threatened species under s. NR 27.03(3). The rule allows the taking of timber rattlesnakes in emergency situations involving immediate threat to human life. The taking of a timber rattlesnake must be reported to the Department within 48 hours.

## Initial Regulatory Flexibility Analysis

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

## Environmental Assessment

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

## Hearing Information

**March 18, 1997**  
**Tuesday**  
 at 5:30 p.m.                      **Basement Auditorium**  
**La Crosse County Courthouse**  
**400 4th Street North**  
**La Crosse**

**March 19, 1997**  
**Wednesday**  
 at 6:30 p.m.                      **Community Building**  
**Highway 35**  
**Ferryville**

**March 20, 1997**  
**Thursday**  
 at 6:30 p.m.                      **Room 027, GEF #2**  
**101 S. Webster St.**  
**Madison**  
**ENTRY WILL BE AT THE MAIN STREET ENTRANCE ONLY.**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Hay at (608) 267-0849 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Robert Hay, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 no later than **March 28, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [ER-9-97] and fiscal estimate may be obtained from Mr. Hay

## Fiscal Estimate

### State Fiscal Impacts

Enforcement and administrative programs for rule are already in place. No changes are expected in rule enforcement or administration costs.

### Local Fiscal Impacts

No additional expenses are anticipated for local units of government.

## Notice of Hearings

### *(Fish, Game, etc., Ch. NR 1--)*

Notice is hereby given that pursuant to ss. 29.174(3) and 227.11(2)(a), Stats., interpreting s. 29.174(2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10 and 15, Wis. Adm. Code, relating to hunting and trapping. The proposed rule:

1. Creates deer management unit 72A (Wildcat Mountain state park) and allows muzzleloader by permit only and late bow hunting.
2. Allows muzzleloader only deer hunting in unit 77D (Loew Lake Unit - Kettle Moraine state forest).
3. Allows deer hunting by firearm, muzzleloader and bow and arrow at Newport state park.
4. Allows deer hunting at Rocky Arbor state park.
5. Creates turkey hunting zone 25A (Loew Lake Unit - Kettle Moraine state forest) for disabled hunters.
6. Strengthens the conditions for placement and hunting over illegal baits.
7. Eliminates the requirement to hunt geese from blinds in the Horicon intensive management zone during the early goose season.
8. Expands the closed area for coyote hunting during the gun deer season.
9. Strengthens the conditions for placement and hunting over illegal baits.
10. Eliminates the requirement to hunt geese from blinds in the Horicon intensive management zone during the early goose season.

11. Includes all of Polk county in the pheasant management zone.
12. Extends the muskrat trapping season by two months.
13. Lists mink trapping separately from muskrat trapping to allow for a different season for muskrats.
14. Eliminates the 75 trap restriction.
15. Corrects the fisher population goals.
16. Modifies beaver management zones to make the northern beaver and otter zone boundaries the same.
17. Creates a game refuge at Wilcox Lake waterfowl production area (Waushara county).
18. Expands a no entry refuge near Brule (Douglas county).

Notice is hereby further given that pursuant to ss. 29.174 and 227.11(2)(a), Stats., interpreting ss. 29.085 and 29.174(2)(a), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20 and 26 relating to sport fishing and fish refuges. The proposed order:

1. Establishes uniform statewide bass fishing regulations on most inland waters through elimination of the northern zone for largemouth and smallmouth bass. The minimum length limit is increased from 12" to 14" and the early catch-and-release season is eliminated in what is now the northern zone. Also, special 15" minimum length limit and 2 daily bag limit regulations on waters in the northern zone are eliminated and will revert to the statewide 14" minimum length limit and a daily bag of 5. The daily bag limit for largemouth and smallmouth bass on all waters is combined and the minimum length limit is increased to 18" and the daily bag limit is reduced from 5 to one on Cable and Wiley lakes, Bayfield county; Windfall lake, Forest county; Stella lake, Oneida county; and Whitney lake; Vilas county.
2. Reduces the minimum length limit from 15" to 18" and reduces the daily bag limit from 5 to 3 for walleye in Stella and Thunder lakes, Oneida county; and Oconomowoc lake, Waukesha county.
3. Reduces the minimum length limit from 20" to 18" and increases the daily bag limit from one to 3 for walleye in Lac La Belle, Waukesha county.
4. Eliminates the year-around open fishing season on the Chippewa river from the Dells dam in Eau Claire county to the Holcombe flowage dam in Chippewa county.
5. Increases the minimum length limit to 26" and reduces the daily bag limit from 5 to 2 for northern pike in tributaries to Lake Superior (to coincide with regulations on Lake Superior) and on Whitney lake, a winterkill lake in Vilas county.
6. Establishes special trout fishing regulations on the Bois Brule river, Douglas county, between the county hwy. S and county hwy. B crossings, with the following rules in effect: artificial lures only, daily bag limit of 3 trout and salmon in total only 2 of which may be brown trout and only one of which may be a rainbow trout, and minimum size limits of 10" for brook trout, 26" for rainbow trout, 15" for brown trout and 12" for salmon.
7. Reduces the daily bag limit for panfish from 50 to 10 for Bladder and Sawdust lakes, Bayfield county; and Pine lake, Iron county.
8. Includes Trude lake as part of the Turtle-Flambeau flowage for the purposes of regulating panfish with special size and bag restrictions already in place on the Turtle-Flambeau flowage.
9. Makes corrections to the boundaries of different trout regulation sections on the Tomorrow river, Portage county.
10. Adds a small section of the Waupaca river to the category 5 reach in Waupaca county and corrects the description of the upstream boundary.
11. Increases the minimum length limit for muskellunge from 34" to 40" on 6 waters in Barron county, 14 waters in Burnett county, all waters in Clark county, one water in Oneida county, 12 waters in Polk county, and 9 waters in Washburn county.
12. Eliminates the harvest of all fish other than smelt and suckers with nets and traps from tributaries to Lake Michigan and Green Bay.

13. Establishes a fish refuge on the Little Turtle river, Iron county, for 200 feet upstream and 200 feet downstream of the Popko's Circle road (west) crossing.

14. Establishes a fish refuge on the south fork Eau Claire river, Clark county, from the Mead Lake dam to a point 500 feet downstream.

15. Changes the effective period of the fish refuge on the south fork Spirit river, Price county, from April 1 through April 30 to March 15 to, but not including, the opening date for the fishing season.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

Notice is hereby further given that the hearings will be held on Monday, April 14, 1997 at 7:00 p.m. at the following locations:

Adams	Adams-Columbia Electric Co-Op Bldg. 401 E. Lake St. Friendship
Ashland	Ashland High School Auditorium Ashland
Barron	Barron County Courthouse Auditorium Barron
Bayfield	Courthouse County Board Room Washburn
Brown	Southwest High School Auditorium 1331 Packerland Dr. Green Bay
Buffalo	Alma Area High School Gym S1618 STH '35' Alma
Burnett	Burnett County Government Center Siren
Calumet	Calumet County Courthouse 206 Court Street, Room 025 Chilton
Chippewa	Chippewa County Courthouse Large Assembly Room Chippewa Falls
Clark	Greenwood High School 209 S. Hendren Greenwood
Columbia	Columbia County Courthouse 400 De Witte St., Basement Portage

Crawford	Crawford County Courthouse Circuit Courtroom Prairie du Chien
Dane	Dane County Expo Center, Next to Coliseum Exhibition Hall, Mendota 8 Madison
Dodge	Horicon City Hall 404 E. Lake St. Horicon
Door	Door County Court House 421 Nebraska, Room A150 Sturgeon Bay
Douglas	Superior Senior High School Cafeteria Superior
Dunn	Dunn County Fish/Game Club 1900 Pine Avenue Menomonie
Eau Claire	So. Middle School Auditorium 2115 Mitscher Ave. Eau Claire
Florence	Florence Natural Resources Center Hwys. 70 & 101, Lg Conference Room Florence
Fond du Lac	Woodworth Jr. High School Cafeteria 85 Morningside Dr. Fond du Lac
Forest	Crandon High School, Auditorium Hwy. 8 West Crandon
Grant	Grant Co. Youth & Ag bldg. 916 E. Elm St. Lancaster
Green	Government Service Building Auditorium, N3150 Hwy 81 Monroe
Green Lake	Green Lake High School Multi Purpose Room 612 Mill St. Green Lake
Iowa	Dodgeville Elementary School Cafeteria 404 N. Johnson Dodgeville
Iron	Mercer School Mercer
Jackson	Jackson County Courthouse County Boardroom Black River Falls
Jefferson	Jefferson County Courthouse Room 205 Jefferson
Juneau	Juneau County Courthouse Court Room Mauston

Kenosha	Kenosha County Center Hearing Room, 19600 75th St. Bristol	Pierce	Hillcrest Elementary School Auditorium 350 S. Grant Ellsworth
Kewaunee	Kewaunee County Courthouse Circuit Court Room 212 Kewaunee	Polk	Government Center Circuit Court Room Balsam Lake
La Crosse	Performing Arts Center Auditorium Onalaska High School Onalaska	Portage	Ben Franklin Junior High School Auditorium, 2000 Polk St Stevens Point
Lafayette	Darlington High School Cafeteria 11838 Center Hill Rd. Darlington	Price	Price County Courthouse Phillips
Langlade	Langlade County Courthouse Large Courtroom 800 Clermont Antigo	Racine	Union Grove High School Gym 3433 S. Colony Ave. Union Grove
Lincoln	Tomahawk Public Schools 1048 East Kings Rd., Auditorium Tomahawk	Richland	Richland County Courthouse Circuit Court Room Richland Center
Manitowoc	UW Center-Manitowoc 705 Viebahn St., Lecture Hall Manitowoc	Rock	Rock County Health Care Center Auditorium, 3530 N. Hwy F. Janesville
Marathon	Horace Mann Middle School 3101 N. 13th St. Wausau	Rusk	Ladysmith High School Auditorium Ladysmith
Marinette	Wausaukee High School Auditorium, N11941 Hwy 141 Wausaukee	St. Croix	American Legion Post 240 410 Maple St. Baldwin
Marquette	Marquette County Courthouse Montello	Sauk	UW – Baraboo Campus A4 Lecture Hall 1006 Connie Rd. Baraboo
Menominee	Menominee County Courthouse Upper Meeting Room Keshena	Sawyer	Hayward High School Auditorium Hayward
Milwaukee	Whitnall High School Auditorium 5000 S. 116th St. Greenfield	Shawano	Shawano Senior High School Cafeteria, 1050 S. Union St., Shawano
Monroe	Sparta High School Auditorium 506 N. Black River St. Sparta	Sheboygan	Sheboygan Falls High School Cafeteria, 220 Amherst Ave. Sheboygan Falls
Oconto	Suring High School, Cafeteria 411 E. Algoma Suring	Taylor	Taylor County Fairgrounds Multi-purpose Bldg. Medford
Oneida	James Williams Junior High Auditorium Rhineland	Trempealeau	Trempealeau County Courthouse Trempealeau Room, 1720 Main St. Whitehall
Outagamie	Roosevelt School 318 E. Brewster St. Appleton	Vernon	Vernon County Courthouse 400 Court House Square, 2nd floor Viroqua
Ozaukee	American Legion Hall 435 N. Lake Street Port Washington	Vilas	Plum Lake Community Building Sayner
Pepin	Pepin County Government Center 740 7th Ave. N. County Board Room Durand	Walworth	National Guard Armory 401 E. Fair St Elkhorn
		Washburn	Experimental Farm Spooner

Washington	UW-Washington County Campus Room 201 (Big Lecture Hall) West Bend
Waukesha	Waukesha County Expo Center North Hall N1 W24848 Northview Rd. Waukesha
Waupaca	Grand Seasons Hotel 110 Grand Seasons Dr. Waupaca
Waushara	Waushara County Courthouse County Board Room 265 Wautoma
Winnebago	Oshkosh North High School Auditorium Oshkosh
Wood	Pittsville High School Gymnasium Pittsville

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dawn Rees at (608) 267-3134 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rules may be submitted to Mr. Al Phelan, Conservation Congress Liaison, P.O. Box 7921, Madison, WI 53707 no later than **April 18, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings.

