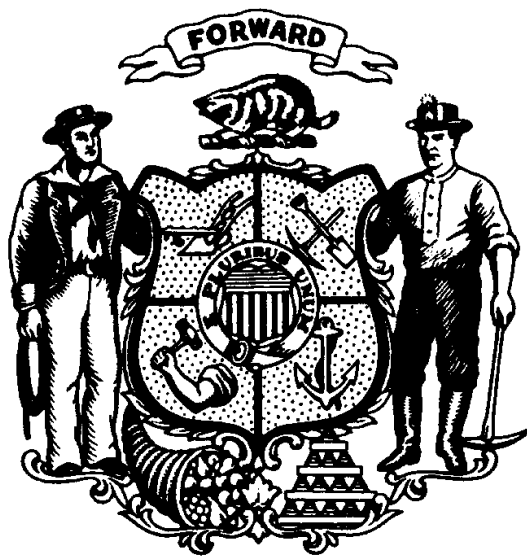


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 508**



Publication Date: April 14, 1998  
Effective Date: April 15, 1998



REVISOR OF STATUTES BUREAU  
SUITE 800, 131 WEST WILSON STREET  
MADISON, WISCONSIN 53703-3233



---



---

## TABLE OF CONTENTS

---



---

**Emergency Rules Now In Effect.****Pages 5 to 16.**

Administration:	Rules relating to kennel owner licenses.
Agriculture, Trade and Consumer Protection:	Rules relating to the sales and use of pesticides containing clomazone. Rules relating to fish farms and imports of live fish and fish eggs.
Commerce:	<u>Building and Heating, etc., Chs. 50–64</u> <u>Multifamily Dwellings, ch. 66</u> Rules relating to the commercial building and multi–family codes.
Commerce:	<u>Financial Resources for Businesses and Communities, Chs. Comm 105 to 128</u> Rules relating to emergency grants under the CDBG program. Rules relating to the Brownfields Grant Program.
Corrections:	Rule adopted relating to the inmate complaint review system. Rules relating to polygraph examinations for sex offenders. Rule adopted amending s. DOC 328.22 (5), relating to custody and detention of felony probationers and parolees. <b>(FIRST APPEARANCE)</b>
Dentistry:	Rule relating to examination requirements for licensed out–of–state dentists.
Gaming Board:	See Administration.
Health & Family Services:	<u>Health, Chs. HSS/HFS 110—</u> Rules adopted revising s. HFS 196.03 (22), relating to restaurants. <b>[FIRST APPEARANCE]</b> Rules adopted revising ch. HSS 138, relating to subsidized health insurance for persons with HIV. <b>[FIRST APPEARANCE]</b>
Insurance:	Rule relating to a decrease in premium rates for the Health Insurance Risk–Sharing Plan, effective January 1, 1998. Rules relating to a decrease in premium rates for the Health Insurance Risk–Sharing Plan (HIRSP) and correcting errors in the published rate table. Rules relating to a deductible alternative to HIRSP.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1–</u> Rule relating to notice of receipt of an application to incidentally take an endangered or threatened species. Rules relating to reservations for state parks, forests and other lands. Rules relating to the forest fire protection grant program. Rules relating to the private forest landowner grant program.
Natural Resources:	<u>Environmental Protection–General Chs. NR 100–</u> Rules adopted creating ch. NR 166, relating to the Safe Drinking Water Loan Program. <b>[FIRST APPEARANCE]</b>
Natural Resources:	<u>Environmental Protection–Water Regulation, Chs. NR 300–</u> Rules adopted revising ch. NR 300, relating to fees for waterway and wetland permit decisions. <b>[FIRST APPEARANCE]</b>

Natural Resources:	<u>Environmental Protection—Air Pollution Control, Chs. NR 400—</u> Rule relating to emission limitations for motor vehicles.
Public Instruction:	Rules relating to full-time open enrollment. Rules relating to the youth options program.
Public Service Commission:	Rules relating to the provision of universal telecommunications service and administration of the universal service fund and establishing the Education Telecommunication Access Program.
Technical College System:	Rules adopted creating ch. TCS 15, relating to Faculty Development Grants. <b>[FIRST APPEARANCE]</b>
Transportation:	Rules relating to the Transportation Infrastructure Loan Program.
Veterans Affairs:	Rules relating to the personal loan program.
Workforce Development:	<u>Economic Support, Chs. DWD 11 to 59</u> Rules relating to Learnfare.
Workforce Development:	<u>Wage Rates, Chs. DWD 290–294</u> Rules relating to prevailing wage rates for state and local public works projects.

