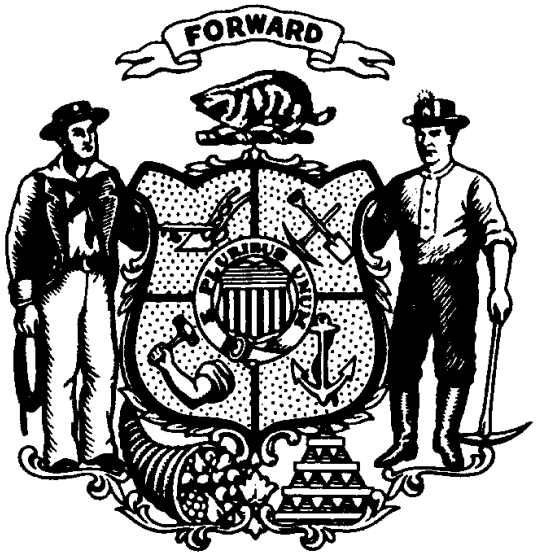
WISCONSIN ADMINISTRATIVE REGISTER

No. 502



Publication Date: October 14, 1997
Effective Date: October 15, 1997

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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 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**
Hearing Date: **July 29, 1997**

EMERGENCY RULES NOW IN EFFECT (3)

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**
Hearing Dates: **August 25, 28 & 29, 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**
Hearing Dates: **August 27, 28 & 29, 1997**

3. Rules adopted revising **ch. DOC 310**, relating to inmates complaint review system.

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 and welfare. A statement of the facts constituting the emergency is:

There is a Corrections Complaint Examiner with two investigator positions and a program assistant position at the Department of Justice. The number and placement of these Corrections Complaint Examiner positions have been in effect for years. At the present time there is a substantial backlog of approximately 3,000 inmate complaints which need to be reviewed by the Corrections Complaint Examiner. The Department of Justice's position is that it will no longer do the Corrections Complaint Examiner function.

The Department must change its administrative rule to reflect the placement of the Corrections Complaint Examiner function from the Department of Justice to the Department of Corrections. The Department must also change its administrative rule regarding inmate complaints to make the system more efficient as a substantial backlog now exists, and there will be no new positions at the Department of Corrections to do the work of the Corrections Complaint Examiner.

The Department's purpose in the inmate complaint review system is to afford inmates a process by which grievances may be expeditiously raised, investigated, and decided. An efficient inmate complaint review system is required for the morale of the inmates and the orderly functioning of the institutions. An emergency exists due to the current backlog and the proposed moving of the function which will require the Department of Corrections to do the work of the Corrections Complaint Examiners with no new positions.

Publication Date: **August 4, 1997**
Effective Date: **August 4, 1997**
Expiration Date: **January 2, 1998**
Hearing Dates: **October 15, 16 & 17, 1997**

EMERGENCY RULES NOW IN EFFECT

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

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**
Extension Through: **October 31, 1997**

EMERGENCY RULES NOW IN EFFECT (3)

Commissioner of Insurance

1. 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**

2. Rules adopted revising **ch. Ins 17,** relating to annual patients compensation fund and mediation fund fees calculation of adding certain physician specialties and UW hospital and clinics residents' fees.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The deputy commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 97–71, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1997. The permanent rule was delayed pending legislative action on Senate Bill 145 which, if passed, will require a lowering of the fund fees originally proposed by the fund's board of governors. Senate Bill 145 may still reach the Senate floor this legislative session but, in all likelihood not before July 1, 1997, when this fee rule must be in effect. Assembly Bill 248, the Assembly bill which mirrors Senate Bill 145, passed the Assembly overwhelmingly.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 15, 1997. Because the provisions of this rule first apply on July 1, 1997, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to the published notice was held on May 30, 1997.

Publication Date: **June 20, 1997**
Effective Date: **June 20, 1997**
Expiration Date: **November, 18, 1997**

3. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1997, adding certain physician specialties to those currently listed in the rule and providing that UW hospital and clinics residents' fees be calculated on a full–time–equivalent basis in the same manner as medical college of Wisconsin resident fees are currently calculated.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

1997 Wis. Act 11 was signed into law on July 14, 1997, but by its terms made effective July 1, 1997. Act 11 increased the required primary limits for health care providers subject to the fund from $400,000 to $1,000,000 for each occurrence and from $1,000,000 to $3,000,000 for an annual aggregate limit. A prior emergency rule effective June 20, 1997, set fund fees for the current fiscal year beginning July 1, 1997, based on the lower liability limits then in effect. The enactment of Act 11 on July 14, 1997, increasing the primary limits made this emergency rule necessary to reduce fund fees as of July 1, 1997, the effective date of that Act.

The commissioner expects that the revised permanent rule corresponding to this emergency rule, clearinghouse rule No. 97–71, will be filed with the secretary of state in time to take effect

November 15, 1997. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 30, 1997.

Publication Date: August 12, 1997
Effective Date: August 12, 1997
Expiration Date: January 10, 1998

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 **ch. NR 10**, relating to the 1997 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

The foregoing rules are approved and adopted by the Natural Resources Board on August 27, 1997.

Publication Date: September 12, 1997
Effective Date: September 12, 1997
Expiration Date: February 10, 1998
Hearing Date: October 27, 1997
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Public Defender

A rule was adopted amending **s. PD 3.038 (2)**, relating to the calculation of indigency.

Finding of Emergency

The State Public Defender Board finds that an emergency exists and that the following rule is necessary for the immediate preservation of the public peace, health, safety or welfare. The statement of facts constituting the emergency is as follows:

The following emergency rule establishes the criteria to be used when determining whether a participant in the Wisconsin works (W–2) program qualifies for public defender representation. W–2 replaces aid to families with dependent children (AFDC) and, pursuant to s.49.141 (2) (b), Stats., goes into effect on September 1, 1997. Although the Office of the State Public Defender (SPD) has rules governing eligibility for public defender representation of AFDC participants, it does not have rules governing the eligibility of W–2 participants. Because W–2 goes into effect on September 1, 1997, and it will be several months before a permanent rule is in place, it is essential that the following rule be promulgated as an emergency rule.

Publication Date: September 15, 1997
Effective Date: September 15, 1997
Expiration Date: February 13, 1998
Hearing Date: October 27, 1997

EMERGENCY RULES NOW IN EFFECT

Public Instruction

Rules adopted revising **chs. PI 3** and **4,** relating to teacher certification requirements and certification program requirements.

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.

Proposed permanent rules were submitted to the Wisconsin Legislative Council on May 27, 1997. Most of the modifications made under the proposed permanent and emergency rules clarify, eliminate redundancy, and streamline current requirements to make the provisions under ch. PI 3 and 4 easier to read, understand, and implement. The rules also provide for consistency with other state agency licensure activity.

In order for teachers to apply for or renew specified licenses (license are issued July 1 through June 30) and for universities to

have program requirements in place in time for the upcoming school year, rules must be in place as soon as possible.

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

EMERGENCY RULES NOW IN EFFECT

Department of Revenue

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 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**
Hearing Date: **July 29, 1997**

EMERGENCY RULES NOW IN EFFECT

State Fair Park Board

Rules adopted revising **chs. SFP 2** and **7**, relating to regulation of activities at the state fair park and revising bond schedule.

Finding of Emergency

The Wisconsin State Fair Park Board finds that an emergency exists and that the adoption of rules is necessary for the immediate preservation of the public peace, health, safety and welfare of its citizens. The facts constituting this emergency are as follows:

During the annual State Fair, which is scheduled to begin on July 31, 1997, the Wisconsin State Fair Park is host to over 100,000 people per day and millions of dollars in merchandise and property. Initially, chapters SFP 1–7 were designed primarily to protect the property of the State Fair Park.

However, crime patterns at the State Fair Park have changed dramatically since those rules werc adopted in 1967. With the increases in attendance and number of events in the intervening years, the number and severity of crimes against State Fair visitors, patrons, and property have necessarily increased. Also, a general rise in gang–related activity at Park events and during skating hours at the Pettit National Ice Center has occurred over the last several years. Consequently, there is a greater need for Park Police Department arrest authority on the Park grounds in order to ensure prosecutorial cooperation by Milwaukee County.

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court system are reluctant to process and charge offenders for relatively minor property–type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee county by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various weapons prohibitions. There is also included provisions to protect the police horses which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family–oriented environment at this year's State Fair and other Park events. It is necessary to use the emergency rule for processing the proposed rule change to Administrative Code, reference to the bail bond schedule, section 5, s. SFP 7.02. Section 5, s. SFP 7.02 is amended to repeal the old bond schedule and recreate the new bond schedule to align the bond code with the corresponding section in the Wisconsin Administrative Code to take effect before the 1997 Wisconsin State Fair begins on July 31, 1997.

The State Fair Park Board has begun the permanent rule process but the normal process will take between 6 and 9 months to complete. It is imperative to have these rules in place by the time of the 1997 State Fair.

These rules are therefore adopted as emergency rules to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes as provided in s. 227.24 (1) (c), Stats.

Publication Date: **August 1, 1997**
Effective Date: **August 1, 1997**
Expiration Date: **December 30, 1997**

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

Rules adopted revising **ch. Trans 300**, relating to school buses.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. The amendments are needed to assure that school bus operators can purchase school buses manufactured using the latest in construction technology and providing equal strength and safety. Currently, there are estimated to be 60 buses on order by operators. Without this emergency rule, these buses could not be used in Wisconsin when the school year begins in August 1997. Therefore, schools will start using alternative vehicles (production vans)

because of the unavailability of the smaller school buses built to the safer school bus standards.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: August 26, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development
(Economic Support, Chs. DWD 11–59)

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
Extension Through: November 26, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Employe Trust Funds

Subject:

ETF Code – Relating to eligibility for duty disability benefits under s. 40.65, Stats., when a protective occupation participant becomes disabled due to a work–related injury or illness.

Description of policy issues:

Objectives of the rule:

I. To clarify when the protective occupation participant becomes eligible for a duty disability benefit due to a work–related injury or illness.

II. To clarify what amount the participant is eligible to receive once it is determined the employe is approved for the duty disability benefit.

Policy analysis:

Under s. 40.65 (4), Stats., a protective occupation participant is entitled to a duty disability benefit:

♦ if the employe is injured while performing his or her duty or contracts a disease due to his or her occupation,

♦ the disability is likely to be permanent and the disability causes the employe to retire from his or her job,

♦ or the employe's pay or position is reduced or he or she is assigned to light duty,

♦ or the employe's promotional opportunities within the service are adversely affected if state or local rules, ordinances, policies or written agreement prohibits promotion because of the disability.

The rule will clarify when the duty disability benefit becomes payable to the disabled employe.

The Wisconsin Statutes, s. 40.02 (41m), defines the monthly salary to be used in determining the duty disability benefit. In addition to the gross amount of salary paid to the participant, overtime pay may be considered part of the employe's monthly salary if it is received on a regular and dependable basis. This rule will clarify the amount of earnings that may be included when determining the monthly salary as well as clarify what is considered "regular and dependable" overtime.

The duty disability program requires that the disabled participant's gross duty disability benefit is reduced by income from other sources. Under s. 40.65 (5) (b) 3, Stats., the benefit is reduced by any worker's compensation benefit payable to the participant, including payments made pursuant to a compromise settlement under s. 102.16 (1), Stats. The Wisconsin Supreme Court recently ruled that the Department was reducing the duty disability benefit incorrectly for the workers' compensation benefit. As a result of the Court's ruling, this administrative rule is being promulgated to provide clarification on what workers' compensation benefit can be used as an offset.

Policy alternatives to the proposed rule:

This rule is intended to codify and systematize the establishment of the benefit amounts as well as the application of the workers' compensation offset. The rule will introduce change in determining the benefit effective date consistent with the Wisconsin Supreme Court's ruling. If the rule were not promulgated, the result would be less certainty and efficiency in the administration of the duty disability program established under chapter 40, Stats.

Statutory authority for rule–making:

s. 40.03 (2) (i), Stats.

Staff time required:

The Department estimates that state employes will spend 60 hours to develop this rule.