A copy of the proposed rules [WM-5-97], [FH-10-97] and fiscal estimates may be obtained from Ms. Dawn Rees, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267-3134.

### **Fiscal Estimate**

This rule contains ten rule change proposals to be placed on the 1997 spring fish and game hearing questionnaire. Sections 1, 2, 11, 14, and 15 alter special deer hunts at state parks and the Leow Lake Unit of the Kettle Moraine State Forest. Since permit issuance systems for special state park hunts are already in place, only limited expenses will result from the need to post new signs. Section 3, expanding the area closed to coyote hunting, has no significant new costs. Section 4 extends the muskrat trapping season by two months and has no new costs. Sections 6 and 7 clarify intent of the rule limiting hunters to no more than ten gallons of bait and have no new associated costs. Section 8 eliminates the requirement to hunt geese from blinds in the Horicon Intensive Management Subzone. No new expenses will be associated with this rule. Section 9, eliminating the 75 trap rule, has no anticipated new costs. Section 10 increases the fisher population goals. No costs are associated with this rule change. Sections 12 and 14 allow hunting during the muzzleloader only season at Newport State Park. Only limited costs associated with new signs will be incurred. Sections 13 and 14 allow deer hunting at Rocky Arbor State Park. Limited costs, associated with law enforcement and new signs will be incurred. Sections 16 and 17 create Wild Turkey Management Unit 77D (Loew Lake Unit - Kettle Moraine State Forest) and allows hunting for disabled hunters. The turkey permit issuance system is already in place and no significant cost increases will be associated with this change. Section 18 includes all of Polk County in the pheasant management zone. Pheasant hunters in this area will be required to purchase a pheasant stamp which may contribute some new money to the pheasant management program. The number of affected numbers cannot be determined. Section 19 modifies beaver management zones to make the northern beaver and other zone boundaries the same. No new costs are associated with this change.

Sections 21 and 22 create or expand refuges in Waushara and Douglas Counties. Though new boundary signs will be needed, no significant costs are associated with this change. These provisions collectively will require an estimated .5 FTE of warden enforcement effort which costs approximately \$35,000.

## **Notice of Hearing**

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

Notice is hereby given that pursuant to ss. 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.174(2), 29.107, 29.1075 and 29.103, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 10, Wis. Adm. Code, relating to hunting and trapping. The proposed rule changes are minor and involve corrections, removal of archaic regulations, improving hunting opportunities and clarifications of existing rules. The specific changes:

1. Allow the use of muzzleloading handguns with a minimum barrel length of 4 inches in situations, other than deer and bear hunting, where other handguns are permitted.
2. Restore November 3 as the uniform expiration date of the 2:00 p.m. pheasant hunting closure date on stocked public hunting grounds. This change also expands hunting opportunity by changing the starting date of the 2:00 p.m. closure from the second day of season to the third. Pheasants are not stocked on the second day of season, a Sunday.
3. Include bonus and special carcass tags in the definition of carcass tags to make it illegal to possess a validated bonus carcass tag that is not attached to a deer and prevent the re-use of bonus carcass tags.
4. Require validation of carcass tags other than those located on backtags. Currently, only validation of back tags is required by rule.
5. Require that bonus deer be registered in the deer management unit of kill. Currently, this rule only applies to hunter's choice and party permit deer. It should also apply to bonus permit deer.
6. Eliminate the requirement that bobcat be registered in the county of kill or an adjoining county.
7. Make minor changes to the boundary of newly created deer management unit 64M and codifies the boundary of 60M. The new 64M border will be less confusing and does not significantly change the size of any adjacent deer management unit.
8. Increase the size of wild turkey hunting zone 38 and create zones 40 and 41. The Department has periodically expanded and created new turkey hunting zones as populations have increased.
9. Prohibit goose hunting on Mississippi River closed areas. State regulations allow hunting on Mississippi River closed areas outside of the duck season. Federal regulations do not allow goose hunting when the duck season is closed. This change makes our regulations consistent.
10. Allow people who claim car killed deer to give them to other persons or organizations.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

## Hearing Information

March 11, 1997  
Tuesday  
at 1:00 p.m.

Room 317, GEF #2,  
101 South Webster St.  
Madison

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

Written comments on the proposed rule may be submitted to Mr. Todd Peterson, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **March 14, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WM-4-97] and fiscal estimate may be obtained from Mr. Peterson.

## Fiscal Estimate

No fiscal effect.

## Notice of Hearing

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

Notice is hereby given that pursuant to ss. 29.175(1), 29.415 and 227.11(2)(a), Stats., interpreting s. 29.175(1), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 18, Wis. Adm. Code, relating to falconry. The proposed rule requires the Department to regulate and monitor nonresident falconers through a new permit system designed to track all nonresident take, as well as require detailed report information from both nonresidents and residents on each raptor taken from the wild. The proposed rule also improves and clarifies definitions, permit and license requirements, application procedures, facility requirements, issuance criteria, items related to the Apprentice and General classes, duration of permits, taking and disposal restrictions and the use of raptors for educational purposes.

1. The proposed rule eliminates the requirement of a small game or sports hunting license for residents holding a falconry permit and requires that nonresidents annually obtain a state nonresident raptor trapping permit and meet all other permit requirements in order to take, possess or transport any raptor from Wisconsin. An application fee, if set by state statute, must accompany an application by both residents and nonresidents. The duration of each resident permit will be for 3 years.

2. A sponsor is required for permittees under the age of 18 and for all permittees for the first 2 years in which an apprentice permit is held, regardless of the age of the permittee. In addition, an apprentice permittee may not possess an eyas (nestling) in the calendar year it was taken.

3. General Class and Master Class falconers are both allowed to possess captive-reared endangered and threatened species banded with seamless U.S. Fish and Wildlife Service bands.

4. All holders of General and Master Class permits may take nestlings not yet capable of flight as provided under current code, but it is proposed that at least one healthy chick must be left in a nest from which an eyas is taken, with the exception that no more than one northern goshawk eyas be taken from a nest because of the uncertain status of Wisconsin's goshawk nesting population.

5. The loss or exchange of raptors must be reported within 5 days (formerly 3 days) to the Department's Bureau of Endangered Resources.

6. Department approval is no longer needed for in-state raptor meets and trials.

7. A permittee is required to submit to the Bureau of Endangered Resources a complete report summarizing the acquisition, use,

disposition and status of each raptor obtained, including detailed site information that will allow the Department to identify locations where raptors are taken for the sport of falconry.

8. Raptors may be used for public education programs, provided that only buteos, falcons and great horned owls are used, raptors used are secure at all times, and permittees maintain accurate records detailing use of raptors in public education programs.

9. The take of northern goshawk nestlings is restricted to residents under cooperative research agreements. Concern over the northern goshawk has resulted in a research project to determine the number, distribution and nesting success of northern goshawks in Wisconsin.

## Initial Regulatory Flexibility Analysis

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

## Environmental Assessment

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

## Hearing Information

March 11, 1997  
Tuesday  
at 6:00 p.m.

Room 027, GEF #2  
101 South Webster St.  
Madison

**ENTRY WILL BE AT THE MAIN STREET ENTRANCE ONLY.**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Sumner Matteson at (608) 266-1571 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Sumner Matteson, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 no later than **March 21, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [ER-1-97] and fiscal estimate may be obtained from Mr. Matteson.

## Fiscal Estimate

The proposed rule revision will require implementation of a state permit system and application fee, but the fee amount is to be determined by state statute and unknown at this time.

## Notice of Hearings

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

Notice is hereby given that pursuant to ss. 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.085 and 29.174(2)(a), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 24.09 and 24.10, Wis. Adm. Code, relating to commercial clamming in the Wisconsin-Minnesota and Wisconsin-Iowa boundary waters and clamming on all waters. The proposed rule:

1. Reduces the open season for commercial clamming on that portion of the Wisconsin-Minnesota boundary waters open to commercial clamming by one month from the current April 1 - September 30 season to April 1 - August 31;

2. Increases the minimum size limit for threeridge mussels from 2-5/8" to 2-3/4";

3. Increases the minimum size for cooked threeridge mussels from 2-7/16" to 2-9/16" and the minimum size for cooked washboard mussels from 3-3/4" to 4";

4. Repeals an obsolete 3-1/2" dead shell size limit exemption for washboard mussels that expired after the 1990-1991 season.

### **Initial Regulatory Flexibility Analysis**

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

- a. Types of small businesses affected: Licensed commercial clambers.
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills.

### **Environmental Assessment**

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

### **Hearing Information**

**March 18, 1997**  
**Tuesday**  
at 5:00 p.m.

**Prairie City Bank**  
**300 E. Blackhawk Avenue**  
**Prairie du Chien**

**March 21, 1997**  
**Friday**  
at 5:00 p.m.

**Room 103**  
**Business Education Bldg.**  
**Western Wis. Tech. Institute**  
**405 8th Street North**  
**La Crosse**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karl Scheidegger at (608) 267-9426 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Karl Scheidegger, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **March 27, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FM-2-97] and fiscal estimate may be obtained from Mr. Scheidegger.

### **Fiscal Estimate**

None anticipated.

