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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 Administration (Gaming Board)

Rules adopted revising **ch. WGC 13**, relating to the license fees of kennel owners that own and operate kennels at Wisconsin greyhound racetracks.

Finding of Emergency

Statutory Authority: ss. 16.004(1), 562.02(1) and 562.05(2)

Statutes Interpreted: ss. 562.02(1)(am) and 562.05(2)

The Department of Administration's Division of Gaming finds that an emergency exists and the rule amendments are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

For CY 1998, the Wisconsin racetracks were unable to recruit kennels to operate at the state's three existing racetracks. The 1997 license fee of \$750.00 per kennel is too cost prohibitive to the kennels and therefore they pursue booking agreements in other states. By decreasing the cost to \$350.00 and allowing the license to be valid at all Wisconsin racetracks, the racetracks will be able to attract quality kennels.

As a result of the increased competition for the availability of greyhounds throughout the country, license fees and purse revenues are the only considerations that racetracks have to offer when attempting to recruit kennels. If the racetracks are unsuccessful in recruiting new kennels or maintaining existing kennels, then races or whole performances would have to be canceled due to the lack of greyhounds.

In conjunction with the canceled races or performances and the associated decrease in handle, the revenue generated for the state related to greyhound racing would decrease accordingly.

Publication Date: December 8, 1997

Effective Date: December 8, 1997

Expiration Date: May 7, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Department of Commerce (Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)

1. Rule adopted amending **s. Comm 108.21 (1) (f)**, relating to the emergency grants under the Community Development Block Grant (CDBG) program.

Finding of Emergency

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

A closer examination of the revised rules to take effect on November 1, 1997 will not allow Commerce to award emergency grants to local governments experiencing a natural disaster or catastrophic event using other state or federal grant funds as match. Those rules do not specify a source for the match funds, and up to the present time, many of the emergency grants did use state and/or federal grants as match. The most recent example of an emergency is the tornado that devastated the Village of Oakfield. In that case, the Federal Emergency Management Administration (FEMA) and state Division of Emergency Management (DEM) funds were used as match for a CDBG emergency grant.

The floods that occurred in June 1997 in the Milwaukee area may generate some emergency requests for repair and remediation activities. Under the rules that take effect November 1, 1997, Commerce would not be able to use the FEMA and DEM grants as match for these emergency projects.

The nature of the emergency program makes it impossible to anticipate future applications for obvious reasons. Commerce must have a program in place and ready to respond on short notice when an emergency occurs. The emergency rule will allow the use of other grant funds as match. It is very important that Commerce be ready to respond in a timely manner to the needs of the citizens of this state in times of emergency.

Publication Date: October 30, 1997

Effective Date: November 1, 1997

Expiration Date: March 31, 1998

Hearing Date: January 13, 1998

2. Rule adopted creating **ch. Comm 110**, relating to the Brownfields Grant Program.

Exemption From Finding of Emergency

On October 14, 1997, 1997 Wis. Act 27 took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the biennium that can be

distributed by the Department of Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires the department to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under ch. 227, Stats., and exempts the department from making a finding of emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration.

Publication Date: December 31, 1997
Effective Date: December 31, 1997
Expiration Date: May 30, 1998

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

1. 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
Extension Through: February 26, 1998

2. 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
Extension Through: March 2, 1998

3. Rules adopted revising **chs. DOC 328 and 332**, relating to polygraph examinations for sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

The testing program cannot be implemented without rules. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

This order:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.
7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.
9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.
10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
11. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.

12. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.

13. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.

14. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.

15. Establishes procedures for the collection of lie detector fees.

16. Provides for sanctions for an offender's failure to pay the lie detector fees.

17. Provides the criteria for lie detector fee deferrals.

18. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

The order provides for including the rules for the lie detector program in the same chapter of the Wisconsin Administrative Code, ch. DOC 332, as the rules for registration and community notification of sex offenders, which were published as emergency rules on June 1, 1997.

Publication Date: December 15, 1997
Effective Date: December 15, 1997
Expiration Date: May 14, 1998

EMERGENCY RULES NOW IN EFFECT

Dentistry Examining Board

A rule was adopted revising s. DE 2.04 (1) (e), relating to examination requirements for applicants licensed as dentists in other states.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats. The Governor vetoed a provision in the budget bill which would have permitted dentists licensed in other states to obtain a license in Wisconsin, despite their not having passed a clinical licensing examination with a periodontal part. In doing so, the Governor requested the board adopt an emergency rule to permit these dentists to obtain licenses in Wisconsin under other reasonable and appropriate methods. The concern for the public health, safety and welfare is that this state's citizens are currently being deprived of necessary dental services from qualified dentists who, themselves, are experiencing substantial and perhaps unnecessary hardship in becoming licensed in Wisconsin. These rules are put into effect prior to the time they would be effective under routine rulemaking procedures to assure that the public is not deprived of necessary dental services from qualified dental professionals and that adequate safeguards for protecting the health and safety of dental patients are part of the licensing process.

Publication Date: October 18, 1997
Effective Date: October 18, 1997
Expiration Date: March 17, 1997
Hearing Date: January 7, 1998

EMERGENCY RULES NOW IN EFFECT

Department of Employment Relations

Rules were adopted revising ch. ER 18, relating to sick leave credits, the adjustment of sick leave balances for state employees and catastrophic leave.

Finding of Emergency

The Department of Employment Relations 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:

It is the state's personnel policy to maintain a uniform system of fringe benefits for state employees in terms of retirement, insurance and leave provisions. This policy is followed in order to facilitate movement of employees between agencies and different types of positions, to minimize the number of benefit systems that must be administered by personnel and payroll staff and to ensure employee equity in benefits. Two of the benefits available to most state employees are sick leave and catastrophic leave. Catastrophic leave programs allow the donation of certain types of unused leave to employees who are on an unpaid leave of absence because they have exhausted their available leave due to a catastrophic need.

The sick leave accrual rate for represented state employees is governed by the applicable collective bargaining agreement. Likewise, provisions regarding catastrophic leave are contained in the agreements. For nonrepresented state employees, the sick leave accrual rate and catastrophic leave are governed by administrative rules promulgated by the secretary of the Department of Employment Relations. Under current administrative rules and all of the 1995-97 collective bargaining agreements, employees earn sick leave at the identical rate of 4 hours per pay period for full-time employees. Under current agreements, catastrophic leave may be exchanged between employees only within bargaining units in the same employing unit, except that the appointing authority may allow exchange between employing units within the same agency. The catastrophic leave program in the current administrative rules for state employees allows exchange of leave only between nonrepresented employees within the same employing unit, except that the appointing authority may allow exchange within an agency.

The Department of Employment Relations recently negotiated new contracts with 11 bargaining units representing the majority of state employees. These contracts will increase the sick leave accrual rate for the covered represented employees and expand the exchange of catastrophic leave for represented employees. The sick leave accrual rate will increase from 4 to 5 hours per pay period for full-time employees, starting on the effective date of the contracts. (Sick leave balances for individual employees also will be adjusted on the effective dates of the contracts to apply the higher accrual rate to hours worked between July 6, 1997 and the effective date of the contracts.) The contracts also expand the catastrophic leave programs to allow exchange of leave between members of different bargaining units, between different employing units within the same agency and between represented and nonrepresented employees. Leave may also be exchanged across agency lines with the approval of each agency.

Without a change in the administrative rules, nonrepresented employees will not receive the increased sick leave, nor will they have the same broadened opportunities to donate and receive catastrophic leave as represented employees.

If the sick leave accrual rate for nonrepresented employees is not increased by this emergency rule, nonrepresented employees will accrue sick leave at a lower rate than those covered by collective bargaining agreements which provide a higher rate. This inconsistency will have the following negative impacts on state employees and agencies: (1) it will create inequitable treatment and morale problems between state employees; (2) it will discourage transfers and promotions by employees from represented to nonrepresented positions; and (3) it will require administration of two different sick leave accrual rates.

If the exchange of catastrophic leave is not broadened, nonrepresented employees will not be able to donate leave to or receive leave from represented employees, or to and from nonrepresented or represented employees in other agencies. Thus, there will be less opportunities for employees who face a catastrophic need to receive donated leave from other employees.

In order to avoid these negative consequences, the Department finds that there is an emergency affecting the public peace, health, safety or welfare. The Department further finds that it is necessary

to provide the higher sick leave accrual rate and expanded catastrophic leave to nonrepresented state employees as soon as possible through an emergency rule.

Publication Date: October 11, 1997
Effective Date: October 12, 1997
Expiration Date: March 11, 1998
Hearing Date: December 15, 1997

EMERGENCY RULES NOW IN EFFECT (4)

Insurance

1. A rule was adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in premium rates for the Health Insurance Risk-Sharing Plan (HIRSP), effective January 1, 1998.

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 Office of the Commissioner of Insurance

January 1, 1998 Premium Adjustments

The Commissioner of Insurance, based on the recommendations 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. This rule adjusts the non-subsidized premium rates effective January 1, 1998. This change in rates will result in a reduction of approximately 14.5%, and is mandated by plan financing changes in 1997 Wis. Act 27.

Publication Date: November 20, 1997
Effective Date: January 1, 1998
Expiration Date: May 31, 1998
Hearing Date: December 30, 1997

2. Rules adopted revising **s. Ins 2.14** and amending **s. Ins 2.16 (1) & (3) (a) 2.**, Wis. Adm. Code, relating to life insurance solicitations.

