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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: July 5, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Commerce
(Fee Schedule, Ch. Comm 2)
(Credentials, Ch. Comm 5)
(Elevators, Ch. Comm 18)

Rules adopted revising **chs. Comm 2, 5 and 18**, relating to inspection of elevators and mechanical lifting devices.

Finding of Emergency

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

The Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

Publication Date: May 4, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 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 a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required

to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately \$260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Hearing Date: February 13, 1997
Extension Through: June 30, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Department of Corrections

1. Rules adopted creating **ch. DOC 304**, relating to inmate secure work groups.

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:

Effective June 1, 1997, appropriations will be made available to the Department of Corrections for the establishment of secure work groups. Section 303.063 (2), Stats. requires that if the Department establishes a secure work program, the Department shall, before implementing the program, promulgate rules specifying the procedures and regulations relating to the program. The Department has just begun the permanent rule process for establishing the administrative rules for the secure work program. It typically takes nine months for a permanent administrative rule to be promulgated from the time the permanent rule making process begins.

The Department needs to adopt administrative rules regarding the organization and operation of the secure work group program in order to have rules in place which will comply with Sec. 303.063 (2), Stats. The rules will provide for the protection of the public, the correctional officers and the inmates by providing the requirements for participation in the program as well as providing for safety and security concerns.

An emergency currently exists as the prison population is idle and needs secure work groups to provide inmates work opportunities, to prepare inmates for work opportunities upon release to the community, and to reintegrate inmates into the community.

Publication Date: May 30, 1997
Effective Date: May 30, 1997
Expiration Date: October 28, 1997

2. Rules adopted creating **ch. DOC 332**, relating to registration and community notification of sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The legislature has directed the department to implement programs for sex offender registration and community notification by June 1, 1997. Emergency rules are necessary to implement the June 1, 1997, timeline mandated by the legislature, inform sex offenders of registration procedures, and inform law enforcement,

victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 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
Extension Through: August, 19, 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
Extension Through: August 15, 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 employees 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, 1997, 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 (2)

Commissioner of Insurance

1. 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
Hearing Date: February 19, 1997
Extension Through: July 29, 1997

2. Rule was adopted revising s. **Ins 18.07 (5) (bg)**, relating to an increase in 1997-98 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.

Analysis Prepared by the Commissioner of Insurance

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 July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. Ins 18.07 (5) (bg). The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This adjustment represents an average 5.8% increase in premium payments over the most recent rates.

Publication Date: May 16, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: June 30, 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
Extension Through: June 25, 1997

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)

Department of Revenue

1. Rules were adopted amending s. Tax 11.05 (2)(s) and revising s. 11.86 (6), relating to sales and use tax treatment of landscaping services.

Finding of Emergency

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

Sections Tax 11.05 (2)(s) and 11.86 (6), Stats., state that landscaping services (e.g., planting, mowing, and fertilizing grass) are only taxable when they are performed in developed areas.

Similar services performed in undeveloped areas (e.g., along highways) were determined by the department to not be landscaping services and therefore, the sale of such services was not subject to sales or use tax.

In case of the *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket#93-S-569), the Wisconsin Tax Appeals Commission held that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

It is necessary to promulgate this rule order to remove any threat of estoppel arguments and revenue loss to the state as a result of information contained in these rules that implies planting, mowing, fertilizing, and similar services performed in undeveloped areas are not taxable.

Publication Date: May 18, 1997
Effective Date: May 18, 1997
Expiration Date: October 16, 1997

- Rules adopted repealing **ch. ATCP 53** and creating **ch. Tax 53**, relating to increasing plat preview fees to cover all of the current costs of activities and services provided by the department under ss. 70.27 and 236.12, Stats.

Finding of Emergency

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

For the past three years, program costs have out paced revenues received. The Plat Review section has relied on their substantial cash balance to cover the difference. Projections indicate that cash reserves will be depleted within the next year or earlier. Without a plat review fee increase significant cutbacks in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut-backs state certified plats with saleable but not buildable lots could result. It should be noted that this program has not had a rate increase since 1985.

In order to address this problem, an administrative rule is in the process of being promulgated. Due to the complexities of where the Plat Review section physically resides (DATCP), who has program responsibility for it, combined with the 1996 Memorandum of Understanding between the Department of Revenue and the Department of Commerce, the administrative rule process has taken longer than anticipated and it is expected that the rule will not be completed for another 90 days.

