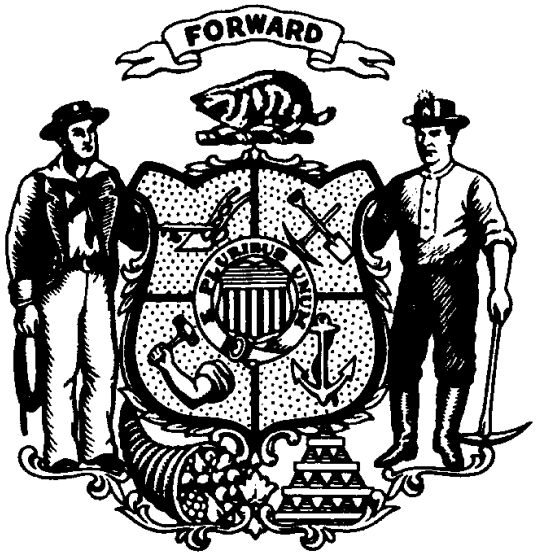
WISCONSIN ADMINISTRATIVE REGISTER

No. 495



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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

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
Extension Through: May 6, 1997

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 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: May 10, 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
Hearing Date: April 8, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services
(Health, Chs. HSS 110––)

1. 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**

2. Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

Finding of Emergency

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

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, 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. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead– based paint. When lead–based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead–safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead–based paint and lead– contaminated dust and soil.

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. 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 created 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. Rules were needed to meet eligibility requirements for a $6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employes who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state–accredited training courses and state–certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection,

a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead–based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over $6.5 million. The grants require that money be disbursed only for lead–based paint activities performed by state–certified persons who have completed state– accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1 997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD–funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

Publication Date: **February 18, 1997**
Effective Date: **February 18, 1997**
Expiration Date: **July 18, 1997**
Hearing Date: **March 18, 1997**

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**
Extension Through: **April 28, 1997**

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
Extension Through: April 28, 1997

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

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

EMERGENCY RULES NOW IN EFFECT

Public Instruction

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

Finding of Emergency

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

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996–97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to

implement the provisions under the Act through the end of the 1996–97 school year. Permanent rules will be developed when judicial review is finalized.

Publication Date: February 19, 1997
Effective Date: February 19, 1997
Expiration Date: July 19, 1997
Hearing Date: April 1, 1997

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. Therefor, 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

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11–59)

1. 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

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W–2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W–2 offers participants the opportunity to move into the work world and become self–sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W–2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W–2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W–2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W–2 no sooner than July 1, 1996 and must fully implement the W–2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV–A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self–sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104–193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W–2 health plan. Therefore, W–2 participants who meet the July 16, 1996, AFDC eligibility

requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101–108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W–2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self–sufficient through employment. The W–2 program provides cash benefits only for those individuals who participate in W–2 employment and training activities. W–2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W–2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self–sufficiency plan and determine their place on the W–2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self–sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of $555 and individuals placed in a transitional placement will receive a monthly benefit of $518. W–2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W–2 employment position. The W–2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W–2 employment position or child care, time–limited benefits for participants in W–2 employment positions, good cause for failure or refusal to participate in W–2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W–2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W–2 employment position participants.

Publication Date: **March 1, 1997**
Effective Date: **March 1, 1997**
Expiration Date: **July 29, 1997**

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 employes 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 employes 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**
Extension Through: **April 28, 1997**

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**
Hearing Date: **March 31, 1997**

STATEMENTS OF SCOPE OF PROPOSED RULES

Employe Trust Funds

Subject:

Ch. ETF 41 – Relating to long–term care insurance.

Description of policy issues:

1) Objectives of the rule:

The rules provide standards for optional long–term care policies under s. 40.55, Stats., which may be offered to state employes and annuitants. These standards are in addition to the minimum standards established by the Office of the Commissioner of Insurance (OCI) for long–term care policies sold in Wisconsin. The objective of this modification is to provide more clear guidelines to insurers and the public.

2) Policy analysis:

The current long–termcare rules were adopted in 1991. Since that time, several changes have been made to the minimum standards promulgated by OCI. As a result, certain provisions of ch. ETF 41 need to be modified or repealed to be consistent with the OCI provisions. For example, ETF rules allow insurers to make payment decisions based on medical necessity. This is no longer allowed by OCI rule.

The Department may also consider changes designed to allow greater flexibility to insurers who develop policies to meet the standards. For example, current policies must meet one of three inflation protection standards required by the ETF rule. These may be modified to allow for a greater degree of choice by insurers.

3) Policy alternatives to the Proposed Rule:

Do not amend the rule. Since the statute provides that all policies offered must first meet the OCI requirements, any standard in OCI rule will take precedence over the ETF rule.

Statutory authority for rule–making:

Sections 40.03 (2) (i) and (t) and 40.08 (8) (a) 1. and 3., Stats.

Staff time required:

The Department estimates that state employes will spend 80 hours to develop this rule.

Insurance, Commissioner of

Subject:

SS. Ins 2.14 and 2.16 – Relating to life insurance solicitation and advertising.

Description of policy issues:

a) A statement of the objective of theproposed rule:

To interpret ss. 601.01 (2) and (3), 628.34 and 628.38, Stats. To amend ss. Ins 2.14 and 2.16, Wis. Adm. Code, to be consistent with the requirements proposed by s. Ins 2.17, Wis. Adm. Code.

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

Section Ins 2.14 (4), Wis. Adm. Code, regarding life insurance solicitation currently contains requirements which contradict the requirements proposed under s. Ins 2.17, Wis. Adm. Code. Additionally, the Buyer's Guide to Life Insurance shown in Appendix I of s. Ins 2.14 will need to be revised to account for changes included in the National Association of Insurance Commissioners' (NAIC) most recent version of their publication entitled "Life Insurance Buyer's Guide", which takes into consideration the requirements proposed under s. Ins 2.17, Wis. Adm. Code.

Section Ins 2.16, Wis. Adm. Code, regarding life insurance advertising currently contains requirements and definitions which contradict requirements and definitions proposed under s. Ins 2.17, Wis. Adm. Code.

Statutory authority for the rule:

Sections 601.41 (3), 628.34 (12) and 628.38, Stats.

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

It is estimated that the amount of time will be a minimum of 160 hours.

Insurance, Commissioner of

Subject:

S. Ins 3.53 – Relating to HIV testing procedures.

Description of policy issues:

a) A statement of the objective of theproposed rule:

To interpret s. 631.90, Stats., and to provide individual life and health insurers wth more flexibility in conducting HIV tests by incorporating into s. Ins 3.53, Wis. Adm. Code, some of the new laboratory testing techniques endorsed by the FDA and the State Epidemiologist.

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

Currently, s. Ins 3.53, Wis. Adm. Code, limits the type of HIV tests insurers may use to underwrite individual life and health insurance policies. At this time, insurers are limited to using only FDA–licensed blood tests. The rule specifically states that only FDA–licensed tests may be used {refer to s. Ins 3.53 (4) (e), Wis. Adm. Code} and defines an FDA–licensed test as ". . . any single whole blood, serum, or plasma specimen which has been approved by the federal Food and Drug Administration" {refer to s. Ins 3.53 (3) (d), Wis. Adm. Code}. Additionally, the rule states that the only tests which may be used to detect HIV are those that the State Epidemiologist cited in a report dated August 30, 1990, entitled "Validated positive tests and medically significant and sufficiently reliable test to detect the presence of HIV, antigen or nonantigenic product of HIV or an antibody to HIV"{refer to s. Ins 3.53 (1), Wis. Adm. Code}.

Since the above noted sections of s. Ins 3.53 were implemented, the FDA has approved HIV testing measures that do not rely only on blood derivatives, but rather, can be conducted with the use of other bodily fluids. As a result, the definition of an "FDA–licensed test" is no longer correct. Additionally, the State Epidemiologist, in conjunction with the Department of Health and Family Services, has endorsed additional HIV testing measures (in addition to blood tests) as acceptable for insurance underwriting purposes. Since the rule references the State Epidemiologist's report dated August 31, 1990, the rule fails to take into consideration recent determinations made by the State Epidemiologist, in his report dated January 24, 1997.

Statutory authority for the rule:

Sections 601.41 (3), 628.34 (12) and 631.90 (3) (a), Stats.

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

It is estimated that the amount of time will be a minimum of 140 hours.

Natural Resources

Subject:

Ch. NR 101 – Relating to reports and fees for wastewater dischargers.

Description of policy issues:

1) Subject of the administrative code action/nature of Board action:

The ($100) base fee category for holders of general permits was exempted until 1996, to allow time for quality assurance activities for this class of permits. There are concerns about implementing the fee category as promulgated. Our proposal is to modify the rule language to remove the $100 general permit fee.

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

Issues of the general permit fees are:

1 The ability to equitably assess fees; and

2 The cost/benefit of these fees in light of the "revenue cap" provisions of s. 299.15, Stats. (formerly known as s. 144.96, Stats.)

There are approximately 2,000 dischargers covered by one of 17 general permits that constitute the Industrial General Permit Program (this is completely separate from the Stormwater General Permit Program). Industrial General Permits (GP) are designed to save Department time by minimizing the steps of authorizing a discharge under a WPDES permit for certain groups of facilities or operations with similar wastewater characteristics. Once a GP is issued, facilities meeting the applicability criteria of the permit can be covered under the permit (typically done by letter). The facility is then required to comply with monitoring requirements, effluent limitations, and other requirements in the GP.

The equitability issue:

> The district wastewater programs were given the responsibility to manage general permits within their staff resources, and the significance of the dischargers in their district. This has led to differences in the level of notification, tracking and on–going management of general permitted dischargers. The differences are based on geographical priorities in addressing pollutant loadings. The differences are appropriate within the GP program, but would make it difficult to assess fees fairly.

The cost/benefit issue:

> GP's typically cover discharges that are not considered a significant environmental concern. Some of the "facilities" that are covered under the GP program include individual residences and citizens, which may react negatively to paying a fee. One type of GP discharge that is considered environmentally significant is from remedial action (groundwater clean–up) operations; however, charging a fee for this GP is inefficient, given that the fee would likely be reimbursable under the financially strapped PECFA program.

General permit fees would reduce the discharge–based fees by the amount assessed for general permits. The total revenue actually collected would remain the same under the cap provisions of s. 299.15 (3) (cm) 2., Stats. Since dischargers paying a base fee only would not be affected, GP fees would impact about 150 industrial dischargers. If we assess fees to all general permittees, the reduction of the discharge–based fees would average about $1,300 per facility. If we assessed fees to a subset of GP's, the reduction would be less.

3) Explain the facts that necessitate the proposed change:

Ch. NR 101, as modified in 1993, assumes that general permits could be assessed in a fair and equitable manner. The DNR's analysis indicates that this is not the case and implementation of the fees will likely generate needless negative reaction from facilities covered under the GP program as it is currently being administered.

Statutory authority for the rule:

Section 299.15, Stats.

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

It is estimated that the amount of time will be a minimum of 17 hours. One public hearing is proposed to be held at a date yet to be determined.

Psychology Examining Board

Subject:

Psy Code – Relating to limiting the number of hours per continuing education program.

Description of policy issues:

Objective of the Rule:

To limit self–developed continuing education programs to no more than 20 hours total in any one biennium and to further limit any one person to no more than 20 hours.

Policy analysis:

Existing law grants the Psychology Examining Board authority to promulgate rules establishing the minimum number of continuing education hours, the requirements and procedures for certificate holders to complete continuing education programs or courses of study in order to qualify for certification renewal.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 455.065, Stats.

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

8 hours.

Department of Regulation & Licensing (Real Estate Board)

Subject:

RL Code – Relating to the use of unlicensed personal assistants by real estate licensees.

Description of policy issues:

Objective of the rule:

The Department has 2 objectives for proposed rule–making:

1. To require that a real estate salesperson who intends to employ an unlicensed personal assistant shall enter into a formal agreement with his or her employing broker which sets forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the salesperson and broker for supervision of the personal assistant's activities.

2. To prohibit a person who does not hold a credential under ch. 452, Stats., from conducting an open house for the sale of real estate or a business without being accompanied by a real estate credential holder.

Policy analysis:

The current statutes and rules require real estate brokers to supervise their licensed salespersons in the practice of real estate. The statutes and rules do address contracts and employment practices between brokers and their employes who do not engage in the practice of real estate or contracts between broker's licensed employees and unlicensed persons who assist the licensed employe.

Chapter 452, Stats., defines "negotiate" as it relates to the sale or exchange of real estate or a business and requires that such negotiation on behalf of another person for a fee or a commission be conducted by a person who has a credential under this chapter. The Department believes that it is practically impossible to conduct an open house without engaging in negotiations with a prospective purchaser.

The proposed new policies are described above. The alternatives are the following:

As for a written contract, require a written contract between involving the broker–employer and his or her licensed salesperson or permit the licensed salesperson to hire an unlicensed personal assistant without including his or her employing broker in the hiring process.

As for conducting open houses, one alternative would be to allow an unlicensed person to conduct an open house without being accompanied by a credential holder under ch. 452, Stats. A second alternative would be to allow an unlicensed person to conduct an open house only if the person is accompanied by a person who holds a credential under ch. 452, Stats. A third alternative is to find some middle ground and permit unlicensed persons to conduct open houses under specified conditions and subject to specified stiff penalties for not observing the conditions.

Statutory authority:

Sections 227.11 (2) and 452.07, Stats.

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

10 hours.

Revenue

Subject:

Notice is hereby given, pursuant to s. 227.135, Stats., that the Department of Revenue plans to promulgate rules relating to ch. Tax 19, the administrative rules for the original tax rate disparity program which was renamed the expenditure restraint program.

Description of policy issues:

Objective of the rule:

1989 Wis. Act 336 created the tax rate disparity program under s. 79.05, Stats. Chapter Tax 19 was promulgated in 1990 to establish administrative rules for governing the program. The legislature has made extensive changes to s. 79.05, Stats., since the law was enacted. However, ch. Tax 19 has not been updated to reflect any of the many statutory revisions. The objective of this rule is to revise ch. Tax 19 to reflect the numerous statutory changes made to s. 79.05, Stats., since it first became law.

Description of policies:

The purpose of ch. Tax 19 is to establish standards and procedures for determining whether a town, village or city is eligible for a tax rate disparity (expenditure restraint) payment under s. 79.05, Stats., and the computation of the payment. The proposed rule will not change that purpose. It will simply incorporate statutory changes made to the original tax rate disparity law.

Statutory authority:

The statutory authority for the proposed rule is s. 227.11 (2) (a), Stats.

Estimate of time and other resources needed to develop the proposed rule:

The total estimated time needed to develop the proposed rule is 80 hours.

Social Workers, Marriage & Family Therapists and Professional Counselors (Professional Counselors Section)

Subject:

SFC Code – Relating to education requirements, applications, temporary certification and examination administration.

Description of policy issues:

1) Objective of the proposed rule:

To clarify definitions, initial application requirements, education; to repeal unnecessary requirements; and to establish criteria for a temporary certificate.

2) Policy alternatives:

The proposed changes will ensure that the rules reflect clarity and streamline the application procedures. Currently temporary certificates are issued by policy and the section would like to define requirements for a professional counselor temporary certificate. And also, the section proposes to revise the rules relating to the number of academic hours required to meet educational requirements.

Statutory authority for the rule:

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

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

It is estimated that the amount of time will be a minimum of 8 hours.

Transportation

Subject:

Ch. Trans 276 – Relating to establishing a network of highways on which long combination vehicles may operate, by adding three highway segments to the network.

Description of policy issues:

1) Description of the objective of the proposed rule:

This proposal will amend ch. Trans 276, a rule of the Department of Transportation which establishes a network of highways on which long combination vehicles may operate, by adding three highway segments to the network. The actual highway segments being proposed are STH 78 from USH 12 south of Sauk City to USH 14 east of Mazomanie, STH 54 from Green Bay to Algoma, and STH 49 from Waupaca to Iola.

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

Federal law requires the Department to react within 90 days to requests for additions to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a written request for the STH 78 route from Fuchs Inc. of Sauk City and from Roadway Express, Inc. for the STH 54 and STH 49 routes.

Statutory authority for the rule:

Section 348.07 (4), Stats.

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

It is estimated that state employes will spend 40 hours on the rule–making process, including research, drafting and conducting a public hearing.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Commerce

Rule Submittal Date

Pursuant to ss. 227.14 (4m), Stats., on March 15, 1997, the Department of Commerce submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rules affecting chs. DOD 6 and Comm 108 relates to the Community Development Block Grant Program.

Agency Procedure for Promulgation

Public hearing is required and will be scheduled at a later date.

Contact Person

Thomas H. Taylor, Deputy Secretary
Wisconsin Department of Commerce
Telephone (608) 266–1018

Educational Approval Board

Rule Submittal Date

On March 11, 1997, the Department of Commerce submitted proposed rules to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

The proposed rules concern the deletion, amendment and creating of permanent rules relating to the approval of schools and programs, setting fees, setting bond requirements, outlining refund policy and, in general, affecting all aspects of the Educational Approval Board's approval of schools.

The proposed order affects post–secondary institutions subject to the approval requirements of s. 38.51 (1) (a), Stats. It constitutes a major simplification of regulatory requirements and practices and a parallel simplification in the assessment of fees. It modifies policies and procedures; deletes many regulatory requirements; and creates new standards and practices.

The changes are in the context of the EAB's re–engineering: 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.

The proposed rules changes simplify, clarify and make more understandable the basic requirements schools must meet to secure approval to operate in Wisconsin. They streamline the application process, specifically outlining required information which schools must provide (and policies they must have in place) in order to become licensed and set parallel standards for information to be included in school catalogs. The changes condense and speed up the program approval process by placing more responsibility with the schools to engage in and document quality program development. Staff will, thereby, have less need to do invasive analysis, or contract with third–party reviewers, and will, instead, be able to rely on information about how schools developed their programs. The proposed changes encourage continuous improvement on the part of schools by removing the impediment of EAB approval of minor program modifications. They also clarify the process for the evaluation of innovative programs by more carefully defining approval criteria and also establish operational standards for distance education.

The proposed changes greatly simplify the fee structure, in general, making it simpler for the EAB to administer fees and easier for schools to comprehend them.

The changes:

✎ Remove the fee for program revisions affecting less than 25% of content;

✎ Collapse fees for correcting errors in application from more than 30 to two fees;

✎ Remove the fee for changing a program name; and,

✎ Establish a simple, more predictable, procedure to set the annual renewal fee on gross school revenues.

The proposed changes greatly simplify prescriptions and prohibitions regarding advertising by concentrating on broad categories of behavior. They clarify the school bonding requirement by basing it on highest point of "unearned tuition," but also provide for better reality–testing by adding criteria so stable schools can have their bond requirement lowered (without risk to students). The changes simplify the administrative procedure for bonding school representatives by removing the requirement for separate bonding and, instead, enabling schools to cover representatives under their school bond. The proposed changes greatly reduce complexity regarding partial payments to students who do not complete their programs, clearly outlining conditions for pro–rata partial reimbursements based upon a single scale for all types of programs. The changes establish a clearer complaints procedure, and more carefully delineate data collection and retention requirements.

Agency Procedure for Promulgation

Because of the nature of the subject matter in this proposed rule, a public hearing is required, and will be scheduled at a later date. The Educational Approval Board is responsible for preparing the proposed rule.

Contact Person

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

Joseph L. Davis, Educational Approval Board
Telephone (608) 266–1996

Health & Family Services

Rule Submittal Date

On March 14, 1997, the Department of Health & Family Services submitted proposed rules affecting ch. HSS 1 to the Wisconsin Legislative Council Rules Clearinghouse, relating to the operation of the Department's uniform fee system, including determination of parental liability for the costs of court–ordered substitute care.

Analysis

This order amends the Department's rules for operation of its Uniform Fee System to apply the child support percentage of income standard in ch. HSS 80 to the determination of expected parental financial support for a child who is ordered by a court to be placed in substitute care because the child is in need of protection or is adjudged delinquent, and makes some minor unrelated updating changes to ch. HSS 1.

The order implements the directive in s. 46.25 (9) (b), Stats., that the Department promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court–ordered substitute care cases.

There is an emergency order in effect.

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats. Public hearing is required for both the proposed rule and the emergency rule , and will be held for both on April 8, 1997.

Contact Person

Delores Trutlin
Division of Management & Technology
Telephone (608) 266–0371

Insurance, Commissioner of

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., on March 10, 1997, the Office of the Commissioner of Insurance submitted proposed s. Ins 2.17 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

These changes will affect section Ins 2.17, Wis. Adm. Code, relating to life insurance illustrations.

Agency Procedure for Promulgation

The date for the public hearing is April 25, 1997.

Contact People

To obtain a copy of the proposed rule, contact Meg Gunderson at (608) 266–0110 in OCI Central Files.

For additional information, please contact Stephen Mueller at (608) 267–2833 or e–mail at smueller@mail.state.wi.usin the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On March 14, 1997, the Department of Natural Resources submitted proposed board order [LF–12–97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule affecting ch. NR 37 relates to timber cutting on lands adjacent to the Lower Wisconsin State Riverway.

Agency Procedure for Promulgation

Public hearing is required and will be held on April 16, 1997.

Contact Person

Doug Fendry
Bureau of Facilities and Lands
Telephone (608) 267–2764

Natural Resources

Rule Submittal Date

On March 14, 1997, the Department of Natural Resources submitted proposed board order [AM–14–97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule affecting chs. NR 400, 406 and 407 relates to the air permit program.

Agency Procedure for Promulgation

Public hearings are required and will be held on April 24 and 25, 1997.

Contact Person

Pat Kirsop
Bureau of Air Management
Telephone (608) 266–2060

Natural Resources

Rule Submittal Date

On March 14, 1997, the Department of Natural Resources submitted proposed board order [PR–20–97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule affecting chs. NR 45 and 51 relates to the use regulations on state lands.

Agency Procedure for Promulgation

Public hearings are required and will be held on April 24 and 25, 1997.