Finding of Emergency

Effective January 1, 1998 Wisconsin will adopt the National Association of Insurance Commissioners Life Illustrations Model Regulation as s. Ins. 2.17 Wis. Adm. Code. These changes are needed to adapt other rules pertaining to life illustrations to s. Ins. 2.17. These changes must be made by emergency rule to synchronize with s. Ins. 2.17.

The main changes proposed to s. Ins 2.14 include:

- Eliminating the requirement that a policy summary be provided at delivery, if a basic illustration was provided.
- Eliminating the requirement that cost indexes be shown on the policy summary.
- Prohibiting insurers from illustrating anything except guaranteed policy elements on the policy summary, and requiring that values be illustrated for years 1-20 and at least one year between age 60 and 65, or maturity, whichever is earlier.

- Requiring that only guaranteed elements be used in the calculation of cost comparison indexes. As a result, the formulas for calculating the net payment cost index and the surrender cost index have been revised and any reference to the equivalent level annual dividend has been deleted from the rule.

- Requiring that insurers use the latest published version of the NAIC Life Insurance Buyer's Guide.

The main changes proposed to s. Ins 2.16 include:

- Excluding the illustration as defined in s. Ins. 2.17 from the definition of an advertisement.
- Revising the purpose of the rule to indicate that the rule is in addition to, and not a substitute, for s. Ins 2.17.

Publication Date: December 10, 1997
Effective Date: January 1, 1998
Expiration Date: May 31, 1998

3. Rules were adopted amending **s. Ins 18.07 (5) (b)**, published as an emergency rule relating to a decrease in premium rates for the health insurance risk-sharing plan under s. 18.07 (5) (b), and correcting errors in the published rate table.

January 1, 1998 Premium Adjustment Correction

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. An emergency rule, already promulgated and published, adjusts the non-subsidized premium rates effective January 1, 1998. This emergency amendment corrects 4 errors in the published rate table.

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 amendment to an emergency rule.

Publication Date: December 12, 1997
Effective Date: January 1, 1998
Expiration Date: May 31, 1998

4. Rules were adopted amending **s. Ins 18.07 (intro.)**, **(5) (a)** and **(5) (br)** and creating **s. Ins 18.07 (5) (bm)**, relating to the creation of a \$2500 deductible alternative to the health insurance risk-sharing plan effective January 1, 1998.

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 Office of the Commissioner of Insurance

Statutory authority: ss. 227.24, 601.41 (3), 619.11, 619.14 (5)(a) and (e), 619.17 (2) and 619.146

Statutes interpreted: s. 619.146

January 1, 1998 health insurance risk sharing plan with \$2500 deductible.

This change is mandated by 1997 Wis. Act 27 which created s. 619.146, Stats. This section requires that an alternative major medical expense coverage plan be offered with a \$2500 deductible as described in section 2744 (a) (1) (C) of P.L. 104-191. Under s. 619.146 (2) (a) premium reductions do not apply to this alternative plan. Section 619.146 (2) (b) prescribes how the rates for the

alternative plan are to be determined. Since the alternative plan is required by law to be offered by January 1, 1998 this emergency rule sets out the rates for that plan.

Publication Date: December 31, 1997
Effective Date: January 1, 1998
Expiration Date: May 31, 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. A rule was adopted revising s. NR 45.10 (3) and (4), relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.

2. Establishes time frame for making reservations.

Publication Date: December 15, 1997
Effective Date: April 1, 1998
Expiration Date: April 1, 1999

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection--Air Pollution Control, Chs. NR 400--)

Rules adopted revising s. NR 485.04, relating to emission limitations for motor vehicles.

Finding of Emergency

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

Many 1980 to 1986 model year vehicles cannot reasonably maintain a level of emissions that would comply with the emission limitations scheduled to go into effect on December 1, 1997, under the current rule. In addition, the number of 1990 and older model year vehicles that would need to be repaired in order to comply with these limitations may exceed the number of vehicles the repair industry could effectively repair. Finally, after December 1, 1997, no fast-pass emission limitations will apply to some 1994 and newer model year vehicles. (Fast-pass limitations enable very clean vehicles to pass the I/M program's emission test in less time than the typical test.) Preservation of the public welfare necessitates the adoption of an emergency rule since: (1) the repairs that would need to be done on some 1990 and older model year vehicles attempting to comply with the emission limitations scheduled to go into effect on December 1, 1997, are likely to be costly and ineffective in keeping emissions low, and (2) the absence of fast-pass emission limitations for some newer vehicles would unnecessarily increase the time motorists would need to wait in line at the I/M test stations prior to having their vehicles tested.

Publication Date: December 29, 1997
Effective Date: January 1, 1998
Expiration Date: May 31, 1998

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted creating ch. Trans 512, relating to the Transportation Infrastructure Loan Program.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is that federally authorized funds for the Transportation Infrastructure Loan Program will be withdrawn if participating states are unable to meet the requirement to have at least one eligible project authorized for construction on or before April 1, 1998. There is insufficient time to have a permanent rule in place to meet the federal deadline. The state has been authorized \$1.5 million in additional federal funds to capitalize the

Transportation Infrastructure Loan Program. Without an emergency rule to implement the program, the state is in jeopardy of losing \$1.5 million in federal assistance.

Publication Date: January 5, 1998
Effective Date: January 5, 1998
Expiration Date: June 4, 1998
Hearing Date: January 15, 1998

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rules were adopted revising **ch. VA 12**, relating to the personal loan program.

Exemption From Finding of Emergency

1997 Wis. Act 27, s. 9154 authorizes the department to promulgate rules for the administration of the personal loan program using the emergency rule procedures without providing evidence of the necessity of preservation of the public peace, health, safety or welfare.

Analysis

By repealing and recreating **ch. VA 12**, Wis. Adm. Code, the department establishes the underwriting and other criteria necessary for the administration of the personal loan program. The personal loan program was authorized by the legislature and governor through the amendment of s. 45.356, Stats., upon enactment of 1997 Wis. Act 27.

Publication Date: October 17, 1997
Effective Date: October 17, 1997
Expiration Date: March 16, 1998
Hearing Date: January 9, 1998

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Economic Support, Chs. DWD 11 to 59)

Rules were adopted revising **s. DWD 12.25**, relating to amendments to the learnfare program.

Exemption From Finding of Emergency

The Department of Workforce Development promulgates a rule under the "emergency rule" procedure of s. 227.24, Stats., as authorized by section 9126 (5qh) of 1997 Wis. Act 27, which provides:

"Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate rules required under section 49.26 of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 49.26 of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1)(c) and (2) of the statutes. Notwithstanding section 227.24

(1) (a) and (2) (b) of the statutes, the department of workforce development need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection."

Analysis

Statutory authority for rule: s. 49.26 (1) (gm) 2 and (h) 1
 Statute interpreted by the rule: s. 49.26

This rule implements changes to the learnfare program made by 1997 Wis. Act 27 by amending the existing rules on the learnfare program, s. DWD 12.25, Wis. Adm. Code, as follows:

Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child's parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W-2 agency, the W-2 agency is required to impose a financial penalty unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under learnfare. In addition, good cause for failing to participate in learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court-ordered appearance or temporary incarceration.
- Observance of a religious holiday.
- Death of a relative.
- Family emergency.
- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent's child.
- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child's parent, as determined by the W-2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W-2 participant who is in a community service job (CSJ) or transitional placement and will be imposed as a liability against a W-2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W-2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until exemption or good cause reason is verified.

Publication Date: January 2, 1998
Effective Date: January 2, 1998
Expiration Date: June 1, 1998

STATEMENTS OF SCOPE OF PROPOSED RULES

Administration

Subject:

Adm Code – Relating to digital signatures.

Description of policy issues:

Description of the objective of the proposed rule:

The objective of the proposed rule is to establish procedures for the use and verification of digital signatures pursuant to s. 16.855 (23), Stats., as created in 1997 Wis. Act 27.

Description of policy issues:

A digital signature is an electronic identifier that is used in a computer communication and that is intended by the party using it to have the same force and effect as a manual signature. Pursuant to s. 16.855 (23) (b), Stats., the Department is authorized to accept a digital signature in connection with any bid or proposal submitted or contract entered into under s. 16.855, Stats.

Statement of the statutory authority for the rule:

Sections 16.004 (1), 16.855 (23) (d), and 227.11 (2) (a), Stats.

Staff time required:

The Department estimates 20–30 hours to promulgate this rule.

Natural Resources

Subject:

NR Code – Relating to rules for issuing permits for the use of natural waters as fish farms per s. 29.521, Stats.

Description of policy issues:

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

The objective of the proposed rule is to establish fees, criteria and procedures for issuing the permits. Aquaculture groups are interested in this issue.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Legislation was passed via the budget bill, requiring DNR to develop rules for permitting the use of natural waters as fish farms. As directed by s. 29.521, Stats., these new permits would be issued for a ten year period. The criteria contained within the new rules will provide a consistent approach in permitting the use of natural waters as fish farms.

Statement of the statutory authority for the rule:

Section 29.521, Stats.

Staff time required:

The anticipated time commitment is 300 hours. At least four hearings are proposed to be scheduled at places throughout the state.

Natural Resources

Subject:

NR Code – Relating to the dry cleaner environmental response program.