In order to ensure that funding will be sufficient and that services to the citizens of this state remain uninterrupted, an emergency rule is necessary. In particular, this rule addresses the following needs:

- Ch. ATCP 53 is repealed.
- Ch. Tax 53 is created. Under this rule certain fees charged for plat review are increased.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997

EMERGENCY RULES NOW IN EFFECT

Transportation

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
Extension Through: June 30, 1997

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rule adopted creating **s. VA 2.01 (2)(b)18.**, relating to the health care aid grant program.

Finding of Emergency

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

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

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

Publication Date: April 7, 1997
Effective Date: April 7, 1997
Expiration Date: September 5, 1997
Hearing Date: April 18, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11-59)

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

Finding of Emergency

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

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

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Extension Through: July 27, 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
Hearing Dates: May 21 & 28, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Labor Standards, Chs. DWD 270-279)

Rules were adopted revising **ch. DWD 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:

In addition to raising the minimum wage to \$4.75 per hour on October 1, 1996, and \$5.15 per hour on September 1, 1997, the

federal Fair Labor Standards Act provides for an "opportunity wage" of \$4.25 per hour which may be paid by each new employer to a person under the age of 20 during the first 90 days of employment. The Department's permanent rules to raise the state minimum wage contained provisions creating an opportunity wage that are the same as those of the federal law.

On April 10, 1997, the State Senate Committee on Labor, Transportation and Financial Institutions suspended the portions of [CR 96-181](#) relating to the opportunity wage. The Department proceeded with formal adoption of the provisions of the rule that were not suspended; the permanent rule changes will become effective on June 1, 1997. On April 17, 1997, the Joint Committee for Review of Administrative Rules (JCRAR) unanimously approved extension of the Department's emergency rule on minimum wage, which includes the provisions on the opportunity wage. The emergency rule extension lasts until June 27, 1997.

The respective votes of the two Legislative committees have caused uncertainty as to whether the provisions relating to the opportunity wage remain in effect through June 27, 1997, or expire on June 1, 1997. The JCRAR has met several times since the standing committee's suspension but its only action on this issue was to extend the emergency rule, which includes the opportunity wage provision. The legal interpretation from the Legislative Council as to the precedence of the emergency rule provision vs. the permanent rule provision has not been definitive.

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee's suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state's employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

In absence of definitive legal opinion or action on the opportunity wage issue by the JCRAR, this emergency rule alleviates uncertainty as to whether the opportunity wage provisions are effective after June 1 by explicitly maintaining their effect. The Department will make every reasonable effort to comply with the JCRAR's intent once action is taken. If the JCRAR affirms the standing committee's suspension, the Department will immediately withdraw the provisions of this emergency rule. If the JCRAR does not affirm the standing committee's suspension, this emergency rule will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a germane modification to [CR-96-181](#) on March 31, 1997. It was the Department's intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

Publication Date: May 31, 1997
Effective Date: May 31, 1997
Expiration Date: October 29, 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:

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former **ch. ILHR 290**, Wis. Adm. Code, in accordance with 1995 Act 215, which enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

Publication Date: May 10, 1997
Effective Date: May 10, 1997
Expiration Date: October 8, 1997
Hearing Date: June 19, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Corrections

Subject:

DOC Code – Rules relating to secure work crews.

Description of policy issues:

Statement of the objective of the proposed rule:

It is anticipated that the proposed administrative rule will make permanent an emergency rule which states the purpose, applicability, organization, and operation of secure work programs for inmates. The rule will also provide definitions, eligibility requirements for inmates to participate in the program, the rate of inmate pay, and also provide a review of the inmate's work program assignment.

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

The existing relevant policies are contained in an emergency rule which is in effect for secure work crews for inmates. It is anticipated that the proposed permanent rule will be identical or similar to the emergency rule. It is anticipated that the policies will not change, but that the emergency rule will be made into a permanent rule.