Contact Person

Kermit Traska
Bureau of Parks and Recreation
Telephone (608) 266–0004

Nursing Home Administrator Examining Board

Rule Submittal Date

On March 14, 1997, the Nursing Home Administrator Examining Board submitted proposed rules to the Wisconsin Joint Legislative Council Staff.

Analysis

The subject matter of the proposed rules affecting chs. NHA 1 to 6 relates to the licensure of nursing home administrators.

In this proposed rulemaking order, the Nursing Home Administrator Examining Board amends ss. NHA 1.02 (1) and NHA 4.03 (2), to clarify that the Board will accept only experience which is acquired within a certain time period (any consecutive 36–month period within the 5–year period immediately preceding the date of application for licensure). In addition, under the current rules, credential applicants are required to submit applications for examination at least 30 days prior to the examination. Section NHA 2.02 is being repealed and recreated to require credential applicants to submit applications for examination to the Board at least 60 calendar days prior to the date of

the examination. Section NHA 4.02 (3) is renumbered s. NHA 4.04 for proper placement in the code.

Section NHA 1.02 (9) is created to define the term "supervised clinical practicum." Sections NHA 2.02 (1) (c), 4.01 (1) (e) and 4.03 (4) are created to clarify that credential applicants must provide information to the Board relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. Finally, s. NHA 2.04 is created to identify the standard used by the Board to determine the passing grades for the state and national examinations; s. NHA 2.05 is created to clarify that the Board may deny an application for licensure if it determines that an applicant has violated the rules of conduct of the examination; and s. NHA 3.01 (2), (3) and (4) are created to identify the Board's procedure for approval of regular courses of study, programs of study and specialized.

Section NHA 4.01 (1) (c) is repealed and recreated to clarify that evidence of completion of the experience requirement must be submitted to the Board in conjunction with the application for licensure, not the application for examination. Section NHA 4.04, which states, in part, that a reciprocal examination must be scheduled at a time mutually convenient to the applicant and the Board, is not consistent with the Board's current practice; therefore, the provision is being repealed. Finally, ch. NHA 6, relating to access to public records, is also being repealed. The procedures for obtaining access to public records of governmental agencies are contained in subchapter II of ch. 19, Stats.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 24, 1997.

Contact Person

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

Transportation

Rule Submittal Date

In accordance with s. 227.14 (4m), Stats., on March 11, 1997, the Department of Transportation submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule affecting ch. Trans 177 relates to motor carriers.

Agency Procedure for Promulgation

Public hearing is required and will be held on April 24, 1997. The organizational unit that is responsible for promulgation of the rule is the Division of Motor Vehicles, Motor Carrier Services Section.

Contact Person

Julie A. Johnson, Paralegal
Telephone (608) 266–8810

NOTICE SECTION

Notice of Hearing

Administration

Notice is hereby given that pursuant to ss. 16.004(1), 218.01(5)(c), 218.101(1), 218.11(2)(b) 1, 218.11(2)(b) 2, 281.11(3), 218.12(2)(b) 1, 218.12(2)(b) 2 and 218.16, Stats., and interpreting ss. 218.01(5), 218.01(5)(a), 218.11, 218.11(3), and 218.12, Stats., the Department of Administration will hold a public hearing at **101 East Wilson Street, Room 418 in the City of Madison, Wisconsin on the 24th day of April, 1997, at 1:30 p.m.,** to consider the creation of rules relating to Manufactured Home Dealer Financial Eligibility; Manufactured Home Dealer Trade Practices, Facilities and Records; and Licensing Periods and Fees for Manufactured Home Dealers and Salespersons. This hearing site is fully accessible to people with disabilities.

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

Donna Sorenson
Department of Administration
P.O. Box 7864
Madison, WI 53707–7864

Written comments must be received by **May 2, 1997**, to be included in the record of rule–making proceedings.

Analysis of ch. Adm 66 prepared by the Department of Administration

Statutory Authority: ss. 16.004(1) and 218.01(5)(c)

Statutes Interpreted: ss. 218.01(5), 218.11(3)

Section 218.101, Stats., was created in 1991 Wis. Act 269, authorizing the Department of Administration to administer subchapter VI of ch. 218 as it relates to manufactured/mobile home dealers and salespersons engaged in the sale of primary housing units. This chapter establishes the financial qualifications for applicants for manufactured/mobile home dealer licenses.

Manufactured/mobile home dealers have been regulated under the former ch. Trans 140 since the program was transferred to the Department of Administration in July, 1992. Chapter Trans 140 is not being repealed by the Department because it was amended by the Department of Transportation in March 1996, and now applies only to dealers that sell recreational vehicles since those dealers continue to be licensed by the Department of Transportation, Division of Motor Vehicles.

Text of Rule

SECTION 1: Chapter Adm 66 is created to read:

Chapter Adm 66
MANUFACTURED HOME DEALER FINANCIAL ELIGIBILITY

Adm 66.01 PURPOSE AND SCOPE. This chapter is promulgated under the authority of ss. 16.004(1) and 218.01(5)(c), Stats., to implement s. 218.11, Stats. This chapter applies to any sole proprietorship, partnership, or corporate entity applying for or holding a Wisconsin dealer's license under ss. 218.11 and 218.12, Stats.

Adm 66.02 DEFINITIONS. In this chapter: (1) "Department" means the department of administration.

(2) "Discounted" means an asset which is not considered at full value when determining financial statement net worth.

(3) "Financial statement" means a balance sheet showing assets, liabilities and net worth.

(4) "GAAP" means generally accepted accounting principles.

(5) "Intangible asset" means an asset which does not have a readily determined value, such as goodwill, and is not generally offered for sale.

(6) "Major liability" means a liability equal to or greater than 10% of the total liabilities listed on the financial statement.

(7) "Manufactured home" or "home" means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air–conditioning, electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure shall be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions shall include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07(3), Stats.

(8) "Manufactured home dealer" or "dealer" means any of the following: (a) A mobile home dealer as set forth in s. 218.10(3), Stats., but does not include:

1. A recreational vehicle dealer as defined in Trans 142.02(7).

2. Governmental units or agents performing their official duties.

3. Advertising media and agents performing their official duties.

4. A licensed realtor involved in a manufactured home sale solely as a result of a real estate transaction including the manufactured home and the real estate site on which the manufactured home is located.

(b) A person not excluded by par. (a) who sells two or more new or used manufactured homes in any one calendar year.

(9) "Mobile home" has the meaning given in s. 340.01(29), Stats.

(10) "Net worth" means the difference between the asset and liability values on a balance sheet. Negative net worth is the excess of liabilities over assets.

(11) "Pro–forma statement" means a statement presented anticipating some event or events which will occur in the future.

(12) "Substantial portion of the assets" means a value greater than 30% of all assets.

Adm 66.03 BALANCE SHEET INFORMATION. (1) A license applicant shall submit a balance sheet dated not more than 90 days prior to the date of application, that is prepared in accordance with GAAP. A small business as defined in s. 227.114(1)(a), Stats., which does no interim financial reporting may submit a balance sheet from the close of the business' most recent fiscal year. The balance sheet shall contain all of the following:

(a) Assets.

(b) Liabilities.

(c) Net worth.

(d) The signature of one of the corporate officers, partners or owners.

(e) The name of any bank or financial institution used by the applicant.

(f) A schedule of securities owned, if any.

(g) A schedule of all real property held, its fair market value, book value, and the amount and terms of any indebtedness.

(2) Pro−forma statements shall not be accepted.

(3) If the department determines that there has been a misstatement on a financial statement, the department may deny or revoke the license.

Adm 66.04 ASSET REPORTING. (1) VALUATION. The financial statement shall present assets in terms of historical cost or book value of assets. In lieu of a statement presented with historical cost of fixed assets or book value of assets, the department may consider a statement presenting fair market value information of fixed assets if clearly labeled and accompanied by an appraisal report of a certified appraiser or tax appraisal.

(2) CASH. Whenever a substantial portion of the assets of an entity is in the form of cash, confirmation of the amount is required from the financial institution holding the cash.

(3) RECEIVABLES. When a substantial portion of the assets of an entity are in the form of receivables from another individual, partnership, or corporation, all or part of the receivables shall be discounted in considering the net worth of the applicant. In order to evaluate the quality of a receivable, a financial statement from the individual, partnership or corporation shall be required. In no case will the department discount factory receivables.

(4) INVENTORY. The financial statement shall include the number of units in inventory and the number of units floor planned or used for loan collateral.

(5) CERTAIN ASSETS NOT TO BE CONSIDERED. The department shall not consider the following assets in evaluating the financial statement of an applicant.

(a) As specified in s. 815.20, Stats., equity in homestead property up to $25,000.

(b) As specified in s. 815.18(3), Stats., items of personal property which are exempt from execution.

(c) Any intangible asset values.

(d) Leasehold improvements.

(e) All other assets subject to prior liens, security arrangements or other pledges.

Adin 66.05 LIABILITY REPORTING. (1) REPORTING. All liabilities and contingent liabilities shall be reported. The terms, amounts and conditions of any major liabilities shall be separately scheduled. The schedule shall list the names of individuals or institutions that hold the debt, the amount of the debt and the terms of repayment. A list of customers and the amounts on deposit with the dealer shall be attached to the financial statement.

(2) RATIO ANALYSIS. A ratio analysis comparing liabilities with assets shall be used to evaluate a dealer's financial potential. If current liabilities exceed current assets, the department may deny, suspend or revoke a dealer's license. An exception to this subsection shall be made when the current ratio is less than 1 to 1 solely due to the manner the dealership has chosen to account for leasing operations.

Adm 66.06 NET WORTH REPORTING. (1) TREASURY STOCK. Treasury stock held by a corporation shall be reported separately on the balance sheet and clearly labeled as treasury stock.

(2) PREVIOUS PROFIT. Profit from the previous period of operations shall be reported separately in the net worth section of the balance sheet.

(3) NEGATIVE NET WORTH. A financial statement with a negative net worth is evidence of a lack of financial ability to conduct business and the license shall be denied or revoked.

Adm 66.07 TYPES OF ENTITIES. (1) SOLE PROPRIETORSHIPS. A sole proprietorship shall report the entire value of assets jointly owned by the sole proprietor and by one or more persons on its financial statement. The financial statement shall be signed by the sole proprietor.

(2) PARTNERSHIPS. Partnerships shall submit a statement for the partnership as a whole and individual statement for each of the general partners. If the partnership agreement provides for anything other than an equal sharing by the partners, it shall be prominently noted on the statements. The provisions of sub. (1) relating to the listing of jointly owned assets also apply to this subsection.

(3) CORPORATIONS. (a) A financial statement is required for the corporation which will hold the license. A financial statement of a controlling corporation, parent corporation, or an interlocking corporation may be submitted but shall not be substituted for the financial statement of the applicant.

(b) The individual who holds the office of president of a corporation may not also hold either the office of secretary or vice president as specified in s. 180.41, Stats.

Adm 66.08 COPIES REQUIRED. Mobile home dealers shall file their statements in duplicate. The department shall forward the duplicate copy to the co−licensor, the department of financial institutions.

Adm 66.09 GENERAL REQUIREMENTS. (1) OPERATING STATEMENT. The department may require a dealer to submit an income statement or other financial information for any of the following:

(a) An initial license.

(b) Renewal of a license.

(c) A change in the licensee.

(d) If any questions arise regarding the dealer's financial condition.

(2) ACCEPTABLE NET WORTH. (a) The following table shall be used in determining the acceptable minimum level of net worth of an applicant:

Annual Home Sales Volume

Number of Homes Sold Per Year	Amount
New Dealer	$25,000
1−10	$25,000
11−50	$50,000
51−150	$100,000
Over 151	$150,000

(b) The department may deny the license of any applicant who fails to meet the net worth criteria set out in par. (a).

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the department does not anticipate that the proposed rule will have any adverse impact on small businesses.

Fiscal Estimate

There is no fiscal effect.

Contact Person

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Department of Administration
101 E. Wilson St., 10th Floor
Madison, WI 53702

Analysis of ch. Adm 67 prepared by the Department of Administration

Statutory Authority: ss. 16.004(1), 218.101(1) and 218.16

Statutes Interpreted: ss. 218.01(5)(a), 218.11, and 218.12

Section 218.101, Stats., was created in 1991 Wis. Act 269, authorizing the Department of Administration to administer subchapter VI of Ch. 218 as it relates to manufactured/mobile home dealers and salespersons engaged in the sale of primary housing units. The rule establishes the standards for manufactured home dealer trade practices, facilities and records.

Text of Rule

SECTION 1: Chapter Trans 141 is repealed.

SECTION 2: Chapter Adm 67 is created to read:

Chapter Adm 67
MANUFACTURED HOME DEALER TRADE PRACTICES, FACILITIES AND RECORDS

Adm 67.01 PURPOSE AND AUTHORITY. This chapter is promulgated under the authority of ss. 16.004(1), 218.101(1) and 218.16, Stats., to implement ss. 218.01(5)(a), 218.11 and 218.12, Stats. This chapter applies to any person applying for or holding a Wisconsin manufactured home dealer or salesperson license.

Adm 67.02 DEFINITIONS. In this chapter: (1) "Available for delivery" means a home that has been constructed and is ready to be delivered to the purchaser from the home sales location or the point of manufacture.

(2) "Cash price" means dealer asking price including dealer installed options and accessories and additional dealer mark–up, profit and transportation charges, minus the dollar value of cash discounts.

(3) "Damage" means defects caused by reasons other than normal wear through home age and usage.

(4) "Department" means the department of administration.

(5) "Licensee" means any manufactured home dealer or salesperson or any person who is both a manufactured home dealer and a salesperson.

(6) "Manufactured home" or "home" means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air–conditioning, and electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07(3), Stats.

(7) "Manufactured home dealer" or "dealer" means any of the following: (a) A mobile home dealer as set forth in s. 218.10(3), Stats., but does not include:

1. A recreational vehicle dealer as defined in s. Trans 142.02(7).

2. Governmental units or agents performing their official duties.

3. Advertising media and agents performing their assigned duties.

4. A licensed realtor involved in a manufactured home sale solely as a result of a real estate transaction including the manufactured home and the real estate site on which the manufactured home is located.

(b) A person not excluded by par. (a) who sells two or more new or used manufactured homes in any one calendar year.

(8) "Mobile home" has the meaning set forth in s. 340.01(29), Stats.

(9) "New home" means a manufactured home that has never been occupied, used or sold for personal or business use.

(10) "Retail purchaser" or "purchaser" means any purchaser not licensed as a manufactured home dealer or salesperson.

(11) "Service agreement" means any repair agreement sold by a licensee.

(12) "Used home" means any untitled or titled manufactured home or mobile home that has been previously occupied, used or sold for personal or business use.

(13) "Site" means any plot of land which is owned or rented, and used or intended to be used for the accommodation of a manufactured home or mobile home for residential purposes.

Adm 67.03 ADVERTISING AND SALES REPRESENTATIONS. (1) TRUTHFUL. The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a manufactured home constitutes an unfair practice and is prohibited.

(2) FACTUAL. Any licensee, making a statement of fact to the public in an advertisement, written statement or representation concerning the manufactured home offered for sale, the services provided or any other aspects of business operation, shall upon request of the department, furnish evidence of the validity and accuracy of the statement of fact at the time it was made.

(3) DISCLOSURES REQUIRED WHEN ADVERTISING PRICE. When the price of a manufactured home is advertised by a licensee, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the advertised home with the exception of the sales tax and the title registration fees.

(4) NAME. Advertisements for manufactured home sales shall include the licensed business name.

(5) NEW OR USED. When advertising a manufactured home, a licensee shall state whether the home is new or used. If all of the homes in an advertisement are new or used, one reference designating that they are new or used is sufficient.

(6) EXPIRATION TERMS OF SALES OR PROMOTIONS. Whenever a sale or promotion offering gifts, merchandise, equipment, accessories, service, discounts, price reductions or cash is advertised, the advertisement shall specifically disclose the expiration terms or date of the sale or promotion.

Adm 67.04 PURCHASE CONTRACT. (1) USAGE. (a) A licensee shall furnish retail purchasers with a copy of a document entitled "manufactured home purchase contract" that clearly states that the retail purchaser is making an offer to purchase a manufactured home. An exact copy of the purchase contract shall be provided to the purchaser at the time the purchaser signs the offer and again after the offer is accepted by the dealer. Any changes in the purchase contract after signing by the purchaser or subsequent to acceptance by the dealer shall be initialed by all the parties on all copies.

(b) A manufactured home purchase contract shall be executed whenever the licensee accepts a down payment, deposit, or title for a trade–in unit from a prospective retail purchaser.

(2) CONTRACT FACE REQUIREMENTS. A purchase contract shall accomplish all of the following on its face:

(a) Clearly identify the names and addresses of the dealer and the purchaser.

(b) Describe the manufactured home purchased by year, make, model and identification number, and any trade–in unit by year, make and model and specify whether the purchased home is new or used.

(c) State the date and time each signature is affixed.

(d) Include the salesperson's name and license number in an area separate from the signatures of the purchaser and dealer or authorized representative.

(e) Specify an anticipated delivery date and state further in bold faced type next to the anticipated delivery date: IF THE MANUFACTURED HOME ORDERED BY THE PURCHASER IS NOT AVAILABLE FOR DELIVERY BY THE DEALER WITHIN 15 CALENDAR DAYS AFTER THE ANTICIPATED DELIVERY DATE, EXCEPT WHEN TRIP PERMITS TO TRANSPORT THE HOME CANNOT BE ISSUED, THE PURCHASER MAY CANCEL THIS ORDER. THE PURCHASER SHALL RECEIVE A FULL REFUND OF ANY DOWN PAYMENT AND RETURN OF THE TRADE–IN, OR TITLE FOR THE TRADE–IN OR BOTH BY THE CLOSE OF THE DEALER'S NEXT BUSINESS DAY. IF THE TRADE–IN HAS BEEN SOLD, THE PURCHASER SHALL RECEIVE THE TRADE–IN ALLOWANCE SPECIFIED IN THE OFFER.

(f) Clearly state the price due on closing and the known components of that price including, but not limited to, the price of the manufactured home, the price and description of any additional accessories, options or equipment, sales tax, license, title fees, down–payment and trade–in allowance. Rebates shall be stated separately by dollar amount and assignment.

(g) Clearly state whether the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice, and how long the purchaser has to obtain financing. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel the contract without penalty and shall, by the close of the dealer's next business day, receive a full refund of any down−payment and return of the trade−in, title for the trade−in or both. The licensee may delay returning a deposited down−payment beyond the close of the dealer's next business day only when the purchaser's personal check or other negotiable instrument has not cleared the payor's bank. If the check or other negotiable instrument clears, the licensee shall return, in person or by mail, the down−payment to the purchaser within 24 hours of receiving evidence of clearance. If the trade−in has been sold, the purchaser shall receive the trade−in allowance specified in the offer.

(h) Specify all other negotiated conditions of the sale not stated elsewhere on the contract.

(3) TERMINATION OF OFFER TO PURCHASE. (a) Unless otherwise specified in the contract, the offer to purchase is automatically voided if the licensee fails to accept or reject the offer by the close of the dealer's next business day.

(b) The licensee shall not sell the manufactured home to any other party until the offer is rejected by the licensee or the offer is voided in accordance with this section, or the purchaser cancels the contract in accordance with sub. (4).

(c) Any down payment, deposit or title shall be returned to the prospective retail purchaser within 2 working hours of the time the offer to purchase is rejected by the licensee. If the prospective purchaser is not present or available during the 2 hour period, those items shall be returned in person or mailed by the close of the dealer's next business day.

(4) PENALTIES FOR CANCELLATION BY PURCHASER. (a) The purchase contract shall clearly state that cancellation of a manufactured home contract within 24 hours of acceptance by a dealer may subject the purchaser to a penalty of up to 1% of the cash price of the manufactured home and that cancellation after the 24 hour period may subject the purchaser to a penalty not to exceed the penalty amount specified in the contract. Modification of the purchase contract shall not extend the 24 hour period. Documented proof of notification of cancellation is required regardless of the method of notification.

(b) The title and any down−payment or deposit which is not retained by the dealer as a penalty in accordance with par. (a) shall be returned to the purchaser by the close of the dealer's next business day following receipt of the purchaser's notice of cancellation.

(5) PRICE CHANGES. Any increase in price to a retail purchaser after the dealer has accepted an offer is an unfair practice and prohibited except when the price increase is due to any of the following:

(a) The addition of new equipment required by state or federal law.

(b) State or federal tax changes.

(c) The reappraisal of a trade−in unit which has suffered damage as defined in this chapter or is missing parts or accessories which were part of the trade−in unit at the time the purchase contract was executed. Reappraisal by the licensee shall be limited to an amount equal to the retail repair costs of damages incurred, or to the value of parts or accessories removed.

(6) WARRANTIES. (a) Reference to any warranties, service agreements or warranty disclaimers which apply to the manufactured home shall be made on the purchase contract.

(b) If a manufactured home is sold with a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time the home is delivered.

(c) If a manufactured home is sold on an as is, no warranty basis, the purchase contract shall include the following statement in bold face type: "AS IS – NO WARRANTY" – "EXCEPT FOR ANY EXPRESSED OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS MANUFACTURED HOME, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS HOME IS WITH THE PURCHASER, AND SHOULD THE HOME PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE PURCHASER SHALL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR."

(d) A warrantor shall service or repair a manufactured home in accordance with the terms and conditions of the warranty or service agreement.

(7) NAME OF PRIOR OWNER. The purchase contract shall include the name and address of the current titled owner if the manufactured home is consigned to or listed by the licensee. The name and address of the previous owner shall be kept on file at the dealer's business office if the manufactured home is owned and offered for sale by the licensee.

(8) ON SITE SALES. If the manufactured home is displayed for sale on a rental lot site or if a licensee represents that a manufactured home may occupy a site in a specified home park, the dealer shall:

(a) Clearly state on the purchase contract whether or not the manufactured home may have to be moved from the site.

(b) Clearly state on the purchase contract that the contract is voidable by the purchaser if the purchaser or home is not acceptable in the home park.

(c) If the home may remain on site, inform the prospective purchaser in writing prior to the execution of the contract that a copy of the current home park lease and rules may be obtained from the current home owner or park operator

(9) SERVICE FEES. A licensee shall not assess a purchaser an additional service charge or fee for completing any sales−related home inspection forms which are required by law or rule.