Description of policy issues:

Description of the objective of the proposed rule:

1997 Wis. Act 27, the 1997–1999 Budget Bill, included statutory authorization for the establishment of the dry cleaning environmental response grant program. This is a funding program for responding to, investigating and remediating contamination caused by the discharge

of dry cleaning solvents. The statute includes language for how funds are to be collected and distributed. Funds are collected from dry cleaning facilities by the Department of Revenue, based on a formula that incorporates a portion of their gross receipts and the amount of dry cleaning solvents used at the facility. The statutes require that 9.7% of the funds are to be reserved for immediate response activities, and 46% of the funds are to be used for interim remedial actions. The Department is to develop a priority system for distributing the remaining funds, based on environmental factors and the order in which applications are received. The statute requires that priority be given to the reimbursement of response costs that were incurred between 1991 and October 14, 1997, the date the statute was signed into law.

The Department will need to draft rules that define program implementation and prioritization for distribution of funds. To that end, the Department will work with external customers in drafting the rules. The statute establishes a Dry Cleaning Advisory Council to assist the Department in program evaluations and implementation. This Council is anticipated to be formed in early 1998, and will also be able to assist during the rule development phase of program implementation. Department staff have already met with representatives of the Wisconsin Fabricare Institute to discuss program implementation issues. They will continue to work with them during program development and implementation.

While all parties recognize that there is insufficient funding to meet the needs of the applications anticipated, the Department will work with industry representatives to ensure the highest-priority sites receive funding based on the statutory provisions provided.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

This is a new program. It is modelled after the PECFA program for reimbursement of cleanup activities at petroleum-contaminated sites. The DNR anticipates the program will not result in a change in the chs. NR 700— cleanup process used for remediating contaminated sites. Some modifications to our enforcement strategy may occur, based on anticipated funding shortfalls.

Statement of the statutory authority for the rule:

Sections 292.65 and 292.66, Stats., as created by 1997 Wis. Act 27

Staff time required:

The anticipated time commitment is 873 hours. Four public hearings are proposed to be held in October, 1998 at Madison, Eau Claire, Green Bay and in the Milwaukee area.

Natural Resources

Subject:

Ch. NR 750 – Relating to fees. The 1997–99 state budget authorizes the Department to collect fees to offset the cost of many existing services it provides, and for the new services created in the budget. Some of the services for which it proposes establishing fees include:

- Issuing off-site letters;
- Pre-qualifying sites;
- Approving limited liability letters for voluntary parties;
- No further action letters (i.e., close out letters);
- Requests for liability clarification;
- Providing technical assistance; and
- Other related activities.

Description of policy issues:

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

The major policy issues that need to be addressed as part of this rule include:

- Which services the Department should charge fees for;
- Whether there should be a flat fee system, an hourly system or some combination thereof;
- Whether to include the option of an expedited review process; and
- Options for collecting sufficient revenue as soon as practical, including adoption of an emergency rule and/or making the effective date of the permanent rule retroactive.

The groups most likely to be affected by this rule include:

- ① Responsible parties;
- ② Municipalities;
- ③ Lenders; and
- ④ Prospective purchasers.

Other groups that would likely be interested in this rule include:

- ⑤ Wisconsin Manufacturers and Commerce;
- ⑥ Consultants;
- ⑦ Attorneys; and
- ⑧ Several citizen groups.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Historically, the Remediation and Redevelopment Program has primarily relied on funding from segregated accounts such as groundwater funds and the environmental fund, and Federal grants such as LUST and Superfund. Reductions in Federal grants, in particular the LUST program, resulted in funding shortfalls and the need for other alternatives to be evaluated. On March 1, 1996, ch. NR 750 became effective. This rule was developed based on the authority established by the land recycling law (1993 Wis. Act 453) and allowed the Department to charge for services provided as part of the purchaser liability program. The scope of the new rule will significantly expand the number of services for which the Department would be authorized to charge fees.

Statement of the statutory authority for the rule:

Sections 292.11 (7) (d) 2. and 292.55, Stats.

Staff time required:

The anticipated time commitment is 1,237 hours. Four hearings are proposed to be held in April, 1998 at Waukesha, Green Bay, Eau Claire and Madison.

Transportation

Subject:

Ch. Trans 102 – Relating to operator’s licenses and identification cards.

Description of policy issues:

Description of the objective of the rule:

This is a proposal to amend ch. Trans 102 relating to operator’s licenses and identification cards. 1997 Wis. Act 27 (biennial budget) expands the operator’s license renewal period from four to eight years and grants the Department of Transportation the authority to provide operator’s licenses in a digitized format.

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:

The rule needs to be revised to:

- Incorporate the expanded eight year renewal cycle.

- Clarify policy and procedures related to mail-in four year driver license extension options.

- Incorporate technology of digitized photo license/identification cards.

- Define appearance of those operators under the legal drinking age.

- Add language regarding reciprocity with Germany for licensing purposes.

- Incorporate new Problem Driver Pointer System criteria to include regular (Class D) and motorcycle (Class M).

Statutory authority for the rule:

The rule is authorized by ss. 343.05, 343.06, 343.14, 343.15, 343.17 and 343.20, Stats. Specific changes to ss. 343.14, 343.16, 343.17 and 343.20, Stats., require revision of the rule.

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

It is estimated that approximately 120 hours of staff time will be necessary to complete the rule. This includes drafting, reviewing and hearing all interested parties.

Transportation

Subject:

Ch. Trans 31 – Relating to accommodating rail passengers excursions on Department-owned railroad lines.

Description of the objective of the rule:

This is a proposal to amend ch. Trans 31, relating to accommodating rail passenger excursions on Department-owned railroad lines. The rule proposes to clarify ambiguous sections of the rule and develop sections dealing with:

- Rental fee for the use of public property
- Environmental protection and clean-up procedures
- Storage and service of railroad equipment
- Liability and indemnification standards
- Maintenance standards
- Establishing standards for warning signs
- Establishing standards for vegetation management
- Reassessment of inspection and application fees
- Reassessment of eligibility requirements for excursion permit

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:

Prior to 1997, all rail passenger excursion permits issued by the Department had been for excursions on railroad lines where the Department had in place a contractual agreement with a local municipal sponsor and an operating railroad for operation, maintenance and repair of the rail line. These contractual agreements have terms and conditions which spell out in detail who is responsible for the items listed in the objective above. WisDOT issued, in 1997, a rail passenger excursion permit for a railroad line where no local municipal sponsor exists. This lack of a contractual agreement has resulted in confusion and ambiguity over standards and requirements for safe railroad operations.

Statutory authority for the rule:

SS. 85.075, 85.08 (2) (g), 85.16 (1), 85.08 (2) (k) and 85.15, Stats.

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

It is estimated that state employees will spend up to 250 hours completing this rule. This includes research, drafting the rule and hearing from the public.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Administration

Rule Submittal Date

Notice is hereby given that on January 12, 1998, the Wisconsin Department of Administration submitted a proposed rule amendment to the Wisconsin Legislative Council Clearinghouse.

Analysis

The proposed rule amends s. WGC 13.05 (3) (a) and repeals s. WGC 13.15 (4) (c). The rule relates to the license fees for kennel owners at greyhound racetracks. The Department is responsible for setting the fees for kennel owners at greyhound racetracks pursuant to s. 562.05 (2), Stats. Because the current license fee is too cost prohibitive, racing kennels are declining booking agreements in Wisconsin and pursuing booking agreements in other states. The proposed amendments reduce the kennel owner license fees and eliminate the necessity for kennel owners to obtain a license at each Wisconsin racetrack.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of this rule is the Division of Gaming.

Contact Person

If you have any questions, you may contact Donna Sorenson at (608) 266-2887.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

Notice is hereby given that on January 5, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection has referred a proposed rule to the Wisconsin Legislative Council Clearinghouse.

Analysis

The proposed rule amends ch. ATCP 134, Wis. Adm. Code, relating to the regulation of residential rental practices. Public hearings are required and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later date. The Division of Trade and Consumer Protection is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact Elmer Prenzlów of the Division of Trade and Consumer Protection at (414) 266-1232 or Attorney David Ghilardi at (608) 224-5030.

Commerce

Rule Submittal Date

Notice is hereby given that on January 12, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Comm 110, relating to the Brownfields Grant Program.

Agency Procedure for Promulgation

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

Contact Person

If you have questions regarding the rule, you may contact Dennis W. Kozich, Chief Legal Counsel at (608) 266-3203.

Commerce

Rule Submittal Date

Notice is hereby given that on January 12, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. Comm 122 and 128, relating to the physician and health care provider loan assistance program.

Agency Procedure for Promulgation

A public hearing is required, and will be scheduled at a later date.

Contact Person

If you have questions regarding the rule, you may contact M. Jane Thomas, Rural Health Specialist at (608) 267-3837.

Corrections

Rule Submittal Date

Notice is hereby given that on December 30, 1997, the Wisconsin Department of Corrections submitted proposed rule chapters to the Wisconsin Legislative Council.

Analysis

The subject matter of the proposed rule affecting chs. DOC 371, 373, 374, 375, 376, 379, 380, 381, 383, 392, 393, 394, 396, 397, 398 and 399 relates to the implementation of ch. 938, Stats., the Juvenile Justice Code.

Agency Procedure for Promulgation

Public hearings are required under s. 227.16 (1), Stats., and will be scheduled. The organizational unit that is primarily responsible for promulgation of this rule is the Division of Juvenile Corrections.

Contact Person

If you have any questions, you may contact Tom Van de Grift at (608) 267-7289.