The policies of the organization of the secure work program include the requirement that the inmate's participation in the secure work program be approved by the warden of the correctional facility to which the inmate is assigned. The policies also provide that an individual work crew may consist of a maximum of 12 inmates, that the work crew members shall be restrained by individual chain leg restraints, and that the inmates may be required to wear electronic stun belts or utilize other security technology. The secure work crew shall be supervised by two correctional officers, and at least one correctional officer shall be armed. The Department determined that the safety of the public, the inmates, and the security officers could only be maintained with these security measures. The warden approves the inmates selected to the program so that inmates who would pose a great risk to the public would not be allowed to participate in the secure work program. The Department determined that each work crew should be limited to 12 inmates for security and safety concerns. The Department determined that the leg restraints would be necessary to prevent inmates from escaping and from harming members of the public, correctional officers, themselves, or other inmates. Inmates may be required to wear electronic stun belts or other security technology if the Department determines that it is necessary for security reasons. Also, at least one of the correctional officers supervising the work crew shall be armed. This requirement is also intended to protect the public by reducing the risk of an escape.

The proposed permanent rule would require an inmate to have a security classification of medium, minimum or minimum security–community residential confinement in order to be eligible for a secure work program assignment. The proposed permanent rule will allow: 1) inmates in the intensive sanctions program who are sanctioned back to prison; and 2) probationers and parolees being held in custody (as an alternative to revocation) to be eligible for a secure work program assignment. The proposed permanent rule also would allow inmates to be assigned to the secure work program as a disciplinary disposition if the inmate otherwise is eligible for participation in the program. The Department determined that it would be preferable to allow as broad an inmate population as possible to participate in the secure work program without compromising security and safety concerns.

The proposed permanent rule would provide that inmates would be assigned to work outside the secure perimeter of the correctional institution to which the inmate is assigned and that the work assignments would include roadside cleaning, snow removal, construction projects and community service projects. The Department determined that these activities are commensurate with the abilities of most inmates, would provide work opportunities for the inmates and would provide service to the community. Section 303.063 (2), Stats., states that the Department's rules shall require that the inmates who are on work assignments under this program must wear distinctively colored outergarments. The proposed permanent rule complies with this statutory requirement.

Statement of the authority for the rule:

Sections 301.02, 301.03, and 303.063, Stats.

Staff time and administrative costs to develop the rule:

It is anticipated that the permanent rule will be identical or at least similar to the emergency rule. The emergency rule will be used as the basis for the permanent rule. There may be some changes made based on the legislative council report or based upon public comments. It is anticipated 10 hours of staff time may be necessary to develop the permanent administrative rule.

Hearing and Speech Examining Board

Subject:

HAS Code – Relating to recordkeeping by hearing instrument specialists.

Description of policy issues:

Objective of the rule:

To describe what records must be kept by a hearing instrument specialist for patients who are fitted for hearing instruments.

Policy analysis:

Current Hearing and Speech Examining Board administrative rules do not contain any requirements for keeping patient records. Because of the lack of those requirements in the rules, hearing instrument specialists are not keeping good and complete patient records. These rules will specifically identify what information needs to be kept by hearing instrument specialists for their patients.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 459.12 (1), Stats.

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

5 hours

Medical Examining Board

Subject:

Med Code – Relating to dispensing or prescribing of controlled substances for the treatment of obesity.

Description of policy issues:

Objective of the rule:

To establish standards for prescribing of controlled substances for treatment of obesity. The rule would revise the definition of unprofessional conduct to include prescribing or dispensing anorectic drugs, Schedules III through V, for the purpose of weight reduction or control in the treatment of obesity unless certain conditions are met.

Policy analysis:

Current Medical Examining Board administrative rules define “unprofessional conduct” for physicians to include prescribing controlled substances otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law. Some weight loss “clinics” now require patients to purchase prescription drugs from the clinic itself. A national chain of weight loss businesses has begun hiring physicians to write prescriptions for weight loss drugs.

The Board’s initial review of this issue indicates that a rule establishing standards for prescribing of controlled substances for treatment of obesity is appropriate and deems that the suggested rule is necessary to protect the public from inappropriate prescribing while still providing physicians with the ability to exercise reasonable medical judgment for the benefit of their patients.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

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

20 hours

Natural Resources

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

Subject:

Ch. NR 20 – Relating to the recreational fishing regulations.

Description of policy issues:

The rule/board action does not represent a change from past policy.

The Department of Natural Resources proposes to overhaul ch. NR 20, Wis. Adm. Code, to rearrange sections, clarify rules, and eliminate redundancy and potentially conflicting rules on specific waters, but to make NO substantive changes. Revisions to ch. NR 20 have been made by a variety of individuals over the years, with at least 7 different drafters making changes over the last 4 years alone. Currently, exceptions to seasons, length limits and other “special” regulations are scattered throughout the chapter, which presents problems when changes for enforcement and future revisions are made.