(10) WAIVER. The use of a manufactured home purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and is prohibited.

Adm **67.05 SELLING AGREEMENTS. (1)** USAGE AND CONTENTS. Whenever a manufactured home dealer lists or offers to sell a home on consignment a written selling agreement shall be completed and shall include:

(a) The date of the selling agreement.

(b) The name of the home owner and dealer and any other parties to the agreement.

(c) The description of the home including year, make and identification number.

(d) The terms of the agreement including the duration of the agreement, the selling price, the amount of sales commission or fee and when the sales commission or fee is to be paid. The sales commission or fee shall not be charged until the sale of the home.

(e) A statement by the owner indicating that either the home is clear of any liens, or the amount of any outstanding lien balance.

(f) Signatures of the home owner and the selling dealer.

(2) ON−SITE SALES ON RENTAL SITES. Manufactured homes selling agreements for units offered for sale on−site shall state whether the home may remain on the same rental lot following the sale. If it may remain, the park operator or owners of the land shall provide the licensee with a copy of the current lease agreement and written rules.

(3) NET SALES PROHIBITED. Licensees shall not obtain, negotiate, or attempt to negotiate any manufactured home selling agreement providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the licensee as commission.

(4) COOLING PERIOD. Whenever a home is sold away from the licensed place of business, the dealer shall furnish the customer with a written notice of the 3−day cooling−off rights pursuant to s. 423.202, Stats.

Adm 67.06 DISCLOSURE OF THE CONDITION OF THE MANUFACTURED HOME. (1) MODEL YEAR DESIGNATION. Changing the model year of a manufactured home is an unfair practice and is prohibited. If no model year is designated, the year of manufacture applies.

(2) NEW MANUFACTURED HOME DISCLOSURE. The licensee shall, on the face of the new manufactured home purchase

contract, disclose all dealer installed options or accessories and whether or not the options or accessories are warranted.

(3) USED MANUFACTURED HOME GENERAL CONDITION DISCLOSURE. (a) Licensees shall inform prospective retail purchasers of used manufactured homes in writing before the execution of the purchase contract in the manner and on the form prescribed by the department, of all significant structural or mechanical defects or damage. If the licensee is unable to determine whether specific damage or defects exist, that fact shall also be noted on the disclosure form. Disclosure of information shall include that which the licensee discovers as a result of a close visual inspection which shall consist of, but is not limited to, a walk–around and interior inspection, an under home inspection, roof inspection and inspection of the appliances. Licensees are not required to dismantle any part of the manufactured home during the inspection process.

(b) Unless otherwise agreed to in the purchase contract, the inspection disclosures shall neither create any warranties, expressed or implied, or affect warranty coverage provided for in the purchase contract.

Adm 67.07 FACILITIES AND RECORDS. (1) BUSINESS FACILITIES. Business facilities required to be provided and maintained by manufactured home dealers shall be as follows:

(a) A business office shall maintain books, records and files necessary to conduct business. The required business office may be established within a residence if it is accessible to an outside entrance and is used primarily for conducting the manufactured home business.

(b) If a display lot is provided, it shall be within the same block or directly across the street from the main business location.

(c) A repair shop, or a service contract with a nearby repair shop, where there are repair tools, repair equipment and personnel to perform the services provided for in a warranty applicable to a home sold by the dealer. Any service contract shall be on the form provided by the department.

(2) RELOCATION. A licensed location may not be relocated without notice to the department.

(3) ZONING. The business premises shall comply with all local zoning, building code and permit requirements.

(4) SIGN. Manufactured home dealers who carry and display inventory shall provide an exterior business sign in compliance with s. 100.18(5), Stats.

(5) TEMPORARY SALES LOCATIONS. Manufactured homes dealers shall be permitted to display and sell homes at a temporary site other than the licensed place of business provided that:

(a) Each licensee furnishes the department with written notification of the sale and location at least 10 days in advance of any temporary sale to last longer than 10 days.

(b) The dealer does not participate in more than 6 sales at a temporary site during each licensing calendar year.

(c) A consigned, listed or model home shall not be considered a temporary sales location.

(6) RECORDS KEPT. The minimum of books and records required to be kept and maintained at the license business premises by a manufactured home dealer under ss. 218.11(3) and (7)(c) and 342.16(2), Stats., shall include:

(a) The title for each used home owned and offered for sale and the manufacturer's statement of origin information for each new home owned and offered for sale. The dealer shall also have either a factory invoice, a completed dealer reassignment form or a purchase contract evidencing trade–in or purchase when a manufacturer or lending institution is holding the title or manufacturer's statement of origin of the manufactured home.

(b) A written selling agreement between the owner and dealer for each manufactured home owned by an individual and offered for sale or listed by the dealer.

(c) The original or a copy of all manufactured home purchase contracts, purchase orders and invoices. The records shall also include a copy of MVI Wisconsin title and registration application forms as additional evidence of the sale as well as information regarding collection of sales tax and Wisconsin title and registration fees.

(d) A record of every manufactured home bought, sold, exchanged, consigned, or listed. The information shall be maintained at each licensed location in the following format:

Date Acquired	Acquired From Name & Address	New or Used	Year Make–ID	Date Sold or Disposed of	Disposed of or sold to Name & Address

(7) MAINTENANCE OF RECORDS. The record book described in sub. (6)(d) shall be maintained for 5 years as required by s. 342.16(2), Stats., and all other required records shall be maintained for a period of 5 years from the date of sale including copies of factory invoices, dealer reassignment forms, selling agreements, purchase contracts, MV1 and MV11 Wisconsin title and registration applications, regular and conforming power of attorney forms for motor vehicles taken in on trade, and prior owner odometer disclosure statements. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by the department during reasonable business hours.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the department does not anticipate that the proposed rule will have any adverse impact on small businesses.

Fiscal Estimate

There is no fiscal effect.

Contact Person

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

Analysis of ch. Adm 68 prepared by the Department of Administration

Statutory Authority: ss. 16.004(1), 218.11(2)(b) 1, 218.11(2)(b) 2, 218.12(2)(b) 1, and 218.12(2)(b) 2.

Statutes Interpreted: ss. 218.01(5)(a), 218.11, and 218.12

Section 218.101, Stats., was created in 1991 Wis. Act 269, authorizing the Department of Administration to administer subch. VI of ch. 218 as it relates to manufactured/mobile home dealers and salespersons engaged in the sale of primary housing units. This Chapter establishes the period, expiration date and fee for licenses issued to manufactured home dealers and salespersons. It also establishes the period, expiration date and fee for registration plates issued to dealers.

Manufactured/mobile homes dealers and salespersons have been regulated under the former ch. Trans 144 since the program was transferred to the Department of Administration in July, 1992. Chapter Trans 144 is not being repealed by the Department because it is currently used by Department of Transportation for the regulation of recreational vehicle dealers and salespersons since they continue to be licensed by the Department of Transportation, Division of Motor Vehicles.

Text of Rule

SECTION 1: Chapter Adm 68 is created to read:

Chapter Adm 68
LICENSING PERIODS AND FEES FOR MANUFACTURED HOME DEALERS AND SALESPERSONS

Adm 68.01 PURPOSE. This chapter establishes the periods, expiration dates and fees for licenses issued by the department under

s. 218.11 and 218.12, Stats., to manufactured home dealers and salespersons. It also establishes the periods, expiration dates and fees for registration plates issued to dealers.

Adm 68.02 DEFINITIONS. Words and phrases in this chapter have the same meaning as found in chs. 218 and 340, Stats., unless additional interpretations are specified. In this chapter:

(1) "Branch" means a non−adjacent sales location in the same municipality.

(2) "Business license" means a license issued by the department under s. 218.11, Stats., to a mobile home dealer.

(3) "Department" means the department of administration.

(4) "Individual license" means a license issued by the department under s. 218.12, Stats., to a salesperson.

(5) "Initial license" means a license issued to a person or business which does not have a license at the time of application.

(6) "Manufactured home" or "home" means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air−conditioning, electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure shall be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07(3), Stats.

(7) "Sublot" means a non−adjacent display lot in the same municipality.

Adm 68.03 LICENSE PERIODS AND EXPIRATION DATES. (1) BUSINESS LICENSES. (a) General licensing period and expiration dates. The license period for a business license is 2 years. The department may issue licenses that start and expire on the following dates:

Date Issued	***Date Expired** ***(Note:** All expiration dates are in the second year after the date the license was issued)
February 1	January 31
April 1	March 31
June 1	May 31
August 1	July 31
October 1	September 30
December 1	November 30

(b) Initial business licenses. The department may issue initial business licenses that go into effect on the dates other than the first day of an even numbered month. The licenses shall expire before the end of two years and the expiration dates shall be as follows:

Month Issued	**Expiration Date**
December or January	Last November 30 before the end of 2 years
February or March	Last January 31 before the end of 2 years
April or May	Last March 31 before the end of 2 years
June or July	Last May 31 before the end of 2 years
August or September	Last July 31 before the end of 2 years
October or November	Last September 30 before the end of 2 years

(2) INDIVIDUAL LICENSES. (a) Licensing period. The department may issue a salesperson license that remains valid until one of the following conditions occur:

1. The business license held by the person's current employer expires.

2. The person ceases employment with a licensed dealer.

3. The person's employer goes out of business

4. The department suspends or revokes the person's license.

(b) Transfer Licenses. A person whose salesperson license is invalidated by ceasing employment with a licensed dealer may request the department to transfer their salesperson license to a new employer without charge, as long as the department receives the application before the new employer's dealer license expires.

(3) REGISTRATION PLATES. The department may register and issue plates to business licensees for periods concurrent with the license periods described in this section.

Adm 68.04 LICENSE AND REGISTRATION PLATE FEES. (1) The department shall collect the fees established in the following table from applicants before issuing their licenses or registration plates.

Type of Licenses	**Type of Fee**		**Amount**	
Manufac-tured home dealer	License		$100	
		Registra-tion−2 plates	$200	
		Additional plates		$ 25
		Replace-ment plates		$ 25
Branch	License		$100	
Sublot	License		$ 50	
Salesper-son	License		$ 50	

(2) When the department issues a salesperson license for less than the employer's business license period, it may reduce the license fee by $25 for each full year reduction in the salesperson license period.

Initial Regulatory Flexibility Analysis

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

There are currently 162 licensed mobile home dealers who employ less than 25 individuals. We are unable to determine the gross annual sales for each mobile home dealer.

The proposed rule increases the licensing fee by an average of $67 per year in order to increase revenue to fully fund the program.

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

None.

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

None.

Fiscal Estimate

The proposed rule increases the licensing fees by an additional $67 per year. The Department estimates that these fees will generate an additional $10,600 annually, which is the amount needed to meet the costs required to administer the mobile home dealer program based on fiscal year 1998 projections.

Contact Person

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Notice of Hearings

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules (proposed chs. ATCP 60, 70, 71, 75 and 80, Wis. Adm. Code) relating to food and dairy license fees. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until May 12, 1997, for additional written comments.

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

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by July 15, 1996 either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608–224–4712), or by contacting the message relay system (TTY) at 608–266–4399 to forward your call to the Department at 608–224–5058. Handicap access is available at the hearings.

Hearing Information

April 18, 1997
Friday
9:30a.m.–2:00p.m.
Northwest Health Center
Room B8
Milwaukee Health Department
7630 W. Mill Road
Milwaukee, WI 53218
Handicapped accessible

April 22, 1997
Tuesday
9:30a.m.–2:00p.m.
Handicapped accessible
Outagamie Public Health Department
410 S. Walnut Street
Appleton, WI 54911

April 23, 1997
Wednesday
9:30a.m.–2:00p.m.
Handicapped accessible
Eau Claire County Extension
Agriculture and Resource Center
227 1st Street West
Altoona, WI 54720

April 28, 1997
Monday
9:30a.m.–2:00 p.m.
Handicapped accessible
WI Department of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53704

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

Statutory authority: ss 93.07(1), 97.20(4), 97.22(8), 97.27(5), 97.29(5) and 97.30(5)

Statutes interpreted: ss. 97.20(2c)(b), (2g)(b), and (2n)(b); 97.22(2)(b) and (4)(am); 97.27(3m), 97.29(3)(am) and (3)(cm); and 97.30(3m)

The department of agriculture, trade and consumer protection enforces Wisconsin's food safety laws. Among other things, the department licenses and inspects food processing plants, retail food establishments, food warehouses, dairy plants and dairy farms. These programs are designed to safeguard public health, and ensure a safe and wholesome food supply. They also facilitate the sale of Wisconsin dairy and food products in interstate and international markets.

Wisconsin's food safety programs are funded by general tax dollars (GPR) and program revenue from industry license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995–97 biennial budget act reduced GPR funding, and raised the percentage of PR funding to 50%. Program costs have also increased due to external factors, such as inflation and statewide pay increases. As a result, the department projects a deficit in its food safety budget in FY 1997–98.

In order to maintain current food safety inspection services, the department is proposing to increase certain food and dairy license fees. The department has not increased license fees since 1991. This rule increases license fees and reinspection fees for food processing plants, retail food establishments, food warehouses, dairy plants and dairy farms.

Milk Producer License and Reinspection Fees

Currently, the annual fee for a milk producer license is $20. This rule will increase that fee to $25 annually, effective July 1, 1999. This rule will also increase milk producer license reinspection fees from $20 to $25 and milk producer reinstatement inspection fees from $40 to $50 on July 1, 1999.

Dairy Plant License Fees

This rule will increase annual dairy plant license fees as follows:

The current $80 basic license fee will increase to $100.

The current $650 supplementary fee for a grade A processing plant receiving more than 2,000,000 pounds of milk from producers will increase to $1000.

The current $270 supplementary fee for a grade B processing plant manufacturing more that 1,000,000 pounds of dairy products or 200,000 gallons of frozen dairy products will increase to $350.

The current $270 supplementary fee for a grade B processing plant manufacturing more than 10,000,000 pounds of dairy products will increase to $850.

The current $250 supplementary fee for a grade A receiving station will increase to $300.

Milk Procurement Fees

Currently, dairy plants pay a monthly milk procurement fee which is intended to fund a portion of the dairy farm inspection program. This rule increases the grade A milk procurement fee from 0.4 cents per hundredweight of grade A milk received from producers to 0.6 cents per hundredweight. The milk procurement fee for grade B milk is not changed by this rule and remains at the current rate of 0.2 cents per hundredweight.

Dairy Plant Reinspection Fees

This rule will increase dairy plant reinspection fees as follows:

The current $40 basic reinspection fee will increase to $80.

The current $160 supplementary reinspection fee for a grade A processing plant receiving more than 2,000,000 pounds of milk from producers will increase to $250.

The current $140 supplementary reinspection fee for a grade B processing plant manufacturing more than 1,000,000 pounds of dairy

products or 200,000 gallons of frozen dairy products will increase to $175.

The current $140 supplementary reinspection fee for a grade B processing plant manufacturing more than 10,000,000 pounds of dairy products will increase to $425.

The current $60 supplementary reinspection fee for a grade A receiving station will increase to $75.

Food Processing Plant License Fees

This rule will increase annual food processing plant license fees as follows:

The current annual $120 fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is engaged in processing potentially hazardous food or in canning will increase to $250.

The current annual $270 fee for a food processing plant that has an annual production of at least $250,000, and is engaged in processing potentially hazardous food or in canning, will increase to $525.

The current annual $50 fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is not engaged in processing potentially hazardous food or in canning, will increase to $100.

The current annual $110 fee for a food processing plant with an annual production of at least $250,000 that is not engaged in processing potentially hazardous food or in canning will increase to $325.

The current annual $40 fee for a food processing plant that has an annual production of less than $25,000 will increase to $60.

Food Processing Plant Reinspection Fees

This rule will increase food processing plant reinspection fees as follows:

The current $80 reinspection fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is engaged in processing potentially hazardous food or in canning, will increase to $170.

The current $180 reinspection fee for a food processing plant that has an annual production of at least $250,000, and is engaged in processing potentially hazardous food or in canning, will increase to $350.

The current $50 reinspection fee for a food processing plant that has an annual production of at least $25,000 but less than $250,000, and is not engaged in processing potentially hazardous food or in canning, will increase to $100.

The current $110 reinspection fee for a food processing plant with an annual production of at least $250,000 that is not engaged in processing potentially hazardous food or in canning will increase to $325.

Retail Food Establishment License Fees

This rule will increase annual retail food establishment license fees as follows:

The current annual $90 fee for a retail food establishment that has annual food sales of at least $25,000 but less than $1,000,000, and processes potentially hazardous food, will increase to $175.

The current annual $210 fee for a retail food establishment that has annual food sales of at least $1,000,000, and processes potentially hazardous food, will increase to $450.

The current annual $80 fee for a retail food establishment that has annual food sales of at least $25,000 and is engaged in food processing, but does not process potentially hazardous food, will increase to $125.

The current annual $40 fee for a retail food establishment that has annual food sales of less than $25,000, and is engaged in food processing, will increase to $60.

The current annual $20 fee for a retail food establishment not engaged in food processing will increase to $30.

Retail Food Establishment Reinspection Fees

This rule will increase retail food establishment reinspection fees as follows:

The current $60 reinspection fee for a retail food establishment that has annual food sales of at least $25,000 but less than $1,000,000, and processes potentially hazardous food, will increase to $125.

The current $140 reinspection fee for a retail food establishment that has annual food sales of at least $1,000,000, and processes potentially hazardous food, will increase to $300.

The current $80 reinspection fee for a retail food establishment that has annual food sales of at least $25,000 and is engaged in food processing but does not process potentially hazardous food, will increase to $125.

The current $40 reinspection fee for a retail food establishment that has annual food sales of less than $25,000, and is engaged in food processing, will increase to $60.

The current $50 reinspection fee for a retail food establishment not engaged in food processing will increase to $60.

Food Warehouse License Fees

This rule will increase annual food warehouse license fees as follows:

The current $50 license fee for a food warehouse that stores potentially hazardous food and that has fewer than 50,000 square feet of storage area will increase to $75.

The current $100 license fee for a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area will increase to $200.

The current $25 license fee for a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to $50.

The current $50 license fee for a food warehouse that does not store potentially hazardous food and has at least 50,000 square feet of storage area will increase to $100.

Food Warehouse Reinspection Fees

This rule will increase food warehouse reinspection fees as follows.

The current $50 reinspection fee for a food warehouse that stores potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to $75.

The current $100 reinspection fee for a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area will increase to $200.

The current $50 reinspection fee for a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to $100.

The current $100 reinspection fee for a food warehouse that does not store potentially hazardous food and has at least 50,000 square feet of storage area will increase to $200.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

This rule will increase program revenues for the department's food safety programs by $.9M. The increase in revenues is needed to pay for cost increases since 1991 and increases which are anticipated during the next four fiscal years (FY 98–01). The department has not raised fees since 1991.

The department proposes to increase license and reinspection fees for the following categories of food and dairy businesses: dairy farms, dairy plants, food processing plants, retail food establishments, and food warehouses.

The 1991–93 biennial budget act created the current structure for food and dairy license fees and set the fees at the current level. The 1991 budget legislation also authorized the department to adjust license fees via the rulemaking process.

Wisconsin's food safety programs are funded by general tax dollars (general purpose revenue (GPR)) and industry license fees (PR). In 1991, license fees funded about 40% of program costs.

Program costs have increased since 1991 and will continue to do so during the next four years. The 1995–97 biennial budget act reduced GPR funding, and required a higher percentage (50%) of license fee funding. No staff positions have been added since 1991. Cost increases are due to external factors, such as inflation and statewide employee pay and benefit increases. As a result, the department projects a deficit in its food safety budget in FY 1997–98 and subsequent years.

Local Government Impact

The cost to local governments will increase by $16,191.

As a result of these fee increases, local governments that license and inspect retail food establishments as agents of the department will be required to increase their reimbursement to the department for administrative services. Local governments can and do pass this increase on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs. Currently, agents must reimburse the department for 20% of the license fee the department would charge if the department was delivering inspection–related services. For FY 95–96, agent reimbursement to the department equaled $37,656. If the proposed fee increases are implemented, the rate of reimbursement will remain at 20%, but the total agent reimbursement to the department will increase to $53,847.

Initial Regulatory Flexibility Analysis

Food And Dairy License Fees

This rule increases existing license fees for milk producers, dairy plants, food processing plants, food warehouses and retail food establishments. The department has not increased license fees since 1991.

Wisconsin's food safety programs are funded by general tax dollars (GPR) and industry license fees (PR). In 1991, license fees funded about 40% of the food safety program costs. Program costs have increased due to external factors, such as inflation and statewide pay increases, over which the department has no control. In addition, the 1995–97 biennial budget reduced GPR funding, and required a higher percentage (50%) of license fee funding. As a result, the department projects a deficit in its food safety budget in FY 1997–98.

Increasing license fees as proposed in this rule will affect small businesses. License fees for all categories of dairy farms, dairy plants, food processing plants, food warehouses and retail food establishments will increase. Small businesses exist in each category of food and dairy establishment.

The department has attempted to accommodate small businesses and provide a reasonably fair and equitable license fee schedule. This is done by basing fees on the actual costs associated with each category of licensed establishment and then determining further subcategories of establishments based on the size or volume of each establishment and the food products processed or handled by the establishment. Smaller establishments processing and handling food with less potential food safety risks pay lower license fees than large establishments handling foods with higher food safety risks.

This rule requires no additional recordkeeping or other procedures for small businesses. Small businesses will need no additional professional skills or assistance in order to comply with this rule.

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chapter ATCP 31, Wis. Adm. Code, relating to groundwater protection. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **May 9, 1997** for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling (608) 224–4505. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **April 11, 1997** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, **(608/224–4505)** or by contacting the message relay system (TTY) at **608/224–5058**. Handicap access is available at the hearings.