Corrections***Rule Submittal Date***

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on January 5, 1998, the Wisconsin Department of Corrections submitted proposed rule amendments to the Wisconsin Legislative Council.

Analysis

The subject matter of the proposed rules affecting chs. DOC 328 and 332 relates to polygraph testing for sex offenders who are on probation or parole.

Agency Procedure for Promulgation

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

Contact Person

If you have any questions, you may contact Kathryn Anderson at (608) 266-9281.

State Fair Park Board***Rule Submittal Date***

Notice is hereby given that on January 7, 1998, the Wisconsin State Fair Park Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ss. SFP 2.07 (2) and (3), SFP 2.16 (4) (b) and (5) (b), and SFP 2.18, and it repeals and recreates ch. SFP 7, relating to the required age to do certain things and a bond schedule.

Agency Procedure for Promulgation

A public hearing will be held.

Contact Person

If you have questions regarding the rule, you may contact Stan Shaw at (608) 224-5016.

NOTICE SECTION

Notice of Hearing

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold one additional public hearing on amending the Corn Marketing Order (ch. ATCP 143).

The proposed amendment increases the assessment rate under the corn marketing order from one-tenth of one cent (\$.001) per bushel to one-half of one cent (\$.005) per bushel.

Written Comments

The public hearing will be held on February 12 in Madison. In addition to the public hearing, the Department will accept written public comments from **February 12 – 20, 1998**. The public is invited to attend the public hearing and/or submit written comments on the proposed rule.

Hearing Information

The public hearing is scheduled as follows:

<p>February 12, 1998 Thursday 11:00 a.m. to 3:00 p.m.</p>	<p>Room 106 (Board Room) Prairie Oak Office Bldg. Wis. Dept. of ATCP 2811 Agriculture Dr. MADISON, WI <i>Handicapped Accessible</i></p>
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Copies of Rule

A copy of the rule may be obtained, free of charge, from:

Marketing Order Program
 Telephone 1 (800) 462-2765
 Wis. Dept. of Agriculture, Trade & Consumer Protection
 P.O. Box 8911
 Madison, WI 53708-8911

Copies will also be available at the public hearing.

An interpreter for the hearing-impaired will be available upon request for these hearings. Please make reservations for a hearing interpreter by **February 11, 1997** by contacting Margaret Fay at 1 (800) 462-2765 (Voice) or by contacting the Department at (608) 224-5058 (TDY Telephone).

Analysis

Statutory authority: ss. 96.05 and 96.08

Statutes interpreted: ss. 96.11 and 227.14 (6) (c)

The proposed rule amends s. ATCP 143.06 (1) by increasing the assessment rate under the corn marketing order from one-tenth of one cent (\$.001) per bushel to one-half of one cent (\$.005) per bushel.

The proposed amendment must be approved by more than 50% of the affected corn producers voting in a referendum before the increased assessment rate becomes effective. If corn growers or affected producers approve the referendum, the Department intends to have the amended marketing order in effect in the fall of 1998 for the harvest and sale of corn grown in 1998 and subsequent years. The rate of assessment has not changed since the marketing order became effective on February 1, 1983.

The Wisconsin Corn Growers Association has petitioned the Department Secretary to amend the marketing order to increase the

assessment rate to one-half of one cent (\$.005) per bushel. The increase is projected to generate an additional \$500,000 in assessment revenue annually.

BACKGROUND

The corn marketing order (ch. ATCP 143, Wis. Adm. Code) was created in 1983 and requires all producers of corn sold into commercial channels to pay an assessment at the rate of one-tenth of one cent (\$.001) per bushel. The funds are used for financing research, market development, and educational programs related to corn sales. Each producer selling corn into commercial channels is liable for payment of the assessment under the corn marketing order. Handlers and dealers taking title to corn sold to them by producers are responsible for collecting the assessment from amounts due the producers. Under the marketing order, a producer may request a refund of the assessment which the producer paid into the marketing order.

The rate of assessment has not changed since the marketing order became effective on February 1, 1983. The Wisconsin Corn Growers Association petitioned the Department Secretary on May 20, 1996, to amend the marketing order to increase the assessment rate to \$.005 per bushel. The Secretary granted the petition and the rulemaking process was begun. It included five hearings held in December, 1996 at various locations throughout the state. The Department may only adopt and amend agricultural marketing orders under ch. 96, Stats., with the approval of affected producers. Producer approval is determined in a referendum of affected producers.

The Department conducted a mail ballot referendum from June 10 to 30, 1997, in which Wisconsin corn growers did not approve amending the corn marketing order to increase the assessment rate. Adoption of the amendment required approval by more than 50% of the producers voting in the referendum. The percentage of affected producers who voted "Yes" was 41.3%. The Wisconsin Corn Growers Association petitioned the Department on August 15, 1997, to continue the current rulemaking process to amend the corn marketing order's assessment rate. The Department Secretary granted the petition.

Under s. 227.14 (6) (c), Stats., a proposed rule is an active proposal until December 31 of the fourth year after the year in which it is submitted for Legislative Council Rules Clearinghouse (LCRH) review, unless withdrawn by the agency before that date. The proposed corn marketing order amendment was submitted to LCRH on October 10, 1996. Despite not being approved in the June, 1997 referendum, it is still an active proposal until December 31, 2000, since the Department has not yet withdrawn the proposal.

The proposed amendment of ch. ATCP 143 is not changed from the hearing draft approved by the Board on October 4, 1996. In order for the Department to continue the proposed rulemaking, Board approval to hold one or more additional hearings is required. The Board gave approval at its meeting on October 3, 1997. After the hearing(s), the Department Secretary will issue Findings of Fact and a Decision on whether to hold a second referendum. Grower approval in a referendum is required before an amendment becomes effective.

Fiscal Estimate

The Department would incur costs of \$12,000 to cover administrative costs related to the rule amendment process. The Wisconsin Corn Growers Association has signed an agreement with the Department to fully reimburse the agency for the cost of adoption. There will be no net fiscal impact to the Department.

The net fiscal impact will be zero as ch. 96, Stats., requires the sponsoring party, Wisconsin Corn Growers Association, to cover the Department's cost in amending the marketing order. Sections 96.05 and 96.98, Stats., provide that a marketing order may be amended

after public hearings, approval by the Secretary and with the approval of the affected producers in a producer referendum.

Initial Regulatory Flexibility Analysis

The proposed amendment will not have a significant economic impact on small businesses. The corn marketing order provides for a refund which enables a producer to receive a refund upon submitting proof satisfactory to the Marketing Board that the assessment for which the refund is requested has been paid.

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)

Notice is hereby given that, pursuant to s. 560.13, Stats., the Department of Commerce proposes to hold a public hearing to consider the adoption of ch. Comm 110, Wis. Adm. Code, relating to the Brownfields Grant Program.

Hearing Information

The public hearing is scheduled as follows:

February 12, 1998	Room 3B, 3rd Floor
Thursday	201 West Washington Ave.
At 1:00 p.m.	MADISON, WI

This hearing is held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-3080 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Copies of Rule

A copy of the rules to be considered may be obtained from:

Div. of Community Development
Department of Commerce, 5th Floor
201 West Washington Ave.
Madison, WI 53707

A copy of the rules to be considered may also be obtained by calling (608) 267-3895 or at the appointed time and place the hearing is held.

Written Comments

Interested people are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **February 20, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Bruce Fox at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Analysis of Rules

Statutory authority: S. 560.13

Statute interpreted: S. 560.13

On October 14, 1997, 1997 Wis. Act 27, took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the biennium that can be distributed by Commerce in the form of grants for brownfields redevelopment or

associated environmental remediation. The act requires Commerce to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the Department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under ch. 227, Stats., and exempts the Department from making a finding of an emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration and published and took effect on December 31, 1997. Commerce has decided to adopt the emergency rule as a permanent rule subject to public hearing review and comment pursuant to s. 227.24 (4), Stats.

Pursuant to s. 560.13, Stats., the Department of Commerce has authority to award grants for brownfields redevelopment or associated environmental remediation to any. Chapter Comm 110, titled "Brownfields Grant Program", Wis. Adm. Code, is being created to establish the criteria the Department will use to issue the grants. This chapter includes the same definitions contained in the Statutes necessary to implement the law. In addition, these rules delineate the criteria the Department will consider in the awarding of grants, including the content and information required from applicants, the conditions of contract under the grant, and reporting and auditing of implementing the grant in terms of periodic financial and program reports.

Contact Person

Dennis W. Kozich, Chief Legal Counsel
Telephone (608) 266-3203
Department of Commerce

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate:

1997 Wis. Act 27 created s. 20.143 (1) (br) and (qm), Stats., appropriating \$5.0 million in each fiscal year of the biennium for brownfield redevelopment or associated environmental remediation grants. Section 20.143 (1) (qa) appropriates \$225,200 in the first state fiscal year and \$266,700 in the second state fiscal year to fund a Brownfields Grant Ombudsman position and one position to process and issue the grants. In addition, the act created s. 560.13, Stats., which creates the Brownfields Grant Program in the Department of Commerce (Commerce).

Section 560.13, Stats., requires Commerce to adopt administrative rules that:

- 1) Set forth the criteria for processing and awarding grants or loans for brownfields redevelopment or associated environmental remediation;
- 2) Prescribe the amounts of grants that may be awarded in accordance with statutory criteria; and
- 3) Include criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment.

The act funds two positions for the biennium to administer the Brownfields Grant Program and develop information about the program that is accessible through the Internet. These rules are estimated to have no additional fiscal impact beyond that which was appropriated.