Insurance, Commissioner of

Subject:

S. Ins 2.30 – Relating to a new mortality table for determining reserve liabilities for annuities.

Description of policy issues:

A statement of the objective of the proposed rule:

To amend current rule s. Ins 2.30, Wis. Adm. Code, to update mortality tables used to determine reserve liabilities for annuity contracts. The current rule is based on a National Association of Insurance Commissioners (NAIC) Model Rule and was promulgated in 1985. This proposed amendment will update the tables to conform to recent NAIC Model Act changes.

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:

To insure that reserve liabilities reflect current mortality experience and are consistent with other states' rules. This is not a change in policy.

Statutory authority:

Sections 601.41, 623.02 and 623.06 (2a), 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:

40 hours

Insurance, Commissioner of

Subject:

SS. Ins 17.01 (3), 17.275, 17.28 (4) and (6), and 17.35 – Relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, confidential claims records, limiting fund fee refunds to one year and application of aggregate limits upon termination of a claims–made policy.

Description of policy issues:

A statement of the objective of the proposed rule:

To establish the annual fees which participating health care providers must pay to the patients compensation fund as required by statute for the fiscal year beginning July 1, 1998, and to further define which fund claims records are to be kept confidential in accordance with open records law in s. Ins 17.275 and to limit fund fee refund requests to one year from the date of payment of same in s. Ins 17.28 (4) and to set standards for the application of the aggregate underlying liability limits upon the termination of a claims–made policy in s. Ins 17.35.

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:

Existing policies are as set forth in the statutes cited in the next section and in the rules themselves; while insurance industry input and consensus, where present, will be considered, no new or alternate policies are contemplated at this time.

Statutory authority:

Sections 601.41 (3), 655.004, 655.23 (4), 655.27 (3) and 655.61, 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:

80–130 hours estimated state employe time to promulgate these rules; other resources will include the review and recommendation of the Board's actuarial committee, based on the analysis and recommendations of the fund's actuaries and the director of state courts.

Public Service Commission

Subject:

PSC Code – Relating to affiliated agreements, financial matters, consumer protection, discontinuance of services, abandonments, and miscellaneous wording revisions.

Description of policy issues:

A. Objective of rule:

The objectives of the rules are to meet the general intent of the legislature and to clarify the Commission's procedures in the following areas:

1. Affiliated agreements. To clarify Commission procedures in relation to the Commission's supervisory jurisdiction over the terms and conditions of affiliated contracts or arrangements per s. 196.52, Stats. These procedures include definitions, filing requirements, due dates for such filings, and certain affirmative statements by a responsible officer regarding the affiliated agreements.

2. Financial matters. To clarify Commission procedures in relation to the Commission's supervisory jurisdiction over the capital structure of any telecommunications utility subject to rate–of–return regulation per s. 184.15, Stats., which is expressed on a total company basis per s. 196.215 (1) (am), Stats. These procedures include filing requirements related to securities issuances and due dates for such filings. It also includes filing requirements related to consolidations, mergers and acquisitions, including due dates for such filings and certain affirmative statements by a responsible officer.

3. Consumer protection. To meet the general intent as expressed in s. 196.219 (3) (h), Stats., to prohibit the practice of discriminatory or preferential service to an affiliate or a telecommunications utility's own retail department.

4. Abandonment and discontinuance. To meet the general intent as expressed in ss. 196.20 and 196.81, Stats., regarding discontinuance of services or abandonment of lines or extensions. This includes requirements to provide notice to customers and to provide information to assist the Commission in its determination of whether the service to be abandoned is basic local service, basic message telecommunications, or any element of universal service. It also includes circumstances for which lines or extensions can be abandoned without a hearing.

5. Miscellaneous. To update language in the Wisconsin Administrative Code to be consistent with 1993 Wis. Act 496 (Act). Examples include references in s. PSC 165.10, Nonutility Merchandising Activities, and ch. PSC 12, Utility Advertising Practices.

Existing policies relevant to rule:

Since the passage of the Act, the Commission has initiated new policies and practices consistent with the Act. These new policies and practices will now be codified into rules.

New policies proposed:

In some areas, clarification of policies will occur which will extend to activities not yet experienced, but reasonably anticipated. For example, policies regarding transfer of telecommunications facilities to an affiliate may be addressed.

Analysis of alternatives:

Alternatives have been considered in the rule development that has taken place to date. An attempt has been made to consider whether a filing requirement is necessary or whether specific case information could be individually requested at a later date if necessary. Additional policy alternatives will be considered in the total package of rules proposed.

Statutory authority:

Sections 196.02 (1) and (3), 196.219 (3) (h), 196.60 (2) and 227.11 (2), Stats.

Time estimates for rule development:

Completing the rulemaking proceeding is estimated to take 200 staff hours. No additional staff or other agency resources are anticipated for this rulemaking. If you have specific questions or comments regarding this proposed rulemaking, please contact Anne Wiecki, Auditor, Telecommunications Division, at (608) 267–0913.

Revenue

Subject:

S. Tax 11.33 (4) (a) and (g) – Wisconsin sales and use tax treatment of (1) auction sales of personal farm property or household goods, and (2) purchases of property and services which when resold are exempt occasional sales.

Description of policy issues:

Objective of the proposed rule:

The objectives of the rule order are to clarify (1) that exempt occasional sales includes auction sales of personal farm property or household goods which are not held at regular intervals, and (2) that a nonprofit organization may purchase tangible personal property or taxable services exempt from tax, for resale, even if the organization's sales are exempt under s. 77.54 (7m), Stats.

Existing policies:

This rule order reflects the Department of Revenue's existing policy of providing accurate information to taxpayers, practitioners and Department employes regarding sales and use taxes as they relate to auctioneers and nonprofit organizations.

The proposed revision to s. Tax 11.33 (4) (a) would provide consistency with s. 77.51 (9) (e), Stats., which provides that "occasional sales" includes "An auction which is the sale of personal farm property or household goods and not held at regular intervals" and with s. Tax 11.50 (4) (a), which provides that auction sales of household goods or personal farm property which are not held at regular intervals are exempt.

The proposed revision to s. Tax 11.33 (4) (g) reflects current Department of Revenue policy.

Policy alternatives:

* Do nothing.

Tax 11.33 (4) (a) will be misleading because it does not include the condition that an auction sale must not be held at regular intervals to qualify for exemption as an occasional sale.

Tax 11.33 (4) (g) will be misleading because it implies that a nonprofit organization must pay sales and use tax on its purchases of tangible personal property or taxable services which are resold, if the organization cannot claim exemption under s. 77.54 (9a), Stats.

Statutory authority:

Section 227.11(2) (a), Stats.

Estimate of staff time required:

The Department estimates that it will take approximately 20 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The Department will assign existing staff to develop this rule order.

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.

Health & Family Services

Rule Submittal Date

On September 19, 1997, the Wisconsin Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Section 48.67, Stats., and section 5 of 1995 Wis. Act 439

Subject:

The proposed rule affects ss. HSS 45.05 (11) and HFS 46.06 (11), Wis. Adm. Code, relating to outdoor play space for children attending day care centers.

Reason for rules, intended effects, requirements:

These rules implement the requirement in section 5 of 1995 Wis. Act 439 that the Department promulgate rules that establish a procedure under which an applicant for a license to operate a family or group day care center for children may obtain an exemption from, in effect, the Department's requirement that outdoor play space be on the center's premises.

The current rules for outdoor play space at centers are found in ss. HSS 45.05 (11) and HFS 46.06 (11). Those subsections had to be reconstructed to fit in the exemption for safe off–premises play space. This involved renumbering and adding some titles in the current rules, and referencing the new exemption part. It did not include amending current requirements for on–premises outdoor play areas. Still, there was enough non–substantive change affecting the current subsections to justify a repeal and recreate action in each case, thereby letting interested persons see the outdoor play space policy as a whole.

The rules provide that a center's plan for exemption from current rules for outdoor play space in order to use off–premises play space must provide for adequate supervision of the children in accordance with standards in referenced tables; for vigorous exercise for the children; and for toileting and diapering arrangements. When the space is reached by walking, children under age 3 must be transported in wheeled vehicles. Other requirements are lifted from the current rules for outdoor play space.

Agency Procedure for Promulgation

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

Contact Person

Patty Hammes
Division of Children and Family Services
Telephone (608) 266–5635

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on September 23, 1997 the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends ss. Tax 11.03 and 11.11, relating to the sales and use tax treatment of schools, and of waste treatment facilities.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Person

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

Mark Wipperfurth
Income, Sales, and Excise Tax Division
Telephone (608) 266–8253

NOTICE SECTION

Notice of Proposed Rule

Administration

Notice is hereby given that pursuant to ss. 16.004 (1), 16.843 (2) (a) and 227.11, Stats., and interpreting s. 16.843, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule amendments as proposed in this notice on **October 15, 1997**, the Department of Administration is petitioned for public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Dept. of Administration

Statutory authority: SS. 16.004 (1), 16.843 (2) (a) and 227.11

Statute interpreted: S. 16.843

The proposed rule amendments clarify the Department's present practices and update references and terminology pursuant to 1995 Wis. Act 174, relating to the operation and parking of motor vehicles on Department–controlled property. The Department proposes a number of minor changes to update rule language and to improve operations related to parking on state–controlled property. These changes include providing the Department authority to appoint police officers to safeguard property pursuant to 1995 Wis. Act 174; correcting a statutory reference to a section in ch. 346; correcting language referencing s. 341.14, Stats.; adding a requirement that van and carpools must have at least 2 state employes; adding a section regarding temporary parking assignments and creating additional exceptions for withdrawal of parking.

Text of Rule

SECTION 1. Adm 1.01 (title) is amended to read:

Adm 1.01 Police and security officers. The department of administration shall appoint police and security officers to safeguard all public property under its control. ~~Security~~ Police and security officers shall have the powers provided in s. 16.84 (2), Stats., and shall be authorized to enforce s. 16.843, Stats., and any rule promulgated under s. 16.843, Stats.

SECTION 2. Adm 1.03 (1) (a), (b), and (2) (intro.), are amended to read:

Adm 1.03 Motor vehicle rules. (1) (a) ~~No person not holding~~ A person who does not hold a valid and current operator's license issued under ch. 343, Stats., ~~shall~~ may not operate any motor vehicle on any roadway or in any parking area under the control of the department of administration unless the person is exempt from being licensed under the provisions of s. 343.05, Stats.~~, from the requirement that the person hold an operator's license in order to operate a motor vehicle on the highways of this state.~~

(b) No person ~~shall~~ may operate any motor vehicle on any roadway or in any parking area under the control of the department of administration unless the same has been properly registered as provided by ch. 341, Stats., unless ~~except~~ the vehicle is exempt from being registered under the provisions of s. 341.05, Stats.~~, from the requirement that the vehicle be registered in order that it may be operated on the highways of this state.~~

(2) All provisions of ch. 346, Stats., entitled "Rules of the Road" which are applicable to highways as defined in s. 340.01 (22), Stats., are hereby adopted for the regulation of traffic on the roadways and parking areas under the control of the department of administration except as follows:

SECTION 3. Adm 1.03 (2) (b) is repealed.

SECTION 4. Section Adm 1.03 (2) (c) is renumbered s. Adm 1.03 (2) (b) and amended to read:

Adm 1.03 (2) (b) Sections 346.61 through ~~346.74,~~ 346.655, Stats.

SECTION 5. Adm 1.05 (2) is amended to read:

Adm 1.05 (2) ACCOMMODATION FOR DISABLED EMPLOYES. An employe's disability shall be shown by a ~~physician's~~ statement from a physician, an advanced practice nurse, a physician assistant, a chiropractor or a Christian science practitioner, indicating that the employe is disabled according to those standards established in s. 341.14, Stats. Parking for vehicles with special ~~indentification~~ identification cards for the physically handicapped pursuant to s. 343.51, Stats., shall be provided as close as possible to an entrance which can be used by disabled employes. Disabled employes allocated parking under this section shall not be exempted from payment for parking privileges under s. 16.843 (2), Stats.