In certain instances, not all the required changes are made in all the various sections of the code, resulting in conflicting rules and enforcement difficulties. For example, recent changes were made to northern pike regulations on the Lake Winnebago system. The DNR discovered that the original revisions that were made and approved were not entirely adequate to fully implement the new rules. This proposed revision will make the administrative code more “user” friendly, particularly for internal use, but will also make interpretation easier for the courts and the public. The DNR feels this re-write (with NO substantive changes) is long overdue.

Statutory authority:

Sections 29.085 and 29.174, Stats.

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

The anticipated time commitment is 110 hours. One hearing is proposed to be held during the month of October, 1997 in Madison, Wisconsin.

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.

Administration

Rule Submittal Date

Notice is hereby given that on May 27, 1997, the Wisconsin Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Chapter Adm 1 relates to the Department's authority and responsibilities regarding the operation and parking of motor vehicles on state-controlled property. The Department proposes a number of minor changes to update rule language and to improve the operations related to parking on state-controlled properties.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rules without a public hearing, pursuant to s. 227.16 (2) (e), Stats.

The organizational unit that is primarily responsible for promulgation of this rule is the Division of Buildings and Police Services.

Contact People

If you have any questions, you may contact:

Donna Sorenson
Telephone (608) 266-2887

Commerce

Rule Submittal Date

On May 19, 1997, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Comm 27, relating to piers for manufactured homes.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The agency unit primarily responsible for the promulgation of the rule order is the Safety and Buildings Division.

Contact Person

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

Corrections

Rule Submittal Date

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on May 23, 1997, the Department of Corrections submits proposed ch. DOC 309 to the Wisconsin Legislative Council Staff.

Analysis

The proposed rule affects ch. DOC 309, relating to inmate mail, property and telephones.

Agency Procedure for Promulgation

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

Contact Person

Deborah Rychlowski
Department of Corrections
Telephone (608) 266-8426

Public Instruction

Rule Submittal Date

On May 27, 1997, the Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends chapters PI 3, 4 and 8, relating to teacher certification requirements, certification program requirements, and Standard (L).

Agency Procedure for Promulgation

Public hearings will be scheduled. The agency unit primarily responsible for the promulgation of the rule is the Division of Learning Support: Instructional Services.

Contact Person

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

Peter Burke
Director of Teacher Education and Licensing
Telephone (608) 266-1879

NOTICE SECTION

Notice of Hearings

Department of Commerce

Notice is given that pursuant to s. 101.92 (1m), Stats., the Department of Commerce proposes to hold public hearings to consider the revision of Ch. Comm 27, Wis. Adm. Code, relating to piers for new manufactured homes.

Hearing Information

July 7, 1997
Monday
1:00 p.m.

Room 103 GEF-1 State Office Bldg.
201 E. Washington Ave.
Madison

July 8, 1997
Tuesday
11:00 a.m.

Room E101
Northcentral Technical College
1000 Campus Drive
Wausau

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety and Buildings, 201 East Washington Avenue, P.O. Box 7969, Madison, Wisconsin 53707, by calling (608) 261-6546 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings 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 hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **July 25, 1997**, for inclusion in the summary of public comments submitted to the legislature. Any such comments should be submitted to Ronald Acker, at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitted comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6546 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 Proposed Rules

Statutory Authority: S. 101.92 (1m)

Statute Interpreted: S. 101.92 (1m)

The Division of Safety and Buildings within the Department of Commerce is responsible for administering rules for the safe and sanitary design and construction of manufactured homes. Chapter Comm 27 contains safety and health standards for manufactured homes that are constructed, distributed, sold or offered for sale in the state of Wisconsin.

The proposed rules consist of revisions to chapter Comm 27 relating to the installation of piers for new manufactured homes. The proposed rules include requirements for site preparation, footings, pier construction, pier location, pier caps and shims, and clearances. The proposed rules require footings under every pier and the removal of all top soil from the area beneath any footing. The piers may be constructed of concrete blocks, manufactured steel stands or manufactured concrete stands. The piers must be placed at specified

intervals under the main frame of the home, no more than 3 feet from the end of the home, and under center mating walls. The proposed rules also include minimum clearance requirements beneath the main frame.