Initial Regulatory Flexibility Analysis

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

The Department estimates a large percent of the grants applied for by communities ultimately reach small businesses in one form or another. The grants may be used by eligible communities to fund projects related to brownfields.

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

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

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

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

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)

Notice is hereby given that pursuant to ss. 560.183 and 560.184, Stats., the Department of Commerce announces it will hold a public hearing on proposed rules repealing and recreating chs. Comm 122 and 128, relating to the Physician and Health Care Provider Loan Assistance Program.

Hearing Information

The public hearing will be held as follows:

February 12, 1998	Room 3B, Third Floor
Thursday	201 West Washington Ave.
At 9:00 a.m.	MADISON, WI

This hearing is held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6546 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis of Rules

Statutory authority: ss. 560.183 and 560.184

Pursuant to ss. 560.183 and 560.184, the Department of Commerce is responsible for administering the physician loan assistance program and the health care provider loan assistance program. Under these programs, the Department awards grants of up to \$50,000 for physicians and up to \$25,000 for nurse practitioners, physician assistants, and certified nurse midwives who agree to practice primary care in a medically underserved area of the State. In the 1997 legislative session, the Wisconsin Legislature made changes to both programs designed to improve the ability of the highest need communities to recruit primary care providers to their area under 1997 Wis. Act 27. In addition, the statute now includes language which allows for Wisconsin's participation in a federal program that provides matching dollars for state loan repayment programs.

Under the changes made in statute, both the physician and health care provider loan assistance programs now provide the same dollar award over a 3-year period rather than a 5-year period and greater dollar amounts in the first two years of the contract. As a result, there are more significant provider restrictions than there were in the past. These restrictions relate to areas of practice, minimum clinical hours and weeks of practice and, in the case of the federal matching program, requirements as to Medicare assignment and the availability in the clinic of a sliding fee scale for patients who are uninsured. The rules enumerate these and other items that would cause a breach of agreement, and provide for penalties in the event of a breach. Also included are provisions for waivers of penalties and conditions under which a contract may be temporarily suspended.

Definitions of providers, the means by which priorities among applicants are decided, and the application process remain the same as in past programs and administrative rules.

Written Comments

Interested people are invited to appear at the hearing and present comments on the proposed rules. People making oral presentations are requested to submit their comments in writing. People submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **February 23, 1998**, to permit submittal of written comments from people who are unable to attend a hearing or who wish to supplement testimony offered at the hearing.

Contact Person

M. Jane Thomas, Rural Health Specialist
Telephone (608) 267-3837

Copies of Rule

A copy of the proposed rules may be obtained without cost from:

M. Jane Thomas, (608) 267-3837
Division of Economic Development
Department of Commerce
P.O. Box 7970
Madison, WI 53701

Copies will also be available at the public hearing.

Fiscal Estimate

Assumptions used in arriving at fiscal analysis:

This rule change implements provisions which were passed as part of 1997 Wis. Act 27 and will have no fiscal effect on the Department of Commerce. The workload of existing staff will not change.

Initial Regulatory Flexibility Analysis

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

Although the grants are given to individual physicians and other primary health care providers, clinics use the program in order to attract and keep these providers in communities where there are provider shortages. Most of these clinics would qualify as "small businesses" and would, therefore, be indirectly assisted by these grants in a positive manner.

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

Federal and state rules require that eligible government units be responsible for administrative, underwriting, recordkeeping, reporting, auditing, close-out, payment, and reimbursement related to the grant. Small businesses must have general business accounting and bookkeeping skills; however, the individual health care providers are primarily responsible for providing documentation to the Department.

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

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

Notice of Hearing

Health & Family Services

(Health, Chs. HFS/HSS 110--)

Notice is hereby given that pursuant to ss. 50.02, 50.49 (2) and 50.95, Stats., the Dept. of Health & Family Services will hold a public hearing to consider the amendment of chs. HSS 131, HFS 132, HSS 133 and HFS 134, Wis. Adm. Code, relating to issuance of prescription orders by advanced practice nurse prescribers working in nursing homes or facilities for the developmentally disabled or for hospice programs or home health agencies.

Hearing Information

The public hearing will be held:

February 16, 1998
Monday
Beginning at
1:00 p.m.

Room B155
State Office Bldg.
One West Wilson St.
MADISON, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building, and take the east end elevator or a center elevator to Floor B1.

Analysis Prepared by the Dept. of Health & Family Services

A recent session law, 1993 Wis. Act 138, created s. 441.16, Stats., which permits certain registered nurses to issue prescription orders. These are advanced practice nurses, defined in s. N 8.02 (1), Wis. Adm. Code, as registered nurses who are nationally certified as nurse practitioners, certified nurse-midwives, certified registered nurse anesthetists or clinical nurse specialists, and who are certified by the Wisconsin State Board of Nursing as advanced practice nurse prescribers to independently issue prescription orders for medications and medical devices.

This order amends the Department's rules for regulation of hospice programs, nursing homes, home health agencies and facilities for the developmentally disabled (FDD's) to recognize the authority of advanced practice nurse prescribers to issue prescription orders.

This order also amends ss. HSS 131.42 (2) (a) 4., HFS 132.60 (5) (a) 2., HSS 133.20 (4) and HFS 134.60 (4) (a) 2. to make clear that the number of days referred to within which a physician's, dentist's or advanced practice nurse prescriber's countersigned oral orders must be filed in a nursing home or FDD resident's clinical record and a home health agency nurse or therapist or a hospice nurse has to obtain the physician's, dentist's or advanced practice nurse prescriber's countersignature for oral orders are calendar days rather than working days.

Contact Person

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

Patricia Russell, (608) 267-1438 or,
 if you are hearing-impaired, (608) 266-7376 (TTY)
 Bureau of Quality Assurance
 Division of Supportive Living
 P.O. Box 309
 Madison WI 53701-0309

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

Written Comments

Written comments on the proposed rules received at the above address no later than **February 23, 1998**, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This order will not affect the expenditures or revenues of state government or local governments.

The order amends the Department's rules for nursing homes, facilities for the developmentally disabled (FDD's), hospices and

home health agencies to recognize in the rules that prescription orders may now be issued by certain registered nurses. Section 441.16, Stats., permits registered nurses who are certified as nurse practitioners, nurse-midwives, registered nurse anesthetists or clinical nurse specialists, and who are also certified by the Wisconsin State Board of Nursing as advanced practice nurse prescribers, to independently issue prescription orders for medications and medical devices.

The order also clarifies in each of the 4 chapters that the days referred to for filing countersigned oral orders or for obtaining the prescriber's countersignature for an oral order are calendar days rather than working days.

Initial Regulatory Flexibility Analysis

These rule changes apply to nursing homes, facilities for the developmentally disabled (FDD's), hospice programs and home health agencies. About 185 of the 473 nursing homes and facilities for the developmentally disabled in Wisconsin are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats., and about 40 of the 207 home health agencies in Wisconsin are small businesses by the same definition. Few, if any, of the 64 licensed hospice programs in the state are likely to be small businesses by that definition.

The rule changes will not add to facility reporting or record-keeping requirements nor will they require new professional skills to comply with them.

The Department is simply recognizing in its rules that certain registered nurses may now issue prescription orders, due to a change in statute law in March 1994 and, in March 1995, the promulgation of ch. N 8, Wis. Adm. Code, and is clarifying at several places in the rules that the days referred to by which oral orders must be countersigned or the prescriber's countersignature must be obtained are calendar days rather than business days.

Notice of Hearings

Natural Resources

(Environmental Protection—Air Pollution Control, Chs. NR 400—)

(Environmental Protection—Solid Waste, Chs. NR 500—)

(Environmental Protection—Investigation & Remediation of Environmental Contamination, Chs. NR 700—)

(Environmental Protection—Water Supply, Chs. NR 800—)

Notice is hereby given that pursuant to ss. 227.11 (2), 280.11, 285.11 and 289.06, Stats., interpreting ss. 292.11 and 292.31 and chs. 280, 285 and 289, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 419, 518, 718, 811 and 812, Wis. Adm. Code, relating to landspreading of soil contaminated by low- to mid-range petroleum distillates.

Analysis

These codes are proposed to be amended to provide standards for the single-application landspreading of petroleum-contaminated soil in ch. NR 718 and to remove such standards from ch. NR 518 in order to streamline the cleanup process and provide a single, local department contact for people selecting this remedial option. In addition, the proposed amendments would increase consistency among air emissions limitations across different remedial options and cross-reference well setbacks between chs. NR 718, 811 and 812.

Distinctions between landspreading of contaminated soil as proposed to be regulated in chs. NR 718 and 518 include:

1. NR 518 is designed to regulate a much wider range of wastes than just petroleum-contaminated soil and, therefore, contains numerous site characterization and monitoring provisions that are not relevant to landspreading petroleum-contaminated soil.

2. NR 518 is intended to regulate multiple applications of waste and, therefore, contains requirements that are inappropriate for single-application landspreading of petroleum-contaminated soil.

3. Landspreading in compliance with ch. NR 718 will be limited to single-application of soil contaminated by low- to mid-range petroleum distillates on a landspreading facility.

4. NR 718 does not require that a review fee be assessed to the responsible party.

5. NR 718 will require that landspreading be approved by DNR Remediation and Redevelopment staff who are most familiar with safe and effective management of petroleum-contaminated soil.