SECTION 6. Adm 1.05 (4) is amended to read:

Adm 1.05 (4) Accommodation for the public that transacts business with tenant departments except ~~in the GEF I, II, III, Wilson Street and Milwaukee state office buildings~~ at buildings where a public parking facility is available in the immediate vicinity.

SECTION 7. Adm 1.05 (6) (b) (intro.) is amended to read:

Adm 1.05 (6) (b) Carpools and vanpools having at least 2 passengers in addition to the driver~~:~~. At least two individuals in the pool must be employes of the state of Wisconsin:

SECTION 8. Adm 1.05 (8) is created to read:

Adm 1.05 (8) Parking assignment may be issued on a temporary basis and may be withdrawn upon notice to the person requesting the parking assignment.

SECTION 9. Adm 1.06 is amended to read:

Adm 1.06 Identification. To facilitate the administration of this chapter, the state ~~protective service~~ capitol police shall procure numbered identification tags, window stickers, magnetic cards or other means of identification and shall issue such means of identification to eligible employes who have agreed to pay the established fee. Parking in stalls and spaces without the proper means of identification is prohibited.

SECTION 10. Adm 1.09 and 1.10 are amended to read:

Adm 1.09 Withdrawal of parking. Except for noncompliance with ~~these rules, or~~ this chapter, non–payment of parking fees, reallocation of agency space, or withdrawal of parking privileges under s. Adm 1.05 (8), the department of administration ~~shall~~ may not withdraw parking privileges after a parking stall is assigned. The department may reallocate parking spaces of a tenant agency if the number of full–time employes at the tenant agency's facility is reduced.

Adm 1.10 Towing. Whenever any police officer or security officer finds a motor vehicle in violation of these rules, the officer is authorized to move the vehicle, have a wrecker service tow the vehicle, or to require the operator to remove the vehicle from state property. The operator or owner of the vehicle removed shall pay all charges for moving or towing or any storage involved.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively 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
P.O. Box 7864
Madison, WI 53707–7864

Notice of Hearings

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from 09–30–97 *Wis. Adm. Register.*)**

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chs. ATCP 29 and 30, Wis. Adm. Code, relating to the use and control of pesticides. 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. During the first half–hour of each scheduled hearing session, the department will give a presentation on the proposed changes. The department also invites comments on the draft environmental assessment which accompanies the rule. Following the public hearings, the hearing record will remain open until **November 7, 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) 224–4542. Copies are available for review at public libraries, and will 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 **October 6, 1997** either by writing to Karen Fenster, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224–4542) or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearings.

Hearing Information

Five hearings are scheduled:

October 13, 1997	**Holiday Inn,**
Monday	**150 Nicolet Rd.**
	Appleton, WI
Daytime session:	**1:00 – 5:00 p.m.**
Evening session:	**6:00 – 9:00 p.m.**
October 14, 1997	**Comfort Suites**
Tuesday	**300 Division St. N.**
	Stevens Point, WI
Daytime session:	**1:00 – 5:00 p.m.**
Evening session:	**6:00 – 9:00 p.m.**
October 15, 1997	**Quality Inn**
Wednesday	**809 W. Clairmont Ave.**
	Eau Claire, WI
Daytime session:	**1:00 – 5:00 p.m.**
Evening session:	**6:00 – 9:00 p.m.**
October 22, 1997	**WDATCP**
Wednesday	**Prairie Oak State Office Bldg.**
	2811 Agriculture Dr.
	Madison, WI
Daytime session:	**1:00 – 5:00 p.m.**
Evening session:	**6:00 – 9:00 p.m.**
October 23, 1997	**State Fair Park Youth Center**
Thursday	**620 S. 84th St, Gate 5**
	West Allis, WI
Daytime session:	**1:00 – 5:00 p.m.**
Evening session:	**6:00 – 10:00 p.m.**

Written comments will be accepted until **November 7, 1997.**

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

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

Statutes Interpreted: ss. 94.67 to 94.71 and ch. 160

This rule reorganizes and clarifies the department's current pesticide rules so they will be easier to read and understand. This rule redrafts the current rules according to current drafting standards. For the most part, this rule does not change the substance of the current rules. In some cases, however, this rule makes substantive changes.

Current Rules

The department administers Wisconsin's pesticide laws under ss. 94.67 to 94.71, Stats. The department licenses pesticide manufacturers, distributors and commercial applicators, and certifies farmers and commercial applicators for competence in using pesticides. The department regulates the distribution, storage, handling and use of pesticides to protect persons, property and the environment.

The department has adopted extensive pesticide rules under chs. ATCP 29 and 30, Wis. Adm. Code. The current rules have been modified many times, and the current organization is becoming unworkable. The department proposes to recodify the current rules in a new, more workable, format.

In recent years, the Legislature has reorganized the licensing of pesticide manufacturers, distributors and applicators. The Legislature has also reduced tax dollar funding for the pesticide program, and has substituted license fee funding. This has created a license and fee structure which is not adequately reflected in the current rules. This rule incorporates current license and fee requirements, including changes proposed in the 1997–99 biennial budget bill. This rule does not change the fees prescribed by the Legislature.

Proposed Reorganization

The department proposes to reorganize ch. ATCP 29 as follows:

Chapter ATCP 29
Pesticide Use and Control

Subch. I	Definitions and General Provisions
Subch. II	Pesticide Registration and Labeling
Subch. III	Pesticide Manufacturers and Labelers
Subch. IV	Pesticide Dealers and Distributors
Subch. V	Commercial Application Businesses
Subch. VI	Individuals Handling or Applying Pesticides
Subch. VII	Storing, Transporting and Selling Pesticides
Subch. VIII	Pesticide Handling, Disposal and Spills
Subch. IX	Pesticide Use
Subch. X	Agricultural Worker Protection
Subch. XI	Special Registrations and Use Authorizations

The department also proposes to consolidate current substance–specific pesticide rules in ch. ATCP 30 as follows:

Chapter ATCP 30
Pesticide Product Restrictions

Subch. I	Definitions
Subch. II	Prohibited Pesticides (from current ATCP 29.03)

Subch. III Pesticides Requiring Special Use Permit (from current ATCP 29.04)

Subch. IV Pesticides Allowed Only for Certain Purposes (from current ATCP 29.05)

Subch. V Pesticides Used to Control Bats (from current s. 94.708, Stats.)

Subch. VI Metam Sodium Pesticides (from current ATCP 29.171)

Subch. VII Aldicarb Pesticides (from current ATCP 29.17)

Subch. VIII Atrazine Pesticides (from current ch. ATCP 30)

The department believes that this new organization will make it easier for affected businesses and individuals to identify the rules that apply to them. The new organization also reflects, more clearly, the current structure of the pesticide program.

Technical Drafting Changes

As part of the pesticide rule reorganization, the department has redrafted the current rules to meet current state drafting standards. This changes the appearance, but not the substance, of the rules. The redrafting:

- Simplifies and clarifies rule language.
- Eliminates ambiguities and inconsistencies.
- Incorporates current drafting conventions specified by the Legislative Council Rules Clearinghouse.
- Consolidates related rule provisions under common headings, for ease of reference.
- Spells out current requirements and exemptions in a more direct way.

Proposed Ch. ATCP 29

This rule reorganizes and clarifies current rules under ch. ATCP 29 as follows:

Definitions

Current pesticide rules under ch. ATCP 29 include over 75 definitions. In some cases, it is impossible to understand a substantive rule provision without consulting 3 or 4 "nested" definitions that contain extensive substantive material. This makes it more difficult for the public to read and understand the rules.

This rule removes substantive material from the definitions, and incorporates it in the rules themselves. This rule also deletes definitions that are no longer necessary. Definitions used only in one section of the rule are located in that section for easy reference.

Declaration of Pests

Current rules include a "declaration of pests" under s. 94.69(1), Stats. This rule simplifies the "declaration of pests" but makes no substantive change in that declaration.

Pesticide Registration and Labeling

Under current law, pesticides and pesticide labels must be registered by the federal environmental protection agency. This rule codifies this current requirement, but exempts pesticides that are specifically exempted from registration under the federal act.

Under current law, pesticides must be labeled with certain information including the identity of the responsible manufacturer or labeler. This rule incorporates current labeling requirements without substantive change.

Pesticide Manufacturers and Labelers

Under current law, a pesticide manufacturer or labeler must obtain an annual license and pay license fees. (There are certain exemptions.) This rule:

- Incorporates current license and fee requirements, but modifies them to reflect changes proposed in the 1997–99 biennial budget bill.
- Clarifies current license exemptions.
- Spells out license application procedures.
- Sets deadlines for department action on license applications.

Under current rules, pesticide manufacturers and labelers must keep records and provide information to the department upon request. This rule incorporates the current requirements without substantive change.

This rule clarifies that individual employees of a licensed manufacturer or labeler need not be separately licensed as manufacturers or labelers if they are acting solely in an employment capacity.

Pesticide Dealers and Distributors

Under current law, a dealer or distributor of restricted–use pesticides must be licensed by the department. This rule incorporates the current license requirement without substantive change, but clarifies that the following persons are exempt:

- Individual employees of a license holder who are acting solely in an employment capacity.
- Licensed manufacturers or labelers selling only pesticides which they have labeled.
- Persons who apply all of the restricted–use pesticides which they sell or distribute.

Under current law, a dealer or distributor of restricted–use pesticides must pay annual license fees. This rule incorporates current fee requirements, but modifies them to reflect changes proposed in the 1997–99 biennial budget bill. This rule also spells out license application procedures, and sets deadlines for department action on license applications.

Under current law, a dealer or distributor of restricted–use pesticides must keep records and file annual reports with the department. This rule incorporates these requirements without substantive change.

Under current law, a business selling pesticides of any kind must keep records of the amounts and kinds of pesticides sold. This rule incorporates this requirement without substantive change.

Commercial Application Business; License

Under current law (subject to certain exemptions), a business that does any of the following, either directly or through an employee, must be licensed by the department:

- Uses or directs the use of any pesticide as an independent contractor for hire.
- Uses or directs the use of restricted–use pesticides.

This rule incorporates the current license requirement but clarifies that the following persons are exempt:

- A government entity.
- An individual employee of a license holder who is acting solely in an employment capacity.
- An individual or business applying pesticides as part of a medical treatment provided by a licensed medical practitioner, or as part of a veterinary treatment provided by a licensed veterinary practitioner.
- An individual or business applying pesticides in the laboratory in the course of bona fide laboratory research.
- An individual or business applying germicides, sanitizers or disinfectants.
- An agricultural producer, except that an agricultural producer who does any of the following is not exempt:

Applies pesticides for a person who is not an agricultural producer.

Applies pesticides for another agricultural producer for a purpose other than the production of agricultural commodities, or for the purpose of producing pesticide–treated commercial seed or pesticide–treated commercial wood products.

Applies pesticides, for compensation other than the exchange of goods or services, for more than 3 other agricultural producers in any calendar year.

Applies pesticides in any calendar year, for compensation other than the exchange of goods or services, to more than 500 acres of land which the applying producer does not own or control.

Under current law, a license holder must pay annual license fees. This rule incorporates current fee requirements, but modifies them to reflect changes proposed in the 1997–99 biennial budget bill. This rule also spells out license application procedures, and sets deadlines for department action on license applications.

Commercial Application Business; Records

Under current rules, a licensed commercial application business must keep a record of pesticide applications which it makes directly or through an employee. This rule modifies current recordkeeping requirements to make them consistent with federal requirements. This rule also clarifies that:

• On the day of the application, the individual who applies the pesticide must make the business record of the application.

• The business must keep the record for at least 2 years. An employee need not keep duplicate copies of an employer's records.

Commercial Application Business; Information to Customers

Under current rules, a licensed commercial application business making a pesticide application for a customer must provide the customer with certain information about that application. This rule incorporates the current requirements without substantive change. Under the current rules, the business must provide the information within 30 days after the application, except that:

• Reentry precautions must be provided before the application is made.

• Information related to residential and landscape applications must be provided at the time of the application.

Veterinary Clinic Applying Pesticides

Under current law (s. 94.702, Stats.), a veterinary clinic applying pesticides must hold a permit from the department. This rule incorporates the current permit requirement without substantive change, and spells out the procedure for obtaining a permit.