Hearing Information

April 21, 1997	**Best Western Arrowhead Lodge**
Monday	**Indianhead Room**
1:00 – 4:00 p.m.	**600 Oasis Rd.**
evening session	**Black River Falls, WI**
6:00 – 8:00 p.m.	
April 22, 1997	**Holiday Inn**
Tuesday	**Salon J**
1:00 – 4:00 p.m.	**US HWY 51 & Northpoint Dr.**
evening session	**Stevens Point, WI**
6:00 – 8:00 p.m	
April 23, 1997	**WI Dept. of Agriculture,**
Wednesday	**Trade & Consumer Protection**
1:00 – 4:00 p.m.	**Board Room**
evening session	**2811 Agriculture Dr.**
6:00 – 8:00 p.m.	**Madison, WI**
April 24, 1997	**County Courthouse**
Thursday	**1st Floor Board Room**
1:00 – 4:00 p.m.	**626 Main Street**
evening session	**Darlington, WI**
6:00 – 8:00 p.m.	

Written Comments

Written comments will be accepted until **May 9, 1997.**

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

Statutory authority: ss. 93.07(1) and (9), 94.69(9), 160.19(2) and 160.21(1)

Statutes interpreted: ss. 94.69, 160.19(2) and 160.21(1)

This rule amends current groundwater protection rules under ch. ATCP 31, Wis. Adm. Code. This rule clarifies current standards for repealing pesticide use prohibitions which the department has imposed in response to groundwater contamination findings.

Background

The department of agriculture, trade and consumer protection ("DATCP") regulates the use of pesticides to protect public health and the environment. Under the state groundwater law, DATCP regulates pesticides to prevent groundwater contamination and maintain compliance with groundwater standards adopted by the department of natural resources ("DNR").

Under the groundwater law, DNR adopts numerical standards for groundwater contaminants including pesticides. For each contaminant, DNR adopts a preventive action limit and an enforcement standard. The preventive action limit is a "yellow light" which normally requires some management action (e.g., reduced application rates), but not necessarily a ban on use. The enforcement standard is a "red light" which presumptively calls for a local ban on use. Current DNR standards are contained in ch. NR 140, Wis. Adm. Code.

Current Rule

Chapter ATCP 31, Wis. Adm. Code, establishes general standards for DATCP's groundwater protection program. ATCP 31 identifies actions which DATCP may take in response to findings of groundwater contamination, and spells out "generic" criteria for choosing among those alternative actions.

Subject to the "generic" criteria in ATCP 31, DATCP may develop substance–specific groundwater protection strategies for pesticides such as atrazine. DATCP's current atrazine rule under ch. ATCP 30, Wis. Adm. Code, reflects the "generic" standards contained in ATCP 31.

Currently, under ATCP 31, if a reliable well test shows that a pesticide concentration in groundwater attains or exceeds the DNR enforcement standard ("red light") for that pesticide:

• DATCP must prohibit the use of that pesticide in that local area unless DATCP is shown, and determines to a reasonable certainty by the greater weight of credible evidence, that an alternative response will achieve compliance with the enforcement standard. The fact that contemporaneous tests of other wells show lower concentrations does not, by itself, relieve DATCP of the obligation to impose a local prohibition.

• The scope and duration of the prohibition must be reasonably designed to restore and maintain compliance with the enforcement standard at the initial test site, and at other downgradient points to which the pesticide contamination may migrate.

• The prohibition may remain in effect indefinitely unless DATCP is shown, and determines, that resumption of the pesticide use is not likely to cause a renewed or continued violation of the enforcement standard.

Repealing Pesticide Use Prohibitions; Proposed Rule

Under this rule, the department may repeal a site–specific prohibition against pesticide use if all of the following conditions are met:

• The department determines, based on credible scientific data, that renewed use of the pesticide in the prohibition area is not likely to result in a renewed violation of the enforcement standard.

• Tests on at least 3 consecutive groundwater samples, drawn from each well site in the prohibition area at which the pesticide concentration previously attained or exceeded the enforcement standard, show that the pesticide concentration at that well site has fallen to and remains at not more than 50% of the enforcement standard. The 3 consecutive samples must be collected at each well site at intervals of at least 6 months, with the first sample being collected at least 6 months after the effective date of the prohibition. A monitoring well approved by the department may be substituted for any well site which is no longer available for testing.

• Tests conducted at other well sites in the prohibition area, during the same retesting period, reveal no other concentrations of the pesticide that exceed 50% of the enforcement standard.

Under this rule, the department may do any of the following as a condition to repealing a site–specific prohibition:

• Provide for continued groundwater monitoring at well sites in the prohibition area (or at monitoring wells substituted for those well sites which are no longer available for testing). At a minimum, well sites which previously tested at or above the enforcement standard must be tested during the second and fifth years after the department repeals the site–specific prohibition.

• Impose pesticide use modifications (e.g., lower use rates or different application methods) which are reasonably designed to achieve and maintain compliance with the preventive action limit at all well sites in the prohibition area which previously tested at or above the preventive action limit, and at all downgradient points to which the pesticide contamination may migrate from those points. DATCP may continue to prohibit pesticide use in smaller areas where, because of special local conditions (e.g., susceptible soils), a continued ban is needed to maintain compliance with the enforcement standard.

Fiscal Estimate

State Government

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). This rule establishes generic standards for the repeal of pesticide use prohibition areas. This rule does not repeal any prohibition areas, nor does it mandate the repeal of any prohibition areas. However, it spells out criteria which the department must consider when considering the repeal of prohibition areas for substances such as atrazine. This rule may require the department to perform additional sampling and testing, in order to determine whether local prohibition areas should be considered for possible repeal.

The groundwater sample collection and analysis required by this proposal will involve new costs for the department. The well(s) upon which the pesticide prohibition area is based must be sampled a minimum of three times to qualify the prohibition area for repeal. When an existing pesticide prohibition areas meets the criteria for repeal of the prohibition area, up to six wells within the prohibition area must be tested for the pesticide in question. Additionally, the well which initially tested above the enforcement standard within the prohibition area must be tested 2 and 5 years after repeal of the prohibition area.

The cost to collect and analyze groundwater samples associated with the repeal of a pesticide use prohibition area are estimated as follows:

Before repeal:		
3 samples over 2 years; collection and analysis		$850/well
samples from nearby wells within the prohibition area		$850
monitoring well installation (if needed)		$3000/well
Subtotal	$1700 – 4700	
After repeal:		
2 samples over 5 years	$550/well	
samples from nearby wells over 5 years		$550
Subtotal	$1100	
Total/Prohibition Area	$2800 – 5800	

In the case of atrazine, the department estimates that about 4 prohibition areas may be considered for repeal annually. The department would need to analyze about 120 wells annually, at a cost of $34,000, to determine whether these prohibition areas qualify for repeal. Assuming four prohibition areas are repealed annually, nearby wells within the prohibition areas would need to be tested for an annual cost of $3,400. After repeal, each prohibition area would require sampling at cost of $1,100 annually. Assuming the repeal of four prohibition areas each year, annual sampling and analytical costs after repeal would be $4,400.

In total the Department estimates an additional $42,900 in sampling costs. These costs can be absorbed by the Department.

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short term increased interest by individuals requesting samples.

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on pest control strategies. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

Initial Regulatory Flexibility Analysis

Businesses Affected

This rule has no direct effect on small businesses in Wisconsin. The rule may indirectly affect small businesses, in that it spells out

minimum standards for the repeal of pesticide prohibition areas. This rule authorizes, but does not mandate the repeal of a prohibition area if certain minimum standards are met. To implement the actual repeal of a prohibition area, the department would have to take separate action to amend its pesticide–specific rules (e.g., atrazine rules under ATCP 30). The department would do a separate, more specific "small business analysis" related to those rule amendments.

Farmers are the primary small businesses having an interest in this rule. The standards contained in this rule may eventually affect the regulation of specific pesticides such as atrazine. For example, if the department annually repealed 4 atrazine prohibition areas, the repeals would affect about 10,000 acres each year. Assuming that farmers would elect to use the pesticide on 25% of this land, then 2,500 acres of land would be affected annually. This acreage would represent between 12 and 30 producers, depending on their crop acreage.

Producers using pesticides are typically small businesses, as defined by s. 227.114 (1)(a), Stats. Secondary effects may be felt by distributors and applicators of the specific pesticide, crop consultants and equipment dealers. The net effect on farmers and pesticide sellers is difficult to estimate, because alternative pesticides are generally available.

Reporting, Recordkeeping and Other Procedures Required for Compliance

Renewed use of a prohibited pesticide may include some restrictions including limits on application rates and limits on the soil types to which the pesticide could be applied. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to document compliance. A map delineating application areas may be required if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

Professional Skills Required to Comply

The rule may indirectly affect how much pesticide can be applied and on which fields. Because renewed use of the pesticide may involve some restrictions, alternative pest control techniques may be needed in some situations. These techniques may include different crop rotations, reduced pesticide application rates, or combinations of pesticides and mechanical pest control measures.

Draft Environmental Assessment

The Department has prepared a draft environmental assessment (EA) for proposed 1997 amendments to rules on the groundwater program. Copies are available from the Department on request and will be available at the public hearings. Comments on the EA should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI, 53708 in care of Jeff Postle. Phone 608/224–4503. Written comments on the EIS will be accepted until **May 9, 1997**.

Notice of Hearing

Department of Commerce

Notice is given that pursuant to ss. 16.54, 560.02 (4) and 560.045, Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of ch. DOD 6 [Comm 108], Wis. Adm. Code, relating to The Community Development Block Grant Program.

Hearing Information

April 16, 1997	**Room 6, Loraine Bldg.**
Wednesday	**123 W. Washington Ave.**
9:00 a.m.	**Madison, WI**

A copy of the rules to be considered may be obtained from the Department of Commerce, 123 West Washington Avenue, P.O. Box 7970, Madison, Wisconsin 53707, by calling (608) 266–7088 or at the appointed time and place the hearing is held.

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **April 26,1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Thomas H. Taylor, Deputy Secretary at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call Tabitha Bemis at (608) 266–7088 or Telecommunication Device for the Deaf (TDD) at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible. be made available on request by a person with a disability

Analysis of Rules

Statutory Authority: ss. 16.54, 560.02(4) and 560.045

Statute Interpreted: s.560.045

Pursuant to ss. 560.02(4) and 560.045, Stats., the Department of Commerce is responsible for administering the federal community development block grant ("CDBG") funds awarded to the State of Wisconsin under 42 USC 5301 to 5319 and 24 CFR Part 570. Under applicable federal law, the department is authorized to award CDBG funds to any city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program, and to any county, other than an urban county as defined by the United States Department of Housing and Urban Development ("HUD"). Historically, the department's rules have authorized eligible communities to use CDBG funds for public facilities projects, public facilities projects to promote economic development, economic development projects, and emergency situations caused by natural disasters and other catastrophic events. Recent amendments to the applicable federal regulations authorize the use of CDBG funding for additional purposes including the elimination and prevention of blight.

The objectives of this proposed rule are to update the department's CDBG program, to authorize the use of CDBG funds to accomplish additional objectives authorized under applicable federal law, and to locate the department's rules relating to the CDBG program into a single chapter, separate from the department's state funded economic development programs. With the exception of the following key changes, the proposed rules are similar to the current rules set forth in subchapters I, II and III of DOD 6:

1. Under the current rule, any local government may apply for CDBG funds if it qualifies as a city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program, and any county, other than an urban county as defined in 42 CFR 570.3. Under the proposed rule, s. Comm 108.02 (2), a local government that otherwise satisfies those requirements will not be eligible to apply for and receive CDBG funds for public facilities projects, economic development projects, public facilities economic development projects, or brownfield redevelopment projects if it fails to comply with any of the administrative, underwriting, recordkeeping, reporting, auditing, closeout, payment, reimbursement or other requirements mandated by HUD and the department.

2. Under the current rule, a local government may receive CDBG funds if its project addresses the national objective of benefitting low and moderate income persons or, alternatively, is designed to alleviate existing conditions which pose a serious and immediate threat to the health, safety or welfare of the municipality. The department's proposed rule authorizes CDBG funds for the redevelopment of brownfield sites, in furtherance of the national objective of preventing or eliminating slums or blight.

3. Out of each annual grant of CDBG funds from the federal government, the current rule authorizes the department to set aside up to 75% for public facilities projects, up to 75% for economic development projects, up to 10% for public facilities economic development projects, and up to $1 million for emergency grants. The proposed rule changes the foregoing allocation by authorizing the department to allocate up to 10% for the blight elimination and brownfield redevelopment program, and up to 5% for the emergency grant program

4. Under the current rule, the department may award a local government up to $750,000 for a public facilities project, up to $1 million for an economic development project, and up to $500,000 for a public facilities economic development project. The proposed rule modifies those caps by authorizing the department to award a local government up to $500,000 for a public facilities project, up to $1 million for an economic development, and up to $1 million for a public facilities economic development project. Further, the proposed rule authorizes the department to award a local government up to $100,000 to conduct an environmental audit of a brownfield site and up to $500,000 to engage in environmental remediation of that site.

5. Under the current rule, the department allocates CDBG funds for public facilities on an annual basis, based upon a comparative ranking of each application using the following criteria: distress indicators; needs assessment; planning; past effort; ability to pay; and, leveraging. The department's proposed rule would establish a semi−annual public facilities competition to better serve the needs of local governments throughout the state. Further, the proposed rule would eliminate any scoring of local government applications based upon planning and past effort.

6. Under the current rule, the department's determination whether an economic development project or a public facilities economic development project will serve a public purpose is based upon consideration of various factors including: the extent of poverty and unemployment; the prospects for new investment and economic development; the amount of investment that is likely to result; the number of jobs that are likely to result; the total cost per job; the amount of wages and benefits provided; the willingness of the business to work cooperatively with the department of workforce development, local job service offices and private industry councils to identify and offer job opportunities to low to moderate income persons; the availability of satisfactory collateral and personal guarantees to assure repayment of economic development loans; whether the award will provide the business with an unreasonable competitive advantage over other similar Wisconsin businesses in the vicinity of the project; and, whether the project will involve the relocation of a business and displacement of jobs from one local government in Wisconsin to another. The proposed rules are different in two key respects. First, the department is required to consider the number of full−time jobs created and retained, without regard to the number of part−time jobs that might be created and retained. Second, the proposed rules require the department to consider whether a project will result in redevelopment of a brownfield site.

7. Under the current rule, the department may award CDBG funds to a community only for public facilities projects, economic development projects, public facilities economic development projects, and emergency situations arising from natural disasters and other catastrophic events. Under the proposed rule, the department would allocate up to 10 percent of its annual CDBG grant from the federal government for a new blight elimination and brownfield redevelopment program. As proposed, the new program would authorize the department to award a local government up to $100,000 to cover up to 75 percent of the cost of an environmental audit for a brownfield site; and, up to $500,000 to cover up to 75 percent of the environmental remediation costs. The department would be able to make a grant to a local government for a brownfield redevelopment project if the department determined that the project serves a public purpose; the local government has a citizen participation plan; the local government has adopted a brownfield redevelopment plan for the brownfield site; the project costs are reasonable; all sources of project financing are committed prior to the disbursement of the grant; the project will likely result in redevelopment of a brownfield site for commercial or industrial use; the project will likely retain or create jobs in this state; and, the local government will contribute at least 25 percent of the total cost of the project from funding sources other than the federal or state government.

Contact Person

Thomas H. Taylor, Deputy Secretary, Department of Commerce, 608/266−3203.

Initial Regulatory Flexibility Analysis

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

The Department estimates 95 percent of the grants applied for by communities ultimately reach small businesses in one form or another. The grants may be used by eligible communities to fund public facility projects, public facility projects to promote economic development, economic development projects, emergency situations caused by natural disasters and catastrophic events, and elimination of economic blight

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

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

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

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

Fiscal Estimate

The Department of Commerce is responsible for administering the federal community development block grant (CDBG) funds awarded to the State of Wisconsin under 42 USC 5301 to 5319 and 24 CFR Part 570. Under applicable federal law, the department is authorized to award CDBG funds to any city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program, and to any county, other than an urban county as defined by the United States Department of Housing and Urban Development ("HUD"). Historically, the Department's rules have authorized eligible communities to use CDBG funds for public facilities projects, public facilities projects to promote economic development, economic development projects, and emergency situations caused by natural disasters and other catastrophic events. Recent amendments to the applicable federal regulations authorize the use of CDBG funding for additional purposes including the elimination and prevention of blight.

The administrative rules governing the administration of CDBG funds are presently contained in ch. DOD 6, the majority of rules which have not been updated in several years. With the passage of 1995 Wisconsin Act 27, these responsibilities were transferred from the Department of Development to the Department of Commerce. The administrative rules are being updated to acknowledge the program. transfer to the Department of Commerce, update the Department's CDBG program to accomplish additional objectives authorized under recent changes to federal law, place the Department's rules related to the administration of CDBG fends into a single chapter Comm 108, and separate the state fended economic development programs into various subchapters within the code.

The administration of the CDBG program is funded from federal fends with a state match. No increase or decrease in the costs of administering the program is expected as a result of these rule changes.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the Department of Corrections proposes the

following rule affecting ch. DOC 324, relating to the inmate work and study release program.

Hearing Information

The hearings will be held as follows:

April 11, 1997	**Room 223**
Friday	**State Office Bldg.**
9:00 a.m.	**141 Northwest Barstow St.**
	WAUKESHA, WI
April 11, 1997	**Secretary's Conference Room**
Friday	**Department of Corrections**
2:00 p.m.	**3rd Floor**
	149 E. Wilson St.
	MADISON, WI
April 17, 1997	**Room 105**
Thursday	**State Office Bldg.**
11:00 a.m.	**718 West Clairemont**
	EAU CLAIRE, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

Some provisions of the Department of Corrections administrative rule relating to work and study release for inmates have not been updated since the rule was created. With over 10 years of experience working with the rule, the Department proposes to update the rule.

Several cross references in the proposed rule are to other rules which are in the process of being revised. Thus, the cross references in this rule to chapters DOC 302 and 303, Wis. Adm. Code, are the cross references to the proposed rules and not the current rules. There may be a gap in time where these cross references will be incorrect. This should be resolved when the new chs. DOC 302 and 303, Wis. Adm. Code, are promulgated.

Work and study release improve the inmate's chances for successful reassimilation in the community. The inmate is gradually exposed to the responsibilities and experiences of life outside an institution, so the adverse effects of abrupt release from the structured prison environment are avoided.

Work and study release not only offer a period of gradual psychological adjustment, but also may directly remedy some educational or training deficiencies contributing to criminal conduct. Many offenders lack job skills, making it difficult to obtain employment and, consequently, to meet financial obligations. Studies have shown that, in many cases, lack of financial resources contributes to a return to criminal activity after release. Work release provides a job, enabling the inmate to develop skills and accumulate savings. Study release increases the inmate's skills through educational or training programs.

An inmate earning wages must pay room and board costs, thereby reducing confinement costs paid by the public.

This proposed rule:

1. Makes technical changes.

2. Repeals some definitions.

3. Creates some definitions.

4. Requires the inmate to have a community custody classification and to reside in a minimum security facility to be eligible for work or study release status.

5. Requires an inmate whose prior work or study release was terminated for misconduct to wait, if required, before regaining eligibility.

6. Provides that an inmate with a record of escape or attempted escape is ineligible for one year from the date the judgment is entered or finding of guilt under ch. DOC 303 is entered.

7. Repeals the requirements that an inmate may be observed in minimum security for 30 days to determine the inmate's adjustment to minimal security or minimum security/community residential confinement before the inmate becomes eligible for work or study release.

8. Permits an inmate who meets eligibility requirements to apply for work or study release.

9. Requires the warden or superintendent, instead of the program review committee, to approve work or study release for an inmate.

10. Requires the warden or superintendent to consider certain criteria in making a work or study release decision.

11. Requires the work release coordinator to advise employers or school administrators of their responsibilities to the inmates and the program.

12. Prohibits placing an inmate where a potential conflict exists, in addition to prohibiting placing an inmate with a relative or in a private home.

13. Requires the warden or superintendent, or their designees, instead of the program review committee, to determine the length of time of the placement in work or study release.

14. Requires all transportation arrangements between a state correctional facility and a work or study placement to be approved by the warden or superintendent, or their designees.

15. Repeals the provision permitting the use of an inmate's personal car for travel.

16. Requires the approval of the warden or superintendent, instead of the appropriate correctional authority, before an inmate may enter into contracts.

17. Requires the approval of the warden or superintendent to terminate work or study release instead of terminating work or study release at the request of an inmate.

18. Requires the warden or superintendent to conduct a preliminary review and permits any action necessary to protect the public pending a hearing.

19. Deletes language related to inmate use of work or study release funds following release to field supervision.

Text of Rule

SECTION 1. DOC 324.01 (intro.) and 324.01 (1) to (4) are amended to read:

DOC 324.01 The purposes of work and study release privileges are the following:

DOC 324.01 (1) To provide an opportunity for inmates to assume responsibility in employment or educational settings to prepare them for a productive life in free society after release~~;~~.

DOC 324.01 (2) To complement institution education, training, and work programs with community resources not available in an institution~~;~~.

DOC 324.01 (3) To provide inmates with a program activity in which they may demonstrate, through responsible behavior, their readiness for parole~~;~~.

DOC 324.01(4) To provide an opportunity for inmates to accumulate funds to meet financial obligations that might otherwise inhibit adjustment following release or parole~~; and~~.

SECTION 2. DOC 324.02 is amended to read:

DOC 324.02 This chapter applies to the department of ~~health and social services, division of corrections,~~ corrections and ~~adult~~ inmates in its custody, whether housed in a department facility or housed in a contract facility. It interprets s. 303.065, Stats. This chapter is adopted pursuant to the authority of s. 303.065 (2), Stats.

SECTION 3. DOC 324.03 (intro.) is amended to read:

DOC 324.03 ~~(1)~~ In this chapter :

SECTION 4. DOC 324.03 (1) is repealed and recreated to read:

DOC 324.03 (1) "Community custody" means the custody classification which permits inmates to participate in off–grounds activities.

SECTION 5. DOC 324.03 (2) is repealed and recreated to read:

DOC 324.03 (2) "Contract facility" includes a county jail, halfway house, or any other facility or agency that has an agreement with the department to provide housing for inmates in the custody of the department.