## **Notice of Hearings**

### **Natural Resources (Environmental Protection— Solid Waste, Chs. NR 500—)**

Notice is hereby given that pursuant to ss. 227.11(2)(a) and 289.05(4), Stats., interpreting s. 289.05(4), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 500, 503, 506, 507 and 516 and the creation of ch. NR 538, Wis. Adm. Code, relating to the beneficial use of industrial byproducts. The proposed rule is intended to be a self-implementing set of requirements to address the beneficial use of high-volume industrial byproducts. Industrial wastes include fly ash, bottom ash, paper mill

sludge and foundry process waste. A generator classifies their industrial byproduct into one of five categories based on a characterization of their material. Various standardized uses are contained in the rule for each category of industrial byproduct. The use methods allowed for Category 1 are the least restrictive and those allowed for Category 5 are the most controlled. The generator can beneficially use their materials in the use methods specified for their category of industrial byproduct without Department approval as long as the requirements of the rule are met.

The proposed rule addresses the storage and transportation of these materials, notification of property owners where these materials are placed and establishes a public participation process. The proposed rule includes requirements for initial and annual certifications to the Department, and a notification to the Department for larger projects to allow for an evaluation of potential for impacts to human health or the environment. The proposed rule also allows for Department review and approval of nonstandard uses or materials where appropriate.

### **Initial Regulatory Flexibility Analysis**

Notice is hereby further given that pursuant to s. 227.114, Stats., it is anticipated that the proposed rule will have a positive economic impact on some small businesses. Specifically, those generators of industrial byproducts as well as brokers and end-users which are considered small businesses will benefit from these rules.

### **Environmental Assessment**

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

### **Hearing Information**

**March 19, 1997**  
**Wednesday**  
at 10:00 a.m.

**Memorial Union**  
**800 Langdon Street**  
**Madison**

**March 20, 1997**  
**Thursday**  
at 10:30 a.m.

**Council Chambers (Rms. 203-205)**  
**Green Bay City Hall**  
**100 N. Jefferson St.**  
**Green Bay**

**March 25, 1997**  
**Tuesday**  
at 10:00 a.m.

**Room 137B**  
**Waukesha State Office Bldg.**  
**Dept. of Transportation**  
**141 N.W. Barstow**  
**Waukesha**

**March 27, 1997**  
**Thursday**  
at 10:30 a.m.

**County Board Room (Rm. 2560)**  
**Eau Claire Co. Courthouse**  
**721 Oxford Ave.**  
**Eau Claire**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Vera Starch at (608) 267-7564 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Dennis Mack, Bureau of Waste Management, P.O. Box 7921, Madison, WI 53707 no later than **April 4, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings.

A copy of the proposed rule [SW-15-97] and fiscal estimate may be obtained from Mr. Joseph Traynor, Bureau of Waste Management, P.O. Box 7921, Madison, WI 53707.

## **Fiscal Estimate**

This rule will not have a fiscal impact on state or local governments. This rule will primarily affect private sector businesses which generate industrial byproducts. Public entities which do generate these materials have more options for the disposition of these materials, however no fees are contained in this rule. There may be some shift in Department staff workload during implementation of this rule but no changes in state appropriations or revenues are anticipated as a result of this rule.

## **Notice of Hearings**

### *Natural Resources (Environmental Protection— Water Supply, Chs. NR 800--)*

Notice is hereby given that pursuant to ss. 280.11 and 281.17(8), Stats., interpreting ss. 280.11 and 281.17(8), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 809, Wis. Adm. Code, relating to safe drinking water. The proposed revisions will update ch. NR 809 to include amendments to the federal regulations contained in 40 CFR 141, 142 and 143. The proposed revisions do not develop new rules, but clarify language and interpretation of existing rules.

Revisions to the lead and copper rule clarify monitoring, reporting and corrosion control requirements for large systems (serving 50,000 people), as opposed to requirements for medium or small-sized systems. These also allow the Department to require systems that exceed the copper action level to use public notification language as listed in s. NR 809.81(5)(eu). The portion of the rule requiring monitoring for synthetic organic and inorganic contaminants is also revised to correct typographical errors, clarify sampling requirements and update Best Available Technology (BATs) for treating maximum contaminant level (MCL) violations. These revisions are intended to simplify implementation of the regulations for the state and regulated community.

Revisions to the Analytical Methods for Drinking Water Contaminants delete outdated methods, promulgate use of several new analytical methods, and update versions of previously approved methods for several regulated contaminants.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

**March 11, 1997**  
**Tuesday**  
**at 9:00 a.m.**

**Room 021, GEF #2**  
**101 S. Webster St.**  
**Madison**

**March 13, 1997**  
**Thursday**  
**at 1:00 p.m.**

**Conference Room D**  
**Portage Co. Courthouse**  
**1516 Church St.**  
**Stevens Point**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Please call Mark Nelson at (608) 267-4230 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Mark Nelson, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 no later than **March 24, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [DG-6-97] and fiscal estimate may be obtained from Mr. Nelson.

### **Fiscal Estimate**

No fiscal effect.

## **Notice of Hearing**

### *Public Service Commission*

The Public Service Commission of Wisconsin (Commission) proposes to create rules for certification and regulation of telecommunications resellers, including those providing alternative operator services. The scope of this proceeding embraces the identification of providers requiring certification, permissible activities under a reseller certification and services authorized for resale. This rulemaking proceeding also covers the establishment of rules for basic consumer protection, assessment of resellers, and the expiration, renewal, revocation and surrender of certification.

On March 22, 1995, the Commission issued its initial Notice of Investigation and Hearing respecting a proposed order to create rules regarding telecommunications resellers. Hearing was held on May 25, 1995, in which testimony was presented by staff. After the hearing, written comments were received from various parties up through the comment deadline of June 5, 1995.

While revisions in light of the comments were pending, Congress enacted the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (to be codified in 47 U.S.C. §§ 151 *et. seq.*) (1996 Act). In addition, the Commission completed the initial phase of its investigation into the development of competition in local exchange markets in docket 05-TI-138, and issued orders necessary for the implementation of the 1996 Act in Wisconsin in docket 05-TI-140. In August 1996, the Federal Communications Commission (FCC) issued its Interconnection Order, dealing with, among several matters, the resale of local exchange network components.

On November 11, 1996, the Commission issued a Notice of Further Hearing in light of numerous comments filed in 1995, and the enactment of federal legislation. The further hearing was held on November 21, 1996, and a number of written comments were received thereafter. In addition, since the filing of further comments, staff became aware of a need to address the issue of assessing telecommunications resellers. The issue had not been raised in prior drafts and no comments were filed on the issue. In view of the further comments, and the substantial nature of the issue of assessments, the Commission believes it appropriate to conduct further formal rulemaking hearing on the total package of revised rules.

### **Hearing Information**

Notice is hereby given that the Commission will hold a public hearing on the revised proposed rules commencing at **1:30 p.m. on March 13, 1997, in the Amnicon Falls Hearing Room (Room 1300), in the offices of the Public Service Commission, 610 North Whitney Way, Madison, Wisconsin**, and continuing thereafter at such times and in such places as the hearing examiner may order. The building is accessible to people using wheelchairs through the main floor entrance in the front of the building. Parking is available by the front entrance. Any party with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267-9766.

Notice is further given that anyone unable to attend the hearing may submit written comments on the revised proposed rules. The hearing record will be open for written comments from the public before the public hearing and through **March 24, 1997 (March 21, 1997, if filed by fax)**. Written comments should be addressed to Lynda L. Dorr, Secretary to the Commission, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI



53707-7854, and include reference to docket 1-AC-158. Industry parties should submit an original and 15 copies. Members of the general public need only file an original. Fax filing cover sheets must state "Official Filing," the docket number, and the number of pages (limit 20 pages). **Do not** file by more than one mode (i.e., by fax, mail, or hand delivery).

If there are any questions regarding this hearing, please contact Ann Pfeifer, Administrator, Examining Division, at (608) 266-5473. Other questions on the matter may be directed to Michael Varda, Legal Counsel, Telecommunications Division, at (608) 267-3591.

### **Analysis prepared by the Public Service Commission Of Wisconsin**

Statutory Authority: ss. 196.02(1) and (3), 227.11

Statutes Interpreted: ss. 196.01(1d)(c), 196.01(9), 196.203

### **Introductory Clause**

Pursuant to 1993 Wis. Act 496 (Act 496), effective September 1, 1994, the level of regulation for telecommunications resellers was modified. Statutory changes in the Communications Act of 1934, 47 U.S.C. § 151 *et. seq.*, created by the Telecommunications Act of 1996, prohibit local exchange carriers from unreasonably restricting the resale of their services. 47 U.S.C. § 251(b)(1). In addition, certain incumbent local exchange carriers are required to offer their services for resale at wholesale rates, and with certain permissible limitations, may not prohibit resale, nor impose unreasonable or discriminatory conditions on resale. 47 U.S.C. § 251(c)(4).

In Act 496, the restriction on ownership, operation, management or control of transmission facilities for provision of telecommunications services by resellers contained in s. 196.01(9), Stats., was repealed. The Commission proposes permanent rules to create a maximum level of ownership or control of transmission facilities for the telecommunications reseller classification, to request revenue information for universal service fund, telephone relay and other assessment purposes, to identify the entities that must observe the described certification procedures, to identify, with any relevant terms and conditions, the services available for resale, to impose minimum service and consumer protections, and to prescribe procedures for the expiration, revocation and surrender of reseller certifications. The proposed rules now consider alternative operator services a part of reselling activities for which reseller certification is appropriate upon a statement by a petitioning entity that it intends to provide such services. With the need to make other amendments in light of both the state and the federal legislation, the Commission proposes to repeal and recreate all of ch. PSC 168.

### **Plain Language Analysis**

Resellers provide telecommunications services primarily by reselling the transport capacity of facilities-based providers. They acquire the transmission capacity through contract commitments that typically involve reduced rates for extended volume or term commitments. Resale is an element of telecommunications marketing that may be engaged in by telecommunications utilities and telecommunications carriers, even though those entities are not specifically certified as alternative telecommunications utility resellers. Resellers may, in turn, resell their contract-committed capacities at wholesale to other resellers, or at retail to end-users such as small businesses and residential users. The chain of resale activity may involve many intermediaries, some of whom may be able to change the price, and others who are merely agents or employees used strictly to sell services.

The rules also address the provision of alternative operator services. In order to provide complete services, numerous resellers also provide operator services of their own or from third-party sources other than the major telecommunications utilities and carriers. In addition, in their arrangements with premises owners, pay telephone providers will often expand their services by including their own choices for a pay telephone's presubscribed long distance carrier and operator service provider. In the past, the Commission has certified these operator service providers as resellers due to the fact

that alternative operator services are, in almost all cases, provided in conjunction with telecommunications reseller services. The proposed rules continue the practice; however, the proposed rules also set forth specific requirements for operator services. While alternative operator service providers are in a competitive market, they also provide service as a "locational monopoly." The average customer frequently does not have a meaningful choice when using the services of one of these providers because the operator services are provided at locations such as hotels, motels, or pay telephones.