Individual Commercial Applicator; License

Under current law, an individual must be licensed by the department if that individual does either of the following:

•Uses or directs the use of any pesticide as an independent contractor for hire, or as an employee of an independent contractor for hire.

•Uses or directs the commercial use of a restricted–use pesticide.

This rule incorporates the current license requirement without substantive change, but clarifies that the following individuals are exempt:

•A licensed health practitioner who uses or directs the use of a pesticide as part of a medical treatment.

•A licensed veterinarian or certified animal technician who uses or directs the use of a pesticide as part of a veterinary treatment.

•A laboratory researcher who uses or directs the use of pesticides only in the laboratory as part of a bona fide laboratory research project.

•An individual who only uses or directs the use of germicides, sanitizers or disinfectants.

•An employee of a licensed commercial application business who applies pesticides only to property owned or operated by that commercial application business, and who applies no restricted–use pesticides.

•An individual who is currently registered with the department as a 30–day "trainee" (see below). A trainee must be directly supervised by a license holder and may not apply restricted–use pesticides.

•An agricultural producer, except that an agricultural producer is not exempt if the producer does any of the following:

*Applies pesticides for a person who is not an agricultural producer.

*Applies pesticides for another agricultural producer for a purpose other than the production of agricultural commodities, or for the purpose of producing pesticide–treated commercial seed or pesticide–treated commercial wood products.

*Applies pesticides, for compensation other than the exchange of goods or services, for more than 3 other agricultural producers in any calendar year.

*Applies pesticides in any calendar year, for compensation other than the exchange of goods or services, to more than 500 acres of land which the applying producer does not own or control.

Under current law, license holders must pay annual license fees prescribed by statute. This rule incorporates current fee requirements, but modifies them to reflect changes proposed in the 1997–99 biennial budget bill. This rule also spells out license application procedures, and sets deadlines for department action on license applications.

Individual Commercial Applicators; Certification

Under current law, an individual licensed as a commercial applicator (see above) must also be certified for competence. The department may certify a commercial applicator for a period of 5 years in one or more application categories. A commercial applicator may apply pesticides only in those categories in which the applicator is certified.

To be certified in any pesticide use category, a commercial applicator must pass a written closed–book examination which demonstrates general pesticide knowledge, as well as specific knowledge in that pesticide use category.

This rule reformulates the current rules but makes few substantive changes. The rule:

•Clarifies current certification procedures.

•Adds 4 new certification categories (greenhouse and nursery, antifouling paint, sewer root and companion animal).

•Deletes 3 certification categories (public health, regulated pest, and demonstration and research) which are effectively covered by other categories.

•Modifies category descriptions, and clarifies the standards for certification in each category.

•Clarifies that a commercial applicator certified in any category may mix and load pesticides, for application by others, in other categories.

Under this rule, a commercial applicator may be certified in any of the following categories:

•Field and vegetable crop pest control

•Fruit crop pest control

•Livestock and poultry pest control

•Forest pest control

•Turf and landscape pest control

•Greenhouse and nursery pest control (new category)

•Seed treatment pest control

•Aquatic pest control

•Antifouling paint applications (new category)

•Right–of–way pest control

•Industrial, institutional, structural and health–related pest control; general

•Fumigation; spaces and commodities

•Sewer root control (new category)

•Termite control

•Wood preservation

•Companion animal pest control (new category)

Under this rule, a certified commercial applicator who wishes to apply pesticides by means of aerial application, chemigation or soil fumigation must obtain a supplementary certification related to that application method. The rule spells out standards for supplementary certification.

Private Applicators; Certification

Under current rules, an agricultural producer must be certified to use restricted–use pesticides. In lieu of being certified as a commercial applicator (see above), a producer may be certified as a private applicator. A private applicator certification does not authorize a producer to engage in activities for which a commercial applicator license and certification are required. Private applicators who complete training and pass an open–book examination are certified for a period of 5 years.

This rule reformulates, but does not substantially alter the current rules. This rule clarifies the distinction between a private applicator and commercial applicator, and clarifies the standards and procedures for certifying private applicators.

Under this rule, a certified private applicator who wishes to apply pesticides by means of aerial application, chemigation or fumigation must obtain a supplementary certification related to that application method. The rule spells out standards for supplementary certification.

Pesticide Mixers and Loaders; Certification

This rule clarifies that the department may license and certify an individual to mix and load pesticides. A certified mixer and loader may mix and load pesticides for application by others in any pesticide use category, but may not apply pesticides in any category. Certification is good for 5 years.

To be certified as a mixer and loader, an individual must pass a written closed–book examination which demonstrates general pesticide knowledge. This rule clarifies the knowledge required of a pesticide mixer and loader.

Trainee Registration

Under current rules, an individual employed by a licensed commercial application business may register with the department as a trainee applicator. A registered trainee may apply pesticides for up to 30 days, without a license or certification, as part of a bona fide training program that prepares the trainee for licensing and certification. The trainee may not apply restricted–use pesticides, and may apply pesticides only under the direct supervision of a licensed and certified applicator.

This rule incorporates the current trainee registration program without substantive change, except that it requires the trainee's employer to file the trainee registration and certify that applicable conditions are met. This rule also clarifies the conditions and restrictions that apply.

Applicator Records

Under current rules, a commercial applicator must keep a record of pesticide applications. This rule reformulates and makes some substantive changes to the current rule. Under this rule:

•Certified commercial and private applicators must keep a record of each pesticide application for which certification is required. The individual must make the record on the day of the application. An individual need not keep a record of pesticide applications for which the individual is not required to be certified.

•A certified applicator employed by a licensed commercial application business need not retain a duplicate copy of an application record made by the applicator and kept by the employer.

Storing and Transporting Pesticides

This rule consolidates and reformulates current rules related to the safe storage of pesticides, but does not substantially alter those rules. This rule adds provisions related to pesticide transportation and deletes a provision related to "first in, first out" storage of hypochlorite sanitizers. Under this rule, persons storing or transporting pesticides must:

•Store and transport pesticides according to label directions, in a manner that avoids reasonably foreseeable and reasonably preventable hazards to persons, property and the environment.

•Store bulk pesticides according to ch. ATCP 33 (current rule).

•Secure pesticides and pesticide containers against access by children, the general public, domestic animals and wild animals.

•Keep pesticides adequately separated from food, feed and other products so that pesticides will not be mistaken for or contaminate other products.

•Clean pesticide storage areas and transport vehicles before reusing them for other purposes.

•Protect pesticide containers and labels from reasonably foreseeable damage and destruction.

•Inspect pesticide containers when they are removed from shipping containers.

•Refrain from storing or transporting pesticides for sale in visibly broken, defective, unsealed or improperly sealed containers.

Selling Pesticides

Current rules spell out standards for the safe display and sale of pesticides. This rule consolidates and reformulates, but does not substantially alter, the current rules.

This rule deletes a provision related to the department's authority to order pesticides removed from sale, because that authority is adequately set forth in s. 94.71, Stats., and need not be repeated in the rule.

Pesticide Mixing and Loading

Under current rules, pesticide mixing and loading operations conducted at any of the following sites must be conducted over a spill containment surface (there are some exceptions):

• A site located within 100 feet of any well or surface water.

• A site at which more than 1,500 lbs. of pesticide active ingredients are mixed or loaded in any calendar year.

The current rules spell out minimum standards for spill containment surfaces. The current rules also prohibit certain mixing and loading practices that may contaminate the waters of the state. This rule consolidates and reformulates, but does not substantially alter, the current rules.

Pesticide and Container Disposal

Current rules prohibit the disposal of pesticides and pesticide containers in a manner inconsistent with label directions, or in a manner that creates a hazard to persons, property or the environment. Current rules also restrict the reuse of pesticide containers. This rule reformulates, but does not substantially alter, the current rules.

Pesticide Spills

Under current rules, persons who spill pesticides must take prompt action to contain and recover the spill. Current rules also contain provisions related to spill reporting and the storage of spilled material. This rule reformulates, but does not substantially alter, the current rules.

Pesticide Use; General

This rule reformulates, but does not substantially alter, current rules which prohibit any person from:

•Using pesticides in negligent manner, in a manner inconsistent with label directions, or in a manner which the user knows or should know will contaminate the waters of the state.

•Using pesticides in a manner that results in pesticide overspray or significant pesticide drift. This rule exempts, from overspray and drift prohibitions, government mosquito control applications made for public health purposes.

•Harvesting pesticide–treated commodities before the prescribed pre–harvest interval has expired.

•Causing pesticides to contaminate waters of the state. This rule clarifies that the prohibition does not apply to:

*Incidental application of pesticides to temporary rain puddles on target application sites.

*Unforeseeable pesticide leaching or runoff.

•Selling, furnishing or using defective application equipment that cannot apply pesticides according to label directions. (A person may sell defective equipment if, before the sale, that person specifically discloses the defect in writing.)

•Directing or coercing an employee or contract agent to violate applicable pesticide laws.

Advance Notice of Pesticide Applications

Current rules provide for advance notification of the following pesticide applications:

- Applications of pesticides labeled "Highly Toxic to Bees."
- Aerial applications (see below).
- Commercial applications to residential structures (see below).
- Commercial landscape applications (see below).

This rule consolidates and reformulates these pre–notification requirements, for ease of reference. Except as noted below, this rule does not alter the pre–notification requirements.

Warning Signs at Application Sites

Under current rules, warning signs must be posted in connection with the following pesticide applications:

- Agricultural applications for which the federal environmental protection agency requires worker protection warning signs under 40 CFR 170. (See worker protection requirements below.) Worker protection signs have a special format, and must be removed within 3 days after each application.
- Applications of "dual notice" agricultural pesticides if the application is located within 100 feet of a public road or within 300 feet of a nonagricultural area where people are likely to be present during the restricted entry interval specified on the pesticide label. Current rules prescribe warning sign contents and method of posting. These signs may remain posted indefinitely. Worker protection signs may be substituted, but must be removed within 3 days after each application.
- Applications of nonagricultural pesticides whose labels prescribe restricted entry intervals. Current rules prescribe warning sign contents and posting methods.
- Chemigation applications (see below).
- Commercial applications to residential structures (see below).
- Commercial landscape applications (see below).
- Applications to bulk stored seeds. Bins used to store bulk treated seed must be posted. The current rules prescribe warning sign contents.

This rule consolidates and reformulates current warning sign posting requirements for ease of reference. This rule does not substantially alter the current requirements, except that it no longer requires warning signs for agricultural applications of "dual notice" agricultural pesticides applied within 100 feet of a public road unless the pesticides are applied by means of chemigation. Warning signs are still required if the application is made within 300 feet of other nonagricultural areas where people are likely to be present.

Aerial Applications

Under current rules, aerial applications must comply with applicable regulations of the federal aviation administration and the Wisconsin department of transportation. The person owning or controlling the application site (or that person's agent) must give prior notice to adjacent residents who have made a request during that calendar year. This rule reformulates, but does not substantially alter, the current rules.

Chemigation

Current rules spell out standards for chemigation systems, including engineering standards. Persons using chemigation systems to apply pesticides must have a chemigation operating plan, and must properly monitor chemigation operations. Warning signs must be posted if the chemigation application site is located within 100 feet of a public road or within 300 feet of an area where people are likely to be present. Current rules prescribe warning sign contents and posting methods.

This rule reformulates the current chemigation rules. This rule does not substantially alter the current rules, except that it eliminates the provision requiring a chemigation operator to notify the department before operating a chemigation system at a chemigation site for the first time.

Commercial Applications to Residential Structures

Current rules spell out requirements for commercial applications to residential structures (other than applications of germicides, sanitizers or disinfectants). This rule reformulates, but does not substantially alter, the current rules.

Under this rule, as under current rules, a commercial application business hired to make a residential application must offer to provide the customer with certain information prior to the application. Even if the customer does not request any pre–application information, the commercial application business must provide certain information to the customer after it completes the application.

Under this rule, as under current rules, a business making a residential application must provide information to residents at the time of the application, and must post warning signs if the pesticide label prescribes a restricted entry interval. The rule spells out methods for providing information and posting warning signs.