**Scope Statements.****Pages 17 to 22.**

Accounting Examining Board:	Accy Code – Relating to the education required to write the certified public accountant examination after December 31, 2000, for students graduating prior to the date, and the time period following the certified public accountant examination in which the candidate must graduate.
Commerce:	Chs. Comm 83 to 85 and 91 – Relating to private sewage systems and sanitation.
Employe Trust Funds:	S. ETF 50.40 – Relating to the eligibility for disability benefits under ch. 40, Stats., and Long-Term Disability Insurance (LTDI) benefits when a participant becomes disabled due to a physical or mental disability.
Health & Social Services:	Chs. HSS/HFS 45, 46, 52, 54, 55, 57 and 59 – Relating to licenses issued by the Department of Health and Family Services to certain facilities, agencies and program that serve children.
Health & Family Services:	Ch. HSS 51 – Relating to adoption of children with special needs.
Health & Family Services:	S. HSS 73.11 – Relating to long-term support Community Options (COP) and Community Integration (CIP) programs.
Health & Family Services:	Chs. HSS/HFS 82, 8, 124, 127, 131, 132, 133 & 134 – Relating to licenses, certifications and approvals issued by the Department of Health and Family Services to certain residential care facilities for adults, health care facilities and health care agencies.
Natural Resources:	Ch. NR 7 –Relating to the creation of rules to determine whether a Recreational Boating Facilities project is of statewide or regional significance.
Natural Resources:	Ch. NR 300 – Relating to a system for expedited decisionmaking on proposed physical alterations to lakes, streams and wetlands.
Social Workers, Marriage & Family Therapists & Professional Counselors Examining Board:	SFC Code – Relating to applications, other human services degree programs, and supervised social work internships and social work employment under s. 457.09, Stats.
Technical College System:	TCS Code – Relating to faculty development grants.
Transportation:	Ch. Trans 197 – Relating to the collection of fees under s. 344.42, Stats.

**Notices of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse.**

Commerce:

Employe Trust Funds:

Social Workers, Marriage &amp; Family Therapists and Professional Counselors Examining Board:

**Notices of Hearings or of Proposed Rules.**

Agriculture, Trade &amp; Consumer Protection:

Commerce:

Elections Board:

Employe Trust Funds:

Public Service Commission:

Revenue:

**Notices of Submission of Proposed Rules to the Presiding Officer of Each House of the Legislature, Under S. 227.19, Stats.**

Agriculture, Trade and Consumer Protection:

Corrections:

Employe Trust Funds:

State Fair Park Board:

University of Wisconsin System:

**Administrative Rules Filed with the Revisor of Statutes Bureau.**

Agriculture, Trade &amp; Consumer Protection:

Agriculture, Trade &amp; Consumer Protection:

Commerce:

Corrections:

Health &amp; Family Services:

Insurance:

Medical Examining Board:

**Public Notice.**

Workforce Development:

**Pages 23.**

Ch. Comm 87 – Relating to private onsite wastewater treatment system (POWTS) replacement and rehabilitation grant program (Wisconsin Fund).

Ch. ETF 52 – Relating to administration of the duty disability benefit program under s. 40.65, Stats.

SFC Code – Relating to biennial continuing education requirements for social worker certification renewal.

**Pages 24 to 38.**

Hearing to consider chs. ATCP 10 &amp; 11, created as an emergency rule, relating to fish farms and live fish and fish egg imports.

Hearing to consider ch. ATCP 36, created as an emergency rule, relating to use of herbicides containing clomazone.

**Plumbing, Chs. Comm 82–87**

Hearings to consider revision to ch. Comm 87, relating to private onsite wastewater treatment system replacement and rehabilitation grant programs.

Hearing to consider s. ElBd 6.05, relating to filing campaign finance reports in electronic format.

Hearing to consider ch. ETF 52, relating to the duty disability benefit program.

Hearing to consider revision of ch. PSC 160 and creation of ch. PSC 161, relating to an educational telecommunications access program.

Proposed revision of ch. Tax 19, relating to tax rate disparity payments.

**Page 39.**

(CR 97–127) – Chs. ATCP 90, 91 &amp; 92

(CR 98–3) – Chs. DOC 332 &amp; 328

(CR 97–73) – S. ETF 10.08

(CR 98–3) – Chs. SFP 2 &amp; 7

(CR 97–149) – S. UWS 18.06

**Page 40.**

(CR 97–113) – Ch. ATCP 30

(CR 97–125) – Chs. ATCP 29 &amp; 30

(CR 97–156) – S. Comm 108.21 (1) (f)

(CR 97–106) – Ch. DOC 310

(CR 97–130) – Chs. HFS 10,67 &amp; Ch. HSS 118

(CR 97–137) – S. Ins 3.53

(CR 97–114) – S. Med 10.02 (2) (zb)

**Pages 41 to 44.**

Relating to the Child Care Co–Payment Schedule under s. DWD 56.08.