SECTION 6. DOC 324.03 (4) is repealed.

SECTION 7. DOC 324.03 (5) is renumbered s. DOC 324.03 (4) and amended to read:

DOC 324.03 (4) "PRC" means the program review committee, whose primary duties and composition are set forth under ~~s~~ ss. DOC ~~302.18~~ 302.15 and 302.16.

SECTION 8. DOC 324.03 (6) is renumbered s. DOC 324.03 (5).

SECTION 9. DOC 324.03 (7) is renumbered s. DOC 324.03 (6) and amended to read:

DOC 324.03 (6) "Superintendent" means the superintendent ~~of~~ at a correctional ~~institution~~ center, or ~~that person's~~ designee.

SECTION 10. DOC 324.03 (8) is renumbered s. DOC 324.03 (7) and repealed and recreated to read:

DOC 324.03 (7) "Warden" means the warden at a correctional institution, or designee.

SECTION 11. DOC 324.03 (9) is renumbered s. DOC 324.03 (8).

SECTION 12. DOC 324.03 (10) is repealed.

SECTION 13. DOC 324.03 (11) is renumbered s. DOC 324.03 (9) and amended to read:

DOC 324.03 (9) "Work release coordinator" ~~or "coordinator"~~ means the person designated ~~at each institution~~ to perform the duties enumerated in this chapter for work release or study release, or ~~that person's~~ designee.

SECTION 14. DOC 324.035 is repealed.

SECTION 15. DOC 324.04 is repealed and recreated to read:

DOC 324.04 Eligibility for work or study release status. (1) ELIGIBILITY. To be eligible for work or study release status an inmate shall meet the following criteria:

(a) Reside in a minimum security facility and have a community custody classification as described in s. DOC 302.05 (6).

(b) Have reached parole eligibility as defined in s. 304.06 (1), Stats., if serving a life sentence.

(c) Wait, if required, before regaining eligibility, if prior work or study release has been terminated under s. DOC 324.13 for misconduct.

(2) INELIGIBILITY. An inmate with a record of escape or attempted escape shall be ineligible for one year from the date the judgment is entered or finding of guilt under ch. DOC 303 is entered.

SECTION 16. DOC 324.05 (1) is amended to read:

DOC 324.05 (1) An inmate meeting eligibility criteria under s. DOC 324.04 may apply for work or study release status to the institution social worker or any designated staff member.

SECTION 17. DOC 324.05 (2) is amended to read:

DOC 324.05 (2) The social worker or designated staff member shall review the inmate's application and shall report on the inmate's eligibility to the ~~PRC of the state correctional facility~~ warden or superintendent where the inmate is assigned.

SECTION 18. DOC 324.05 (3) is amended to read:

DOC 324.05 (3) The inmate shall be approved for work or study release status by the ~~PRC~~ warden or superintendent before any further placement efforts can be undertaken.

SECTION 19. DOC 324.05 (4) is repealed and recreated to read:

DOC 324.05 (4) The criteria set forth under ss. DOC 302.07 and 302.09 shall be considered in making the decision to approve or deny the inmate's application for work or study release.

SECTION 20. DOC 324.05 (5) is repealed and recreated to read:

DOC 324.05 (5) The warden or superintendent shall notify the work release coordinator of the approval of the application for work or study release.

SECTION 21. DOC 324.05 (6) is repealed.

SECTION 22. DOC 324.05 (7) is repealed.

SECTION 23. DOC 324.05 (8) is repealed.

SECTION 24. DOC 324.06 (1) is amended to read:

DOC 324.06 (1) Upon ~~PRC~~ approval for the program, the inmate shall meet with the work release coordinator to complete the application process. The application process shall include, in accordance with s. DOC 324.09, information about the inmate's financial obligations. If the application is for study release, the inmate shall apply for benefits as required under s. DOC 324.09 (1).

SECTION 25. DOC 324.06 (2) is amended to read:

DOC 324.06 (2) Upon receiving ~~PRC~~ notification, the ~~institution~~ work release coordinator and appropriate staff shall, under s. DOC 324.09 (2), investigate the inmate's financial obligations and attempt to place the inmate in accordance with the requirements of s. DOC 324.07 or 324.08.

SECTION 26. DOC 324.06 (3) is repealed.

SECTION 27. DOC 324.06 (4) is renumbered s. DOC 324.06 (3) and amended to read:

DOC 324.06 (3) Before placement, the work release coordinator shall advise the employers or appropriate school administrators of their responsibilities to the inmates and the program. For placement in a ~~county jail or halfway house~~ contract facility, the ~~sheriff or~~ director of the ~~halfway house~~ contract facility must consent in advance to accept the inmate. Withdrawal of the consent terminates the placement. Determination of the costs and method of payment for room and board must be arranged prior to placement at the location.

SECTION 28. DOC 324.06 (5) is renumbered s. DOC 324.06 (4) and repealed and recreated to read:

DOC 324.06 (4) When a suitable placement is available for an inmate, the work release coordinator shall explain to the inmate the rules of work or study release and complete the forms necessary to implement the placement.

SECTION 29. DOC 324.06 (6) is renumbered s. DOC 324.06 (5) and DOC 324.06 (5) (a) to (e), as renumbered, are amended to read:

DOC 324.06 (5) (a) Date placement is to begin~~;~~.

(b) Site of placement ~~and alternate housing~~ or contract facility, if any~~;~~.

(c) Hours the inmate will be on the placement site~~;~~.

(d) Type of work or study program~~;~~.

(e) Rate of pay or amount of financial aid~~; and~~.

SECTION 30. DOC 324.06 (7) is repealed.

SECTION 31. DOC 324.06 (8) is repealed.

SECTION 32. DOC 324.07 (1) is amended to read:

DOC 324.07 (1) The inmate shall have a confirmed job offer~~, or the parole agent shall indicate that employment is imminent in cases where an alternate housing facility is utilized~~.

SECTION 33. DOC 324.07 (3) is repealed.

SECTION 34. DOC 324.07 (4) is renumbered s. DOC 324.07 (3) and amended to read:

DOC 324.07 (3) No inmate may be placed with a relative or in a private home or any place where a potential conflict exists.

SECTION 35. DOC 324.07 (5) is renumbered s. DOC 324.07 (4).

SECTION 36. DOC 324.08 (2) is amended to read:

DOC 324.08 (2) The ~~PRC~~ warden or superintendent shall determine the length of time of the placement and may extend that time period. Study release placements shall be for the same length of time as the educational program unless there is good cause for a different length of time.

SECTION 37. DOC 324.08 (3) is repealed.

SECTION 38. DOC 324.08 (4) is renumbered s. DOC 324.08 (3).

SECTION 40. DOC 324.09 (2) (a) is amended to read:

DOC 324.09 (2) (a) Cost of the inmate's food and clothing in the placement assigned~~;~~.

SECTION 41. DOC 324.09 (2) (b) is amended to read:

DOC 324.09 (2) (b) Cost of an educational placement, including but not limited to tuition and books~~;~~.

SECTION 42. DOC 324.09 (2) (c) is amended to read:

DOC 324.09 (2) (c) Necessary travel expenses to and from the placement and other incidental expenses~~;~~.

SECTION 43. DOC 324.09 (2) (d) is amended to read:

DOC 324.09 (2) (d) Support obligations for the inmate's dependents~~;~~.

SECTION 44. DOC 324.09 (2) (e) is amended to read:

DOC 324.09 (2) (e) Reasonable room charges as determined by the department~~; and~~.

SECTION 45. DOC 324.09 (4) (a) is amended to read:

DOC 324.09 (4) (a) For board including food and clothing for the inmate, any fee charged under s. 301.135, Stats., plus, if the inmate is on study release, tuition, books, fees, tools, and other supplies or, if the inmate is on work release, work related expenses~~;~~.

SECTION 46. DOC 324.09 (4) (b) is amended to read:

DOC 324.09 (4) (b) Necessary travel expense to and from the placement and other incidental expenses of the inmate~~;~~.

SECTION 47. DOC 324.09 (4) (c) is amended to read:

DOC 324.09 (4) (c) Payment of the crime victim and witness assistance surcharge under s. 973.045 (4), Stats.~~;~~

SECTION 48. DOC 324.09 (4) (d) is renumbered s. DOC 324.09 (4) (e) and amended to read:

DOC 324.09 (4) (e) Support of the inmate's dependents, if any~~;~~.

SECTION 49. DOC 324.09 (4) (d) is created to read:

DOC 324.09 (4) (d) Payment of the deoxyribonucleic acid analysis surcharge under s. 973.046 (4), Stats.

SECTION 50. DOC 324.09 (4) (e) is renumbered s. DOC 324.09 (9) (f) and amended to read:

DOC 324.09 (4) (f) A reasonable room charge as determined by the department~~;~~.

SECTION 51. DOC 324.09 (4) (f) is renumbered s. DOC 324.09 (4) (g) and amended to read:

DOC 324.09 (4) (g) After investigation under sub. (2), payment, either in full or proportionately, of the inmate's obligations that were acknowledged by the inmate in writing or that have been reduced to judgment~~;~~.

SECTION 52. DOC 324.09 (4) (g) is renumbered s. DOC 324.09 (4) (h) and amended to read:

DOC 324.09 (4) (h) Wages to the inmates on work or study release until the current canteen limit under s. DOC ~~309.52~~ 309.37 (1) (b) is reached. Unspent money shall be deposited in the inmate's general account. Before releasing an inmate to field supervision, the releasing institution shall inform the parole agent of the balances in the inmate's general account under s. DOC ~~309.55~~ 309.38, release account under s. DOC ~~309.466~~ 309.30 and segregated account under s. DOC ~~309.50~~ 309.35. The agent shall instruct the institution business manager as to where these balances shall be transferred and as to disbursement of work or study release funds from general and segregated accounts. ~~Following release, the inmate may use funds formerly held in general, release and segregated accounts with the approval of the agent. When the client is discharged from field supervision, any remaining funds from these accounts shall be paid to the client. Only inmates who are on work or study release may receive wages from the segregated account under s. DOC 309.50.~~

SECTION 53. DOC 324.09 (5) is amended to read:

DOC 324.09 (5) Books, tools, supplies, and other items necessary for study release purchased with the inmate's funds remain the inmate's property. ~~If these items are purchased with state funds, they are the state's property.~~

SECTION 54. DOC 324.10 (1) is amended to read:

DOC 324.10 (1) All transportation arrangements between a state correctional facility and a work or study placement require approval by the warden or superintendent, of the state correctional facility to which the inmate is assigned. All vehicles transporting inmates shall be insured.

SECTION 55. DOC 324.10 (2) is repealed.

SECTION 56. DOC 324.10 (3) (intro.) is renumbered s. DOC 324.10 (2) (intro.).

SECTION 57. DOC 324.10 (3) (a) is renumbered s. DOC 324.10 (2) (a) and amended to read:

DOC 324.10 (2) (a) Institution vehicles~~;~~.

SECTION 58. DOC 324.10 (3) (b) is renumbered s. DOC 324.10 (2) (b) and amended to read:

DOC 324.10 (2) (b) Public carriers~~;~~.

SECTION 59. DOC 324.10 (3) (c) is renumbered s. DOC 324.10 (2) (c) and amended to read:

DOC 324.10 (2) (c) Approved vehicles driven by members of the public~~; or~~.

SECTION 60. DOC 324.10 (3) (d) is repealed.

SECTION 61. DOC 324.10 (4) is renumbered s. DOC 324.10 (3) and amended to read:

DOC 324.10 (3) Inmates on work release shall pay the cost of transportation to and from the work site ~~as provided under s. 56.065 (5), Stats.~~ If the department provides transportation, it may assess a reasonable charge.

SECTION 62. DOC 324.11 is amended to read:

DOC 324.11 Inmates placed in work or study release remain in the legal custody of the department ~~of health and social services~~.

SECTION 63. DOC 324.12 (1) (b) is amended to read:

DOC 324.12 (1) (b) Inmates shall not possess weapons or possess or use any form of alcohol, marijuana, narcotics, or drugs except as authorized and directed by a physician.

SECTION 64. DOC 324.12 (1) (d) is amended to read:

DOC 324.12 (1) (d) Inmates shall not send or receive personal letters or property and shall not make or receive personal telephone calls at the placement site unless authorized by the ~~department~~ warden or superintendent. Personal visits are not permitted at the placement site.

SECTION 65. DOC 324.12 (1) (e) is amended to read:

DOC 324.12 (1) (e) Inmates shall not enter into contracts or agreements without prior approval by the ~~appropriate correctional authority~~ warden or superintendent. Prohibited contracts include but are not limited to: purchases of property, time payments, and marriage. ~~Inmates may, however, hire an attorney.~~

SECTION 66. DOC 324.12 (1) (f) is amended to read:

DOC 324.12 (1) (f) The inmate may not remove any tools, equipment, or shop–built items from the state correctional facility or bring any such item into the state correctional facility without the ~~superintendent's~~ prior approval of the warden or superintendent.

SECTION 67. DOC 324.12 (1) (g) is amended to read:

DOC 324.12 (1) (g) Money shall be considered contraband unless authorized in advance by the warden or superintendent for incidental expenses. ~~Unexpended funds shall be returned daily.~~

SECTION 68. DOC 324.12 (1) (i) is amended to read:

DOC 324.12 (1) (i) Inmates shall abide by these administrative rules, the specific policies and procedures of the institution to which they are assigned~~, and the rules of the facility in which they are housed~~.

SECTION 69. DOC 324.12 (1) (j) is repealed and recreated to read:

DOC 324.12 (1) (j) Failure to report or return from a work or study placement may be referred for prosecution as an escape under s. 946.42 (3), Stats., and may be administratively charged with an escape under s. DOC 303.22.

SECTION 70. DOC 324.12 (2) (a) is amended to read:

DOC 324.12 (2) (a) Inmates shall attend all regularly scheduled classes even if the instructor does not require attendance. The

~~coordinator~~ warden or superintendent must approve all schedules and schedule changes.

SECTION 71. DOC 324.12 (2) (b) is amended to read:

DOC 324.12 (2) (b) Inmates shall maintain passing grades in all courses and a cumulative 2 point (2.0) grade point average (C average) or better on a 4 point (4.0) scale. Incompletes may result in termination ~~at the PRC's discretion~~.

SECTION 72. DOC 324.12 (2) (c) is amended to read:

DOC 324.12 (2) (c) Unless approved in advance by the warden or superintendent ~~of the state correctional facility~~, inmates may not enroll in or attend evening courses, courses requiring attendance at events away from the placement site, theater activities, field trips, athletic functions, or social events. ~~The superintendent may require staff escort.~~

SECTION 73. DOC 324.12 (2) (d) is amended to read:

DOC 324.12 (2) (d) Unless ~~the inmate has received advance approval from~~ approved in advance by the warden or superintendent, the inmate shall not sign up for additional projects that require fees or the purchase of additional books and materials.

SECTION 74. DOC 324.13 is repealed and recreated to read:

DOC 324.13 Process for termination of work and study release. The procedure for termination of an inmate's work release or study release program is as follows:

(1) A termination at the inmate's request is subject to the approval of the warden or superintendent.

(2) A termination due to withdrawal of consent to the placement by a person outside of the department whose consent is prerequisite of the placement shall occur upon receipt of oral or written notification by an appropriate authority that the authority no longer consents to the placement. If the notification is given orally, the staff member receiving the oral notification shall document the information and forward it to the warden or superintendent.

(3) If the placement is terminated as a result of any of the violations listed below by the inmate, the inmate shall be afforded a hearing for the purpose of determining whether the alleged violation occurred. A termination by the department may occur after determining that the inmate has committed any of the following:

(a) Violation of a statute.

(b) Violation of the rules of the placement site.

(c) Violation of the administrative rules of the department.

(d) Violation of the work or study release agreement.

(e) Violation of any special conditions imposed on the placement.

(4) The warden or superintendent shall conduct a preliminary review and may take any action with reference to the inmate considered necessary for protection of the public consistent with administrative rules, including temporary removal or suspension from the placement pending the hearing.

(5) When an inmate's work or study release privileges have been suspended the department has no liability for loss of wages or consequences of missed classes.

(6) A hearing shall be conducted in accordance with the procedures under ss. DOC 303.75 to 303.84, modified as follows:

(a) In accordance with s. DOC 303.81, with the permission of the hearing officer, the work release coordinator shall interview employers or school officials who have relevant evidence and report to the hearing officer.

(b) A penalty listed in s. DOC 303.84 need not be imposed as a result of a finding of guilt.

(7) If the inmate is found to have committed the violation alleged, the warden or superintendent may terminate the inmate's work or study release placement. The inmate may be referred to the PRC for a review of custody level in accordance with s. DOC 302.18.

(8) An inmate whose work or study release placement has been suspended pending a hearing and who is found not guilty of the alleged violation may be returned to the placement as soon as practicable following the finding.

(9) A work or study placement may be terminated by the warden or superintendent in response to documented adverse community reaction to the placement.

SECTION 75. DOC 324.14 and 324.15 are repealed.

SECTION 76. Appendix DOC 324.01 (Note) is amended as follows:

Delete paragraph #4.

SECTION 77. Appendix DOC 324.02 (Note) is amended as follows:

Amend sentence #2 paragraph #1 to read:

...~~PRC~~ warden or superintendent...

Amend sentence #1 paragraph #2 to read:

...~~PRC~~ warden or superintendent...

Amend paragraph #3 to read:

Subsection (1) requires an inmate to have a ~~minimum security~~ community custody...~~Under s. DOC 302.12, minimum security~~ Community custody is the...For a discussion of ...DOC ~~302.14 and note~~ 302.

Delete paragraphs #4, 5, 6, 7, and 8.

SECTION 78. Appendix DOC 324.05 (Note) is amended as follows:

Amend paragraph #1 to read:

~~Since approval~~ Approval for...is made by the ~~PRC~~ warden or superintendent ~~, ch. 302 must be followed in addition to this chapter. Any inconsistencies are to be resolved in favor of ch. DOC 324 for decisions about work and study release.~~

Delete paragraphs #2, 3, and 4.

Amend paragraph #5 to read:

If the ~~PRC~~ warden or superintendent approves...~~PRC~~ warden or superintendent ...

SECTION 79. Appendix DOC 324.06 (Note) is amended as follows:

Amend paragraph #1 to read:

DOC 324.06 is the procedure...~~PRC~~ warden or supervisor approval. Once...~~or alternate housing facility;~~ ~~explains~~ advises the ~~duties of~~ employers and school authorities of their responsibilities;...~~;~~ ~~and forwards required information to the division of program services and the state correctional facility social worker.~~

SECTION 80. Appendix DOC 324.07 (Note) is amended as follows:

Delete sentences #3 and #4 paragraph #1.

Delete sentences #3 and #4 paragraph #2.

SECTION 81. Appendix DOC 324.08 (Note) is amended as follows:

Amend sentence #1 paragraph #3 to read:

...~~PRC~~ facility staff...

SECTION 82. Appendix DOC 324.09 (Note) is amended as follows:

Amend sentence #5 to read:

...state correctional facility ~~or alternate housing facility~~...

SECTION 83. Appendix DOC 324.10 (Note) is amended as follows:

Delete sentence #2 paragraph #6.

SECTION 84. Appendix DOC 324.14 (Note) is renumbered DOC 324.13 and amended as follows:

Amend sentence #1 paragraph #1 to read:

DOC ~~324.14~~ 324.13 is the procedure...~~DOC 324.13~~ sub. (3). If the inmate requests the termination, ~~or if a person at the placement whose consent is necessary for the placement makes the request, the inmate will be transported to the state correctional facility to which the inmate is assigned. This should be done as soon as possible to prevent an escape or some other conduct which could result in a more serious conduct charge or violation of the law~~ it is subject to the approval of the warden or superintendent.

Amend paragraph #2 to read:

When termination is not initiated by the department, a due process hearing is not required~~, but since the PRC will review the status, any oral requests or notification to terminate the status must be documented for use by the committee~~.

Amend sentence 2 paragraph 3 to read:

...the inmate has a right to a ~~due process fact–finding~~...

Amend sentence #2 paragraph #3 to read:

...except as noted in sub. (~~5~~ 6)

Delete sentences #1 and #3 paragraph #4.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

The proposed revisions make technical changes to ch. DOC 324, relating to work and study release, repeal some definitions, and create some new definitions. The rule permits others, such as the warden, superintendent, or correctional facility staff to make some decisions which formerly were the responsibility of the Program Review Committee (PRC).

Other provisions change the time periods for inmate eligibility for the program based on length of stay in the minimum security facility, or former termination from the program for misconduct.

The rule is not expected to have a state or local fiscal impact.

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If you are hearing– or visually–impaired, do not speak English, or have 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

Written comments on the proposed rules received at the above address no later than **April 24, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 302.15 and 304.115, Stats., the Department of Corrections proposes the following rule affecting ch. DOC 325, relating to the temporary release of an inmate under supervision.

Hearing Information

The hearings will be held as follows:

April 11, 1997	**Room 223**
Friday	**State Office Bldg.**
10:00 a.m.	**141 Northwest Barstow St.**
	WAUKESHA, WI
April 11, 1997	**Secretary's Conference Room**
Friday	**Department of Corrections**
3:00 p.m.	**3rd Floor**
	149 E. Wilson St.
	MADISON, WI
April 17, 1997	**Room 105**
Thursday	**State Office Bldg.**
1:00 p.m.	**718 West Clairemont**
	EAU CLAIRE, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

Some provisions of the Department of Corrections' administrative rule relating to the temporary release of an inmate have not been updated since the rule was created. With over 10 years of experience working with the rule, the Department proposes to update the rule.

This rule provides for the temporary release of an inmate under direct supervision. Temporary release recognizes that: the use of community resources may be beneficial for inmates; the opportunity to visit a seriously ill close family member or to attend a service following the death of a close family member may be desirable; the need to release an inmate to facilitate handling an emergency; and, the assignment of an inmate as an inmate driver. Temporary release must be consistent with the preservation of institutional order and public protection.

This proposed rule:

1. Makes technical changes.

2. Permits an inmate in any security level to:

a. Respond to a request from law enforcement officials or make a court appearance.

b. Receive medical treatment.

c. Participate in any other activities consistent with the purposes of ch. DOC 325.