Commercial Landscape Applications

Current rules define "landscape applications" to include applications to turf areas located in or around residential, public or commercial areas, or to plants located in those turf areas. This rule modifies the current definition to:

- Include applications to certain non–turf areas (ornamental and mulched areas).
- Excludes application within 10 feet of a building that are designed to prevent structural or household pests from entering the building.

Under current rules, a commercial application business hired to make a landscape application must provide the customer with certain information about the application. This rule reformulates, but does not substantially alter, this requirement. The business must provide the information when it completes the application.

Under current rules, a business must post warning signs whenever it makes a landscape application in or around a residential, public or commercial site. The current rule specifies the form, content and method of posting warning signs. If any person asks for information about the landscape application, the business must offer to provide specified information. This rule reformulates but does not substantially alter the current rules, except that this rule:

- Makes changes in sign contents. Under this rule, every warning sign must specify the date when the warning sign may be removed.
- Makes changes related to posting locations. Under this rule, at least one warning sign must be visible from each point at which there is significant potential for human access to the treated area.
- Creates an exception for cemeteries posted with permanent warning signs. This new exception is similar to the current exception for golf courses:

*The rule specifies the location, form and content of permanent warning signs.

*Permanent warning signs must state that pesticides are used periodically, and that additional information is available from the golf course superintendent or cemetery grounds manager.

*The superintendent or grounds manager, if asked for information, must notify the requester that certain information is available and must provide that information upon request.

Under current rules, the department publishes an annual registry of persons requesting advance notice of landscape applications in their immediate area:

- Persons must register annually to be included in the annual registry.
- The department distributes the registry to commercial application businesses that make landscape applications.
- Before a commercial application business makes a landscape application to any site, it must notify registered individuals who are entitled to notice of that application.
- Registered individuals are entitled to advance notice of applications to property on which they reside, to immediately adjacent property, or to property located on the same or immediately adjacent blocks.

This rule reformulates the current landscape registry rules. This rule does not substantially alter the current rules, except that this rule:

•Changes the annual registration deadline from March 1 to January 15. (The department will distribute the registry by March 1.)

•Entitles registered individuals to advance notice of applications to property on which they reside, and to immediately adjacent property, but not to other property located on the same or adjacent blocks.

Finally, this rule modifies the current definition of "landscape application" to include tree and subsoil injections.

Seed Applications

Current rules regulate the planting and use of pesticide–treated seed, and require warning signs on bins used to store pesticide–treated seed. This rule reformulates, but does not substantially alter, the current rules.

Agricultural Worker Protection

The federal environmental protection agency has adopted agricultural worker protection rules under 40 CFR 170. This rule incorporates the federal standards.

Among other things, federal rules require agricultural employers to post worker protection warning signs and give workers notice of pesticide applications. The department's current rules spell out the content, format and method of posting worker protection warning signs, consistent with federal standards. This rule reformulates, but does not substantially alter, the current rules.

Federal rules currently prohibit agricultural workers from reentering a treated area during a restricted entry interval except in an "agricultural emergency." Current rules identify conditions that constitute "agricultural emergencies," and include the state "declaration of emergency" required under federal rules. This rule reformulates, but does not substantially alter, the current rules.

Current rules specify worker and handler training requirements, consistent with federal rules. This rule reformulates, but does not substantially alter, the current rules.

Emergency Use Permits

Under current rules, the department may issue an emergency permit authorizing a pesticide use (otherwise prohibited) which is necessary in an emergency to control a serious disease or pest infestation. Current rules spell out standards and procedures for issuing emergency use permits. This rule reformulates, but does not substantially alter, the current rules.

Experimental Use Permits

Under current rules, the department may issue an experimental use permit authorizing an experimental use of a pesticide that would otherwise be prohibited. Current rules spell out standards and procedures for issuing experimental use permits. This rule reformulates, but does not substantially alter, the current rules.

Registering Pesticides to Meet Special Local Needs

Under current rules, the department may register a pesticide or pesticide use that is not registered by the federal environmental protection agency if use of that pesticide is necessary to meet a special local need in this state. Current rules spell out standards and procedures for issuing special local needs registrations. This rule reformulates, but does not substantially alter, the current rules.

Proposed Ch. ATCP 30

This rule consolidates current substance–specific pesticide rules into ch. ATCP 30 as follows:

Prohibited Pesticides

Current rules under ch. ATCP 29 prohibit the use of certain pesticides such as DDT. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Pesticides Requiring Special Use Permit

Current rules under ch. ATCP 29 prohibit the use of certain pesticides, such as strychnine, without a permit from the department. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Pesticides Allowed Only for Certain Purposes

Current rules under ch. ATCP 29 prohibit the use of certain pesticides except for certain purposes specified in the current rules. The pesticides include chromium, lindane, mercury and daminozide. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Pesticides Used to Control Bats

Section 98.708(4), Stats., prohibits the use of pesticides other than naphthalene to control bats, except under an emergency permit from the pesticide review board. This rule incorporates the statutory prohibition, and requires an emergency permit from the department and the pesticide review board. The rules are incorporated in ch. ATCP 30.

Metam Sodium Pesticides; Use Restrictions

Current rules under ch. ATCP 29 restrict the use of pesticides (mainly soil fumigants) containing metam sodium. The current rules restrict who, how, where, and for what purposes these pesticides may be applied. The current rules also spell out special application precautions, as well as notice, monitoring, reporting and recordkeeping requirements. This rule moves the current rules to ch. ATCP 30. It also reformulates, but does not substantially alter, the current rules.

Aldicarb Pesticides; Use Restrictions

Current rules under ch. ATCP 29 restrict the use of aldicarb pesticides in order to protect groundwater. This rule moves the aldicarb rules to ch. ATCP 30 but does not change those rules.

Atrazine Pesticides; Use Restrictions

Current rules under ch. ATCP 30 restrict the use of atrazine pesticides in order to protect groundwater. This rule renumbers the atrazine rules within ch. ATCP 30 but does not change those rules.

Fiscal Estimate

(See page 23, September 30, 1997 *Wis. Adm. Register.*)

Initial Regulatory Flexibility Analysis

(See page 23, September 30, 1997 *Wis. Adm. Register.*)

Draft Environmental Assessment

The Department has prepared a draft environmental assessment (EA) for proposed 1998 amendments to rules on the use and control of pesticides. 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 Karen Fenster. Phone 608/224–4542. Written comments on the EA will be accepted until **November 7, 1997**.

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 Department rules related to the regulation of packaging and labeling (proposed ch. ATCP 90, Wis. Adm. Code), methods of sale of commodities (proposed ch. ATCP 91, Wis. Adm. Code), and weighing and measuring devices (proposed ch. ATCP 92, Wis. Adm. Code).

Written Comments

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 rules. Following the public hearings, the hearing record will remain open until **November 14, 1997** for additional written comments.

Copies of the Rules

Copies of the rules may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708–8911, or by calling (608)224–4947. 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 **October 17, 1997** either by writing to Judy Jung, P.O. Box 8911, Madison, WI 53708–8911 or by calling (608/224–4972) or via the Division's TDD telephone (608/224–5058). Handicap access is available at the hearings.

Hearing Information

Four hearings are scheduled:

October 27, 1997	**Suite C**
Monday	**1st Floor Conference Room**
Commencing	**The Woods at Mayfair**
at 9:30 am.	**10930 W. Potter Road**
	Wauwatosa, WI
October 27, 1997	**Board Room SR–106**
Monday	**Prairie Oak State Office Bldg.**
Commencing	**2811 Agriculture Drive**
at 2:00 pm.	**Madison, WI**
October 30, 1997	**1st Floor Conference Room**
Thursday	**WDATCP State Office Bldg.**
Commencing	**3610 Oakwood Hills Parkway**
at 9:30 am.	**Eau Claire, WI**
October 31, 1997	**Room 152**
Friday	**Wis. District Office Bldg.**
Commencing	**200 N. Jefferson Street**
at 9:30 am.	**Green Bay, WI**

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

Statutory authority: ss. 93.07 (1), 97.09 (1) and (4), 97.42 (4) (j), 98.07(3) and (4), 98.26 (1) (b) and 100.20 (2)

Statutes interpreted: ss. 98.06, 98.07 and 98.26 (1) (b)

This rule modifies the Department's current rules related to weighing and measuring devices, fair packaging and labeling, and selling commodities by weight, measure or count.

Weighing and Measuring Devices

Current Department rules under ch. ATCP 92, Wis. Adm. Code, regulate weighing and measuring devices. The rules are designed to ensure the accuracy of commercial weights and measures. This rule amends the Department's current rules under ch. ATCP 92.

Section 98.26 (1) (b), Stats., currently prohibits any person from causing a weight or measure to be incorrect. This rule also prohibits any person from causing a weight or measure to be incorrect. A person who manufactures or distributes a weighing or measuring device is deemed to violate this prohibition if all of the following apply:

❍ The person knows or reasonably should know that the weighing or measuring device has a defect that may cause an incorrect weight or measure.

❍ The person fails to take steps which that person is reasonably capable of taking, which would prevent the defect from causing incorrect weights or measures.

❍ The defective weighing or measuring device causes an incorrect weight or measure which is attributable, at least in part, to the defect.

Fair Packaging and Labeling

Overview

Current Department rules under ch. ATCP 90, Wis. Adm. Code, regulate the packaging and labeling of consumer commodities. Under the current rules, consumer commodities sold in package form must bear declarations of seller identity, product identity and net quantity. The current rules also spell out sampling methods used to determine whether packages contain the full amounts claimed on the package labels.

This rule modifies current rules as follows:

■ It establishes fair packaging and labeling standards for liquefied petroleum gas (LP gas) sold in portable refillable containers.

■ It modifies current sampling procedures used to determine whether packages contain the full amounts claimed on the package labels.

Liquefied Petroleum Gas

Current fair packaging and labeling rules do not apply to the sale of LP gas in portable refillable containers (cylinders). This rule establishes fair packaging and labeling rules for LP gas sold in portable refillable containers.

Under this rule:

✔ The tare weight of each container must appear on the outside of the container.

✔ The net quantity of LP gas in each container must be disclosed on the container label, or on a tag attached to the container.

✔ A declaration of responsibility (identifying the responsible seller) must be attached to the container or posted at the point of sale.

Enforcement Samples

Current rules spell out statistical sampling procedures and compliance standards used to determine whether packages contain the full amounts claimed on the package labels. This rule modifies the current standards to conform to current standards specified by the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods."

Selling Commodities By Weight, Measure or Count

Overview

Under s. 98.06 (1), Stats., liquid commodities must ordinarily be sold by liquid measure and nonliquid commodities must ordinarily be sold by weight. Other methods of sale may be used if they are in general use and provide accurate information as to the quantity of commodity sold. For some commodities, however, a proliferation of alternative methods may result in deception, confusion and unfair competition.

Current Department rules under ch. ATCP 91, Wis. Adm. Code, spell out uniform methods of sale for certain commodities. This rule modifies current rules as follows:

▶ It incorporates the general requirements of s. 98.06, Stats.

▶ It clarifies current standards related to the sale of bulk commodities by weight.

▶ It gives retailers greater flexibility to sell "ready–to–eat" foods by weight, measure or count, at the retailer's option.

▶ It defines "weight" to exclude packaging materials and other extraneous materials.

▶ It modifies current standards related to fresh fruits and vegetables, meat and poultry, seafood, cheese and pizza.

▶ It incorporates, without change, current statutory standards related to sales of petroleum products and motor fuel.

▶ It makes organizational and drafting changes to streamline and clarify the current rule.

Bulk Commodities Sold by Weight

This rule clarifies current rules related to the sale of bulk commodities by weight.

Under this rule:

● Whenever a bulk or unpackaged commodity is offered for sale by weight, the price for that commodity must be declared per single whole unit of weight. The price may not be declared per fractional or multiple unit of weight.

● If a retailer displays more than one type of bulk or unpackaged commodity for sale by weight in the same retail display, the retailer must declare all of the prices of the displayed commodities per the same whole unit of weight.