The proposed rules are consistent with the pier installation standards established by the American National Standards Institute in standard A225.1. Also, the proposed rules have been developed with the assistance of the following 11-member advisory committee.

| <u>Name</u> | <u>Representing</u> |
|----------------------|----------------------------|
| Clifford Bader, Jr. | Pier Installers |
| William M. Baudhuin | Public Interest |
| Dale Dolata | Pier Installers |
| David R. Friday | Public Interest |
| James E. Garski | Manufactured Home Industry |
| Terry Halverson | Department of Commerce |
| Dave Perret | Park Licensees |
| Scott E. Slattery | Manufactured Home Industry |
| Char Thompson | Public Interest |
| Nader Tomasbi | Manufacturers |
| Gerald "Mike" Zenner | Manufacturers |

Because the rules for licensing of manufactured home manufacturers were previously moved to chapter Comm 5, the proposed rules also include the removal of the references to licensing in the Purpose and Scope of chapter Comm 27.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

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

The rules will affect any business involved with the installation of piers for new manufactured homes.

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

There are no reporting, bookkeeping or similar procedures required for compliance with the rules.

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

There are no professional skills necessary for compliance with the rules.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 27. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing chapter Comm 27. Any additional workload costs created by the new pier installation rules will be offset by the respective fees. Therefore, the proposed rules will not have any fiscal effect on the Division.

Local municipalities may voluntarily enforce chapter Comm 27, and they have the authority to offset any costs by charging appropriate fees.

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to ss. 115.28 (7), 121.02 (1) (a) and (5) and 227.11 (2) (a), Stats., and interpreting ss. 115.28 (7) and 121.02 (1) (L), Stats., the Department of Public Instruction will hold public hearings as follows to consider emergency and proposed permanent rules relating to teacher certification requirements, certification program requirements, and Standard (L).

Hearing Information

The hearings will be held as follows:

| | |
|---|---|
| July 8, 1997 Tuesday 4:00 p.m. – 6:00 p.m. | Room 041 GEF 3 Building 125 South Webster St. MADISON, WI |
| July 9, 1997 Wednesday 4:00 p.m. – 6:00 p.m. | Room 233 UW Center–Marathon County 518 South 7th Ave. WAUSAU, WI |

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

Copies of Rule and Contact Person

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

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

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **July 14, 1997**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Section 115.28 (7), Stats., requires the state superintendent of public instruction to license all teachers for the public schools and to make rules establishing standards of attainment for licensure. Chapter PI 3 contains the requirements which an individual must meet to be licensed in Wisconsin. Chapter PI 4 contains the procedures and standards for approval of professional education programs leading to licensure.

Section 121.02 (5), Stats., requires the state superintendent of public instruction to promulgate rules relating to school district standards. Chapter PI 8 contains the 20 standards that each school board is required to meet. One of these standards, Standard (L), requires that instruction be provided at specified grade levels in reading, language arts, mathematics, science, social studies, etc.

The rules include modifications made to chs. PI 3, 4 and 8 as follows:

Educational interpreter: Amend s. PI 3.03 (2) (e), relating to educational interpreter license renewal criteria. This amendment

would incorporate an educational interpreter performance assessment as a requirement for license renewal. Educational interpreters who work as oral or cued speech interpreters would be exempt from this renewal requirement.

General requirements for a license: Amend s. PI 3.05 (3m) (g), relating to special subject areas, special education and pupil services requirements pertaining to the general requirements to receive a license. This amendment would replace the requirement that applicants complete 6 semester credits in reading and language arts with a requirement that one discrete course be completed in reading and language arts.

Driver education: Amend s. PI 3.13, relating to driver education licenses. This amendment would allow the department to take action on individuals holding a driver education license who do not maintain an acceptable driving record. This amendment would also add another option to the driver education license renewal criteria.

Cognitive disabilities: Amend s. PI 3.26, relating to mild or moderate cognitive disabilities licenses and eliminate s. PI 3.27, relating to severely handicapped licenses. Current rules allow individuals holding a mild or moderate cognitive disabilities – 806 license to teach severely handicapped children but does not allow individuals holding a severely handicapped – 807 license to teach children with mild or moderate cognitive disabilities. This amendment would combine the two licenses into one comprehensive license covering the full range of severity of cognitive disabilities. Corresponding changes will be made to cognitive disability program requirements under ss. PI 4.65 and 4.66.

Speech and language: Amend s. PI 3.35, relating to speech and language pathology licenses. This amendment would eliminate redundancy, clarify, and consolidate rules so that they can be more easily read and understood. Corresponding changes will be made to the speech and language pathology program requirements under s. PI 4.78.