6. NR 518 will continue to regulate operations where contaminated soil is landspread more than one time, or where contaminants other than low- to mid-range petroleum distillates are present.

Environmental Assessment

Notice is hereby further given that the Department has prepared an environmental analysis (EA) for these proposed rule changes. The Department's EA concluded, however, that the proposed changes to chs. NR 419, 518, 718, 811 and 812 do not constitute a major action which would significantly affect the quality of the human environment and, therefore, an environmental impact statement is not required under ch. NR 150, Wis. Adm. Code.

Hearing Information

Notice is hereby further given that the hearings will be held on:

February 17, 1998 Tuesday 9:00 a.m.	Council Chambers Rhinelander City Hall 135 S. Stevens St. RHINELANDER, WI
February 17, 1998 Tuesday 4:00 p.m.	Room 158, DNR Office 1300 W. Clairmont EAU CLAIRE, WI
February 18, 1998 Wednesday 9:00 a.m.	Council Chambers Tomah City Hall 819 Superior Ave. TOMAH, WI
February 18, 1998 Wednesday 4:00 p.m.	Main Floor Demonstration Center Rock County Courthouse 51 South Main St. JANESVILLE, WI
February 19, 1998 Thursday 9:00 a.m.	(Room 100) Council Chambers Waukesha City Hall 201 Delafield St. WAUKESHA, WI
February 19, 1998 Thursday 4:00 p.m.	Council Chambers Manitowoc City Hall 817 Franklin St. MANITOWOC, 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 Gregory Parker at (608) 267-3859 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

The Department is specifically seeking comments from the public which will address recent modifications to the rule proposal, including:

- Requiring Department approval of landspreading sites;
- Requiring notification of local government and affected residents;
- Additional setbacks;
- Increased site characterization requirements; and
- More consistent air emission limitations.

Written comments on the proposed rule changes, and on the EA, may be submitted to:

Gregory Parker
Bureau of Remediation & Redevelopment
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **February 27, 1998**, and will have the same weight and effect as oral statements presented at the hearings.

Copies of Rule

A copy of the proposed rule changes [SW-9-96], the EA and the fiscal estimate may be obtained from Mr. Parker at no charge.

Fiscal Estimate

Background:

Chapter NR 718 was created to address the storage, transportation, treatment and disposal of contaminated soil, and certain other solid wastes, generated at sites or facilities addressed by the Remediation and Redevelopment (RR) program in accordance with the requirements of chs. NR 700 to 726. When ch. NR 718 became effective on May 15, 1995, the landspreading of all solid waste was regulated by the Waste Management program under ch. NR 518. As of June 15, 1995, single-application landspreading of contaminated soil excavated during response actions conducted in accordance with chs. NR 700 to 726 is overseen by regional RR program staff to begin implementation of the concept while rulemaking is finalized. The proposed amendment to ch. NR 718 is intended to codify this change and maintain a single point of contact for cleanup actions where single-application landspreading is being pursued as a remedial option.

Fiscal Impact to State Government:

The amendment to ch. NR 718 does not create additional regulatory workload. No state fiscal impact is anticipated as a result of the amendment of ch. NR 718.

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 118.51, Stats., the Department of Public Instruction will hold public hearings as follows to consider emergency and proposed permanent rules affecting ch. PI 36, relating to the open enrollment program. Emergency rules were promulgated by the Department effective **January 17, 1998**.

Hearing Information

The hearings will be held as follows:

February 17, 1998 Tuesday 5:00 p.m. – 7:00 p.m.	Room 225 DeLong Middle School 2000 Vine St. EAU CLAIRE, WI
February 18, 1998 Wednesday 5:00 p.m. – 7:00 p.m.	CESA #6 2300 State Rd. 44 OSHKOSH, WI

February 19, 1998
Thursday
5:00 p.m. –
7:00 p.m.

Room 041
GEF #3 Bldg.
125 South Webster St.
MADISON, WI

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Mary Jo Cleaver, Policy and Budget Analyst, at (608) 267-9101 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to slausll@mail.state.wi.us or by writing to:

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

Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **February 27, 1998**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Dept. of Public Instruction

1997 Wis. Act 27 created an inter-district public school open enrollment program in Wisconsin, beginning in the 1998-99 school year. Pupils in kindergarten to grade 12 may attend public school in a district other than the one in which they reside, if space is available (and subject to certain other limitations). A child may attend a prekindergarten or early childhood program in a nonresident school district if the resident district also offers the program and if the child is eligible for the program in the resident district.

The rules establish procedures and requirements relating to:

- ☞ Applying for the open enrollment program;
- ☞ Timely notification to school boards, parents and the Department as required in the statutes;
- ☞ Accepting and rejecting applications;
- ☞ Establishing transportation reimbursement procedures for low-income parents;
- ☞ Determining payment for children with exceptional educational needs; and
- ☞ Filing and deciding appeals.

Parents must apply to the nonresident school district no earlier than February 2 and no later than February 20, 1998, for attendance in the 1998-99 school year. Therefore, the Department promulgated emergency rules effective **January 17, 1998**, in order to notify pupils, parents, and school districts of the necessary timelines and requirements to participate in the program in time for the upcoming school year.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate:

1997 Wis. Act 27 created a full-time and part-time inter-district public school open enrollment program. Under the program, pupils may attend school in any school district in Wisconsin, if space is available and subject to certain other restrictions.

This chapter establishes procedures and requirements relating to:

- ☞ Applying for the full-time and part-time open enrollment programs;
- ☞ Timely notification to school boards, parents and the Department as required in the statutes;
- ☞ Accepting and rejecting applications;
- ☞ Establishing transportation reimbursement procedures for low-income parents;
- ☞ Determining payment for children with exceptional educational needs, and
- ☞ Filing and deciding appeals.

There is no significant fiscal effect to the administrative rule; therefore, this fiscal note is based on the fiscal effect of 1997 Wis. Act 27, relating to the program.

State Fiscal Effect:

The provisions of Act 27 relating to public school open enrollment increase costs to the Department of Public Instruction for administration of the program. The Act authorized 1.0 FTE position to administer the program and appropriated \$38,100 GPR in 1997-98 and \$64,600 GPR in 1998-99 to fund the position. The Act did not provide any funding for permanent property and supplies and services. It is estimated that the annual cost of supplies and services will be \$10,000; this amount must be reallocated with the Department's GPR operational appropriation.

The Act appropriates \$1 million in local assistance to the Department for reimbursement of transportation costs for low-income parents.

Local Fiscal Effect:

The provisions of Act 27 relating to public school open enrollment may have the following fiscal effect on local school districts:

- ◆ Increase local revenues:
 - The Act provides that, for each student who transfers into a nonresident school district, the nonresident school district's state aid payment is increased by a state-specified pupil transfer amount (based on the state average cost per pupil for regular instruction, instructional services, pupil services and co-curricular activities). Under the Act, this state aid adjustment is not reflected in the amount of state aid certified to school districts on October 15 of each year. Therefore, the school district is not required to decrease its property tax levy by the amount of the state aid reduction.
 - The Act provides that if a child with exceptional educational needs transfers to a nonresident school district, the resident school district must pay the tuition cost for the pupil, calculated under s. 121.83, Wis. Stats. The money received by the nonresident school district is outside of the revenue limits, so the nonresident school district is not required to decrease its property tax levy by the amount of the state aid reduction.
- ◆ Increase local costs:
 - The Act provides that, for each student who transfers out of a resident school district, the resident school district's state aid payment is reduced by a state-specified pupil transfer amount (based on the state average cost per pupil for regular instruction, instructional services, pupil services and co-curricular activities). Under the Act, this state aid adjustment is not reflected in the amount of state aid certified to school districts on October 15 of each year; therefore, the school district may not increase its property tax levy by the amount of the state aid reduction.
 - The Act provides that if a child with exceptional educational needs transfers to a nonresident school district, the resident school district must pay the tuition cost for the pupil, calculated under s. 121.83, Wis. Stats. However, the Act also provides that if the school board determines that payment of the costs of the special education program and related services would impose an "undue financial burden" on the resident school district, the school district may require the student to remain in the district or, under certain circumstances, may require a student attending school in a nonresident school district to return to the resident school district.

- Nonresident school districts may experience increased costs due to additional pupils. While in most cases, it is expected that additional costs will be equal to or less than the additional revenue from the per pupil transfer amount, in some instances, the cost may be higher.
- There may be costs associated with administration of the open enrollment, including development of policies and procedures, processing of applications, record-keeping and reporting, etc.
- ◆ Decrease local costs:
- Resident school districts may experience a decrease in costs due to students transferring to nonresident school districts. Whether the decrease in costs will be enough to offset the reduction in the state aid payment for the transfer depends on the number, grade levels and educational needs of the students transferring. It is expected that in many cases, the reduction in costs will not be enough to offset the reduction in state aid payments.
- ◆ Effect on equalization aid eligibility. Although the resident school district continues to count open enrollment transfers out as members for state aid purposes, the treatment of the state aid adjustment may affect equalization aid eligibility:
 - A reduction of state aid payment is treated as a shared cost in the calculation of equalization aid. Districts that have a net reduction of state aid will experience no change in the school district's equalization aid payment, assuming that the school district would have spent that amount anyway.
 - An increase of state aid payment is treated as a deductible receipt in the calculation of equalization aid. Districts that have a net increase of state aid may experience either an increase or a decrease or no change in equalization aid eligibility. School districts that receive positive aid at both the secondary and tertiary levels will experience a reduction of equalization aid eligibility, which may be made up for by an increase in the property tax levy. School districts that have a negative tertiary situation will experience an increase in state aid eligibility and must reduce their property tax levy by the amount of the increase. School districts that receive only primary aid will experience no change in their equalization aid eligibility.