● No person may sell a bulk or unpackaged commodity by weight at retail unless one of the following applies:

- The commodity is weighed at the time of sale.
- The weights of individual commodity units are accurately premarked on those units.
- A placard stating the guaranteed minimum individual weight of the individual commodity units displayed for sale is conspicuously posted at the display location.

● The weight of a bulk or unpackaged commodity sold by weight may not include the weight of the containers or wrappers, if any, in which those commodities are sold.

● Whenever a bulk commodity sold by weight is delivered by vehicle to an individual purchaser, the bulk delivery must comply with s. 98.22, Stats. Under s. 98.22, the seller must provide the purchaser with a delivery ticket that shows the seller's name and address, the name and address of the purchaser, the net weight of the delivery in pounds, and the gross and tare weights of the delivery if gross and tare weights are used in determining the net weight.

Fresh Fruits and Vegetables

Under current rules, fresh fruits and vegetables must be sold by weight unless exemptions authorize other methods of sale. The current rules exempt 29 fruits or vegetables that may be sold by weight or count, 15 that may be sold by weight or "bunch," 11 that may be sold by weight or specified dry measure (e.g., berries sold by 1/2 pint, pint or quart), and 2 that may be sold by weight, count or specified dry measure.

This rule modifies the current exemptions, adding or deleting certain fruits or vegetables in each exemption category. Under this rule, 36 fruits or vegetables may be sold by weight or count, 18 may be sold by weight or "bunch," 9 may be sold by weight or specified dry measure, and 4 may be sold by weight, count or specified dry measure.

Meat, Poultry and Cheese

Under current rules, meat, poultry, cheese, and foods made from meat, poultry or cheese must ordinarily be sold by weight. This rule maintains the current requirement, but creates an exemption for certain "ready to eat" foods. This rule also provides that the declared weight of cheese coated with wax may not include the weight of the wax.

Seafood

Under current rules, seafood and seafood products must ordinarily be sold by weight, except that current rules authorize different methods of sale for mollusks, live fish and live shellfish. This rule maintains the current requirements, with minor modifications. This rule also creates an exemption for certain "ready to eat" foods.

Pizza

This rule clarifies that pizza must be sold by weight, except that "made to order" pizzas may be sold by weight or count.

Ready–to–Eat Foods

Supermarkets and convenience stores are currently offering more restaurant–style or "ready–to–eat" foods for consumption on or off the premises. Current rules unnecessarily restrict the methods by which many of these foods may be sold (e.g., by requiring weight declarations on restaurant–style foods which the consumer does not expect to purchase by weight).

In recognition of current market trends, this rule gives retailers greater flexibility to sell certain "ready–to–eat" foods by weight, measure or count. Under this rule, for example, a grocery store could sell individual "ready to eat" sandwiches or salads without having to weigh them. The grocery store could sell these items by count –– e.g., $2.00 per sandwich, or $1.50 per individual salad. This treatment of "ready–to–eat" foods is consistent with allowed methods of sale in restaurants.

Under this rule, "ready–to–eat" food means food which is sold for immediate consumption without further washing, heating, thawing or other preparation. "Ready–to–eat food" does not include any of the following:

◆ Raw fruits or vegetables, except when sold as part of a ready–to–eat meal.

◆ Sliced meat or poultry, or other sliced luncheon products, except when sold as part of a ready–to–eat meal.

◆ Cheese, except when sold as part of a ready–to–eat meal.

◆ Candy or snack foods, except when sold as part of a ready–to–eat meal.

◆ Beverages in hermetically sealed containers.

Under this rule, the following foods may be sold by weight, measure or count (at the seller's option):

➔ Foods sold for immediate consumption on the premises where sold.

➔ Ready–to–eat foods sold from bulk.

➔ Ready–to–eat foods in single–serving packages that are sold as part of a meal.

This rule prohibits any person from misrepresenting the weight, measure or count of any ready–to–eat food. Weight declarations for cooked ready–to–eat foods are considered declarations of cooked weight unless they are identified as declarations of precooked weight.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

The proposed amendments alter the existing packaging and labeling and methods of sale rules for some commodities and expand the scope of the code to cover a number of commodities not discussed in the existing rules.

The proposed regulations affect enforcement activities in which the Trade and Consumer Protection Division's Weights and Measures staff are already engaged. Therefore no fiscal effect is estimated.

Under Chapter 98, Wisconsin Statutes, each municipality of more than 5,000 is charged with enforcing weights and measures laws within their respective jurisdictions. To the extent that these municipalities are enforcing chs. ATCP 90, ATCP 91, and ATCP 92, there should be no fiscal effect on them, as the amendments impose no additional responsibilities. The adoption of the proposed rule revisions will have no state or local fiscal effect.

Initial Regulatory Flexibility Analysis

Proposed chs. ATCP 90, ATCP 91, and ATCP 92, Wis. Adm. Code (Fair Packaging and Labeling, Methods of Sale of Commodities, Weighing and Measuring Devices)

The Department's proposed rule amendments will have an impact on some retailers of various commodities. Many of these retailers are small businesses, as defined by s. 227.114 (1) (a), Stats.

In the area of marketing fruits and vegetables, the proposals increase the number of fruits and vegetables which can be sold by count rather than weight. And pizza, made to order for the customer, may be sold by weight or count under the new rules. As a result, some small businesses that might have had to buy and use scales under the current rules will not have to under the proposed rules, thereby decreasing their costs.

In the area of ready–to–eat foods, the proposals decrease the number of commodities that must be sold by weight, once again decreasing the costs of doing business for retailers of these products.

The proposed creation of packaging and labeling requirements on liquefied petroleum gas in portable cylinders should have little impact, since these standards have already been in existence in the marketplace for some time.

The remaining provisions of the proposed amendments to chs. ATCP 90, ATCP 91, and ATCP 92 should have no significant effect on small business.

The Division anticipates a period of education and information to assist business in compliance with the new revisions.

The essence of the three rules and the proposed amendments is to protect the consumer from unfair trade practices while also providing a level playing field for good businesses to prosper. The revisions do not create additional financial burdens and therefore are not expected to have an adverse impact on small business.

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 29.085, 29.155, 29.174(3), 227.11(2)(a) and 227.24, Stats., interpreting ss. 29.085, 29.155, 29.174(1) and (2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM–18–97(E) relating to the 1997 migratory game bird season. This emergency order took effect on September 12, 1997. The significant regulations are:

Ducks: The state is divided into 2 zones each with 60–day seasons. The season in the southern duck zone begins at noon October 4 and continues for 60 days, closing December 2. The north duck zone season begins at noon October 4 and continues through December 2. The daily bag limit in both zones is 6 ducks, including 4 mallards, of which only one may be a hen, and one canvasback for the entire 60 days in both zones. A special youth duck hunt on September 27 is established.

Canada Geese: The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Season lengths are: Collins Zone – 69 days; Horicon Zone – 93 days; Exterior Zone – 93 days; and Mississippi River Subzone – 70 days. The Burnett County and New Auburn Subzones are closed to Canada goose hunting.

Woodcock season dates, season length and bag limits are changed to comply with the federal framework. Bismuth–tin and tungsten shot are legalized for migratory bird hunting.

Hearing Information

October 27, 1997
Monday
at 1:00 p.m.

Room 611A,
GEF #2, 101 S. Webster St.
Madison, WI

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 Jon Bergquist at (608) 266–8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Mr. Jon Bergquist, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **October 29, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [WM–18–97 (E)] may be obtained from Mr. Bergquist.

Fiscal Estimate

Summary of Bill. This rule establishes the seasons and bag limits for waterfowl hunting. Bismuth and tungsten shot are made legal for migratory bird hunting. The proposed changes will not result in any significant changes in spending or revenue.

Notice of Hearings

Public Service Commission

Notice is hereby given that the Commission will hold public hearings for the purpose of obtaining comments from customers, competitors, incumbent local exchange carriers and other interested parties on the proposed rules. Hearings will be held according to the following schedule:

Hearing Information

October 27, 1997
Monday
1:30 & 7:00 p.m.

Italian Community Center
631 E. Chicago Street
Milwaukee, WI

October 29, 1997
Wednesday
1:30 & 7:30 p.m.

Radisson Inn
2040 Airport Drive
Green Bay, WI

November 11, 1997
Tuesday
9:00 a.m.

Public Service Commission
610 N. Whitney Way
Madison, WI

(Public Hearing to be followed by technical conference.)

All buildings are accessible to people using wheelchairs. Any party with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267–9766.

Notice is further given that immediately after the Madison hearing on November 11, 1997, a technical conference will be held to enable staff, customers, industry providers, and other interested persons to discuss informally all aspects of fresh–look procedures. The technical conference may be adjourned to continue thereafter at such times and in such places as may be appropriate.

Written Comments

Notice is further given that any interested person may submit written comments on the revised proposed rules. The hearing record will be open for written comments from the public effective immediately, through **12:00 noon** on **November 14, 1997 (12:00 noon on November 13, 1997, if filed by fax)**. Written comments should be addressed to Lynda L. Dorr, Secretary to the Commission**,** Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI 53707–7854, and include reference to docket 1–AC–167. Industry parties should submit an original and 15 copies. Members of the general public need only file an original. Fax filing cover sheets must state "Official Filing," the docket number, and the number of pages (limit 20 pages). File by **one mode only**.

In addition, informal comments may be sent by e–mail to Anne Arnold of the Commission staff for consideration in this proceeding. Her e–mail address is *arnola@psc.state.wi.us*. E–mailed comments will be distributed for internal staff use, and if received by the Commission before **12:00 noon** on **November 10, 1997**, will be provided at the technical conference and treated as if submitted informally therein.

If there are any questions regarding these hearings, please contact Anne Arnold, Auditor, Telecommunications Division, at (608) 267–3897, or Michael Varda, Legal Counsel, Telecommunications Division, at (608) 267–3591.

The Public Service Commission of Wisconsin (Commission) proposes to create rules to establish a "fresh–look" procedure whereby existing s. 196.194(1), Stats., telecommunications services contracts may be ended, at the customer's option, provided the customer's area is experiencing emerging facilities–based telecommunications competition and appropriate compensation is made to the telecommunications utility. The objective of the rules is to promote competition and customer choice consistent with the public interest. The final promulgation of the rules, however, will be subject to adequate definition of a workable procedure, identification of appropriate contracts for fresh–look procedure, and further Commission assessment of the level of public interest and customer demand for fresh–look procedures.

FRESH–LOOK PROCEDURE GENERALLY

It is anticipated that a fresh–look procedure would give customers an opportunity to take advantage of new legislation intended to foster local exchange telecommunications competition that did not exist when many customers signed long–term service contracts. These contractual obligations may now effectively bar the customer from receiving any benefit from the new legislation. Because the contracts may be long–term, the change to favor competition would be substantially slowed because there would be fewer buyers, even though new entrants are becoming authorized competitors.

The "fresh–look procedure" in this proceeding is intended to allow a period of time for customers to decide, at their option, whether to terminate existing special telecommunications service contracts executed under s. 196.194(1), Stats. This "window" is created by the presence of additional facilities–based telecommunications providers in the local exchange market, and is intended to permit the customer to effectively take advantage of the new regulatory policy under 1993 Wis. Act 496. This Act favors competition as the primary means of delivering intrastate telecommunications services. Should a customer choose to opt out of a contract, the customer will usually have to pay any difference between the contract price and the price that would apply for the period of time of actual performance. (Usually, the price for the contract services will increase because of the shortened term of the contract.) Appropriate interest may also have to be paid to the utility to account for the time value of money. Interest would keep the telecommunications utility economically whole, and prevent the customer from receiving a windfall in the form of discounted pricing for the services already received. In order to remove a potential barrier to a customer's exercise of a fresh–look option contract termination penalties would not be collected.

CUSTOMER AND PROVIDER INPUT EXPRESSLY INVITED

The Commission specifically invites industry and customer input to consider the rules attached hereto as a starting point for further collaboration. The Commission wants to craft rules that respond to the needs of providers and customers and operate in a manner consistent with business practicalities. The Commission invites comment on the following subject matter areas as they are relevant to fresh–look procedures:

1. Types of service contracts that should be considered candidates for fresh–look procedures, in addition to, or other than, CENTREX, CENTREX–like and private line service contracts.