3. Permits an inmate in a minimum security facility to:

a. Attend a service following the death of a close family member.

b. Visit a terminally ill close family member.

c. Attend educational, social, therapeutic, or athletic events.

d. Participate in a structured work program.

e. Be interviewed by a prospective employer or educational official who requests the interview to determine a work release or study release placement.

f. Participate in release planning.

g. Perform duties as an inmate driver.

4. Permits an inmate to be assigned to special projects in the community.

5. Requires the title in addition to the name of the person accompanying the inmate to be included on the authorization for temporary release.

6. Requires the destination in addition to the date and time of departure and return to the institution on the authorization for temporary release.

Text of Rule

SECTION 1. DOC 325.01 (1) (intro.), (a), (b), and (c), are amended to read:

DOC 325.01 (1) PURPOSE. The purposes of temporary release under ~~escort~~ supervision are the following:

(a) To use resources outside the institution for educational and rehabilitative purposes~~;~~.

(b) To permit an inmate in a minimum security facility to visit a seriously ill close family member or attend ~~the funeral~~ a service following the death of a close family member or both~~; and~~.

(c) To permit ~~the superintendent to temporarily remove~~ the temporary removal of an inmate from an institution when an emergency exists.

SECTION 2. DOC 325.01 (1) (d) and (e) are created to read:

(1) (d) To permit an inmate to be assigned as an inmate driver.

(e) To permit an inmate to be assigned to special projects in the community.

SECTION 3. DOC 325.01 (2) is amended to read:

(2) Temporary release under ~~escort~~ supervision ~~should~~ shall be consistent with preserving order in the institution and protecting the public.

SECTION 4. DOC 325.03 (1) is repealed and recreated to read:

DOC 325.03 Definitions. (1) "Close family member" means the inmate's natural, step, foster and surrogate parents; spouse, children, siblings, and children raised with the inmate by the parents, in the relationship of a sibling even though the person is not a blood sibling.

SECTION 5. DOC 325.03 (3) is repealed.

SECTION 6. DOC 325.03 (2) is renumbered s. DOC 325.03 (3).

SECTION 7. DOC 325.03 (2), (4), and (5) are created to read:

(2) "Designee" means a person designated by the warden. The designee shall have the same authority as the warden for purposes of this chapter.

(4) "Minimum custody" means the custody level given to an inmate who resides in minimum security facilities as defined in ch. DOC 302.

(5) "Warden" means the warden at an institution or center, or designee.

SECTION 8. DOC 325.04 is amended to read:

DOC 325.04 Supervision. Temporary release under this chapter shall be under the direct supervision of staff or an approved sponsor designated by the ~~superintendent~~ warden. The level of supervision shall be specified by the ~~superintendent~~ warden.

SECTION 9. DOC 325.06 is amended to read:

DOC 325.06 Approval by warden. Only a ~~superintendent~~ warden may order the temporary release of an inmate. The warden has the authority to delegate this responsibility in writing to a designee.

SECTION 10. DOC 325.07 is amended to read:

DOC 325.07 Conditions. (1) The ~~superintendent~~ warden may authorize the temporary release of an inmate for any length of time and upon appropriate conditions.

(2) The ~~superintendent~~ warden shall specify in writing all of the following:

(a) The staff member or other person to accompany the inmate on release~~;~~.

(b) The level of supervision required~~;~~.

(c) The cost, if any, that is to be assumed by the inmate~~; and~~.

(d) Any other conditions that shall be complied with by the inmate on temporary release. The conditions imposed ~~are to~~ shall comply with s. DOC ~~302.12~~ 302.05.

SECTION 11. DOC 325.08 is repealed and recreated to read:

DOC 325.08 Criteria. An inmate's temporary release may be authorized by the warden for any of the following reasons:

(1) To allow an inmate in any security level to do any of the following:

(a) Respond to a request from law enforcement officials or make a court appearance.

(b) Receive medical treatment.

(c) Participate in any other activities consistent with the purposes of this chapter.

(2) To allow an inmate in a minimum security facility to do any of the following:

(a) Attend a service following the death of a close family member.

(b) Visit a terminally ill close family member.

(c) Attend educational, social, therapeutic, or athletic events.

(d) Participate in a structured work program.

(e) Be interviewed by a prospective employer or educational official who requests the interview to determine a work release or study release placement.

(f) Participate in release planning.

(g) Perform duties as an inmate driver.

SECTION 12. DOC 325.09 (1) (intro.), (a) to (d), and (2) are amended to read:

DOC 325.09 Release order. (1) Every authorization for temporary release shall be in writing and shall contain all of the following information:

(a) The inmate's name and institution number~~;~~.

(b) The name and the title of the person accompanying the inmate~~;~~.

(c) The destination, date and time of departure and return to the institution~~;~~.

(d) The criteria under s. DOC 325.08 upon which the release was ordered and the underlying facts upon which the order was made~~; and~~.

(2) The accompanying staff member or person designated by the ~~superintendent~~ warden shall carry a copy of the release order. The institution shall retain a copy ~~in the inmate's record~~ per department regulations. The inmate may be required to carry a copy.

SECTION 13. DOC 325.11 is amended to read:

DOC 325.11 Authority of escort. An inmate shall obey all lawful directives made by the staff member or other designated person accompanying ~~him or her~~ the inmate on release.

SECTION 14. DOC 325.12 is amended to read:

DOC 325.12 Cancellations. (1) The ~~superintendent~~ warden may cancel the release order at any time ~~he or she~~ the warden considers leave no longer desirable or no longer in conformance with the purposes of temporary release as stated under s. DOC 325.01.

(2) The cancellation order shall contain the reasons for the cancellation ~~and the facts upon which the decision was based~~.

SECTION 15. DOC 325.13 (2) is amended to read:

(2) In deciding how much the inmate must pay, the ~~superintendent~~ warden shall consider the purpose of the release, the inmate's ability to pay, and the requirements of ss. DOC ~~309.45~~ 309.27 to ~~309.52~~ 309.37. Mileage costs ~~should~~ shall be computed at the ~~current~~ rates in effect at the time of the release for state travel set by the department of administration.

SECTION 16. DOC 325.14 is amended to read:

DOC 325.14 Procedure. Each institution shall make available to inmates a specific written procedure by which inmates may request temporary release under this chapter and by which inmates shall receive a timely written response to their requests. ~~Forms for requests shall be available at the institutions.~~

SECTION 17. Appendix DOC 325.01 (Note) is amended as follows:

Amend sentence 2 paragraph 1 to read:

...~~superintendent~~ warden...

Amend sentence 3 paragraph 5 to read:

...~~superintendent~~ warden...

Delete paragraph 6.

SECTION 18. Appendix DOC 325.04 (Note) is amended as follows:

Amend paragraph 2 to read:

...~~superintendent~~ warden...

Amend sentence 1 paragraph 3 to read:

...~~superintendent~~ warden...

SECTION 19. Appendix DOC 325.06 (Note) is amended as follows:

Amend sentence 1 to read:

...~~superintendent~~ warden...

Amend sentence 2 to read:

...~~superintendent~~ warden...

Amend sentence 3 to read:

...~~superintendent~~ warden...

SECTION 20. Appendix DOC 325.07 (Note) is amended as follows:

Amend sentence 1 to read:

...~~superintendent~~ warden...

Amend sentence 2 to read:

...DOC ~~302.12~~ 302.05

SECTION 21. Appendix DOC 325.08 (Note) is amended as follows:

Amend sentence 1 paragraph 1 to read:

Subs. (1) ~~to (7)~~ and (2)....

Amend sentence 2 paragraph 1 to read:

...~~first 7~~ the 2...

Amend sentence 3 paragraph 1 to read:

The ~~superintendent~~ warden...~~seven~~ 2 subsections.

Amend sentence 4 paragraph 1 to read:

The ~~superintendent~~ warden...

Amend sentence 5 paragraph 1 to read:

...~~superintendent~~ warden...

Delete paragraph 2.

SECTION 22. Appendix DOC 325.09 (Note) is amended as follows:

Delete sentences 2 and 3.

SECTION 23. Appendix DOC 325.12 (Note) is amended as follows:

Amend sentence 1 paragraph 1 to read:

...~~superintendent~~ warden...

Amend sentence 2 paragraph 1 to read:

...~~superintendent~~ warden...and

...~~he or she~~ the warden...

Amend sentence 1 paragraph 2 to read:

...~~superintendent~~ warden...

SECTION 24. Appendix DOC 325.13 (Note) is amended as follows:

Amend sentence 1 paragraph 1 to read:

...~~superintendent~~ warden...

Amend sentence 2 paragraph 1 to read:

...DOC ~~309.45 – 309.52~~ 309.27–309.37.

Amend sentence 1 paragraph 2 to read:

...~~superintendent~~ warden...~~superintendent~~ warden...

Amend sentence 2 paragraph 2 to read:

...~~superintendent~~ warden...

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

This rule provides for the temporary release of an inmate under direct supervision, for purposes such as visiting a seriously ill close family member or attending a service following the death of a close family member.

The only substantive change that this revised rule contains is that it limits the temporary release privilege to those inmates who are in minimum security facilities.

Costs are incurred by the Department in escorting inmates on temporary release. The costs are for overtime, meals, and mileage.

Costs are variable due to the unknown frequency of the requests. In a recent one year period, medium and maximum security institutions experienced a range from 4 to 18 approved visits for a total of approximately 85 trips. Using this time period for illustrative purposes, about $9,000 in expenses related to the visits were incurred by the Department.

This rule could have the effect of saving the Department between $8,000 and $10,000 annually.

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Written Comments

Written comments on the proposed rules received at the above address no later than **April 24, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.068, Stats., the Department of Corrections proposes the following rule affecting ch. DOC 326, relating to leave for qualified inmates.

Hearing Information

The hearings will be held as follows:

April 11, 1997 **Friday** **11:00 a.m.**	**Room 223** **State Office Bldg.** **141 Northwest Barstow St.** **WAUKESHA, WI**
April 11, 1997 **Friday** **4:00 p.m.**	**Secretary's Conference Room** **Department of Corrections** **3rd Floor** **149 E. Wilson St.** **MADISON, WI**
April 17, 1997 **Thursday** **2:00 p.m.**	**Room 105** **State Office Bldg.** **718 West Clairemont** **EAU CLAIRE, WI**

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

Some provisions of the Department of Corrections administrative rule relating to leave for qualified inmates have not been updated since the rule was created. With over 10 years of experience working with the rule, the Department proposes to update the rule.

This rule permits a community custody inmate to be on unescorted leaves. Allowing community custody inmates unescorted leaves is consistent with the correctional goal of reintegration into the community. A conditional exposure to life outside an institution for an inmate who does not pose a threat to the public is a beneficial means of preparing the inmate for life outside prison.

This rule:

1. Provides that a qualified inmate may be granted unescorted leave for any of the following purposes:

a. To visit a close family member who is seriously ill.

b. To attend the funeral of a close family member.

c. To contact a legitimate, verified potential employer through a prearranged interview. The requirements that the interview be legitimate, verified, and prearranged are additions to the rule.

d. To screen for or diagnose or treat an injury, illness or disease, as pre−approved by the Bureau of Health Services. The requirement that the health service be pre−arranged by the Bureau of Health Services is an addition to the rule.

e. To visit a close family member to facilitate family reintegration and stability.

2. Creates and clarifies definitions.

3. Requires the following of an inmate to be eligible for unescorted leave:

a. To be housed in a minimum security facility. The proposed rule deletes the requirement that the inmate have the classification for at least 30 days prior to application.

b. To have a community custody status.

c. To demonstrate a need consistent with the purposes of the rule. The proposed rule adds this requirement.

d. To not be confined or have a criminal conviction for a violent offense or a history of assaultive behavior. The proposed rule adds this requirement.

e. To not be confined nor have a criminal conviction for escape. The proposed rule adds this requirement.

f. To remain in Wisconsin while on leave. The proposed rule adds this requirement.

g. To have leave granted for no more than 3 days exclusive of travel, unless an extension is granted, and have no more than 3 leaves during a calendar year. The proposed rule adds this requirement.

4. Requires an inmate or an employe on behalf of an inmate to apply for leave.

5. Requires the warden or superintendent to designate a staff member to conduct an investigation and verification of the application.

6. Requires the Department to notify the assigned parole agent of the details of the approved leave. This is a new requirement in the proposed rule.

7. Requires the warden or superintendent, based on recommendations, to deny the leave or approve the leave and impose conditions. This is a change from the current rule which provides that the PRC shall deny the request for leave or make a recommendation to the superintendent to grant the leave.

8. Provides a process for review of a denial of leave. The proposed rule changes the current rule by providing that the superintendent's decision may be appealed to the warden, and that the warden's decision may be appealed to the administrator.

9. Requires notification of the details of the approved leave to the local officials before an inmate is released on leave. This is a change from the current rule which only requires that the local officials be notified.

10. Provides that all direct expenses of a leave are the responsibility of the inmate. This is a change from the current rule which provides that the direct expenses of leave shall be the responsibility of the inmate, the inmate's family, or another lawful source.

11. Provides for sanctions for an inmate who intentionally fails to report from a leave or violate conditions of leave or rules of the Department.

Text of Rule

SECTION 1. DOC 326 is repealed and recreated to read:

Chapter DOC 326

LEAVE FOR QUALIFIED INMATES

DOC 326.01 Authority and applicability. This chapter is promulgated under the authority of s. 303.068 (5), Stats., and interprets s. 303.068, Stats. It applies to the department of corrections and to all inmates in the legal custody of the department. Community custody inmates may be permitted unescorted leaves under this chapter. Leaves under this chapter are distinguishable from temporary release of inmates with supervision which is regulated by ch. DOC 325, and from work and study release for inmates which is regulated by ch. DOC 324.

DOC 326.02 Purpose. This chapter provides for an eligible, community custody inmate to be considered for an unescorted leave from the institution for any of the following purposes:

(1) To visit a close family member who is seriously ill.

(2) To attend the funeral of a close family member.

(3) To contact a legitimate, verified potential employer through a prearranged interview.

(4) To screen for or diagnose or treat an injury, illness or disease, as pre−approved by the bureau of health services.

(5) To visit a close family member to facilitate family reintegration and stability.

DOC 326.03 Definitions. In this chapter:

(1) "Administrator" means the administrator of the division of adult institutions or the administrator of the division of community corrections, department of corrections.

(2) "Bureau of health services" means bureau of health services, department of corrections.

(3) "Close family member" means the inmate's parent, child, spouse, grandparent, brother or sister. "Parent" includes a person who was previously acting as a parent, as defined in s. 822.02 (8), Stats., for the inmate.

(4) "Community custody" means that custody classification which permits inmates to participate in off−grounds activities.

(5) "Department" means the department of corrections.

(6) "Leave agreement" means the written statement, signed by the inmate, by which the inmate agrees to accept the responsibilities that the privilege of the leave requires and agrees to abide by certain specified conditions of leave.

(7) "Leave for qualified inmates" or "leave" means the privilege of an unescorted, authorized absence from the institution for one of the verifiable purposes under s. DOC 326.02.

(8) "Serious illness" means a medical condition which is verified by a physician where death is imminent.

(9) "Superintendent" means the superintendent at a correctional center, or designee.

(10) "Violent offense" means a conviction for any offense in which there is actual or threatened bodily harm or any sexual offense.

(11) "Warden" means the warden at an institution, or designee.

DOC 326.04 Eligibility for leave application. To be eligible to apply for a leave, an inmate shall meet the following requirements:

(1) The inmate shall be housed in a minimum security facility as described in s. DOC 302.06, including contract facilities, and the inmate shall have a community custody status as defined in s. DOC 302.05 (5).

(2) The inmate shall be able to demonstrate a need consistent with one of the purposes under s. DOC 326.02.

(3) The inmate shall not be confined, nor have a criminal conviction for a violent offense or a history of assaultive behavior.

(4) The inmate shall not be confined, nor have a criminal conviction for escape.

(5) The proposed leave is restricted to the state of Wisconsin.

(6) The proposed leave shall only be for a period of time necessary for the purpose of the leave, but no inmate may be granted a total of more than 3 leaves per calendar year and no leave may exceed 3 days exclusive of travel time unless an extension is granted, for cause, by the warden or superintendent.

DOC 326.05 Process for obtaining leave. (1) The inmate or an employe on behalf of the inmate shall apply for a leave far enough in

advance of the requested departure date to permit investigation, review by institution staff, and appeal of an adverse decision, by submitting a completed, signed application and leave agreement.

(2) In completing these documents, the inmate shall be required to provide all necessary information, prove eligibility, and agree in advance to all conditions of the leave, including, but not limited to urinalysis or breathalyzer tests, personal or strip searches by department staff or law enforcement personnel.

(3) The warden or superintendent shall designate a staff member to investigate and verify the application information according to the following procedure:

(a) Verify that there are no outstanding detainer, pending charges, or revocations.

(b) Verify the accuracy of the information in the application and the inmate's eligibility under s. DOC 326.04. This investigation shall include contact with anyone who can verify the accuracy of the information in the application. If, upon investigation, the inmate is found ineligible, the staff member shall note the reason for the ineligibility on the application.

(c) Notify the assigned parole agent of the details of the approved leave.

(d) Attempt to determine potential community reaction to the proposed leave, including, any input from the parole agent, local law enforcement authorities and district attorneys.

(e) Investigate the application and document the investigation in a timely manner.

(4) The staff member designated under sub. (3) shall refer the recommendation to approve or deny the leave to the warden or superintendent.

(5) The warden or superintendent shall review any recommendation and shall do either of the following:

(a) Deny the leave.

(b) Approve the leave, and impose conditions. The inmate shall sign a statement agreeing to the conditions as a prerequisite to leave being granted.

DOC 326.06 Review of denial of leave. (1) An inmate may appeal the superintendent's decision to the warden or the warden's decision to the administrator in writing within 5 days of the date of the decision denying leave. This may be extended for good cause at the discretion of the warden or administrator.

(2) The warden or administrator shall issue a decision within 10 days of receiving the request.

(3) The warden's or administrator's decision to deny a leave is final.

(4) Complaints about procedural violations, but not the warden's or administrator's final decision, shall be reviewed within the inmate complaint system under ch. DOC 310.

DOC 326.07 Notification of local officials. Before an inmate is released on leave, the warden or superintendent shall notify the police chief of any community involved and the sheriff and district attorney of any county involved of the details of the approved leave.

DOC 326.08 Custody. An inmate granted leave remains in the legal custody of the institution from which the inmate has taken leave or to which the inmate is assigned.

DOC 326.09 Expenses. All direct expenses of a leave shall be the responsibility of the inmate.

DOC 326.10 Inmate conditions while on leave. (1) An inmate shall travel to and from the leave destination by the approved method of transportation and route.

(2) An inmate shall abide by all state statutes and rules, local ordinances, and policies and procedures of the department while on leave.

(3) An inmate shall comply with the leave agreement.

(4) An inmate shall at all times have a copy of the authorization of leave on the inmate's person.

DOC 326.11 Sanctions. (1) An inmate who intentionally fails to return from a leave as specified, or who intentionally leaves the approved route to or from the leave destination, may be treated as an escapee.

(2) An inmate who violates conditions of leave, the leave agreement or any rules of the department are subject to disciplinary action under ch. DOC 303.

(3) The warden or superintendent may cancel leave at any time.

DOC 326.12 Good time credit on leave. Leave time is credited toward the service of the sentence. The time credit includes statutory and extra good time not covered by s. 973.155, Stats.

Note: DOC 326.02. DOC 326.02 states the purposes of leave for qualified inmates. Selected inmates are allowed unescorted leave only for a serious illness of the close family member, to attend the funeral of a close family member, for employment interviews, for medical purposes, or to facilitate family reintegration and stability as provided under s. 303.068, Stats. Leaves are considered a privilege not a right. They provide an incentive for inmates to exhibit appropriate behavior in the institution. Leaves for the purposes of family reintegration provide a special incentive for inmates.

Allowing selected inmates unescorted leave is consistent with the correctional goal of eventual reassimilation of the offender into the community. A conditional exposure to life outside an institution for an inmate who does not pose a threat to the public is beneficial as a means of preparing an inmate for life outside a structured prison environment.

Leave for qualified inmates has direct and immediate benefits. Permitting an inmate to visit a seriously ill relative or attend a funeral is important in maintaining family ties. The inmate can be with the family in these most difficult periods, can show his or her concern for the family, and can share the burden that frequently accompanies illness or death in a family. It strengthens family ties, helps the inmate work through feelings of pain and sorrow, and assists in the inmate's adjustment in the institution and after release. Leave is also granted to promote family stability and the reintegration of the inmate into the family. In some cases a person who is not the natural parent has actually raised the inmate.

Ch. DOC 326 and s. 303.068, Stats., allow leave for an inmate to contact a prospective employer. This contact away from the institution and staff enables an inmate to experience independent responsibility prior to release, thereby reducing the adjustment necessary after release. This independent responsibility can give the individual the self−confidence necessary for successful reintegration into society. The inmate has an opportunity to plan for life on the outside and to secure a position upon release by expanding the potential for employment. Employment opportunities are limited for someone with a criminal record. Many employers are unwilling to hire a person they have not seen or interviewed. Leaves for job−seeking remove this obstacle to obtaining employment.

Leaves granted for medical reasons, like other types of leaves, are granted only upon the warden's or superintendent's approval. The bureau of health services should be consulted before deciding to grant leave for this purpose. The chapter does not allow an inmate to select his or her own health care provider or type of treatment in lieu of the treatment already provided in the institution.

The purpose of leave is to fulfill the correctional goals of reintegration. This is to be achieved consistent with the protection of the public.

Note: DOC 326.03. "Leave" is sometimes called "furlough" in the institutions.

Note: DOC 326.04. This section establishes the minimum requirements to be eligible for leaves. Simply meeting these requirements does not mean that an inmate is entitled to leave.

Although an inmate who is eligible for leave is likely to be a low escape risk due to the eligibility requirements of s. DOC 326.04, and unescorted and supervised visit to the community, offers more freedom of movement than any previous experience the inmate has had in the correctional system. An unescorted leave presents an opportunity for escape. An inmate with a record of escapes may be more likely to take advantage of this opportunity, and therefore, no inmate is eligible for leave who is confined or has a criminal conviction for escape.