The proposed rules reflect the foregoing elements of telecommunications resale and the Commission's experience with resale and the 1996 Act. The certification process is designed to reduce barriers to entry, and the regulations and statutes applied that govern resellers operations are designed to promote consumer protection consistent with maximum reliance upon competition.

Proposed s. PSC 168.03 specifies the services available for resale, related terms and conditions respecting special situations such as market trials and promotions, and procedures for examining resale restrictions. These provisions affect all entities engaged in resale including telecommunications utilities and carriers.

Those subject to certification in order to engage in resale, and those entities that are exempt from certification, are described in proposed s. PSC 168.04. Proposed s. PSC 168.05, describes the permissible activities of an alternative telecommunications utility reseller certified under ch. PSC 168, and the voiding effect on contracts if a reseller lacks proper certification. Importantly, to meaningfully define this category of provider under ch. 196, Stats., ownership and control of substantial amounts of transmission facilities are prescribed.

Certification under proposed s. PSC 168.06 involves the filing of a petition with required information and the requisite fee. Act 496 abolished the notice requirement and authorized the Commission to establish an application fee schedule. These statutory changes are reflected in proposed s. PSC 168.08 and 168.06, respectively. A certificate expires each year, but is automatically extended if the certificate holder timely files its annual report and submits any required filing fee. Under proposed s. PSC 168.09, a certificated reseller must comply with the certain provisions of ch. 196, Stats. If the reseller's gross operating revenues exceed a certain threshold, the reseller becomes subject to assessment for telephone relay service under s. 196.858, Stats., and regulatory costs of the Commission and the Department of Justice telecommunications advocate under s. 196.85, Stats.

Proposed s. PSC 168.10 and 168.11 establish certain consumer protection provisions. The former provision specifies certain minimum identification and complaint handling processes, including certain requirements for operator service providers. The latter provision retains present rate ceilings on calls handled by resellers certified under ch. PSC 168, but adjusts the ceiling upward and simplifies its calculation. Proposed ss. PSC 168.12 and 168.13 set forth, respectively, the annual report requirement and the procedures and grounds for involuntary revocation of certification. A reseller may also voluntarily surrender certification under the process set forth in proposed s. PSC 168.14.

### **Initial Regulatory Flexibility Analysis**

Since most small, switchless resellers have annual revenues exceeding \$2,500,000, these rules will have no effect on small businesses as defined in s. 227.114(1)(a), Stats. To the extent that the rules may affect small telecommunications utilities, such impacts cannot otherwise be diminished or eliminated without negating the purposes of Act 496, or contravening provisions of the federal Telecommunications Act of 1996 and implementing orders of the Federal Communications Commission.

### **Fiscal Estimate**

Although these rules establish a fee to accompany petitions for certification, an annual fee for smaller resellers, and a provision for assessment, there is no increase in revenue to the agency. Instead, there will be a decrease in the remainder assessment billed to other utilities. The rules will have no fiscal impact on any other state or local units of government.

## Environmental Analysis

This action is not expected to result in significant environmental impacts according to s. PSC 4.10(3), Wis. Adm. Code. Furthermore, since no unusual circumstances have come to the attention of the Commission which indicate that significant environmental consequences are likely, neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

## Text of Rule

SECTION 1. PSC 168 is repealed and recreated to read:

### Chapter PSC 168 TELECOMMUNICATIONS RESELLERS AND REALE

**PSC 168.01 PURPOSE.** (1) The purpose of this chapter is to set forth the regulation of resellers and resale, to identify those entities that are telecommunications providers that must be certified as resellers under s. 196.01 (1d) (c), Stats., and to state the requirements for consideration of petitions from telecommunications providers requesting certification as alternative telecommunications utility resellers. Regulations regarding the provision of operator services by telecommunications resellers and providers of private pay telephone services are specified. This chapter also describes the telecommunications services of telecommunications utilities that are available for resale, those services that are not available for resale, and sets forth procedures for petitioning to add or remove a service from those available for resale, or to impose, remove, or modify any restriction or condition affecting the resale of a specific telecommunications service offered by a telecommunications utility. This chapter addresses neither the right of, nor the manner in which, a telecommunications utility may petition for exemption, suspension, or modification of the duty to resell as addressed in s. 196.219 (2), Stats., or 47 U.S.C. § 251 (f) (2).

(2) Except as specified in ss. PSC 168.02 (12) and 168.03, this chapter does not apply to telecommunications utilities or telecommunications carriers.

(3) Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

**PSC 168.02 DEFINITIONS.** In this chapter:

(1) "Alternative telecommunications utility" has the meaning given in s. 196.01 (1d), Stats.

(2) "Alternative telecommunications utility reseller" means that category of telecommunications provider referred to s. 196.01 (1d) (c), Stats.

(3) "Collect calls" are calls paid for by the party receiving the call where the receiving party does not have a standing arrangement for reversed charge calling.

(4) "Control of transmission facilities" includes leasing transmission facilities, but does not include the use of transmission facilities obtained pursuant to tariff filed under any provision of ch. 196, Stats., or an agreement under 47 U.S.C. § 252 approved by the commission.

**Note:** "Dark fiber" leases or rental agreements that identify specific facilities constitute control of transmission facilities. In contrast, however, a long-term subscription to, or putative "lease" of, a transmission service, e.g., a "lease" of DS-3 transmission capacity, does not constitute control of transmission facilities, even though the nature of the service is largely defined by reference to the principal facility involved.

(5) "Customer dialed calling card calls" are calls which are dialed by the customer, and for which the customer enters a calling card number directly, without operator intervention.

(6) "Holding company" has the meaning given in s. 196.795 (1) (h), Stats., but shall include any company which owns, operates, manages or controls a telecommunications utility.

(7) "Holding company system" has the meaning given in s. 196.795 (1) (i), Stats., but shall include a telecommunications utility as a public utility.

(8) "Operator assisted calling card calls" are calls which are dialed by the customer and paid for with a calling card, but which require operator intervention.

(9) "Pay telephone service provider" means a person who owns or leases a pay telephone located on property owned or leased by that person and telecommunications providers furnishing customer-owned, coin-operated telephones, also commonly known as "COCOTs" or COCOT providers, but does not include telecommunications utilities or telecommunications carriers.

(10) "Person to person calls" are calls in which the calling party requests to speak to a particular person, and the call is put through only if that person comes to the phone.

(11) "Telecommunications provider" has the meaning given in s. 196.01 (8p), Stats.

(12) "Telecommunications reseller" or "reseller" means a telecommunications provider that resells message or wide-area telecommunications services or other telecommunications services approved for resale pursuant to this chapter or commission order, and includes the following:

(a) Alternative telecommunications utility resellers.

(b) Alternative telecommunications utilities authorized to engage in resale.

(c) Pay telephone service providers, as defined in sub. (8), that provide operator services, resale of telecommunications services, or both.

(d) For purposes of s. PSC 168.03 only, telecommunications utilities certificated pursuant to s. 196.50 (2), Stats., and telecommunications carriers, when engaged in reselling services of another telecommunications provider.

(13) "Telecommunications service," for purposes of this chapter, means a telecommunications service, as defined in s. 196.01 (9m), Stats., that must be offered in a tariff pursuant to state or federal statute, or a rule or order of the commission or the federal communications commission.

(14) "0" or "0-" or "0 minus" call means a call for which the caller only dials "0," and does not dial additional digits.

(15) "0+" or "0 plus" call means a call for which the caller dials "0" and additional digits such as on a calling card call when the caller dials "0" and then the telephone number.

**PSC 168.03 SERVICES AVAILABLE FOR REALE.** (1) Whether offered at wholesale, retail, or both, all telecommunications services of telecommunications utilities and of alternative telecommunications utilities that are required to allow resale by commission rule or order, are approved for resale by resellers, except the following:

(a) Trunks for 911 and E911 service.

(b) Telephone relay services.

(c) Multi-party services.

(d) Telecommunications services offered in a market trial. A "market trial" is an offering of a new service for technical or market feasibility testing for a period not exceeding one year, and is offered only to a small subgroup of all intended customers.

(e) Telecommunications services offered in a promotion. A "promotion" is a temporary price discount or other incentive offered to customers for up to 90 days for the purpose of encouraging the purchase of new or additional telecommunications services.

(f) Telecommunications services offered at a discount to public institutions providing educational, library and medical services, as defined in 47 U.S.C. § 254 and any rules of the commission or federal communications commission implementing that statute.

(g) Telecommunications services that have been grandfathered, unless the services are resold to customers that are eligible for the grandfathered services. In such cases, the reseller shall be charged no more than the grandfathered price, less any applicable wholesale discount and any other discounts, such as for volume or term, for which the reseller qualifies.

(2) Where prices for residential services are set below those for similar business services, services bought at residential rates may not be resold to business customers.

(3) Except for the services identified in sub. (1), a service is available for resale only according to the terms and conditions, if any, in a commission order that approves the service for resale by resellers. A reseller, a telecommunications provider, or other interested person may also petition the commission for an order approving for resale any intrastate telecommunications service not identified in sub. (1), or for a determination under 47 U.S.C. § 251 as to whether a restriction or condition on resale of any service provided by a telecommunications utility or an alternative telecommunications utility should be removed or imposed. If the commission determines that the petition is consistent with the purposes of this chapter and the public interest, the commission may adopt an order to approve, condition or restrict the resale of a service, or to remove a resale restriction, to protect or promote the public interest.

(4) The ownership or management of a private shared telecommunications system, as defined in s. 196.201 (1), Stats., by itself does not constitute resale of telecommunications services for purposes of this chapter, provided the resold services are furnished only to retail end-user customers at a discrete premises, such as a building complex or multi-tenant office building, served by the private shared telecommunications system.

**PSC 168.04 PROVIDERS SUBJECT TO RESELLER CERTIFICATION.**

(1) Any entity offering resold telecommunications services is a reseller requiring certification under this chapter, unless it possesses or obtains commission certification as another type of telecommunications provider, or is an exempt entity under sub. (2).

(2) An entity that otherwise must be certified under sub. (1) need not obtain certification under this chapter if the entity, as a whole, is one or more of the following:

(a) A marketing agent or employee that has no discretion with respect to the prices, discounts, terms or conditions of the resale of any telecommunications service.

(b) A broker, acting as an intermediary, that assists end-user customers to obtain services directly from underlying providers at rates, terms and conditions that the customers could normally obtain on their own.

(c) A wholly owned subsidiary that is doing business in Wisconsin and is owned by a reseller previously certificated under this chapter, if the owning reseller notifies the commission in writing that it desires to extend its authorization to the subsidiary and will consolidate all requested or reportable revenue and service information of the subsidiary in its own responses or reports when complying with the information filing requirements of this chapter and ch. PSC 160, governing the Wisconsin Universal Service Fund. Upon receipt of a notice under this paragraph, the commission will treat the owning and subsidiary entities as a single certificated entity for all purposes under this chapter.