*Notice of Nonacquiescence.*

*Page 45.*

James M. Callen v. Wisconsin Department of Revenue.



---



---

## 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  
**Hearing Date:** February 26, 1998

---

### EMERGENCY RULES NOW IN EFFECT (2)

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

1. Rules adopted creating **Ch. ATCP 36**, relating to the sale and use of pesticides containing the active ingredient clomazone.

#### **Finding of Emergency**

(1) Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

(2) Clomazone is volatile. Off-target movement from clomazone applications can affect non-target plants located hundreds of feet from the application site. Off-target movement from clomazone applications can damage non-target plants by inhibiting the formation of chlorophyll in those plants.

(3) Off-target movement has occurred in many clomazone applications to date. Non-target plants exposed to off-target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long lasting than in prior years. In 1997, the department received 49 complaints of off-target movement to non-target plants. These complaints comprised 20% of all pesticide complaints received by the department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off-target movement incidents that occurred. Off-target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

(4) The department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non-target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off-target movement and nontarget damage during the 1998 planting and growing season.

(5) Clomazone herbicides are commonly applied during spring planting. The department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

**Publication Date:** March 15, 1998  
**Effective Date:** March 15, 1998  
**Expiration Date:** August 12, 1998  
**Hearing Date:** April 28, 1998

[See Notice this Register]



2. Rules adopted creating ss. ATCP 10.68 and 11.58, relating to fish farms and imports of live fish and fish eggs.

### Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

#### Fish Farms

##### Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

##### Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

##### Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:

- \*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

- \*Allows public fishing, for a fee, for fish hatched at that fish farm.

- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

- \*Allows public fishing at the fish farm for a fee.

- \*Sells or trades fish, from the fish farm, to any person.

- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

- \*Sell minnows to any person

- \*Sell fish or fish eggs to a type A registrant.

- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- \*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

- \*The fish farm consists solely of ponds used to hold or grow fish.

- \*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

##### Registration Fees

This emergency rule establishes the following registration fees:

· Type A registration	\$50.00
· Type B registration	\$25.00
· Type C registration	\$ 5.00
· Type D registration	\$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

##### Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.

- DNR informs DATCP that DNR has approved the facility.

##### Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.

- The date on which the operator received or delivered the fish or fish eggs.

- The location at which the operator received or delivered the fish or fish eggs.

- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

##### Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.

- Violating the terms of the registration

- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.

- Physically assaulting a DATCP employee performing his or her official duties.

- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.

- Paying registration fees with a worthless check.

### Fish Imports

#### Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.

- Selling them as bait, or for resale as bait.

- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

#### Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.

- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.

- The number of each fish farm registration certificate, if any, held by the importer.

- Each species of fish or fish eggs which the importer is authorized to import under the permit.

- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.

- The purpose for which the fish or fish eggs are being imported.

- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.

- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

#### Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).

- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

#### Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.

- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.

- Preventing a department employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.

- Physically assaulting a department employe while the employe is performing his or her official duties.

- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

#### Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.

- The name, address and telephone number of the source from which the import shipment originated.

- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.

- The location at which the import shipment was received in this state.

- The size, quantity and species of fish or fish eggs included in the import shipment.

#### Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.

- Viral hemorrhagic septicemia.

- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.

- Enteric redmouth.

- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

**Publication Date:** March 16, 1998

**Effective Date:** March 16, 1998

**Expiration Date:** See section 9104 (3xr) 1997 Wis. Act 27

**Hearing Date:** April 27, 1998

[See Notice this Register]

---

## **EMERGENCY RULES NOW IN EFFECT**

### ***Department of Commerce***

**(Building & Heating, etc., Chs. Comm/ILHR 50–64)**

**(Uniform Multifamily Dwellings, Ch. ILHR 66)**

Rules adopted revising **chs. Comm 51, ILHR 57 and 66**, relating to commercial buildings and multifamily dwellings.

### **Finding of Emergency and Rule Analysis**

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.02 (15), 101.12, and 101.971 to 101.978, Stats., the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public buildings, including multifamily dwellings. Present requirements include methods for stopping fire in one area of a building from spreading to another area through service openings in walls, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fail under fire testing conditions.