Assistive technology: Create s. PI 3.38 (3), relating to a license in assistive technology. This proposal would require specialized training in the applications of assistive technology to facilitate communication for students with exceptional educational needs. This proposal would also allow physical and occupational therapists, in addition to special education teachers, to receive such a license.

Human relations, relating to genocide, slavery and the Holocaust: Amend ss. PI 3.05 (2m) (a), 4.11 (2) and 8.01 (2) (L), relating to human relations and instruction requirements. This amendment would:

⇒ Require the study of human rights issues related to genocide, slavery and the Holocaust in order to receive a license to teach.

⇒ Require a licensure program to require the study of human rights issues related to genocide, slavery and the Holocaust.

⇒ Require instruction in human rights issues related to genocide, slavery and the Holocaust in grades 5–12.

Special education program requirements: Repeal and recreate subch. VII of ch. PI 4, relating to special education programs. Several minor amendments will be made to program areas relating to special education common rules, early childhood, emotional disturbance, hearing impaired, learning disabilities, cognitive disabilities, and speech and language to ensure that future special education teachers will be both available and adequately prepared to meet the needs identified by the field. These changes are also based on the Department's evaluation of licensure programs made every five years. Most licensure programs have already amended their programs based on the Department's evaluation.

Finally, one of the provisions under **Clearinghouse Rule 96–60** was to authorize the state superintendent to grant exemptions on required test scores for out-of-state graduates. The modification was made under s. PI 3.05 (7) (b) 2 and should have been placed under s. PI 3.05 (7) (a). This rule modification will correct this misplacement.

The Department will promulgate these rules as emergency rules effective July 1, 1997. Persons applying for licenses and universities providing programs that lead to licensure should have little difficulty in meeting these rule requirements. Initial applicability sections have

been listed at the end of the rule to help license applicants and universities determine when the rule will affect licensure and program requirements.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate:

Ch. PI 3 contains the requirements that an individual must meet to be licensed in Wisconsin. Chapter PI 4 contains the procedures and standards for approval of professional education programs leading to licensure. Chapter PI 8 contains the 20 standards that each school board is required to meet under Wisconsin statutes.

The modifications included in the emergency and proposed permanent rules most likely to result in a cost, if any, are as follows:

Educational Interpreters: In order to renew a license under these rules, educational interpreters are required to take an educational interpreter performance assessment. The assessment would cost between \$100 – \$125 which the test taker would have to pay. A school district may elect to pay for these assessments, but such payment is not required. It should be noted that the assessment would be counted as 30 equivalency clock hours, or 1 credit, toward meeting the 6 credits required for license renewal every 5 years.

Human relations, relating to genocide, slavery and the Holocaust: Under these rules, licensure and program requirements relating to human relations must address issues related to genocide, slavery and the Holocaust. The rules also require that instruction in these issues be provided at school in at least one grade level in grades 5 through 8 and in at least one grade level in grades 9 through 12. Most teacher training programs and schools already provide instruction relating to the inhumanity of genocide, slavery and the Holocaust. Therefore, it is assumed that there will be no increased costs to teacher training programs or school districts.

The following modifications made under these rules will clarify, eliminate redundancy, and streamline current requirements to make provisions under ch. PI 3 and 4 easier to read, understand, and implement:

General requirements for a license. This amendment would replace the requirement that certain applicants complete 6 semester credits in reading and language arts with a requirement that one discrete course be completed in reading and language arts.

Driver education. This amendment would allow the department to take action on the licenses of individuals holding a

driver education license who do not maintain an acceptable driving record, and add another option to the driver education license renewal criteria.

Cognitive disabilities. This amendment would combine the current two cognitive disabilities licenses (mild/moderate and severely handicapped) into one comprehensive license covering the full range of severity of cognitive disabilities. Corresponding changes will be made to cognitive disability program requirements.

Speech and language. This amendment would eliminate redundancy, clarify, and consolidate rules so that they can be more easily read and understood. Corresponding changes will be made to the speech and language pathology program requirements.

Assistive technology. This amendment would require specialized training in the applications of assistive technology to facilitate communication for students with exceptional educational needs. The amendment would also allow physical and occupational therapists, in addition to special education teachers, to receive such a license.

Special education program requirements. Several minor amendments have been made to program areas relating to special education common rules, early childhood, emotional disturbance, hearing impaired, learning disabilities, cognitive disabilities, and speech and language to ensure that future special education teachers will be both available and adequately prepared to meet the needs identified by the field. These changes are also based on the Department's evaluation of licensure programs made every five years. Most licensure programs have already amended their programs based on the Department's evaluation.