(d) A vendor of prepaid calling cards, provided that another telecommunications provider certificated by this commission supplies the underlying telecommunications services for the prepaid cards and that the viability of the prepaid cards does not depend on actions of the vendor.

(e) A member of a definable class or type of reseller that the commission by order under this subsection has excluded from those resellers requiring certification under this chapter.

(f) Exempt from commission resale regulation under s. 196.202, Stats., a federal statute, or a federal communications commission rule or order.

**Note:** Under this paragraph, cellular mobile radio telecommunications utilities exempted from commission regulation under s. 196.202, Stats., are not required to obtain certification to resell telecommunications services obtained from other providers.

**PSC 168.05 QUALIFYING PROVIDERS.** (1) A telecommunications provider that is certified as a

telecommunications reseller under s. PSC 168.06 is authorized to do the following:

(a) Resell services approved for resale by the commission, as set forth in s. PSC 168.03, and purchase and use access services from telecommunications providers.

(b) Own, operate, manage or control switches, processors, routers, and other equipment customarily found in a telecommunications utility switching office or wire center.

(c) Provide operator services, subject to the rules in s. PSC 168.11.

(d) Own, operate, manage or control, in Wisconsin, transmission facilities, including wire, cable, fiber optics or radio, and associated electronics, whose cost basis, including capital leases as defined by generally accepted accounting principles, does not exceed \$250,000 or 25 percent of the gross assets of the reseller in Wisconsin, whichever is greater. The requirements of this paragraph shall be determined for the reseller as of the date of its application for certification and as of December 31 of each calendar year, based upon annual reports filed pursuant to s. PSC 168.12.

(2) Upon a petition from a reseller, or the commission's own motion, the commission may, after investigation, notice and opportunity for hearing, exempt the reseller from sub. (1) (d), or reclassify the reseller as another type of telecommunications provider. When considering exempting or reclassifying a reseller, the commission may grant an exemption or order reclassification, with or without conditions to protect the public interest, based on the facts of the situation and any other information supplied by the provider.

**PSC 168.06 PETITION; CERTIFICATION.** (1) A telecommunications provider that must be certified as a telecommunications reseller under this chapter, may not resell intrastate telecommunications services in Wisconsin without receiving and maintaining certification as provided in this chapter. If a telecommunications provider fails to obtain or maintain certification as a telecommunications reseller as required under this chapter, the provider's arrangements, contracts, and billings for resold intrastate telecommunications services rendered in Wisconsin without proper certification, are void.

(2) A telecommunications reseller seeking certification as an alternative telecommunications utility shall file a petition with the commission containing the following information:

(a) The legal name, address and telephone number of the telecommunications reseller.

(b) A list of marketing, trade or other names under which the reseller intends to conduct business.

(c) The name, title, telephone number and facsimile numbers of a responsible contact person for the company.

(d) An affidavit, signed by a corporate officer authorized to bind petitioner, that demonstrates that petitioner does not own, operate, manage or control, directly or indirectly, transmission facilities with the technological capability to provide telecommunications service within Wisconsin and whose cost basis exceeds the limits specified in s. PSC 168.05 (1) (d).

(e) If the petitioner is part of a holding company system, the names of all system affiliates and a description of the nature of their affiliations with the petitioner in the holding company system.

(f) A copy of the certificate from the department of financial institutions authorizing the petitioner to transact business in Wisconsin, and petitioner's state tax number.

(g) Identification of the services and activities under s. PSC 168.05 (1) for which certification is requested. A petition may include a request for exemption under s. PSC 168.05 (2).

(h) An affidavit, signed by a corporate officer authorized to bind petitioner, that verifies that all information provided in the petition is true and correct to the best of the officer's knowledge or belief, and that the officer understands the commission's requirement that each year an annual report must be timely filed and necessary fees or assessments be paid in order to continue certification in Wisconsin.

(i) Any other information as required by the commission.

(3) An original of the petition, and such number of copies as the commission may order, shall be filed with the secretary of the commission.

**Note:** The mailing address of the commission is P.O. Box 7854, Madison, WI 53707-7854.

(4) A fee for processing shall accompany a petition. A petition without the accompanying fee will not be accepted for filing and will be returned. The commission may determine by order the amount of the fee and the permissible form or forms of fee payment, which may include use of certified check, cashier's check or money order and shall be made payable to the Public Service Commission of Wisconsin. The amount of the fee will not be returned to the petitioner if the petition is ultimately rejected by the commission.

(5) On receipt of a reseller's completed petition for certification and fee, the commission shall review the petition and conduct such additional investigation, including hearing, as may be appropriate. Upon concluding its investigation, the commission may certify the petitioner, with or without conditions, as an alternative telecommunications utility reseller, unless the commission determines that grant of the petition is not in the public interest.

**Note:** The current fee is \$250, payable in any check form or by money order. Cash is not acceptable.

**PSC 168.07 CONTINUATION OF CERTIFICATION.** (1) A certificate issued under this chapter is subject to automatic expiration if the reseller fails to file the annual report required by s. PSC 168.12, and the fee required if the certificated reseller is not subject to assessment under s. PSC 168.09 (2). The expiration of a certificate shall be effective June 1 of the year in which the required report, or any fee required by this section, was not filed by April 1, or such later date as may be ordered by the commission.

(2) A reseller not subject to assessment under s. PSC 168.09 (2) shall pay a fixed fee with the filing of the annual report. The commission by order may determine the amount of the fee and the permissible form or forms of payment. An annual report received by the commission that is not accompanied by a required fee in the proper amount or form of payment will not be considered a substantially complete annual report filing for purposes of s. PSC 168.13 (1) (a) and may be returned.

**Note:** The current fee is \$50, payable in any check form or by money order. Cash is not acceptable.

(3) A reseller issued its initial certificate under s. PSC 168.06 after January 1 and on or before April 1 shall comply with this section commencing in the succeeding calendar year.

(4) Any alternative telecommunications utility reseller holding an interim or final certificate of authority from the commission upon the effective date of this section ... [revisor inserts date] remains authorized under that certificate, subject to expiration for failure to comply with this section, or unless the certification is otherwise revoked or surrendered.

**PSC 168.08 NOTICE; LISTS.** The commission does not give notice of petitions for certification as alternative telecommunications utility resellers. A person may, however, receive a list of pending petitions for certification as alternative telecommunications utility resellers or a list of alternative telecommunications utility resellers currently authorized by the commission. A person may obtain a list by sending to the commission a written request accompanied by any required fee.

**Note:** Requests shall be addressed to Records Management, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI 53707-7854, and may be subject to a fee required by Records Management.

**PSC 168.09 COMPLIANCE WITH STATUTES.** (1) All alternative telecommunications utility resellers shall comply with the following sections of ch. 196, Stats.: ss. 196.02; 196.03 (6); 196.12; 196.14; 196.203; 196.204; 196.207 (6); 196.208; 196.209; 196.218; 196.219, excepting sub. (3) (f) and (j); 196.25; 196.26; 196.28; 196.37; 196.39; 196.395; 196.40; 196.41; 196.43; 196.44; 196.65; and 196.66, Stats.

(2) Notwithstanding sub. (1), the commission may order one or more alternative telecommunications utility resellers to comply with s. 196.219 (3) (f) and (j), Stats.

(3) Alternative telecommunications utility resellers having gross operating revenues derived from Wisconsin intrastate operations of \$200,000 or more in a calendar year shall comply with and be subject to assessment as provided in ss. 196.85 and 196.858, Stats.

(4) Alternative telecommunications utility resellers are not required to comply with the provisions of ch. 184, Stats.

(5) Alternative telecommunications utility resellers shall file with the commission pursuant to s. PSC 168.12 annual reports for Wisconsin operations.

(6) Alternative telecommunications utility resellers shall comply with ch. PSC 160.

(7) An alternative telecommunications utility reseller shall respond to any other requests for information.

(8) Alternative telecommunications utilities engaging in resale shall comply with applicable regulations and orders of this commission and the federal communications commission, including rules and orders governing the execution and alteration of customer pre-subscription agreements or arrangements.

**PSC 168.10 GENERAL REQUIREMENTS.** (1) An alternative telecommunications utility reseller certified under this chapter shall do the following:

(a) Within 20 days of the occurrence, notify the commission in writing of any change to information supplied in response to s. PSC 168.06 (2) (a), (b), or (c).

(b) In all advertising, solicitations, and consumer billings, clearly identify itself with one of the marketing, trade or other names provided in compliance with s. PSC 168.06 (2) (a) and (b).

(c) Provide its consumers a non-charge number for service inquiries and furnish adequate staff to receive communications, answer questions, investigate complaints, and resolve disputes. Unless there are extenuating circumstances, the reseller, within 10 business days, shall investigate a complaint and inform the complaining consumer of the results of the investigation.

(d) Respond to commission requests to investigate complaints to a resolution within 10 business days, unless the commission has determined an extension is warranted because exceptional circumstances exist.

(2) If an alternative telecommunications utility reseller provides operator service, it shall in addition to the requirements of sub. (1):

(a) If providing operator service to hotels, motels, other hospitality entities, and payphones, ensure that those entities display information about its operator services and rates at each telephone where "0+" calls are routed to the provider.

(b) Ensure that its operators promptly identify the provider to callers before handling calls and ensure that operators for the provider quote rates upon customer request.

(c) Upon receipt of any emergency telephone call for police, fire, or medical services, ensure immediate connection of the call to the appropriate emergency service for the reported location of the emergency, if known, or if not known, for the originating location of the call. If a provider is technically unable to divert an emergency telephone call as prescribed in this subsection, the provider shall divert to its system only those calls where the customer dials additional digits within five seconds of dialing the "0" digit. All other "0" calls ("0-" or "0 minus" calls) shall be diverted to the appropriate local exchange operator.

**PSC 168.11 RATE CEILINGS ON OPERATOR AND CALLING CARD CALLS.** (1) A telecommunications reseller shall not charge a customer more than the rate ceilings for any of the calls listed in sub. (5).

(2) A single set of rate ceilings shall apply to both intrastate interLATA and intraLATA calls. These rate ceilings shall be calculated from time to time using the highest rates filed by either the largest telecommunications provider in the interLATA market or the largest telecommunications provider in the intraLATA market, whichever is higher, and rounding up the combined surcharge and

initial minute rates to the nearest \$.25 and the subsequent minute rates to the nearest \$.05. The largest telecommunications provider shall be determined by gross operating revenues derived from intrastate operations as computable for purposes of assessment under s. 196.85 (2), Stats. The commission shall from time to time determine by order the largest provider for purposes of this section.

(3) Telecommunications resellers may impose any additional type of fixed charge, such as a premises fee, but the total amount charged to a customer for the initial minute shall not exceed the combined surcharge and initial minute rate ceiling.