Initial Regulatory Flexibility Analysis

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

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to ss. 118.55 (9) and 227.11 (2) (a), Stats., and interpreting s. 118.55, Stats., the Department of Public Instruction will hold public hearings as follows to consider emergency and proposed permanent rules affecting ch. PI 40, relating to the youth options program. Emergency rules were promulgated by the Department effective **January 16, 1998**.

Hearing Information

The hearings will be held as follows:

February 17, 1998 Tuesday 5:00 p.m. – 7:00 p.m.	Room 129 DeLong Middle School 2000 Vine St. EAU CLAIRE, WI
February 18, 1998 Wednesday 5:00 p.m. – 7:00 p.m.	CESA #6 2300 State Road 44 OSHKOSH, WI
February 19, 1998 Thursday 5:00 p.m. – 7:00 p.m.	Room 027 GEF#2 Bldg. 101 South Webster St. MADISON, WI

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Preston Smeltzer, Education Consultant, at (608) 266-3701 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to slausll@mail.state.wi.us or by writing to:

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

Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **February 27, 1998**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Dept. of Public Instruction

1991 Wis. Act 39 created the postsecondary enrollment options (PSEO) program. Beginning in the 1992-93 school year, any public school pupil enrolled in the 11th or 12th grade could enroll in a center or institution within the University of Wisconsin system, a Wisconsin technical college system (WTCS) school or a private, nonprofit institution of higher education if the private institution notified the state superintendent of its intent to participate in the program by September 1 of the previous school year.

Effective the 1998-99 school year, 1997 Wis. Act 27 renames the PSEO program to be the youth options program. The youth options program differentiates between an institution of higher education (IHE) and a technical college. The term "institution of higher education" includes a center or institution within the UW system, a tribally controlled college or a private, nonprofit institution. A private institution or tribally controlled college must notify the department of its intent to participate in the program by September 1 of the previous school year.

For IHE's, the youth options program will operate essentially the same as it did under the PSEO program. However, the program changes participation and payment requirements relating to technical colleges, making it necessary to revise the rules. The rules modify provisions relating to technical colleges, including general requirements for participating pupils, parents/guardians, school boards, technical colleges, transportation reimbursement, appeals, and state superintendent responsibilities.

By January 30, school districts must notify pupils of program changes effective in the 1998-99 school year; by March 1, pupils must notify school districts of their intent to participate in the program. Therefore, the Department promulgated emergency rules effective **January 16, 1998**, in order to notify pupils, school districts, IHE's and technical colleges of the necessary timelines and requirements to participate in the revised youth options program in time for the upcoming school year.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

1991 Wis. Act 39 created the postsecondary enrollment options (PSEO) program. Beginning in the 1992-93 school year, any public school pupil enrolled in the 11th or 12th grade could enroll in a center or institution within the University of Wisconsin system, a Wisconsin technical college system (WTCS) school or a private, nonprofit institution of higher education if the private institution notified the

state superintendent of its intent to participate in the program by September 1 of the previous school year.

Effective the 1998–99 school year, 1997 Wis. Act 27 renames the PSEO program to the youth options program. The youth options program differentiates between an institution of higher education (IHE) and a technical college. The term “institutions of higher education” now excludes technical colleges, but includes a center or institution within the UW system, a tribally controlled college or a private, nonprofit institution. A private institution or tribally controlled college must notify the Department of its intent to participate in the program by September 1 of the previous school year.

For IHE’s, the youth options program will operate essentially the same as it did under the PSEO program. However, the program differentiates between participation in an IHE, and a technical college, making it necessary to revise the administrative rule as it relates to technical colleges. The rules modify provisions relating to technical colleges, including general requirements for participating pupils, parents/guardians, school boards, technical colleges, transportation reimbursement, appeals, and state superintendent responsibilities.

The rule itself is not expected to have a fiscal effect separate from the legislation created under the Act. Therefore, this fiscal note is based on the provisions in 1997 Wis. Act 27.

Local Costs:

Under previous law, local costs would be incurred only if a pupil took a postsecondary course which had been approved by the school board for high school credit and was not comparable to a course offered at the school district. These costs included tuition, fees, books and other necessary materials directly related to the course. This formula was used regardless of how many postsecondary credits a pupil took under the program.

The provisions under the Act which may have a fiscal effect on school district costs include:

1. Changing how school boards are to pay a technical college, based on the number of credits a pupil takes each semester.

A school board is still required to pay only for courses taken for high school credit at a technical college under the program. For each semester in which a pupil is enrolled at a technical college under the program, the school board is required to pay to the technical college an amount as follows:

- If the pupil is enrolled for less than seven credits that are eligible for high school credit, an amount equal to the cost of tuition, course fees and books, at the technical college.

This formula is essentially the same as the formula under previous law and should not affect local costs.

- If the pupil is enrolled for seven credits or more that are eligible for high school credit, an amount equal to one–half of the school district’s average per–pupil cost for regular instruction and instructional support services in the previous school year, as determined by the Department, multiplied by the result of dividing the number of credits taken for high school credit by 15, as illustrated below:

Average per pupil cost	X	Number of technical college
<u>in previous school year</u>		<u>course credits taken</u>
2		15

The amount to be paid using this formula would depend on the number of pupils participating in the technical college, the number of credits taken, and the district’s average per pupil cost in the previous school year. These amounts are indeterminable.

2. Requiring a school board to pay for some technical college credits that are comparable to courses offered in the school district if the pupil is attending a technical college for 10 or more credits in a semester.

Previous law did not require a school board to pay for any postsecondary course that was comparable to a course offered at the school district. The Act states that:

- A school board *will not be* responsible for payment for courses taken by the student that are comparable to courses offered in the district if the student takes nine or fewer credits per semester. This provision is the same as current law and will not increase local costs.

- A school board *will be* responsible for payment for courses taken by the student that are comparable to courses offered in the district not to exceed one–half the total number of credits taken, or six credits per semester, whichever is less, if the pupil takes ten or more credits per semester.

Again, the amount to be paid by the school district would depend on the number of pupils participating in the technical college, the total number of credits taken, the total number of comparable credits taken, and the district’s average per pupil cost in the previous school year. These amounts are indeterminable.

3. Eliminating the requirement that a school district offer a course if the school board determines that the number of resident pupils enrolled in a postsecondary course at a postsecondary institution is equal to or greater than the number normally required for the district to offer the course and if the board expects the situation to continue in the next school year.

This provision will provide local school districts the flexibility to determine whether a course should be offered, rather than being required to offer a course. It is not known how many school districts have had to offer a comparable course under this provision. Therefore, the potential cost savings are indeterminable.

4. Allowing a school board to refuse to permit a pupil with exceptional educational needs (EEN) from attending a technical college under the program if the school board determines that the cost to the school district would impose an undue financial burden on the school district.

This provision allows local school districts to restrict the participation of a pupil with an exceptional educational need if the cost to do so would create an undue financial burden. Again, the potential cost savings are indeterminable.

Technical College Costs:

The provisions which may have a fiscal effect on technical colleges include:

- Denying a technical college the ability to reject a pupil’s application based on space availability.
- Denying a technical college the ability to limit a pupil to taking 15 credits at the technical college.

The Department is unable to estimate the costs to technical colleges relating to these provisions. A copy of the proposed rule has been submitted to the Wisconsin Technical College Board with a request for a fiscal note.

State Costs:

The Act provides that the \$20,000 appropriated to reimburse the costs of transportation for those pupils or pupils’ parents or guardians who are unable to pay for transportation under the youth options program also be used to pay for transportation costs under the open enrollment program. It is not known if these funds will be sufficient to reimburse all the transportation claims that will be made under both programs.

Initial Regulatory Flexibility Analysis

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

Notice of Hearing
State Fair Park Board

The State of Wisconsin, State Fair Park Board announces that it will hold a public hearing on proposed rules (proposed ss. SFP 2.07 (2) and (3), 2.16 (4) (b) and (5) (b), 2.18 and ch. SFP 7), relating to the required age to do certain things and a bond schedule.

Hearing Information

The hearing will be held at:

February 11, 1998
Wednesday
At 4:00 p.m.

Room 172
Wis. Dept. of Agriculture Bldg.
2811 Agriculture Dr.
MADISON, WI 53718
Handicapped accessible

Written Comments and Copies of Rule

The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until **February 18, 1998**, for additional written comments.

A copy of this rule may be obtained free of charge, from the State Fair Park Board at:

State Fair Park Board
P. O. Box 14990
West Allis, WI 53214-0990

Copies will also be available at the public hearing.

An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by contacting Margaret Cain at (414) 266-7000. Handicap access is available at the hearing.

Analysis Prepared by the State Fair Park Board

Statutory authority: s. 42.01 (3) (a)

Statute interpreted: s. 42.01 (1), (2) and (3)

The current rule contains 6 instances in which specific actions are prohibited if a person is under 18 years of age.

1. It prohibits persons under 18 years of age from carrying, possessing, receiving possession or transferring possession of paint in a spray can.

2. It prohibits selling spray cans of paint to any person under 18 years of age; and requires display of a sign stating "It is unlawful to sell spray paint to persons under 18."