The duration of leave is limited to 3 days, excluding travel time. The duration of leave may be extended by the warden or

superintendent. An extension may be granted, for example, if a seriously ill family member dies while the inmate is on leave and the inmate wants to attend the funeral. Also, an employer may request a second interview with an inmate who is on leave for an employment interview. No more than 3 leaves are granted in a calendar year.

Note: DOC 326.05. DOC 326.05 described the procedures for obtaining a leave. Subsection (1) allows either an inmate or an employe on behalf or the inmate to apply for the leave. An employe should not apply for a leave on behalf of an inmate if the inmate does not want the leave. The application should be submitted far enough in advance of the desired leave date that there is ample opportunity to review the application and the inmate has an opportunity to request review of the decision under s. DOC 326.06.

Subsection (2) allows the imposition of leave conditions as provided in s. DOC 326.04 (2). Having the inmate sign a statement agreeing to the conditions ensures that the inmate knows what those conditions are.

Subsection (3) describes the process of investigating leave applications. First, a staff member must review each application to determine whether the information in the application is accurate and whether the inmate is eligible for the leave under the criteria in s. DOC 326.04. If the information is inaccurate and can be corrected, the investigator should do so. If the inmate is ineligible for the leave, there is no reason to continue processing the application.

If the inmate is found eligible for the leave and the information is verified, the investigation continues. The investigation's purpose is to make sure that all information that could be relevant to the decision to grant or deny the leave is included in the application. Investigation also protects the public. All the inmate's assertions must be verified and the leave principals willing to cooperate. Investigation may include contact with many outside people, including law enforcement and criminal justice agencies and the committing court. It also includes investigation for detainers.

Following the investigation, the application and recommendation is referred to the warden or superintendent. The warden or superintendent approves and imposes conditions on the leave or denies the leave.

In some instances, an offense may have received unusually intense publicity and substantial community reaction may have been aroused. In such a case the presence of the offender might cause negative reactions. The staff member is required to consider the likelihood of such severe negative community reactions. If investigation reveals substantial likelihood that the community will become aroused, then, in the best interests of the community and of the inmate, leave should not be granted. If investigation reveals substantial threat to the safety of the inmate in the community, the leave should not be granted.

Note: DOC 326.06. DOC 326.06 allows an inmate to request the warden or administrator to review a denial of a leave. This request must be made within 5 days of the decision to deny the leave. The time limit protects the inmate's ability to get review and also ensures that the review process does not unnecessarily delay the leave process. The warden or administrator may, but does not have to, review any procedural irregularities of the leave review. The warden's or administrator's main task in reviewing leave applications is to decide whether to override the actual decision of the reviewing authorities. The warden's or administrator's decision to deny a leave is final.

An inmate may request a review of procedural irregularities in the leave process by going through the inmate complaint system.

Note: DOC 326.08. This section makes clear that legal custody of an inmate on leave remains with the department, thereby avoiding confusion about who has legal custody of the inmate if the inmate is not within the institution.

Note: DOC 326.10. This section specifies conduct that is expressly controlled while the inmate is on leave. These provisions must be a part of the leave agreement so the inmate is aware of them. Violation of any of the these provisions may subject an inmate to the sanctions under s. DOC 326.11.

Note: DOC 326.11. DOC 326.11 provides for escape or misconduct while an inmate is on leave. An inmate may be treated as an escapee if that inmate leaves the area designated in the leave agreement or if the inmate fails to return from leave. Since an inmate is in the custody of the department, a violation of this subsection is an "intentional escape from custody" under s. 946.42 (3), Stats. This escape could be prosecuted as a new offense.

Subsection (2) provides for sanctions for misconduct, other than escape, while the inmate is on leave. An inmate may be disciplined under ch. DOC 303 for violations of conditions of leave or the leave agreement, department rules under ch. DOC 303. Subsection (3) also gives the warden or superintendent the right to cancel leave at any time.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

This rule repeals and recreates ch. DOC 326, relating to leave for qualified inmates.

This rule updates the provisions under which a community custody inmate may be on unescorted leave. Some of the material in the original ch. DOC 326 has been rearranged; however, there are no substantive changes in the new rule.

Since this rule applies only to unescorted leave, and contains no additional provisions that have a fiscal impact, ch. DOC 326 should not have any fiscal impact on the Department.

Contact Person

Deborah Rychlowski
Telephone (608) 266–8426
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have 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

Written comments on the proposed rules received at the above address no later than **April 24, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Insurance, Commissioner of

The Commissioner of Insurance, pursuant to the authority granted under s. 601.41 (3), Stats., and according to the procedures under s. 227.18, Stats., will hold a public hearing in or as soon thereafter as the matter may be reached, to consider the revision of s. Ins 2.17, Wis. Adm. Code, relating to life insurance illustrations. This is a second hearing on this rule. See Analysis for details.

Hearing Information

The hearing will be held as follows:

April 25, 1997	**Room 23**
Friday	**121 East Wilson St.**
10:00 a.m.	**MADISON, WI**

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41, 601.42, 628.34 (12), 628.38, 631.01 and 631.20

Statutes interpreted: ss. 601.41, 601.42, 628.34 (12), 628.38, 631.01 and 631.20

This rule is NEARLY identical to the National Association of Insurance Commissioners ("NAIC") Model Regulation adopted on December 4, 1995. The purpose of this rule is to protect consumers and foster consumer education by providing standardized formats for illustrating life insurance policies.

This section provides rules for life insurance policy illustrations that will protect consumers and foster consumer education. This section provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goals of this rule are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

This second hearing is necessary because the Legislative Council did not receive the proposed rule until the week of January 20, 1997 and the law requires that the hearing be held after the Legislative Council has received the proposed rule. Additional Legislative Council comments will be considered for inclusion in the final version of this rule, which will be made available at the hearing.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule will impose additional requirements on small businesses. It requires additional disclosures to be provided to customers by insurance companies and agents. Since this is a consumer protection rule, all disclosures must be uniform and it would be impossible to treat small businesses any differently. It is expected that the cost to small businesses will be minimal since the form disclosures will need to be developed by the life insurance companies. It is not likely that any of them are small businesses.

Copies of Rule and Contact Person

A copy of the text of the proposed rule and fiscal estimate may be obtained from:

Meg Gunderson, Services Section
Telephone (608) 266–0110
Office of the Commissioner of Insurance
121 East Wilson Street
P. O. Box 7873
Madison, WI 53707–7873

Notice of Hearings

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

Notice is hereby given that pursuant to ss. 23.09(2) and (3), 23.28(3), 25.295, 27.01(2)(j) and (k), (7), (11), 27.106 and 227.11(2)(a), Stats., interpreting ss. 23.09(2), 23.091, 23.098, 23.11(1), 23.28, 25.295, 27.01(2)(i), (j), (k), (7) and (11), 27.016 and 28.01, Stats., the Department of Natural Resources will hold public hearing on revisions to chs. NR 45 and 51, Wis. Adm. Code, relating to use regulations on state lands. The proposed revisions:

1. Increase the overnight boat mooring fee from $10.00 to $15.00 per boat per night and increase the mooring fee at Rock Island from $.40 to $.60 per foot per day. This is recommended to keep pace with local market conditions.

2. Add $5.00 to shelter rental fee where electricity is provided. This is recommended to collect the cost of providing the electrical service rather than charging everyone a higher shelter rental fee.

3. Add Governor Knowles to the list of Department properties where vehicle admission and camping fees are collected. Governor Knowles state forest will be opening a new campground within the next year. The camping fee would be for type "B" campgrounds, resident fees are $9.00/night weekends or $7.00/night weekdays, nonresident are $2.00 higher each day.

4. Create a rule that would require bicycles to stop at stop signs located on designated bicycle trails. Currently stop signs on trails and at intersections of highways, county roads, etc., are not considered traffic signs and are nonenforceable. In addition, a rule would be created to prohibit careless, negligent or reckless use of bicycles.

5. Limit use of watercraft campsites on designated state–owned islands outside northern state forest boundaries to 3 days to assure opportunities to the largest possible number of users.

6. Limit group and backpack camping to a maximum of 21 nights per property.

7. Require campers using the Turtle–Flambeau scenic waters area not to leave a camping unit unoccupied for more than one night.

8. Create hours when the Dells of the Wisconsin River Natural Area is open. In addition, glass containers, fires and the use of charcoal grills would be prohibited within the project boundary. These rules are contingent on the Natural Resources Board approving the master plan for the project in December or January.

9. Amend language in s. NR 51.91 to more accurately reflect the eligibility requirements for the Heritage Trust Fund grant.

10. A number of housecleaning changes correct errors in cross references with state statute or administrative rules, repeal outdated rules, renumber and update language to current program names or practices.

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.

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

April 24, 1997	**Council Chambers**
Thursday	**Municipal Building**
at 2:00 p.m.	**300 LaCrosse St.**
	Wis. Dells
April 25, 1997	***Conference Call Participation***
Friday	***will be available at:***
at 2:00 p.m.	**Conference Room**
	DNR Area Hdqrs.
	875 S. 4th Ave.
	Park Falls

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 Kermit Traska at (608) 266–0004 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule [PR–20–97] may be submitted to Mr. Kermit Traska, Bureau of Parks and Recreation, P.O. Box 7921, Madison, WI 53707 no later than **April 30, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Traska.

Fiscal Estimate

See the following tables. Many of these proposals are housekeeping changes with ch. NR 45 and are made to accommodate visitor needs. Chapter NR 51 changes are made to clarify proper applicability covered in statute.

Assumptions used in analysis of fiscal impacts of proposed changes in Chs. NR 45 and 51 follows:

Section	Code	Subject
1.	NR 45.04 (3)(k) – (m)	Renumbered – No Fiscal Impact.
2.	NR 45.05 (3)(e)	Amends bicycle operation to include Turtle–Flambeau scenic waters are – No Fiscal Impact.
3.a.	NR 45.05 (3)(f)	Clarifies bicycles must stop on state trails – No Fiscal Impact.
3.b.	NR 45.05 (3)(g)	Prohibits careless, negligent, and reckless use of bicycles – No Fiscal Impact.
4.	NR 45.06 (1)	Amends areas pets are permitted – No Fiscal Impact.
5.	NR 45.06 (6) (a)	Clarifies where horses on Turtle–Flambeau scenic waters areas can be used – No Fiscal Impact.
6.	NR 45.07 (1)	Amends areas where ground fires are prohibited – No Fiscal Impact.
7.	NR 45.08 (1) & (2)	Amends beach term used in NR 45.03 definition – No Fiscal Impact.
8a.	NR 45.10 (1)(a) & (k)	Amends to utilize proper terms of Turtle–Flambeau scenic waters area– No Fiscal Impact.
8b.	NR 45.10 (1) (L)	Creates 3 day camping period on designated state owned islands – No Fiscal Impact.
9.	NR 45.10 (2) (c)	Amends the time when extensions of campsites need to be made – No Fiscal Impact.
10.	NR 45.10 (3)(a)3.	Repealed – No Fiscal Impact.
11.	NR 45.10 (3)(a)4.	Amends date reservations are accepted –No Fiscal Impact.
12.	NR 45.10 (4)(intro.)	Creates 21–day camping period for group and backpack sites – No Fiscal Impact.
13.	NR 45.11 (6)(cm) & (g)	Corrects county name and renames East Lake to Vern Lake previously approved by NRB – No Fiscal Impact.
14.	NR 45.12 (1) (b)6.c.–e. and n.	Corrects names of use areas – No Fiscal Impact.
16.	NR 45.12 (1)(c)3. and (d) 32.–34.	Repealed – No Fiscal Impact.
17.	NR 45.12 (1)(f)1.	Clarifies parks honoring National Park Passes. – No Fiscal Impact.
20.	NR 45.12 (2)(b)4.	Repealed – No Fiscal Impact.
21.	NR 45.12 (2)(b)3. and 5.	Renumbered – No Fiscal Impact.
22.	NR 45.12 (2)(c)3.c.	Repealed – No Fiscal Impact.
25.	NR 45.12 (4)(h)	Clarifies mooring fees are included in self–registration process – No Fiscal Impact.
26.	NR 45.13 (1)(b)	Repealed – No Fiscal Impact.
27.	NR 45.13 (1)(c)	Clarifies process for collecting plant parts on state natural areas – No Fiscal Impact.
28.	NR 45.13 (1m)	Creates rules for the Dells of Wisconsin River State Natural Area – No Fiscal Impact.
29.	NR 45.13 (2)	Adds Pewit's Nest State Natural Area to specific property regulations – No Fiscal Impact.
30.	NR 45.13 (14)(b)	Clarifies possession of glass bottles and beverage containers must be secured in watercraft launched from Brule River State Forest – No Fiscal Impact.

31.	NR 45.13 (17)(b)4.	Corrects administrative code number fro cross reference – No Fiscal Impact.
32.	NR 45.13 (17) (bf) to (c)	Renumbered – No Fiscal Impact.
33.	NR 45.13 (22)	Clarifies camping unit must not be left unoccupied for 48 hours on Turtle–Flambeau– No Fiscal Impact.
34.	NR 51.91	Clarifies proper applicability covered in statute – No Fiscal Impact.

Section 15. Creates NR 45.12 (1) (b) 8. and (d) 49.

Add Governor Knowles State Forest St. Croix campground to list of properties requiring vehicle admission sticker.

a. Estimated Revenue from sticker

1. Resident Daily 648 x $5 3240
2. Non–Resident Daily 647 x $7 4536
3. Resident annual 216 x $18 3888
4. Non–Resident Annual 216 x 25 5400
5. Total Revenue 7064

b. Estimated program costs 3564

c. Net fiscal impact (new revenue) 13500

Section 18. Creates NR 45.12 (2) (a) 2.s.

Add Governor Knowles State Forest to Type "B" campground.

a. Number of sites 30

b. Estimate occupancy rate 35%

c. Number of camper days 2160

d. Total Revenue 20000

e. Estimated program costs 10686

f. Net Fiscal Impact 9314

Section 19. Amends NR 45.12 (2)(a)3.

Increases Kinnickinnic overnight boat mooring fee from $10.00 to $15.00 per night.

a. Average number of boats during camping season 1369

b. Increase cost $5.00/night

c. Net Fiscal Impact–15% resistance $5818

Section 23. Amends NR 45.12 (4) (e)

Increases Rock Island overnight boat mooring fee from $0.40/foot to $0.60/foot of boat length/night.

a. Average boat length is 28.4 ft. at .40/ft. = $11.36

b .Average mooring fee collected $11.36/boat x 547 nights= $6,212/yr.

c. Increase cost to $0.60/ft. $9321.00

d. Net Fiscal Impact $3109.00

Section 24. Repeals and recreates NR 45.12 (4) (g) 1. and 2.

Creates open shelter with electric and enclose shelter with electric fee.

a. Number of shelter rentals with electric 44

b. Average number rented/yr. 6

c. Cost of electrical service $5.00/rental

d. Net Fiscal Impact $1320

Summary of Projected Revenue Increases on Ch. NR 45 changes

Section	Code	New Revenue	Operation Costs	Net Impact
15	45.12 (1)(b)8.a. & (d) 49.	17064	3564	13500
18	45.12 (2)(a)2.s.	20000	10686	9314
19	45.12 (2)(a)3.	5818		5818
23	45.12 (4)(e)	3109		3109
24	45.12 (4)(g)1. &2.	1320		1320
	Totals	**47311**	**14250**	**33061**

Fiscal Impact

Revenue will increase as users become aware of new programs being provided under the proposed code changes.

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 30.42(1)(d) and 227.11(2)(a), Stats., interpreting ss. 30.42(1)(d), 30.44 and 30.45, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 37, Wis. Adm. Code, relating to timber cutting on lands adjacent to the Lower Wisconsin State Riverway. The existing rules provide that timber harvest or cutting may only be conducted on the land when authorized by a permit issued by the Lower Wisconsin State Riverway Board. The proposed rules incorporate changes mandated by Wis. Act 211 which specifies that the minimum amount of residual timber that must be left standing after timber harvest in the area known as the bluff zone and river edge zone of the riverway be reduced from 70 to 60 square feet basal area per acre. The statutory change also specifies that timber harvesting in these zones will be done by selection cutting. Because a county's authority to issue timber harvest permits was deleted in Wis. Act 211, the proposed rule deletes references to counties.

Initial Regulatory Flexibility

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.

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

April 16, 1997
Wednesday
at 2:00 p.m.

Room 511, GEF #2
101 S. 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 Doug Fendry at (608) 267–2764 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule [LF–12–97] may be submitted to Mr. Doug Fendry, Bureau of Facilities and Lands, P.O. Box 7921, Madison, WI 53707 no later than **April 28, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Fendry.

Fiscal Estimate

This proposed rule change implements Wis. Act 211, which pertains to Lower Wisconsin State Riverway. Wis. Act 211 requires the Department to amend ch. NR 37. This rule pertains to cutting and harvesting timber in the Lower Wisconsin State Riverway. The existing rules provide that timber harvest or cutting may only be conducted on the land when authorized by a permit issued by the Lower Wisconsin State Riverway Board. The rules are designed to integrate timber management with other uses of the riverway while maintaining the natural character and scenic beauty within the riverway. The rule contains cutting specifications that are designed to insure timber cutting will be visually inconspicuous. To accomplish this, four vegetative management zones were established in ch. NR 37 with specific restrictions or recommendations regarding timber harvest and cutting for each zone.

Wis. Act 211 specifies that the minimum amount of residual timber that must be left standing after timber harvest in the area known as the bluff zone and river edge zone of the riverway be reduced from 70 to 60 square feet basal area per acre. The statutory changes specifies that timber harvesting in these zones will be done by selection cutting. Wisconsin Act 211 also deletes a county's authority for issuing timber harvest permits, so the rule would delete references to counties. The rule would also add the River Edge Zone to s. NR 37.04 (2), which pertains to time requirements and road construction for harvesting timber.

Fiscal Impact

None.

Notice of Hearings

Natural Resources (Environmental Protection– Air Pollution Control, Chs. NR 400––)

Notice is hereby given that pursuant to ss. 285.11(1) and (5), 285.60(4) and (6), 285.62(1), (7) and (8), 285.65, 285.67 and 227.11(2)(a), Stats., interpreting ss. 285.11(6), 285.60(1)(b)1. and (4), 285.62(1), (7) and (8), 285.64 and 285.66(3)(c), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 400, 406 and 407, Wis. Adm. Code, relating to the air permit program. The proposed order revises air construction and operation permit rules to grant new and modified sources, consistent with recently enacted state statutes, the same application shield and operational flexibility that the rules grant to existing sources.

An application shield provides a facility the ability to operate without a permit if a complete and timely permit application is submitted. The proposed order also defines what records a facility must keep to qualify for certain exemptions from the requirement to obtain an operation permit. In addition, exemptions from both the construction and operation permit programs for small grain handling facilities are added to the rules.

The construction permit rules are revised to allow additional operational flexibility for rock crushing facilities, temporary replacement boilers and facilities that voluntarily take Plantwide Emission Limitations (PEL). Through the PEL, a facility elects to incorporate in its operation permit a cap on plantwide emissions. This would exempt it from the requirement to obtain construction permits for changes within the facility that are described in the operation permit. The plantwide emission limits would be set at actual historic levels, which typically are between 20% and 40% of the potential to emit.

There are also several other minor changes to the permit rules to clarify them or make them consistent with federal policy changes that have occurred since they were written and some clarifying changes to definitions.

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: Any business that needs or will need a construction permit, small grain handling facilities, rock crushing plants, facilities exempt from permitting based on actual production rates, facilities needing a temporary replacement boiler and facilities wishing to avoid construction permit requirements by accepting a PEL.

b. Description of reporting and bookkeeping procedures required: No new procedures required; the paperwork should be decreased

c. Description of professional skills required: No new skills

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

April 24, 1997	**Room 120**
Thursday	**State Office Building**
at 1:00 pm.	**141 NW Barstow St.**
	Waukesha
April 25, 1997	**Room 611A, GEF #2**
Friday	**101 S. Webster St.**
at 10:00 a.m.	**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 Robert Park at (608) 266–1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule [AM–14–97] may be submitted to Mr. Pat Kirsop, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than **April 25, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings.

A copy of proposed rule AM–14–97 and its fiscal estimate may be obtained from:

Proposed Rules
Bureau of Air Management
P.O. Box 7921
Madison, WI 53707
Phone: (608) 266–7718
FAX: (608) 267–0560

Fiscal Estimate

Summary Of Rule. The Department's operation permit program received interim approval from the U.S. EPA in April 1995. This proposed order addresses deficiencies EPA listed that prevented full approval of the Department's program. Changes made within this proposed order will make the operation permit program consistent with criteria in the Clean Air Act and federal regulations.

The proposed order will revise air construction and operation permit rules to grant new and modified sources, consistent with recently enacted in the Statutes, the same application shield and operational flexibility that the rules grant to existing sources. It will also define what records a facility must keep to qualify for certain exemptions from the requirement to obtain an operation permit. To keep the requirements of the construction permit program consistent with those of the operation permit program, similar language will be added to the construction permit rules. In addition, exemptions from both programs for small grain handling facilities will be added to the rules.

The construction permit rules will also be revised to allow additional operational flexibility for rock crushing facilities, temporary replacement boilers and facilities that voluntarily take Plantwide Emission Limitations (PEL). Through the PEL concept, a facility elects limits capping emissions at historic actual levels. In order to be exempt from the requirement to obtain a construction permit, the operation permit would include the emission caps, any anticipated changes as well as the emission limitations for any existing or future emissions units at the facility.

Fiscal Impact. Facilities will have some costs in gathering and keeping the records necessary for the exemptions. A facility electing to meet a PEL will save money. Changes covered under the PEL will not require a future construction permit or permit exemption. Construction permit costs range from $600 for a permit exemption to $2300 for a new source permit at a minor facility. Assuming 5 PELs per year in operation permits, the Department may lose revenue up to $1 1,000 per year. However, staff time spent processing the operation permits containing PELs would mean less time spent in processing the future facility changes that would need exemptions or construction permits. Staff will spend time in other revenue generating activities such as expedited permit review and other construction permit review. Staff could also spend time processing operation permits containing PELs.