(4) Telecommunications resellers may charge no more than the subsequent minute rate ceiling for each additional minute of a call after the initial minute.

(5) Separate rate ceilings shall apply for each of the following types of calls:

- (a) Customer dialed calling card calls.
- (b) Operator assisted calling card calls.
- (c) Collect calls and calls billed to a third party number.
- (d) Person to person calls.

(6) The commission shall recalculate the rate ceilings as necessary. The commission shall maintain a list of the current rate limits, which will be available on request.

*Note:* [Following example will be made more current at time of publication.] Rate ceilings were calculated as of November 1, 1996, from the tariffs of AT&T Communications of Wisconsin, Inc., as those tariffs had the highest rates for the types of calls listed in the rule. For customer dialed calling card calls, the initial minute shall not exceed \$1.50 and each subsequent minute shall not exceed \$.30. For operator assisted calling card calls the initial minute shall not exceed \$2.75 and each subsequent minute shall not exceed \$.30. For collect and third party calls the initial minute shall not exceed \$2.75 and each subsequent minute shall not exceed \$.30. For person to person calls the initial minute shall not exceed \$5.50 and each subsequent minute shall not exceed \$.30. Statements of the current telecommunications provider source tariffs and calculated rate ceilings may be obtained from the Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI 53707-7854.

**PSC 168.12 REPORTS AND REQUESTS FOR INFORMATION.** (1) Each reseller shall file with the commission by April 1 of each year an annual report providing details concerning the following:

(a) All changes in information filed with the reseller's petition requesting certification as an alternative telecommunications utility.

(b) Adoption of other business or "doing business as" names.

(c) Acquisition of transmission facilities resulting in the telecommunications reseller owning, operating, managing or controlling transmission facilities whose cost basis exceeds the maximum specified in s. PSC 168.05 (1) (d).

(d) Total gross operating revenues generated by the provision of intrastate Wisconsin telecommunications services, apportioned between wholesale and retail revenues. "Retail revenues" means only those revenues derived from services sold directly to retail end-user customers. "Wholesale revenues" means only those revenues from telecommunications services sold to other telecommunications providers.

(e) Intrastate minutes of use of telecommunications services provided by the reseller, number of Wisconsin wholesale customers and number of Wisconsin retail customers served by the reseller.

(f) The cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin.

(2) Each reseller shall respond to any other requests for information. The form designated by the commission for a request for confidential treatment of information shall accompany any confidential information filed.

*Note:* Copies of the annual report form to be filed by telecommunications resellers and Form PSC-RM 7000 to request confidential treatment may be obtained from the Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI 53707-7854.

**PSC 168.13 REVOCATION OF CERTIFICATION.** (1) Certification of a reseller may be revoked under the procedure in sub. (2) for any of the following reasons:

(a) Failure to file a substantially complete annual report required by s. PSC 168.12.

(b) Failure to comply with any applicable provision of this chapter or of ch. 196, Stats.

(c) Failure to provide Wisconsin intrastate telecommunications service consistent with the provisions of s. 196.03 (6) or s. 196.203 (3) (a), Stats., applicable provisions of 47 U.S.C. §§ 151 - 613, or applicable rules and orders of the federal communications commission, including those relating to unauthorized changes of presubscribed providers, also known as "slamming."

(d) Failure to file reports or responses to requests for information, as may be required by the commission.

(e) Failure to comply with any other order or rule of the commission that is applicable to the reseller.

(2) If the commission has determined that grounds for revocation exist, the commission may commence a revocation proceeding by mailing to the affected reseller, at its last known address on file with the commission, a written notice of the reasons for the proposed revocation of certification under this section. Within 30 days of the mailing date of said notice, a reseller may file a written petition for continued certification. The petition shall contain a statement of any corrective action taken and state whether a hearing is requested or waived. Depending upon the information received, the commission may determine that the grounds for revocation have been remedied, proceed to revoke the reseller's certificate, or take other action as may be appropriate in the circumstances. Failure of a reseller to respond under this subsection shall result in revocation of certification without hearing.

(3) If the commission revokes the certificate of an alternative telecommunications utility reseller, the commission in the revocation order may direct that telecommunications utilities providing service to the reseller terminate all connections used to furnish service to the reseller. The commission may also allocate to other providers of similar services those customers of the affected reseller who fail to select a replacement provider or providers, as appropriate.

(4) With respect to a revocation proceeding under this section, the commission, upon its own motion or petition by any interested person, may at any time enter an emergency or other order that, under the circumstances, it deems necessary to protect the reseller's customers or the public interest.

**PSC 168.14 VOLUNTARY SURRENDER OF CERTIFICATION.** (1) A reseller may file at any time a notice of voluntary surrender of certification to be effective 20 days after the filing. A notice will be deemed effective unless the commission acts to stay the surrender notice's effective date within 20 days of filing. Once a notice of voluntary surrender is effective, the reseller must cease providing resold intrastate telecommunications services within Wisconsin. Unless other provisions are made by commission order, voluntary surrender of certification does not terminate a reseller's obligation to comply with any outstanding commission order, requests for information, and required reports, or to comply with any other requirements accruing because of its certificated operations in Wisconsin prior to the effective date of surrender of certification.

(2) A reseller that has surrendered its certification may petition again for certification at any time. The petition will be processed as a petition for initial certification and will be subject to the same fee as an initial petition.

(3) With respect to the voluntary surrender of certification under this section, the commission, upon its own motion or petition by any interested person, may at any time enter any emergency or other order that, under the circumstances, it deems necessary for the protection of the reseller's customers or the public interest.

## Notice of Hearing

### Revenue

Notice is hereby given that pursuant to ss. 70.32 (2) (c) 1 and 70.32 (2r) (b) (intro), Stats., and 1995 Wis. Act 27, s. 9148 (1x), and interpreting ss. 70.05 (5), 70.32 (2), 70.32 (2r) (b) and (c), 70.57 (3), Stats., and 1995 Wis. Act 27, s. 9148 (1x), the State of Wisconsin Department of Revenue will hold a public hearing, at the time and place indicated below, to consider the proposed rule relating to the assessment of agricultural land.

### Hearing Information

March 17, 1997  
Monday  
Commencing  
at 1:30 p.m.

Room 207  
General Executive Facility # 3  
125 South Webster St.  
MADISON, WI

### Analysis by the Wisconsin Dept. of Revenue

*Statutory authority:* ss. 70.32 (2) (c) 1 and 70.32 (2r) (b) (intro), Stats., and 1995 Wis. Act 27, s. 9148 (1x)

*Statutes interpreted:* ss. 70.05 (5), 70.32 (2), 70.32 (2r) (b) and (c), 70.57 (3), Stats., and 1995 Wis. Act 27, s. 9148 (1x)

The rule provides definitions needed to implement use value assessment of agricultural land. The rule requires the assessor to record the category of agricultural land, by acreage, for each legal description that contains a parcel of agricultural land. Categories of agricultural land include first grade tillable cropland, second grade tillable cropland, third grade tillable cropland, pasture, and specialty land.

Beginning in 1997 and each year thereafter, the Farmland Advisory Council and the Department of Revenue shall determine the net rental income per acre by category of agricultural land for each municipality by subtracting average total production cost per acre from gross income per acre. Use value per acre for each category of agricultural land in each municipality shall be calculated by dividing the net rental income per acre by the capitalization rate for that municipality. Not later than January 1, 1998, and each January 1 thereafter, the Department shall provide assessors with the use value per acre for each category of agricultural land in each municipality, to be used for assessing agricultural land. The use value per acre for each category of agricultural land in each municipality shall be published annually in the Wisconsin Property Assessment Manual.

The assessor shall determine the use value of each parcel of agricultural land based on the use values per acre provided by the Department, which may be adjusted by the assessor to reflect more accurately the use value of that parcel of agricultural land.

The rule provides for transition from the current, frozen assessments of agricultural land to assessments based on use value. Each year from 1998 to 2007, the assessed value of each parcel of agricultural land will be adjusted by an amount based on the number of years the parcel has been assessed under subchapter II of this rule and the difference between the 1996 assessment and the then-current use value. In 2008 and thereafter, the assessed value of each parcel of agricultural land is its use value. Property classified "Other" is assessed under s. 70.32 (1), Stats.

### Initial Regulatory Flexibility Analysis

The rule is not expected to directly affect small business and, therefore, under s. 227.114 (8) (b), a regulatory flexibility analysis is not required.

### Fiscal Estimate

Prior to 1996, agricultural land was assessed at market value. Under current law, the 1996 and 1997 assessments of agricultural land are frozen at their 1995 assessments and, beginning in 1998, assessments of agricultural land based on value in agricultural use will be phased in. In 2008 and thereafter, agricultural land will be assessed at use value.

The proposed rule recodifies ch. Tax 18 as subchapter I, providing for 1996 and 1997 assessments of agricultural land.

Under subchapter II of the proposed rule, the Department of Revenue will provide local assessors with recommended use values for different categories of agricultural land. Based on these values, adjusted for local conditions, assessors shall determine the use value of agricultural land. The assessed value of parcels of agricultural land is determined according to a statutory formula, based on the 1995 assessment for that parcel and its use value in the current year.

Since the taxable value of agricultural land is likely to be lower under use value assessment than under market value assessment, property taxes will be shifted from agricultural land to other classes of property, state equalization aids will be reallocated and state forestry taxes will be lower. The property tax shift will affect state costs for tax credit programs and state tax revenues. In addition, the state and municipalities will incur costs to implement the new assessment system.

#### Local Fiscal Effect

Property Tax Shifts. The equalized value of agricultural land is about \$9 billion. Assuming its use value is about \$6 billion, assessments of agricultural land will decline by about \$3 billion over the period 1998 to 2007 or by \$300 million per year. Assuming a statewide tax rate of \$23 per \$1,000 of value, an amount of property taxes that increases by \$6.9 million (\$300 million x 0.023) per year will be shifted from agricultural land to other classes of property each year from 1998 to 2007.

Administrative Costs. Property assessors will incur costs to implement the new assessment system for agricultural land. Also, the number of objections filed with Boards of Review may increase as the new system is implemented. The implementation costs of assessors and boards of review required under the new system cannot be reliably estimated.

#### State Fiscal Effect

Revenue and Expenditure Effects. The property tax shift from agricultural land to other classes of property would also affect state revenues and expenditures. The major effects are:

1. Farmland Preservation Credits will decline since claimants' property taxes will be lower and household incomes will be higher than under prior law.
2. The Farmland Tax Relief Credit of 10% on up to \$10,000 in property tax paid on agricultural land will decline as property taxes on agricultural land decline. The decline in Farmland Tax Relief Credit will increase the amount available for the lottery credit.
3. The State Forestry Tax, levied at \$0.20 per \$1,000, will be lower due to the reductions in the assessed value of agricultural land.