It is not anticipated that there would be any new costs to school districts for hiring appropriately trained staff under the rule modifications listed above. In some cases, these rule modifications may result in decreased costs to individuals seeking or renewing a license due to fewer credit requirements.

These rules may have a fiscal effect on the University of Wisconsin System. A copy of the proposed rules has been submitted to the University of Wisconsin System with a request for a fiscal note.

These rules will have no fiscal effect on the Department.

Initial Regulatory Flexibility Analysis

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

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

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

Commerce (CR 96-172):

Chs. Comm 18 and ILHR 51, 52, 66, 69 and 70 – Relating to barrier-free design requirements.

Educational Approval Board (CR 97-35):

Chs. EAB 1 to 10 – Relating to approving and licensing schools and programs, setting fees, advertising, setting bond levels, defining tuition refund policy and procedures, outlining complaints procedures, mandating records retention and all matters related to the oversight of approved postsecondary educational institutions.

Health and Family Services (CR 97-24):

Ch. HSS 148 – Relating to rural counties participating in the Wisconsin Breast Cancer Screening Project.

Health and Family Services (CR 97-36):

Ch. HSS 1 – Relating to operation of the uniform fee system, including determination of parental liability for the cost of court-ordered substitute care of a child.

Insurance, Commissioner of (CR 96-192):

S. Ins 2.80 – Relating to valuation of reserve liabilities for life insurance.

Insurance, Commissioner of (CR 97-7):

S. Ins 3.46 – Relating to the requirements for tax deductible long-term care insurance.

Insurance, Commissioner of (CR 97-9):

S. Ins 2.17 – Relating to life insurance illustrations.

Optometry Examining Board (CR 97-22):

Chs. Opt 1 and 3 to 7 – Relating to applications, examinations and continuing education requirements, and to standards of professional conduct of optometrists.

Public Service Commission (CR 95-62):

Ch. PSC 168 – Relating to the certification and regulation of telecommunications resellers and alternative operator service providers.

Regulation and Licensing (CR 97-25):

Chs. RL 100 to 105 and 110 to 116 – Relating to amateur and professional boxing.

Transportation (CR 97-63):

S. Trans 276.07 (8), (11) and (16) – Relating to allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

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.

Hearing & Speech Examining Board (CR 96-162):

An order affecting ss. HAS 4.03, 5.02, 6.02, 6.065 and 6.09, relating to calibration of audiometric equipment and the use of support personnel.

Effective 08-01-97.

Hearing & Speech Examining Board (CR 96-173):

An order amending s. HAS 6.09 (2) (o), relating to the grounds for discipline for individuals who are credentialed as speech-language pathologists and audiologists.

Effective 08-01-97.

Natural Resources (CR 96-40):

An order creating s. NR 19.025, relating to the waiver of approvals, fees and other requirements of ch. 29, Stats., for an educational, recreational skills activity.

Effective 08-01-97.

Natural Resources (CR 96-133):

An order amending s. NR 10.09 (1) (c) 1. a., relating to the definition of a muzzleloader for the muzzleloader gun deer season.

Effective 07-01-97.

Natural Resources (CR 96-135):

An order amending s. NR 27.03 (2) and (3), relating to endangered and threatened species.

Effective 08-01-97.

Natural Resources (CR 96-190):

An order affecting ss. NR 20.02, 20.03 and 25.06, relating to sport and commercial fishing for yellow perch in Green Bay.

Part effective 07-01-97.

Part effective 08-01-97.

Regulation and Licensing (CR 96-193):

An order affecting ch. RL 50 and ss. RL 52.02, 52.04, 53.02, 54.04 and 54.05, relating to the regulation of cemetery authorities, cemetery salespeople and preneed sellers of cemetery merchandise.

Effective 08-01-97.

Regulation and Licensing (CR 97-1):

An order affecting ss. RL 25.02, 25.025, 25.03, 25.035 and 25.066, relating to educational requirements for real estate salesperson's and broker's licenses.

Effective 08-01-97.

Veterinary Examining Board (CR 96-194):

An order repealing and recreating s. VE 4.01 (3), relating to evidence that would be required (in order to obtain a veterinary license) of a candidate who is not a graduate of a school that has been approved by the Board.

Effective 07-01-97.

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