3. It prohibits selling or transferring spray paint containing a harmful substance to any person under 18 years of age.

4. It prohibits selling or transferring toxic glue to any person under 18 years of age, except it does not prohibit transferring one tube or container of toxic glue to a person under 18 years of age when the glue is provided along with a model kit as long as the model kit needs approximately that amount of glue to assemble the kit.

5. It prohibits a lessee who has a contract permitting the sale of alcoholic beverages from employing a person under 18 years of age for serving, selling or vending alcoholic beverages.

6. It prohibits employing a person under 18 years of age unless the employer has on file a child labor permit authorizing the employment.

This proposed rule changes each reference from 18 years of age to 17 years of age except it does not change the age requirement for

persons selling, serving or vending alcoholic beverages. The current requirement that persons serving, selling or vending alcoholic beverages be 18 years of age or older is not changed. These changes will bring the rule into conformity with current statutes and local ordinances.

The proposed rule also repeals and recreates the bond deposit schedule. The current rule establishing a bond deposit schedule does not address several violations which were identified in SFP rules promulgated in 1996. This proposed rule establishes bond deposits for additional types of violations and changes the amount of bond required for some violations and continues the policy of expelling anyone camping at the State Fair Park after revocation of a RV permit.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

This proposed rule addresses two portions of the rules of the State Fair Park Board. First, it addresses several subsections of ch. SFP 2 in which a minimum age for doing some specific thing is 18 years of age. Under the amendment, most of these references to age are changed from 18 years of age to 17 years of age. The Board does not believe this change will cause any fiscal impact. The existing staff have enforced the 18 year age requirement in the past, so the Board does not expect any additional fiscal impact with the new age level.

The second portion of the rules affected by this proposed order is the bond schedule. In September, 1996, new SFP rules numbered chs. SFP 1 through 6 were published in the *Wisconsin Administrative Register*. Chapter SFP 7 was also published, but it did not include changes which were needed under the newly-published chs. SFP 1-6. This proposed order changes the bond schedule to provide bond amounts for violations of provisions created in the 1996 rules. Since this order does not create new violations, there should be no additional fiscal impact. The persons who enforce chs. SFP 1-6 will simply have an accurate bond schedule to use.

There is no local government fiscal impact.

Initial Regulatory Flexibility Analysis

This rule proposal has minimal effect on small businesses in Wisconsin. To the extent that it does affect small businesses, it grants them additional rights without imposing any additional costs.

This rule changes several references in SFP rules from 18 years of age to 17 years of age. This means that if something was previously prohibited for persons under 18 years of age, it is now prohibited for persons under 17 years of age. There is one exception to this lowering of age. Current rules require persons serving, selling or vending alcoholic beverages to be 18 years of age or older. That provision was not changed. These changes do not have a negative impact on small businesses.

The other thing this rule does is establish a bond schedule for persons who violate provisions of chs. SFP 1-6. Since this will only apply to persons who violate the rules, it is not anticipated that this will have an effect on small businesses. While it is true that small businesses may be faced with paying a forfeiture, that is completely within their control because they are able to determine whether they will violate the rules and, therefore, whether they will be subject to the bond.

*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.

Financial Institutions--Division of Securities

(CR 97-148):

SS. DFI-Sec 7.01 (6), 27.01 (5) and 35.01 (4) - Relating to
Division photocopying fee charges.

Elections Board (CR 96-106):

S. El Bd 1.855 - Relating to contributions from conduit
accounts.

Elections Board (CR 96-107):

S. El Bd 1.30 - Relating to filing campaign finance reports.

Elections Board (CR 96-108):

S. El Bd 1.655 - Relating to the identification of the source of
communications in polls and surveys paid for with money
raised for political purposes.

Elections Board (CR 96-109):

S. El Bd 1.85 - Relating to conduit registration and reporting
requirements.

Natural Resources (CR 97-57):

SS. NR 132.085 and 132.09 and ch. NR 182 - Relating to
regulation of metallic mineral mining.

Veterans Affairs (CR 97-147):

Ch. VA 12 - Relating to the personal loan program.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **January 31, 1998 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

Agriculture, Trade & Consumer Protection (CR 97-38):

An order affecting ss. ATCP 70.03, 71.02, 74.08, 75.015 and 80.04, relating to food and dairy license fees.

Effective 02-01-98.

Agriculture, Trade & Consumer Protection (CR 97-43):

An order creating ss. ATCP 31.03 and 31.08, relating to standards for repealing site-specific prohibitions against the use of pesticides found in groundwater.

Effective 02-01-98.

Commerce (CR 97-96):

An order affecting chs. Comm 2, 5 and 18, relating to the inspection of elevators and mechanical lifting devices.

Part effective 01-01-98.

Part effective 02-01-98.

Corrections (CR 97-95):

An order creating ch. DOC 304, relating to the inmate secure work program.

Effective 02-01-98.

Natural Resources (CR 97-78):

An order amending s. NR 101.13 (2), relating to the wastewater fee program.

Effective 02-01-98.

Public Defender (CR 97-124):

An order affecting s. PD 3.038 (2), relating to the calculation of indigency.

Effective 02-01-98.

Regulation & Licensing (CR 97-101):

An order affecting ss. RL 17.02, 17.03 and 17.12, relating to the employment of personal assistants by real estate salespeople and broker-employees.

Effective 02-01-98.

Regulation & Licensing (CR 97-110):

An order affecting chs. RL 80 to 87, relating to the regulation of certified and licensed appraisers.

Effective 02-01-98.

Transportation (CR 97-62):

An order affecting chs. Trans 129 and 503, relating to the waiver of the motorcycle skills test and to required attendance of motorcycle rider courses and motorcycle instruction permit issuance.

Effective 02-01-98.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection (CR 97-38)

Chs. ATCP 70, 71, 74, 75 and 80 – Food and dairy license fees.

Summary of Final Regulatory Flexibility Analysis:

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

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

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

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

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

Summary of Comments from Legislative Committees:

On September 16, 1997, this department transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture and Environmental Resources and the Assembly Committee on Agriculture.

The Senate Committee on Agriculture and Environmental Resources did not take any action on the rule during its review period. However, the Assembly Committee on Agriculture held a hearing on November 13, 1997. The Assembly Committee on Agriculture took no action regarding the proposed rule.

2. Agriculture, Trade & Consumer Protection (CR 97-43)

Ch. ATCP 31 – Groundwater protection.

Summary of Final Regulatory Flexibility Analysis:

Businesses Affected:

This rule has no direct effect on small businesses in Wisconsin. The rule may indirectly affect small businesses, in that it spells out criteria for the repeal of pesticide prohibition areas. This rule authorizes, but does not mandate the repeal of a prohibition area if certain criteria are met. To implement the actual repeal of a prohibition area, the department would have to take separate action to amend its pesticide-specific rules (e.g., atrazine rules under ATCP 30). The department would do a separate, more specific "small business analysis" related to those rule amendments.

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

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

Reporting, Recordkeeping and Other Procedures Required for Compliance:

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

Professional Skills Required to Comply:

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

Summary of Comments from Legislative Committees:

The rule was referred to the Senate Committee on Agriculture and Environmental Resources and the Assembly Committee on Agriculture on August 27, 1997. The Assembly Committee on Agriculture did not take any action on the rule during its review period. However, the Senate Committee on Agriculture and Environmental Resources held a hearing and requested the department accept the rule for modification based on hearing testimony.

The department agreed to insert a note after the proposed s. 31.08 (4) (b)2., Stats. The note explains that the repeal of a prohibition area does not limit the department's responsibility to take reasonable action to minimize contamination to achieve compliance with the preventive action limit. Further, the department may reinstate a repealed prohibition area if testing shows an increasing trend of pesticide contamination.

The note reads:

“The repeal of a prohibition area does not affect any responsibility which the department has under s. ATCP 31.07 to take other appropriate action to minimize the concentration of the pesticide substance where technically and economically feasible, and to restore and maintain compliance with the preventive action limit. The department may also reinstate a repealed prohibition area if groundwater testing at a point of standards application shows an increasing trend of pesticide contamination, suggesting that contamination may again attain or exceed the enforcement standard.”

3. Corrections (CR 97-95)

Ch. DOC 304 – The inmate secure work program.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments reported.

4. Natural Resources (CR 97-78)

S. NR 101.13 (2) – Wastewater fee program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule eliminates a \$100 fee that may have been charged to a small business if that business held a general permit for wastewater discharges. There are no changes to any requirements of the permit.

Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Environment Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

5. Public Defender (CR 97-124)

Ch. PD 3 – The calculation of indigency.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

6. Regulation and Licensing (CR 97-101)

Ch. RL 17 – The employment of personal assistants by real estate salespersons and broker-employees.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

7. Regulation & Licensing (CR 97-110)

Chs. RL 80-87 – The regulation of certified and licensed appraisers.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

8. Transportation (CR 97-62)

Chs. Trans 129 & 503 – The waiver of the motorcycle skills test and to required attendance of motorcycle rider courses and motorcycle instruction permit issuance.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have an impact on small businesses involved in motorcycle training because statutory license requirements are being imposed upon these businesses. The fees for instructor and school licenses under current law are \$5 and \$25 per annum, respectively.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

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

Executive Order 324. Relating to a Special Election for the Eighty-Second Assembly District.

Executive Order 325. Relating to a Special Election for the Twenty-Eighth Senate District.

Executive Order 326. Relating to the Approval and Issuance of Model Academic Standards.

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