Administrative Costs. The Department of Revenue will have to determine agricultural land rents and capitalization rates to calculate use values of agricultural land in each municipality each year. In addition, the Department will have to update equalization databases for property reclassifications and for changes in acreages. The Department will also have to change a number of property tax reporting forms and systems. In addition, the Wisconsin Property Assessment Manual will require revision to incorporate the substance of this rule.

### Copies of Rule and Contact Person

Following the public hearing, the hearing record will remain open until **March 24, 1997**, for additional written comments.

Copies of the complete rule text and fiscal estimate are available at no charge on request from Gregory Landretti at the address listed

below. An interpreter for the hearing-impaired will be available on request for the hearing. Please make reservations for a hearing interpreter by **March 10, 1997**, either by writing:

Gregory Landretti  
Office of Assessment Practices  
Wis. Dept. of Revenue  
125 S. Webster St.  
Madison, WI 53702

by calling (608) 266-8202, or via the Office's fax telephone (608) 264-6887.

## Notice of Hearing

### Workforce Development

#### (Economic Support, Chs. DWD 11-59)

Notice is given that pursuant to ss. 49.132 (2) (b), (2r) (d), (4) (d) and (e) 2 and (5) (e), and 49.155 (5), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rule ch. DWD 56, Wis. Adm. Code, relating to the administration of child care funds and required copayments.

### Hearing Information

The public hearing is scheduled as follows:

**March 18, 1997**  
**Tuesday**  
**1:30 p.m. to**  
**3:30 p.m.**

**Room B139**  
**State Office Bldg.**  
**One West Wilson St.**  
**MADISON, WI**

*This hearing will be held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6971 or, if you are deaf or hard-of-hearing (608) 267-9880, at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.*

### Written Comments

Interested people are invited to appear at the hearing and will be afforded the opportunity of making oral presentations of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing may be submitted no later than **Tuesday, March 25, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to:

Bonnie Kendell, Division of Economic Support  
Dept. of Workforce Development  
FAX (608) 261-6968  
1 West Wilson Street  
P. O. Box 7935  
Madison, WI 53707-7935

Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

### Analysis

This rule contains a schedule of required copayments for parents who receive state child care funds. Under the schedule, a parent who receives a child care subsidy will not be required to pay more than 16% of gross income as a copayment. The copayments for licensed child care are 30% more than the copayments for certified child care.

The rule also provides that the schedule may be adjusted in the future to reflect changes in the costs or other economic factors.

### Text of Rule

**SECTION 1.** Subchapter VII of HSS 55 is renumbered ch. DWD 56.

**SECTION 2.** DWD 56.08 is created to read:

**DWD 56.08 Parent copayments.** (1) SCHEDULE. The department shall set a schedule for parent copayment responsibilities which meets the following criteria:

(a) All families will have a copayment responsibility.

(b) Copayment amounts will be based on family size, family gross income, the number of children in child care, and the type of child care selected.

(c) The initial schedule is Table DWD 56.08 (1) (c).

(2) APPLICATION. (a) This paragraph applies before the sunset of s. 49.132, Stats., takes effect in accordance with s. 49.132 (6), Stats. The copayment schedule applies to the following parents:

1. Parents who receive low-income child care funds under s. 49.132 (3) and (4), Stats.

2. Parents who receive at-risk child care funds under s. 49.132 (2m) and (2r), Stats.

3. Parents who receive child care funds as former AFDC recipients under s. 49.191 (2), Stats.

4. Parents who receive child care funds as participants in the food stamp employment and training program under s. 49.124, Stats.

(b) This paragraph applies upon the implementation of the Wisconsin works program under s. 49.141 (2) (b), Stats. The copayment schedule applies to all parents who receive public child care funds.

(3) ADJUSTMENTS. The department may adjust the amounts in the schedule to reflect one or more of the following factors:

(a) A change in child care prices or in the rates paid by county or tribal agencies.

(b) A change in the amount of funds available for child care assistance.

(c) A change in costs due to inflation.

(d) A change in the federal poverty level.

(e) A change in economic factors affecting the cost of child care to the state, such as an increase in the demand for subsidized child care.

### Copies of Table DWD 56.08 (1) (c)

If you would like a copy of Table DWD 56.08 (1) (c), you may contact Bonnie Kendell at the address listed earlier in this notice.

### Initial Regulatory Flexibility Analysis

S. DWD 56.08 — Relating to administration of child care funds and required copayments.

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

This rule will have little direct impact upon small child care businesses.

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

The rule is intended to make possible a streamlined statewide child care payment system which is automated to reduce small business paperwork and to require more timely payments to child care providers. A simple attendance report will be required from small child care businesses which will trigger prompt automated payments.

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

Not applicable.

### Fiscal Estimate

There is no state fiscal effect as a result of this change.

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

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

**Justice (CR 96-38):**

Ch. Jus 9 – Relating to the DNA databank.

**Transportation (CR 96-170):**

Ch. Trans 55 – Relating to the granting of state aid to airport owners.

**Transportation (CR 96-171):**

Ch. Trans 152 – Relating to the Wisconsin interstate fuel tax and the International Registration Plan.



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*ADMINISTRATIVE RULES FILED WITH THE  
REVISOR OF STATUTES BUREAU*

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

**Commerce** ([CR 95-69](#)):

An order affecting ch. ILHR 202, relating to relocation assistance.

Effective 04-01-97.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the February 28, 1997 Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

**Commerce (CR 96-63):**

An order affecting s. Comm 5.99 and ss. ILHR 51.21, 51.23 and ILHR Table 2.64-1 and chs. ILHR 82 and 84, relating to plumbing plans and adopted standards.

Part effective 01-01-97.

Part effective 03-01-97.

**Commerce (CR 96-99):**

An order affecting chs. ILHR 20 and 21 in the Uniform Dwelling Code, relating to one- and two-family dwelling construction in flood hazard zones.

Effective 03-01-97.

**Commerce (CR 96-100):**

An order affecting chs. ILHR 20 and 21 in the Uniform Dwelling Code, relating to soil erosion at one- and two-family dwelling construction sites.

Effective 03-01-97.

**Health & Family Services (CR 95-236):**

An order creating ch. HFS 89, relating to assisted living facilities.

Effective 03-01-97.

**Health & Family Services (CR 96-141):**

An order repealing s. HSS 55.63 and repealing and recreating ss. HSS 55.55 to 55.62, relating to child care certification.

Effective 03-01-97.

**Medical Examining Board (CR 92-162):**

An order affecting chs. Med 1 to 8, 19 and 20 and s. Med 14.03, relating to open book examinations on statutes and rules, examination reviews and claim of examination error, and requirements relating to licensure of applicants with disabilities.

Effective 03-01-97.

**Natural Resources (CR 96-39):**

An order affecting chs. NR 158, 700, 705, 706 and 708 and ss. NR 712.11, 716.05, 722.01, 724.01, 724.17 and 726.02, relating to hazardous substance discharge notification requirements and source confirmation.

Effective 03-01-97.

**Natural Resources (CR 96-85):**

An order affecting chs. NR 19, 21 and 22, relating to turtle harvest.

Effective 03-01-97.

**Natural Resources (CR 96-96):**

An order repealing and recreating s. NR 10.01 (1) (b) and (g) 1. a. - k., (g) 2., (g) 3., (u) 1. and (u) 2., relating to the 1996 migratory game bird season.

Effective 03-01-97.

**Revenue (CR 96-75):**

An order affecting s. Tax 11.83, relating to the Wisconsin sales and use tax treatment of motor vehicles.

Effective 03-01-97.

**Workforce Development (CR 96-140):**

An order repealing ss. HSS 55.70 to 55.77 and creating ch. DWD 56, relating to administration of child care funds.

Effective 03-01-97.

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Department of Commerce (CR 96-63)

Chs. ILHR 82 & 84 – Plumbing plans and adopted standards.

Summary of Final Regulatory Flexibility Analysis:

Section 145.02, Stats., gives the department authority to adopt rules for the design, construction, installation and inspection of plumbing. The proposed rules of Clearinghouse Rule No. 96-063 are minimum requirements to provide the needed level of safety and health, and any exceptions from compliance for small businesses would be contrary to the statutory objectives which are the basis for the rules.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Labor. No comments were received.

### 2. Department of Commerce (CR 96-99)

Chs. ILHR 20 and 21 – Floodplain construction.

Summary of Final Regulatory Flexibility Analysis:

These rules should have very little impact on small business in Wisconsin. There are no additional reporting or report preparation requirements in these rules. The only additional cost which is new to the Uniform Dwelling Code is the requirement that builders engage the services of a professional engineer or architect when building a floodproof basement or any dwelling in a coastal floodplain. However, this requirement is taken from FEMA regulations which already had to be complied with. Therefore, there should be no net impact on small businesses as a result of these rules.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Housing and the Senate Committee on Environmental Resources and Urban Affairs. No comments were received.

### 3. Department of Commerce (CR 96-100)

Chs. ILHR 20 and 21 – Soil erosion.

Summary of Final Regulatory Flexibility Analysis:

Small businesses submitted many comments during the public hearing stage of rule development. The major concern was unclear language in the current rules that led to nonuniform enforcement. The rules were revised extensively based on these comments and on subsequent meetings with the Uniform Dwelling Code Council. The only obvious cost-related issue with these rules is the requirement for using a tackifier or netting when steep slopes are seeded and mulched. The department anticipates an added cost of approximately \$200 per site for

these steep slopes. The department believes this will affect a very small portion of the total number of sites developed and further believes it is a cost-effective way to comply with s. 101.653 (2) (b), Stats., which requires additional controls on sites with slopes greater than 12%.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Housing and the Senate Committee on Labor. No comments were received.

### 4. Health & Family Services (CR 95-236)

Ch. HFS 89 – Assisted living facilities.

Summary of Final Regulatory Flexibility Analysis:

These are the first rules for a new type of regulated residential care facility for adults called an assisted living facility. An assisted living facility is a place where 5 or more adults reside which consists of independent apartments and which provides each resident with up to 28 hours of supportive, personal and nursing services per week. There are now facilities in the state that meet the definition of assisted living facility but they are regulated as community-based residential facilities under ch. HFS 83. They will likely be converted to assisted living facilities when these rules take effect, along with wings of hospitals and nursing homes and possible motels and other types of residences. In addition, some brand new facilities specifically designed as assisted living facilities are under construction. Some of the assisted living facilities will likely be operated as small businesses as defined in s. 227.114 (1) (a), Stats.

These rules are much less stringent, irrespective of facility size, than the ch. HFS 83 rules for community-based residential facilities.

At the public hearings on the proposed rules, no issues were raised by small businesses that identified the issues as concerns of small businesses.