2. Procedural components, such as notice to customers of a fresh–look period, customer notice to a provider of its intention to exercise fresh–look procedures, information that may be needed by the customer, length of the fresh–look window, calculation of interest for amounts due on terminated contracts, other responsibilities of customers and providers, and dispute resolution processes.

3. Levels of competition that would justify establishment of a fresh–look procedure in an area, and how such competition may be reasonably measured or recognized.

4. Customer interest in, or need for, fresh–look procedures.

5. Appropriate geographical areas for fresh–look procedures, such as exchange territories, counties, or areas defined by the U.S. Bureau of the Census. (e.g. "urbanized areas" or standard metropolitan statistical areas).

6. Impacts upon small telecommunications utilities (those having 50,000 or fewer access lines), such as potential revenue losses, stranded investment, possible discouragement of infrastructure investment, effects on other rates and charges, implications for universal service in a relevant geographical area, and appropriate proceedings for presentation of such issues.

7. Any other relevant considerations regarding the practical processes of authorizing a fresh–look procedure in a geographical area and applying it to a contract that a customer wishes to terminate.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory Authority: ss. 196.02(1) and (3); 196.03(6); 196.194(1); 196.219(3)(e), (4) and (5); 196.37(2), 196.44, and 227.11(2), and other provisions of chs. 133, 196 and 227, and Section 1 of 1985 Wis. Act 297 as may be pertinent hereto.

Statutes Interpreted: ss. 133.01; 196.03(6); 196.194(1); 196.37(2); and 196.219(3)(e), (4) and (5)

In 1993 Wis. Act 496 (Act 496), the legislature enacted a new regulatory model to manage the transition to a competitive telecommunications market place. In addition, Congress enacted the Telecommunications Act of 1996 to, in major part, foster the development of competition in the local exchange markets nationwide. Section 196.03(6), Stats., as created by Act 496, expands the concept of the public interest with respect to telecommunications to include several specific factors, including, but not limited to, the preservation and promotion of competition consistent with ch. 133 and s. 196.219, Stats., and the promotion of consumer choice, infrastructure deployment, and universal service. Section 133.01, Stats., states that the basic policy of the state is the maximum amount of competition, "consistent with other public interest goals established by the legislature."

Incumbent local exchange carriers (ILECs) are given the right under s.196.194(1), Stats., to execute individual contracts with customers if they file authorizing tariffs with the Commission. The Commission accepts the tariffs for filing "if substitute telecommunications services are available to customers or potential customers of the telecommunications utility and the absence of such a tariff would cause the telecommunications utility to be disadvantaged in competing for business." Act 496, however, did not change the provision of s. 196.194(1), Stats., that authorizes the Commission to impose in the tariffs "any other condition and procedure required by the commission in the public interest." Section 196.37(2), Stats., as interpreted in *GTE North Inc. v. Public Service Commission*, 176 Wis. 2d 559, 567, 500 N.W. 2d 284 (1993), authorizes the Commission to make just and reasonable orders regarding services, including "any services which can be reasonably demanded" but which "cannot be obtained." In addition, Act 496 created s. 196.219(3)(e) and (4), Stats., which authorize the Commission to take administrative enforcement action respecting the obligation of telecommunications utilities to "provide a service, product, or facility to a consumer other than a telecommunications provider in accord with the telecommunications utility's applicable tariffs, price lists or contracts and with the commission's rules and orders." Section 227.11(2), Stats., gives a general substantive rulemaking power to the Commission that may be invoked to create a rule requiring fresh–look procedures in tariffs filed under s. 196.194(1), Stats.

By accepting the filing of the tariff for these special s. 196.194(1), Stats., contracts, the Commission, since 1986, has implicitly acknowledged and accepted, based upon its experience and technical knowledge regarding telecommunications, that (1) in each tariff situation some "substitute" service existed, and (2) deviation from traditionally set rates and charges was needed to enable a telecommunications utility to compete through its proposed individual contracting authority. These tariffs for a number of years have included express reservation of Commission jurisdiction to investigate and issue further orders.

Except in very limited instances in rural parts of the state, the Commission for decades declined to authorize more than one facilities–based local exchange carrier in a given area. This has meant the competition prompting tariff filings under s. 196.194(1), Stats., has usually come from a non–regulated entity or substitute product (e.g., answering machines competing with voice mail). The types of contracts for which tariffs have been filed include, but are not confined to, local exchange private line, CENTREX, and CENTREX–like contracts. The latter two services are subject to "substitute" service competition. Nonregulated makers of PBX (private branch exchange) switching equipment sell PBX arrangements as a customer premises–based alternative to CENTREX or CENTREX–like services based in a telephone company's central office switching equipment. Other subjects of special contracts include video distance learning networks, voice mail, and billing and collection services.

Numerous contracts have been entered into between ILECs and their commercial and institutional customers. Generally, discounted rates have been available when the customer entered into a long–term

contract, with the greatest discounts being offered for the longest term contract. Penalties for early termination of the contracts by customers appear to be included in typical contract language.

In Act 496, the legislature endorsed competition in the telecommunications marketplace, and enacted a new regulatory model to manage the transition from a monopolistic to a competitive telecommunications environment. Two large ILECs, Ameritech Wisconsin and GTE North Incorporated (GTE), had their service territories directly opened to competition by Act 496. Several competitive local exchange carriers (CLECs) obtained Commission approval to begin offering local service in and around certain urban areas of the state. New competitors raised the issue that fresh–look procedures should be authorized to effectively implement the promotion of competition and consumer choice, by returning to the marketplace customers who would be otherwise bound to long term contracts.

Plain Language Analysis

The proposed fresh–look procedures, subject to additional changes and customer input, are authorized as a "condition and procedure" for tariffs filed under s. 196.194(1), Stats. Fresh–look procedures are intended to promote competition and customer choice consistent with the public interest, as authorized in that statute. A rule requiring a fresh–look procedure will interpret the public interest under that statute, and therefore is authorized by s. 227.11(2), Stats. Sec. 196.219(3)(e), Stats., requires a telecommunications utility to offer services in compliance with its tariffs, such as those filed under s. 196.194(1), Stats., as interpreted by these rules issued pursuant to the rule–making power under s. 227.11(2), Stats. Sec. 196.219(5), Stats., authorizes alternative dispute resolution (ADR) procedures for complaints against a telecommunications utility arising under s. 196.219 Stats. A utility could violate s. 196.219(3)(e), Stats., by not properly terminating service in compliance with a fresh–look procedure when a customer exercises an authorized fresh–look opportunity. Sec. 196.219(4), Stats., authorizes the Commission to use rulemaking as an administrative action to implement ADR, permitted by s. 196.219(5), Stats. to expedite resolution of the dispute.

The rules in proposed ch. PSC 178, Wis. Adm. Code are designed to offer to a customer who entered into a long–term telecommunications contract, under a monopoly situation as described above, an opportunity to take advantage of the new competitive marketplace. The rules provide a process whereby a customer in an area where competition is present may elect to opt out of an existing ILEC contract. By meeting and following the criteria of the rules, a customer would be given a limited "window of opportunity" during which it could exercise the right to terminate its existing contract and obtain a different service provider. While termination penalties are rendered uncollectible under the rules, ILECs would still be compensated as if the original contract had been written for the period of actual contract performance.

A customer must within the 240–day fresh–look window (s. PSC 178.06) also sign a contract with another facilities–based provider. Services from that provider, however, may commence at a later time as provided by the contract. The length of the window is intended to allow a customer time to review alternatives.

The rules are also designed to foster competition and facilities deployment by providing a means by which a competitive provider may petition the Commission to make a determination, where appropriate under the rules, to apply a fresh–look procedure to a specific area.

The rules proposed address: (1) the types of contracts subject to fresh–look procedures; (2) geographical areas subject to fresh–look procedures; (3) sufficient facilities–based competition; (4) fresh look notice and termination processes; (5) ILEC compensation for terminated contracts; (6) arbitration of disputes; and (7) small telecommunications utility opportunities for modification or exemption from fresh–look procedures.

Initial Regulatory Flexibility Analysis

These proposed rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. The effect depends upon the pace of development of competition in mostly rural territories, which has tended to lag that in urban areas. Nonetheless, the rules include a specific opportunity for small telecommunications utilities to raise the issue of possible modification or cancellation of a fresh–look procedure when facilities–based competition is authorized in a small telecommunications utility territory under s. 196.50(1)(b), Stats. The public interest consequences of a fresh–look procedure appear to be intertwined with the public interest in certifying and introducing competitors to active marketplace competition. In this opportunity for special case treatment, a small telecommunications utility could make a case for modifying, temporarily suspending, or canceling altogether, use of fresh–look procedures in its basic territory. Because of the variety of potential fresh–look situations involved, more detail for purposes of s. 227.114(2), Stats., cannot be determined at this time.

Fiscal Estimate

These rules will have no fiscal impact on the agency or state government. The rules will have no direct effect on local government, but could allow a local government unit, as its option, to enter into a more favorable contract for telecommunications services with an alternative provider.

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

Text of Rule

Chapter PSC 178
TELECOMMUNICATIONS TARIFFS FOR INDIVIDUAL CUSTOMER CONTRACTS

PSC 178.01 PURPOSE AND SCOPE. (1) The purpose of this chapter is to establish a procedure by which the contracts executed by local exchange telecommunications utilities pursuant to tariffs filed under s. 196.194(1), Stats., may be reopened at the option of the contracting customer for a period of time, upon the determination of the commission that in a defined geographical area in which the customer is located, sufficient emerging facilities–based local exchange service is present. These procedures will be known as "fresh–look procedures." The purpose of these rules is to permit the fullest promotion of local exchange competition, consistent with other public interest objectives as may be defined in ch. 196, Stats.

(2) This chapter applies to incumbent telecommunications utilities maintaining certification under s. 196.50 (2), Stats., and those entities that are designated as local exchange carriers either by the federal communications commission pursuant to rules promulgated under 47 USC 251(h) or by the commission pursuant to notice and an opportunity for hearing.

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

PSC 178.02 DEFINITIONS. The definitions in s. 196.01, Stats., apply in this chapter. In addition, in this chapter:

(1) "Contract" shall mean any written agreement executed by a telecommunications utility with another legal entity pursuant to tariffs filed with the commission under the authority of s. 196.194(1), Stats. A contract may include by reference terms, conditions and other provisions contained in tariffs of the telecommunications utility filed pursuant to s. 196.19, Stats. A contract under s. 196.194(1), Stats., may include a contract with another telecommunications provider. A contract shall incorporate by reference any subcontracts executed with third parties for purposes of delivering the services provided under the principal contract.

(2) "Incumbent telecommunications utility" and "incumbent local exchange carrier" mean the telecommunications utility, or its successor in interest that provides basic local exchange service in a geographical area as of the effective date of this chapter . . . [revisor inserts date].

(3) "Local exchange carrier" means a telecommunications utility providing telephone exchange service, exchange access, or both, as those services are defined in 47 USC 153.

PSC 178.03 CONTRACTS SUBJECT TO FRESH–LOOK. (1) A contract executed by a telecommunications utility shall be subject to fresh–look procedures set forth in s. PSC 178.06 if all of the following criteria are satisfied:

(a) The principal service provided by the contract is one of the following:

1. Private line service.

2. CENTREX or CENTREX–like service.

3. A combination of the services offered in subd. 1. and 2.

4. Any other type of local exchange service, or combination of services, that the commission has determined by order shall be subject to this paragraph.

(b) All of the services rendered under the contract are local exchange services rendered at customer facilities or premises that are identified to the contract and are within a geographical area that has sufficient facilities–based local exchange service competition as defined by this chapter or by commission order under sub. (2).

(c) The principal term of the contract, or any extension thereof, has one year or more remaining, as measured from the date set by the commission pursuant to sub. (2).

(2) Upon petition of an interested person, or on its own motion, the commission may determine in a geographical area that sufficient facilities–based competition is present and thereupon set a date establishing the commencement of a 240–day period in which a customer under contract may use the fresh–look procedure defined in s. PSC 178.06 to terminate a contract without penalty, subject to the right of the contracting telecommunications utility to be kept whole as set forth in s. PSC 178.07.