Interest in the PEL program has mainly come from the printing industry. The number of PELs processed per year is an approximation and we anticipate processing the first PEL by January 1999. New source construction review permit activity in any year varies by 20 permits or 10% of the workload. The air program will absorb the PEL review fluctuation as it currently does with construction permits.

Notice of Hearing

Nursing Home Administrator Examining Board

Notice is hereby given that pursuant to authority vested in the Nursing Home Administrator Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 456.02, Stats., and interpreting ss. 456.02 (7), 456.04, 456.05, 456.08 and 456.10, Stats., the Nursing Home Administrator Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. NHA 4.04 and 5.01 and ch. NHA 6; to renumber s. NHA 4.02 (3); to amend ss. NHA 1.01, 1.02 (intro.), (1) (intro.), (b) (intro.), 7., (c) (intro.), 9., (d) (intro.), (2), (6) (intro.), (7) and (8), 2.03 (title) and 2.03, 3.01, 3.03 (1) (a) 1., (3) and (4), 4.01 (1) (b), 4.03 (2) and (3), 5.02 (3) and (12); to repeal and recreate ss. NHA 1.02 (1) (c) 2., 2.02, 4.01 (1) (c) and 4.04; and to create ss. NHA 1.02 (9), 2.04, 2.05, 3.02 (1) Note, 4.01 (1) (d) and (e) and 4.03 (4), relating to the licensure of nursing home administrators.

Hearing Information

The hearing will be held as follows:

April 24, 1997
Thursday
10:00 a.m.

Room 179A
1400 E. Washington Ave.
MADISON, WI

Written Comments

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

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

Written comments must be received by **May 9, 1997** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 456.02

Statutes interpreted: ss. 456.02 (7), 456.04, 456.05, 456.08 and 456.10

In this proposed rule–making order, the Nursing Home Administrator Examining Board amends ss. NHA 1.02 (1) and NHA 4.03 (2), to clarify that the Board will accept only experience which is acquired within a certain time period (any consecutive 36–month period within the 5–year period immediately preceding the date of application for licensure). In addition, under the current rules, credential applicants are required to submit applications for examination at least 30 days prior to the examination. Section NHA 2.02 is being repealed and recreated to require credential applicants to submit applications for examination to the Board at least 60 calendar days prior to the date of the examination. Section NHA 4.02 (3) is renumbered s. NHA 4.04 for proper placement in the code.

Section NHA 1.02 (9) is created to define the term "supervised clinical practicum." Sections NHA 2.02 (1) (c), 4.01 (1) (e) and 4.03 (4) are created to clarify that credential applicants must provide information to the Board relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. Finally, s. NHA 2.04 is created to identify the standard used by the Board to determine the passing grades for the state and national examinations; s. NHA 2.05 is created to clarify that the Board may deny an application for licensure if it determines that an applicant has violated the rules of conduct of the examination; and s. NHA 3.01 (2), (3) and (4) are created to identify the Board's procedure for approval of regular courses of study, programs of study and specialized courses.

Section NHA 4.01 (1) (c) is repealed and recreated to clarify that evidence of completion of the experience requirement must be submitted to the Board in conjunction with the application for licensure, not the application for examination. Section NHA 4.04, which states, in part, that a reciprocal examination must be scheduled at a time mutually convenient to the applicant and the Board, is not consistent with the Board's current practice; therefore, the provision is being repealed. Finally, ch. NHA 6, relating to access to public records, is also being repealed. The procedures for obtaining access to public records of governmental agencies are contained in subchapter II of ch. 19, Stats.

Text of Rule

SECTION 1. NHA 1.01 is amended to read:

NHA 1.01 Authority. The rules in chs. NHA 1 ~~through 6~~ to 5 are adopted pursuant to ss. 15.08 (5) (b), 227.11 (2) and 456.02, Stats.

SECTION 2. NHA 1.02 (intro.), (1) (intro.), (b) (intro.), 7. and (c) (intro.) are amended to read:

NHA 1.02 Definitions. As used in s. 456.04, Stats., and in rules of the nursing home ~~administrators~~ administrator examining board~~.~~:

(1) "Experience in the field of institutional administration" means work experience acquired in any consecutive 36−month period within the 5−year period immediately preceding the date of application for licensure, as an employe, student, trainee or intern in the total operation and activities of a ~~licensed~~ nursing home under the supervision of persons licensed under ch. 456, Stats., or holding the equivalent license in another state recognized by the board, and exposure to and knowledge of each of the following:

(b) Environmental services, including, but not limited to~~,~~:

7. ~~Governmental~~ Government environmental service providers.

(c) Resident services, including, but not limited to~~,~~:

SECTION 3. NHA 1.02 (1) (c) 2. is repealed and recreated to read:

NHA 1.02 (1) (c) 2. Physician services,

SECTION 4. NHA 1.02 (1) (c) 9., (d) (intro.), (2), (6) (intro.), (7) and (8) are amended to read:

NHA 1.02 (1) (c) 9. ~~Rehabilitative/restorative~~ Rehabilitative and restorative.

(d) Personnel management, including, but not limited to~~,~~:

(2) "~~Licensed nursing~~ "Nursing home" has the meaning given under s. 456.01 (2), Stats.

(6) "Program of study" means a prescribed sequence of courses ~~comprised~~ offered by a university or college, accredited by a regional or national accrediting agency recognized by the U.S. department of education, which consists of at least one course of 3 credit hours in each of the following:

(7) "Regular course of study" means a prescribed program of courses ~~in an established~~ offered by a university or college, accredited by a regional or national accrediting agency recognized by the U.S. department of education, which leads to an associate, baccalaureate, master or doctoral degree and which includes a program of study in the area of nursing home administration and a supervised clinical practicum.

(8) "Specialized courses" means individual courses offered by one or more educational institutions or course providers which lead to adequate preparation in each of the following general subject areas in nursing home administration ~~as described in s. NHA 2.03.~~:

(a) Administration of a nursing home.

(b) Long−term patient care.

(c) Organizations of health−care systems.

SECTION 5. NHA 1.02 (9) is created to read:

NHA 1.02 (9) "Supervised clinical practicum" means work experience acquired in a nursing home in conjunction with a regular course of study offered by a college or university.

SECTION 6. NHA 2.02 is repealed and recreated to read:

NHA 2.02 Application for examination. An applicant for examination for a license as a nursing home administrator shall make application on a form provided by the board at least 60 calendar days prior to the date of the examination. A qualified applicant with a disability shall be provided with reasonable accommodations. An applicant shall also submit to the board:

(1) Evidence satisfactory to the board of having completed any one of the following:

(a) A regular course of study, as defined in s. NHA 1.02 (7).

(b) A program of study, as defined in s. NHA 1.02 (6).

(c) Specialized courses, as defined in s. NHA 1.02 (8).

(2) The fees authorized by s. 440.05 (1), Stats.

(3) A statement relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all relating information necessary for the board to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

Note: Application forms are available on request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 7. NHA 2.03 (title) and 2.03 are amended to read:

NHA 2.03 Examination requirements. Every applicant for a license as a nursing home administrator after meeting the requirements for qualification for examination ~~shall successfully pass an examination which may include any of the following general subject areas in nursing home administration:~~ shall pass the examination under s. NHA 2.01 (3).

(1) General administration of a licensed nursing home.

(2) Long−term patient care.

(3) Organization of health−care systems.

SECTION 8. NHA 2.04 and 2.05 are created to read:

NHA 2.04 Passing grades. (1) NATIONAL. To pass the national examination, each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board may adopt the passing grade recommended by the examination provider.

(2) STATE. To pass the state law examination, each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

NHA 2.05 Cheating. The board may deny the application for licensure of any applicant who violates the rules of conduct of the examination.

SECTION 9. NHA 3.01 is amended to read:

NHA 3.01 Board approval. (1) All regular courses of study, programs of study and specialized courses in the subject area of nursing home administration shall be approved by the board.

(2) An application for approval of a regular course of study shall include a current copy of the college or university catalog which contains a summary of the requirements for completion of the degree program, including a list of the required courses and a description of the supervised clinical practicum.

(3) An application for approval of a program of study shall include a current copy of the college or university catalog which contains a summary of the requirements for completion of the program of study, including a list and description of the required courses and the number of credits approved for each course.

(4) An application for approval of a specialized course shall include a current copy of the course syllabus, a description of the course and the number of proposed credits.

Note: A list of approved regular courses of study, programs of study and specialized courses is available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin ~~53702~~ 53708.

SECTION 10. NHA 3.02 (1) Note is created to read:

Note: Except as provided in s. NHA 3.03 (4), continuing education programs must be approved by NAB. A list of approved programs is available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 11. NHA 3.03 (1) (a) 1., (3) and (4) are amended to read:

NHA 3.03 (1) (a) 1. General administration of a ~~licensed~~ nursing home.

(3) In−service programs sponsored by ~~licensed~~ nursing homes are not eligible for approval unless the programs are available to all ~~licensed~~ nursing home administrators.

(4) Any continuing education program submitted to NAB in a timely manner according to NAB procedures which is not approved may be submitted to the ~~office of the nursing home administrator examining~~ board~~, 1400 East Washington Avenue, Madison,~~

~~Wisconsin 53702~~ for consideration. The request must be submitted on forms provided by the board at least 20 days prior to the date the program will be offered, and shall include the written notification from NAB stating the reasons the program was not approved, an outline of the program, a general description of the subject matter, the time and location, and the name and title of the instructor of the program.

Note: Correspondence to the Nursing Home Administrator Examining Board should be mailed to P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 12. NHA 4.01 (1) (b) is amended to read:

NHA 4.01 (1) (b) Satisfy the examination requirements specified in s. NHA ~~2.02 (1)~~ 2.01 (3).

SECTION 13. NHA 4.01 (1) (c) is repealed and recreated to read:

NHA 4.01 (1) (c) Submit evidence of successful completion of experience as follows:

1. For applicants who have completed a program of study, one year of experience in the field of institutional administration.

2. For applicants who have completed a specialized course, one year of experience in the field of institutional administration.

Note: A qualified applicant with a disability shall be provided with reasonable accommodation. Application forms for licensure are available on request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 14. NHA 4.01 (1) (d) and (e) are created to read:

NHA 4.01 (1) (d) Satisfy the educational requirements specified in s. NHA 2.02 (1) (a).

(e) A statement relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all relating information necessary for the board to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

SECTION 15. NHA 4.02 (3) is renumbered NHA 4.04.

SECTION 16. NHA 4.03 (2) and (3) are amended to read:

NHA 4.03 (2) The applicant has been engaged in practice as a nursing home administrator for no fewer than 2,000 hours in any ~~12–month~~ consecutive 36 month period within the 5–year period immediately preceding the date of application for licensure; and,

(3) The applicant has passed the ~~reciprocal~~ examination on Wisconsin law governing ~~licensed~~ nursing homes under s. NHA 2.01 (3) (b).

SECTION 17. NHA 4.03 (4) is created to read:

NHA 4.03 (4) A statement relating to any pending criminal charge or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all relating information necessary for the board to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

SECTION 18. NHA 4.04 is repealed.

SECTION 19. NHA 5.01 is repealed.

SECTION 20. NHA 5.02 (3) and (12) are amended to read:

NHA 5.02 (3) Practicing while ~~the ability of the nursing home administrator to competently perform duties is~~ impaired by physical, mental or emotional disorder or drug or alcohol abuse;

(12) ~~Participating in~~ Committing or aiding or abetting the commission of a rebate or fee–splitting arrangements with health care ~~practitioners~~ providers;

SECTION 21. Chapter NHA 6 is repealed.

Note: The procedures for obtaining access to public records of governmental agencies are contained in subchapter II of ch. 19, Stats.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Transportation

Notice is hereby given that pursuant to s. 85.16, Stats., and interpreting ch. 194, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the creation of ch. Trans 177, Wis. Adm. Code, relating to motor carriers.

Hearing Information

The hearing will be held as follows:

April 24, 1997
Thursday
1:00 p.m.

Room 419
Hill Farms State Trans. Bldg.
4802 Sheboygan Ave.
MADISON, WI

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

Written Comments and Contact Person

The public record on this proposed rulemaking will be held open until **May 1, 1997**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Rick Soletski
Division of Motor Vehicles, Room 253
Department of Transportation
P. O. Box 7909
Madison, WI 53707–7909

Analysis Prepared by the Wis. Dept. of Transportation

Statutory Authority: s. 85.06

Statutes Interpreted: ch. 194

General Summary of Proposed Rule:

1993 Wis. Act 16 dissolved the Office of the Commissioner of Transportation and transferred responsibility for granting motor carriers the authority to operate in Wisconsin to the Department of Transportation within ch. 194, Stats. This proposed rule will replace ch. OCT 2, Wis. Adm. Code.

This proposed rule contains changes to update language, make correct references reflecting changes due to 1993 Wis. Act 16 and reflect Department procedures.

The proposed rule also requires that all carriers providing transportation shall register with the single–state registration system consistent with s. 194.405, Stats., and the standards in 49 USC s. 14504.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Proposed Rule and Contact Person

Copies of this proposed rule may be obtained upon request, without cost, by writing to Rick Soletski at the address for written comments previously given in this notice, or by calling (608) 267–7216.

Hearing–impaired individuals may contact the Department using TDD (608) 266–0396. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Veterans Affairs

Notice is hereby given that pursuant to s. 45.35 (3), Stats., and interpreting s. 45.351 (1), Stats., the Department of Veterans Affairs will hold a public hearing as follows to consider the emergency rule revision to s. VA 2.02 (2) (b) 2., Wis. Adm. Code, relating to the Health Care Aid grant program.

Hearing Information

The hearing will be held as follows:

April 18, 1997
Friday
9:45 a.m.

Wisconsin Veterans Home
Marden Center
KING, WI

Analysis and Summary Prepared by the Dept. of Veterans Affairs

Under s. VA 2.01 (2) (b) 2, Wis. Adm. Code, the Department of Veterans Affairs is prohibited from expending more than $50,000 in any fiscal year as payment for denture claims under the Health Care Aid grant program. Because of unprecedented demand, the Department of Veterans Affairs projects that claims for payment of dentures during this fiscal year will exceed the $50,000 limit. The emergency rule will raise the limit by $95,000 for the current fiscal year and will, therefore, enable the Department of Veterans Affairs to pay for dentures included in treatment plans already received during this fiscal year.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The emergency rule revision will raise the limit for denture claims by $95,000 from $50,000.

Copies of Rule and Fiscal Estimate

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

John Rosinski
Wisconsin Department of Veterans Affairs
P.O. Box 7843
MADISON, WI 53707–7843

Contact Person

John Rosinski, Chief Legal Counsel
Telephone (608) 266–7916
Wisconsin Department of Veteran Affairs

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

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

Agriculture, Trade and Consumer Protection (CR 96–191):

S. ATCP 139.04 (11) – Relating to prohibiting the sale of flammable substances containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Commerce (CR 97–4):

Chs. DOD 13 and Comm 113 – Relating to the annual allocation of volume cap on tax–exempt bonds for 1997.

Corrections (CR 96–163):

S. DOC 313.025 – Relating to the definition of a "prison industry" pursuant to s. 227.11 (2) (a), Stats.

Health & Family Services (CR 96–81):

Ch. HSS 144 – Relating to immunization of students.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Agriculture, Trade & Consumer Protection (CR 96–138):
An order affecting ch. ATCP 98, relating to financial standards and security requirements for vegetable contractors.
Effective 05–01–97.

Agriculture, Trade & Consumer Protection (CR 96–142):
An order affecting ch. ATCP 30 Appendix A, relating to atrazine use restrictions.
Effective 05–01–97.

Corrections (CR 95–206):
An order repealing and recreating ss. DOC 328.20 and 333.16, relating to use of oleoresin of capsicum, firearms and other weapons by Division of Community Corrections employes.
Effective 05–01–97.

Corrections (CR 96–175):
An order creating s. DOC 309.05 (2) (d), relating to stamping outgoing prisoner mail.
Effective 05–01–97.

Health & Family Services (CR 95–235):
An order affecting ch. HSS 90, relating to a system of early intervention services, called the Birth to 3 Program, for children in the age group birth through 2 who are found to be developmentally delayed or to have a diagnosed condition which will likely result in developmental delay.
Effective 05–01–97.

Insurance, Commissioner of (CR 96–153):
An order repealing and recreating s. ILHR 18.07 (5), relating to a decrease in 1996–97 premium rates for the Health Insurance Risk–Sharing Plan (HIRSP).
Effective 05–01–97.

Natural Resources (CR 96–134):
An order affecting chs. NR 190 and 191, relating to lake management planning grants and lake protection grants.
Effective 05–01–97.

Natural Resources (CR 96–160):
An order amending ss. NR 25.02, 25.05, 25.06 and 25.07, relating to commercial fishing for whitefish and chubs in Green Bay and Lake Michigan.
Effective 05–01–97.

Public Defender (CR 96–152):
An order amending s. PD 6.05 (1) (b), relating to reimbursement from parents of juveniles.
Effective 05–01–97.

Public Defender (CR 96–161):
An order repealing s. PD 3.04, relating to partial indigency.
Effective 05–01–97.

Transportation (CR 96–62):
An order affecting ch. Trans 301, relating to Human Services Vehicles (HSV's).
Effective 05–01–97.

Transportation (CR 96–76):
An order affecting ss. Trans 276.07 and 276.09, relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.
Effective 05–01–97.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the ***March 31, 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 95–69):
An order affecting ch. ILHR 202, relating to relocation assistance.
Effective 04–01–97.

Commerce (CR 96–144):
An order amending the effective date clause of Clearinghouse Rule 94–116 and affecting ss. ILHR 2.31, 59.22 and 82.40 and chs. ILHR 50, 51, 52, 54, 55, 56, 57, 58, 60, 62, 63, 64, 66 and 72, relating to energy conservation and ventilation.
Effective 04–01–97.

Natural Resources (CR 96–74):
An order affecting ss. NR 7.04, 7.05 and 7.06, relating to the recreational boating facilities program.
Effective 04–01–97.

Natural Resources (CR 96–77):
An order repealing and recreating ch. NR 235, relating to the regulation of effluent limitations and pretreatment standards for the organic chemicals, plastics, and synthetic fibers industry.
Effective 04–01–97.

Natural Resources (CR 96–78):
An order creating ch. NR 233, relating to the regulation of effluent limitations and pretreatment standards for the pesticide chemicals industry.
Effective 04–01–97.

Natural Resources (CR 96–86):
An order affecting ss. NR 439.01, 484.03, 484.04 and 484.10 and ch. NR 460, relating to general provisions for emission standards for hazardous air pollutants.
Effective 04–01–97.

Natural Resources (CR 96–87):
An order affecting chs. NR 400, 407, 423, 460, 468 and 469 and ss. NR 406.04 and 484.04, relating to emission standards for hazardous air pollutants generated from halogenated solvent cleaning operations.
Effective 04–01–97.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Department of Commerce (CR 95–69)

Ch. ILHR 202 – Relocation assistance.

Summary of Final Regulatory Flexibility Analysis:

This rule does not affect small business.

Summary of Comments of Legislative Standing Committees:

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

2. Department of Commerce (CR 96–144)

Chs. ILHR 63 & 64 – Energy conservation and ventilation.

Summary of Final Regulatory Flexibility Analysis:

Overall, the proposed rules will make the code less stringent and easier to use for all users.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Agriculture, Transportation, Utilities, and Financial Institutions. No comments were received.

3. Natural Resources (CR 96–74)

Ch. NR 7 – Recreational boating facilities program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not affect businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environmental Resources and Urban Affairs Committee. On August 21, 1996, the Assembly Natural Resources Committee requested the Department to modify the rule as it related to the eligibility for cost sharing assistance of the acquisition of weed harvesting equipment being limited to lakes where the acreage of harvestable aquatic vegetation was a minimum of 30 acres. The concern was that the acreage limit did not allow some lakes to participate in the program.

4. Natural Resources (CR 96–77)

Ch. NR 235 – Effluent limitations and pretreatment standards for the organic chemicals, plastics and synthetic fibers industry.

Summary of Final Regulatory Flexibility Analysis:

The U.S. Environmental Protection Agency considered small business impacts in their regulation development process. The Department does not have the discretion to apply these rules less stringently than the federal regulations to small businesses. In addition, the organic chemical manufacturing industry is not by nature a small facility business, either nationally or in Wisconsin.

Summary of Comments by Legislative Review Committees:

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

5. Natural Resources (CR 96–78)

Ch. NR 233 – Wastewater effluent limitations and pretreatment standards for the pesticide chemicals industry.

Summary of Final Regulatory Flexibility Analysis:

The U.S. Environmental Protection Agency considered small business impacts in their regulations development process. The Department does not have the discretion to apply these rules less stringently than the federal regulations to small businesses. In addition, the pesticide chemical manufacturing industry is not by nature a small facility business.

Summary of Comments by Legislative Review Committees:

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

6. Natural Resources (CR 96–86)

Chs. NR 439, 460 and 484 – Hazardous air pollutants general provisions.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will not have a significant impact on small business. The proposed rule simply mirrors the federal requirements and will not further impact small businesses except that, upon delegation, small business would work with the Department rather than U.S. EPA.

Summary of Comments by Legislative Review Committees:

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

7. Natural Resources (CR 96–87)

Chs. NR 400, 407, 423, 460, 468 and 484 – Halogenated solvent cleaning operation emission standards.

Summary of Final Regulatory Flexibility Analysis:

Small businesses are affected by this proposed rule. Those businesses will not be further impacted because this proposed rule simply mirror existing federal requirements.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Environment and Utilities Committee and the senate Environmental Resources and Urban Affairs Committee. There were no comments.

EXECUTIVE ORDERS

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

Executive Order 305. Relating to the Creation of the Governor's Commission on Teaching in the 21st Century.

Executive Order 306. Relating to Issuance of General Obligation Bonds for the Veterans Home Loan Program and Appointment of Hearing Officer.

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