Summary of Comments of Legislative Standing Committees:

Both the Senate Committee on Health, Human Services, Aging and Corrections and the Assembly Committee on Health held legislative public hearings on the proposed rules. Following the hearings both did committees asked the Department to make germane modifications in the rules based on testimony received at those hearings. The Department did make germane modifications in the rules and delivered a revised ch. HFS 89 with those changes to the committees on January 3, 1997. The letter of transmittal summarized the more significant of the germane modifications. These included addition of a subchapter on tenant rights, reduction in minimum size of an apartment; addition of provisions that a facility may approve an outside provider of assisted living services to a tenant and may require that the outside provider comply with established facility policies; and addition to and clarification or reasons for an assisted living facility to terminate its contract with a tenant

## 5. Health & Family Services (CR 96-141)

SS. HSS 55.55 to 55.63 – Child care certification.

### Summary of Final Regulatory Flexibility Analysis:

The revised rules modify training requirements for certified providers to make it easier for family day care providers to be regulated and receive public funds, exempt short-term child care arrangements from regulation, and include reduced paperwork and space requirements for school-age programs.

No new reports are required of certified providers, although they are expected to maintain documentation of compliance with standards.

County and tribal certifying agencies are permitted under s. 48.651 (1) (intro.), Stats., as affected by 1995 Wis. Act 27, to charge fees to day care certification and under s. 48.651 (2) (j), Stats., as created by Act 27, to charge fees to cover the costs of criminal record checks on applicants for certification. These fee-charging provisions are repeated in the rules.

On balance, the revised rules better protect the health and safety of children in the care of certified providers while only modestly increasing provider costs.

### Summary of Final Regulatory Flexibility Analysis:

No comments were received.

## 6. Medical Examining Board (CR 92-162)

Med Code – Open book examinations on statutes and rules, examination reviews and claim of examination error, administration of the SPEX examination and requirements relating to licensure of applicants with disabilities.

### Summary of Final Regulatory Flexibility Analysis:

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

### Summary of Comments:

No comments were reported.

## 7. Natural Resources (CR 96-39)

Ch. NR 706 – Hazardous substance discharge notification requirements and source confirmation.

### Summary of Final Regulatory Flexibility Analysis:

The Department does not expect any negative impact on small businesses as a result of this action. Some small businesses will benefit by reducing the number of toll-free calls that must be made to the Department to report spills because of the addition of the de minimis reporting exemptions.

### Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Senate Committee on Environmental Resources and Urban Affairs and the Assembly Committee on Natural Resources. The Assembly Committee on Natural Resources extended the review period on the proposed rule in order to meet with Department staff regarding the rule. There were no modifications requested.

## 8. Natural Resources (CR 96-85)

Ch. NR 19 Turtle harvest.

### Summary of Final Regulatory Flexibility Analysis:

The proposed rule will affect both commercial and noncommercial turtle trappers. In addition to affecting turtle harvesters, these regulations are likely to affect commercial turtle meat buyers and distributors by potentially reducing their meat volumes. One affected biological supply house stands to see an impact on business based on the reduced season and bag and possession limits.

### Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources and Urban Affairs. The Assembly Committee on Natural Resources expressed some concerns regarding the proposed rule. The Committee requested that the Department, after one “trial” season, make a presentation to update the Committee on the successes and shortcomings of the rule. The Department is also requested to modify the rule as necessary after the trial season.

## 9. Natural Resources (CR 96-96)

Ch. NR 10 – 1996 Migratory game bird season.

### Summary of Final Regulatory Flexibility Analysis:

This rule will not directly affect small businesses; therefore, a final regulatory flexibility analysis is not required.

### Summary of Comments by Legislative Review Committees:

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

## 10. Revenue (CR 96-75)

Ch. Tax 11 – Wisconsin sales and use tax treatment of motor vehicles.

### Summary of Final Regulatory Flexibility Analysis:

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

### Summary of Comments:

No comments were reported.

**11. Workforce Development (CR 96-140)**

Ch. DWD 56 – Administration of child care funds.

Summary of Final Regulatory Flexibility Analysis:

These rules have little direct impact on small businesses, since most of the rules are directed to local governments. The rules are intended to make possible a streamlined statewide child care payment system which is automated to reduce small business paperwork and to require more timely payments.

Most comments by small businesses focused on eligibility limits for families, required parent copayments, and reimbursement rates. Eligibility limits and reimbursement rates are set in statute and are beyond the scope of these rules. parent copayments are not addressed in this rule proposal.

The rules make possible a simple attendance report from small child care businesses which will trigger prompt automated payments.

No additional costs are envisioned for small businesses due to these rules. Small businesses are expected to experience reduced costs due to simplified billing processes.

Summary of Comments:

No comments were received.

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## *EXECUTIVE ORDERS*

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

**Executive Order 302.** Relating to the Creation of the Governor's Council on Model Academic Standards.

**Executive Order 303.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Late Deputy Sheriff David Demos of the Milwaukee County Sheriff's Department.

**Executive Order 304.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Late Assistant Fire Chief Robert Martinson of the Conover Township Fire Department.

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## *PUBLIC NOTICE*

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### **Public Notice** **Natural Resources** **(Environmental Protection)**

Section 144.025 (2) (b) 2. a., Stats., published November 9, 1987, requires the Department of Natural Resources to "At least annually publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following year." Pursuant to this section, the Department hereby provides notice that it intends to adopt or revise water quality criteria for the following substances:

#### Metals and Inorganics

Aluminum  
Antimony  
Arsenic  
Asbestos  
Beryllium  
Cadmium  
Chromium (+6)  
Chromium (+3)  
Copper  
Cyanides  
Fluoride  
Iron  
Lead  
Mercury  
Nickel  
Selenium  
Silver  
Thallium  
Zinc  
Ammonia  
Chloride  
Chlorine  
Phosphorus

#### Halogenated Polycyclic Aromatic Hydrocarbons

2,3,7,8-Tetrachlorodibenzofuran  
2,3,7,8-Tetrachlorodibenzo-p-dioxin  
Chloronaphthalenes Chlorinated Naphthalenes  
Chlorinated Dioxins  
Chlorinated Furans  
Chlorinated Xanthanes  
Octochlorostyrene  
Polychlorinated biphenyls

#### Pesticides

Acrolein  
Alachlor  
Aldrin  
Atrazine  
Butylate  
Chlordane  
Chlordane  
Chlorpyrifos  
DDT & metabolites  
Dieldrin  
Dimethoate  
Endosulfan  
alpha-Endosulfan

beta-Endosulfan  
Endosulfan sulfate  
Endrin  
Endrin aldehyde  
Heptachlor  
Heptachlor expoxide  
Hexachlorobutadiene  
Hexachlorocyclohexane (lindane,  
all isomers)  
Isophorone  
Malathion  
Metolachlor  
Mirex  
Parathion  
Photomirex  
Toxaphene  
Trifluralin

#### Halogenated Aliphatics

1,1,2,2-Tetrachloroethane  
1,1,1-Trichloroethane  
1,1,2-Trichloroethane  
1,1-Dichloroethane  
1,2-Dichloroethane  
1,2-Dichloroethene  
1,2-Dichloropropane  
1,3-Dichloropropane  
1,2-Trans-dichloroethene  
Bromodichloromethane  
Bromomethane  
Chloroethane  
Chloroethene (vinyl chloride)  
Dibromochloromethane  
Dichloromethane (methylene chloride)  
Halomethanes  
Hexachlorobutadiene  
Hexachlorocyclopentadiene  
Hexachloroethane  
Tetrachloroethene  
Tribromomethane  
Trichloroethene (carbon tetrachloride)  
Trichloromethane (methylene chloride)

#### Ethers

2-Chloroethyl vinyl ether  
4-Bromophenyl phenyl ether  
4-Chlorophenyl phenyl ether  
Bis(2-chloroethoxy) methane  
Bis(2-chloroethyl) ether  
Bis(2-chloroisopropyl) ether

Monocyclic Aromatics

1,2,3,4 Tetrachlorobenzene  
 1,2,4,5 Tetrachlorobenzene  
 1,2,4 Trichlorobenzene  
 1,2 Dichlorobenzene  
 1,3 Dichlorobenzene  
 1,4 Dichlorobenzene  
 2,4 Dinitrotoluene  
 2,6 DinitrotolueneBenzene  
 Chlorobenzene  
 Ethylbenzene  
 Hexachlorobenzene  
 Nitrobenzene  
 Pentachlorobenzene  
 Toluene

Phenols and Cresols

2,3,4,6-Tetrachlorophenol  
 2,4,5-Trichlorophenol  
 2,4,6-Trichlorophenol  
 2,3-Dichlorophenol  
 2,4-Dimethylphenol  
 2,5-Dichlorophenol  
 2,6-Dichlorophenol  
 2,4-Dichlorophenol  
 2-Chlorophenol  
 2-Methyl-4-Chlorophenol  
 2-Nitrophenol  
 3,4-Dichlorophenol  
 3-Chlorophenol  
 3-Methyl-4-Chlorophenol  
 3-Methyl-6-Chlorophenol  
 4-Nitrophenol  
 4,6-Dinitro-P-cresol  
 4-Chlorophenol  
 Alkyl Phenols  
 Dinitrophenols  
 2-isopropylphenol  
 3-isopropylphenol  
 4-isopropylphenol  
 2,4-diisopropylphenol  
 2,5-diisopropylphenol  
 2,6-diisopropylphenol  
 3,5-diisopropylphenol

2-methyl-5-isopropylphenol  
 2-isopropyl-5-methylphenol  
 Pentachlorophenol  
 Phenol  
 P-Chloro-m-cresol  
 Thiophenol  
 Thiocresol

Phthalate Esters

Bis(2-ethylhexyl) phthalate  
 Butyl benzyl phthalate  
 Diethyl phthalate  
 Dimethyl phthalate  
 Di-n-butyl phthalate  
 Di-n-octylphthalate

Polycyclic Aromatics

Acenaphthene  
 Acenaphthylene  
 Anthracene  
 Benzo(a) pyrene  
 Benzo(a) anthracene  
 Benzo(b) fluoranthene  
 Benzo(ghi) perylene  
 Benzo(k) fluoranthene  
 Chrysene  
 Dibenzo(a,h) anthracene  
 Fluoranthene  
 Fluorene  
 Indeno (1,2,3-cd) pyrene  
 Naphthalene  
 Phenanthrene  
 Polynuclear aromatic hydrocarbons  
 Pyrene

Nitrosamines and Miscellaneous Compounds

1,2-Diphenylhydrazine  
 3,3'-Dichlorobenzidine  
 Acrylonitrile  
 Benzidine  
 Dimethyl nitrosamine  
 Diphenyl nitrosamine  
 Di-n-propyl nitrosamine

The Department also intends to review water quality criteria for the following: fecal coliform or other indicator bacteria; dissolved oxygen; pH; and temperature.





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