PSC 178.04 GEOGRAPHICAL AREAS. (1) The commission may select the following types of defined geographical areas to be subject to fresh–look procedures as described in this chapter:

(a) Standard metropolitan statistical areas as defined by the bureau of the census.

(b) One or more obliged–to–serve territories, as defined in the tariffs of one or more telecommunications utilities.

(c) An extended area service local exchange service territory served by two or more telecommunications utilities.

(d) A territory that is defined as any combination of territories defined under pars. (a), (b), and (c).

(e) A geographical area specially defined by commission order, taking into account the business and residential demands for telecommunications services within the defined geographical area.

PSC 178.05 MARKETS HAVING EMERGING FACILITIES–BASED COMPETITION. (1) Upon its own motion, or the petition of an interested provider or purchaser of telecommunications services, the commission may determine that a geographical market as defined in s. PSC 178.04 is experiencing or is about to experience facilities–based local exchange service competition. Upon making such a finding, the commission may thereupon order that each telecommunications utility serving that area shall insert the fresh–look procedure defined in s. PSC 178.06 in all tariffs under s. 196.194 (1), Stats., pursuant to which the utility provides in the geographical area those services identified in s. PSC 178.03 (1) (a).

(2) Notwithstanding sub. (1), the geographical area consisting of the standard metropolitan statistical areas for Milwaukee, Racine and Kenosha is determined to have emerging facilities–based competition as of the effective date of this rule . . . [revisor inserts date]. Within 30 days of the effective date of this section, each telecommunications utility serving the specified geographical area shall amend all its tariffs in compliance with sub. (1) and shall include any modifications as may be required by any commission order to adjust the boundaries of the foregoing geographical area.

(3) With respect to any other geographical area, emerging facilities–based competition exists in an area if both the following criteria are satisfied:

(a) Two or more telecommunications providers, not including the incumbent telecommunications utility or utilities and commercial mobile radio service providers, are providing facilities–based local exchange telecommunications services within the specified geographical area.

(b) In the aggregate, the providers identified in par. (a) actively provide basic local exchange service or business access line and usage, and the total number of such access lines equals or exceeds 1 percent or more of the total of access lines of the incumbent telecommunications utilities in use in the geographical area at issue. The commission may chose any reasonable date and method for obtaining access line counts for purposes of this paragraph.

PSC 178.06 FRESH–LOOK PROCEDURE. Fresh–look procedures that the commission has ordered to be inserted in tariffs pursuant to s. PSC 178.05 (1) shall comply with the following provisions:

(1) The tariff for a category of contract under s. 196.194 (1), Stats., shall provide for a fresh–look period of 240 days commencing on the date specified by the commission in the order for fresh–look procedures.

(2) The incumbent telecommunications utility shall transmit written notice of the fresh–look period to all affected contract customers not less than 15 days before the effective date of the tariff provisions containing fresh–look procedures. The text of the notice shall be as set forth in the order, or as prepared by the staff upon direction of the commission, and shall advise customers of the procedures and responsibilities of providers and customers under this chapter with respect to compliance with fresh–look procedures.

(3) A customer shall have a period of 240 days from the date specified by the commission pursuant to sub. (1) in which to exercise its option to terminate its existing contract or contracts with the incumbent telecommunications utility and execute one or more new contracts with a competing facilities–based telecommunications provider. The customer and the telecommunications utility shall comply with the following requirements:

(a) If the customer is considering the termination of any current contract, it shall notify the telecommunications utility in writing by certified mail, return receipt, of its present intention to use fresh–look procedures to terminate one or more contracts with the telecommunications utility. This notice shall be mailed not later than the 90th day of the fresh–look period, and shall include the customer's projected termination date for each contract at issue. If the notice is not timely mailed in strict compliance with this paragraph, the customer may not use fresh–look procedures in this chapter.

(b) The telecommunications utility shall furnish in writing to the customer within 20 days of the date of the receipt of the notice described in par. (a), a good faith estimate of the termination compensation, as computed in sub. (4), for the contract services for the period of projected actual contract performance, as determined using the customer's projected termination date.

(c) The customer shall notify the telecommunications utility in writing of its actual termination of a contract, and shall state in the notice the last date of service from the utility. The notice shall be sent by certified mail, return receipt, on or before the 240th day of the fresh–look period.

(d) In the absence of a complaint for dispute resolution under s. PSC 178.07, the good faith estimate of termination compensation shall be due and owing to the incumbent telecommunications utility as of the 30th day after the termination date, unless a mutually acceptable payment date is otherwise agreed upon by the parties in writing.

(e) Except where established practice dictates otherwise, addressees for notices described in this subsection shall be those identified in a contract as appropriate for the subject matter of contract termination.

(4) Upon receipt of the notice described in sub. (2), an incumbent telecommunications utility shall compute good faith termination compensation of the contract based as nearly as practicable on its own pricing for similar contracts. A "similar contract" is one that is for the same principal services, is entered into within 180 days before or after the date of the original customer contract, and is for a period of time that is within 90 days of the length of the actual performance projected for the contract to be terminated under this chapter. Termination penalties imposed by the original contract may not be included. Reasonable service termination costs relating to actual and necessary physical facility termination arrangements that are authorized in a contract may be included in termination compensation.

(5) If the price for the period of actual performance period exceeds the price paid under the contract for that period, then interest may be added by the incumbent telecommunications utility to establish the total due from the customer. Interest shall be calculated on accrued amounts due according to the payment terms of the contract, using the prime rate as published in the *Wall Street Journal* on the nearest date preceding a contractually specified payment due date. The commission may designate by order a substitute index for establishing the applicable prime rate for interest.

(6) A telecommunications utility subject to a fresh–look procedure termination shall not remove, alter, or render unusable network facilities used exclusively to serve the customer, except as accepted by generally recognized telecommunications industry engineering standards relating to safe, economical, or efficient use or operation of network facilities when services are terminated, or for immediate reuse elsewhere in the utility's network.

(7) The incumbent telecommunications utility shall retain for not less than three years from date of contract termination all documentation for its good faith termination compensation estimate, and shall furnish copies of the documentation immediately upon demand of either the customer or the commission. Documentation will be deemed adequate if it furnishes all relevant assumptions and calculations and sets forth when necessary those judgments determining similar contracts appropriate for the computation of the good faith estimate.

PSC 178.07 RESOLUTION OF TERMINATION DISPUTES. (1) If a customer disputes a good faith termination compensation estimate, it may file a complaint for dispute resolution under this section, and shall not be obliged to make payment of termination compensation until the complaint is resolved. If a customer files a complaint under this section, interest compounding per s. PSC 178.06 (5) shall cease as of the date of termination of the utility's contract services, and thereafter only interest at the applicable legal rate shall apply, unless otherwise agreed by the parties in writing.

(2) A customer shall file a complaint for dispute resolution with the commission no later than 15 days after the actual termination of contract services by the incumbent telecommunications utility, or if services are not terminated, no later than 15 days after the last projected termination date set by the customer in compliance with these rules.

(3) Upon receipt of a complaint, the commission may elect to do either one or both of the following:

(a) Mediate the dispute between the customer and the telecommunications utility.

(b) Order the parties to enter arbitration governed by the American Arbitration Association to enter a final award. The final award shall be reviewable by any court of competent jurisdiction. If such arbitration is ordered, the costs of arbitration shall be paid by the incumbent telecommunications utility initially, but upon completion of the arbitration, the prevailing party shall recover all of its costs but no attorney's fees.

PSC 178.08 CONTRACTS GENERALLY. Any provisions in a tariff filed pursuant to s. 196.194(1), Stats., or in a contract executed pursuant to that section, shall be null and void if they provide for any procedure materially differing from the procedure in this chapter, or have as their primary effect or purpose the impairment or elimination of the right of a customer to use the fresh–look procedures provided in this chapter.

PSC 178.09 FRESH–LOOK PROCEDURES AFFECTING SMALL TELECOMMUNICATIONS UTILITIES. Upon any petition or motion of the commission as provided in s. PSC 178.03, or upon application by a telecommunications provider for a certificate of authority that requires a determination under s. 196.50 (1) (b), Stats., an affected small telecommunications utility may in such proceeding request that the commission determine whether or not the application of any or all of the provisions of this chapter should, in the public interest, be modified, temporarily suspended, or canceled. In making its determination, the commission shall consider any relevant factor identified in s. 196.03 (6) (a) – (g), Stats., whether users of telecommunications services generally would experience a significant adverse economic impact, and any other relevant factor.

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 & Consumer Protection (CR 97–38):
Chs. ATCP 70, 71, 74, 75 and 80 – Relating to food and dairy license fees.

Natural Resources (CR 96–189):
S. NR 24.09 – Relating to commercial clamming on the Wisconsin–Minnesota and Wisconsin–Iowa boundary waters and clamming on all waters.

Natural Resources (CR 97–20):
SS. NR 10.02, 27.03 and 27.06 – Relating to the timber rattlesnake.

Revenue (CR 97–94):
S. Tax 11.15 – Relating to the Wisconsin sales and use tax as it applies to containers.

Transportation (CR 97–103):
Ch. Trans 300 – Relating to the transportation of schoolchildren.

Transportation (CR 97–108):
Ch. Trans 276 – Relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Workforce Development (CR 97–112):
S. DWD 80.02 – Relating to reports from insured employers, self–insured employers and insurance carriers.

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.

Chiropractic Examining Board (CR 95–59):
An order affecting ss. Chir 6.015 and 6.02, relating to advertising.
Effective 12–01–97.

Corrections (CR 96–180):
An order affecting ss. DOC 308.01, 308.03 and 308.04, relating to the administrative confinement of inmates.
Effective 12–01–97.

Corrections (CR 96–184):
An order affecting ss. DOC 309.24, 309.37, 309.38 and 309.39, relating to food, hygiene, and living quarters for inmates.
Effective 12–01–97.

Dietitians Affiliated Credentialing Board (CR 97–61):
An order affecting s. DI 2.01, 2.02, 2.03, 2.04, 3.01 and 4.01, relating to certification of dietitians.
Effective 12–01–97.

Funeral Directors Examining Board (CR 96–183):
An order creating ch. FD 6, relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy.
Effective 11–01–97.

Health and Family Services (CR 97–91):
An order repealing and recreating ch. HFS 163, relating to certification to perform lead (Pb) abatement, other lead hazard reduction work and lead management activities, accreditation of training courses for individuals performing those activities and approval of training course managers, principal instructors and guest instructors.
Effective 11–01–97.

Natural Resources (CR 97–59):
An order affecting ss. NR 46.16, 46.18, 46.24 and 46.30, relating to the administration of the Forest Crop Law and the Managed Forest Law.
Effective 11–01–97.

Public Instruction (CR 97–81):
An order affecting chs. PI 3 and 4 and s. PI 8.01, relating to teacher certification requirements and certification program requirements.
Effective 12–01–97.

Regulation & Licensing (CR 97–48):
An order affecting chs. RL 30 to 35, relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.
Effective 12–01–97.

Revenue (CR 97–55):
An order affecting ss. Tax 11.001, 11.002, 11.01, 11.35 and 11.97, relating to registering for and reporting Wisconsin sales and use taxes.
Effective 11–01–97.

Revenue (CR 97–68):
An order affecting ss. Tax 11.39 and 11.41, relating to the Wisconsin sales and use tax as it applies to manufacturers.
Effective 11–01–97.

Revenue (CR 97–75):
An order affecting s. Tax 11.14, relating to the use of exemption certificates.
Effective 11–01–97.

Revenue (CR 97–90):
An order affecting ss. Tax 11.05 and 11.86, relating to the Wisconsin sales and use tax treatment of landscaping services and sales and purchases by governmental units and the use of exemption certificates.
Effective 11–01–97.

Workforce Development (CR 97–54):
An order renumbering ch. HSS 215 to be ch. DWD 15, creating ch. DWD 12, and affecting ss. DWD 15.03 and 56.04, relating to the Wisconsin Works (W–2) program.
Effective 11–01–97.

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