The proposed rule impacts all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire–stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area–separation protection consisting of either a fire–protective membrane or fire–resistive rated construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revisions, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** January 28, 1998  
**Effective Date:** January 28, 1998  
**Expiration Date:** June 27, 1998  
**Hearing Date:** March 11, 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  
**Extension Through:** May 30, 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  
**Hearing Date:** February 12, 1998

---

## EMERGENCY RULES NOW IN EFFECT (3)

### *Department of Corrections*

1. 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:** May 1, 1998

2. 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  
**Hearing Date:** March 16, 1998

3. Rule adopted amending **s. DOC 328.22 (5)**, relating to custody and detention of felony probationers and parolees.

### 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 Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court rule in *Sullivan v. Kliemet*, that the Sheriff of Milwaukee may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliemet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11 (2), and 973.10, Stats., the Department of Corrections hereby amends s. DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

**Publication Date:** March 23, 1998  
**Effective Date:** March 23, 1998  
**Expiration Date:** August 20, 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 (2)

### Health and Family Services

(Health, Chs. HSS/HFS 110—)

1. Rules adopted revising s. HFS 196.03 (22), relating to an exemption from regulation as a restaurant.

### Finding of Emergency

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

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a "locally sponsored sporting event" from being regulated under ch. HFS 196 as a restaurant. Following enactment of the State Budget, the Department received several inquiries from its own region-based inspectors and local health departments serving as the Department's agents for enforcement of the Department's environmental sanitation rules, including rules for restaurants, about the meaning of "locally sponsored sporting event." What did the term cover? Did it cover food stands at facilities of locally-owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department's rules for restaurants and, in this connection, defines both "locally sponsored sporting event" and "concession stand." The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, "such as a little league game," that follows the term, "locally sponsored sporting event," in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department's understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department's understanding of what "locally sponsored sporting event" should be taken to mean has been communicated to its field-based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public's health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change

that will prevent any local inspector from exempting from regulation food stands at locally sponsored sporting events for adults.

**Publication Date:** March 14, 1998  
**Effective Date:** March 14, 1998  
**Expiration Date:** August 11, 1998

2. Rules were adopted revising ch. HSS 138, relating to subsidized health insurance premiums for certain persons with HIV.

### Finding of Emergency

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

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the current Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or who must reduce their hours of work:

The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.

Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.

The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employe and group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

The rule changes are being published by emergency order so that the program changes made by Act 27 can be implemented quickly for the benefit of persons with HIV infection who are newly eligible for the subsidy or for continuation of the subsidy. Act 27 was effective on October 14, 1997. Implementation of the statutory changes, which is expected to increase the caseload from 50 to about 300, depends upon rule changes. Following determination of what changes were needed in the rules, a statement of scope of proposed

rules was published on November 15, 1997. After that the rulemaking order was drafted and decisions were made about language and the expected contribution of some eligible individuals toward payment of the annual premium. The proposed permanent rule changes were sent to the Legislative Council's Rules Clearinghouse for review on March 3, 1998, but because of the length of the permanent rulemaking process will not take effect until August 1, 1998 at the earliest. Earlier implementation of the statutory changes will allow some prospective program clients to maintain health insurance policies they otherwise could not afford. Not having the coverage could result in deterioration of their health.

**Publication Date:** March 28, 1998  
**Effective Date:** March 28, 1998  
**Expiration Date:** August 25, 1998  
**Hearing Dates:** April 22 & 23, 1998

---

## EMERGENCY RULES NOW IN EFFECT (3)

### 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 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

3. 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 (4)

### 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

3. Rules adopted creating ch. NR 47, subch. VIII, relating to the forest fire protection grant program.

### Exemption From Finding of Emergency

Under Section 9137 (10x) of 1997 Wis. Act 27, the Department is not required to make a finding of emergency for these rules.

**Publication Date:** February 16, 1998  
**Effective Date:** February 16, 1998  
**Expiration Date:** July 15, 1998  
**Hearing Date:** March 13, 1998

4. Rules adopted creating ch. NR 47, subch. VII, relating to the private forest landowner grant program.

### Exemption From Finding of Emergency

Under Section 9137 (10n) of 1997 Wis. Act 27, the Department is not required to make a finding of emergency for these rules.

**Publication Date:** February 20, 1998  
**Effective Date:** February 20, 1998  
**Expiration Date:** July 19, 1998  
**Hearing Date:** March 13, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

(Environmental Protection–General,  
Chs. NR 100–)

Rules adopted creating ch. NR 166, relating to the Safe Drinking Water Loan Program.

### Exemption From Finding of Emergency

Statutory authority: ss. 281 .61 (2),(6), (12)(a)(b) and 227.24

Statute interpreted: s. 281.61

SECTION 1 creates ch. NR 166, Wis. Adm. Code, entitled "Safe Drinking Water Loan Program."

The federal Safe Drinking Water Act Amendments signed by President Clinton on August 6, 1996 created a new state revolving loan fund for drinking water infrastructure. The program creates a capitalization grant to states that enables states to provide loans to community water systems as well as nonprofit non–community water systems that build, upgrade, or replace water supply infrastructure to protect public health and address federal and state drinking water requirements.

The state budget bill, Wisconsin Act 27, s. 281.61, Stats., directs the Department of Natural Resources to promulgate rules establishing eligibility criteria, priority, and application procedures to administer the Safe Drinking Water Program, and to promulgate rules needed for the Department to exercise its responsibilities under the Safe Drinking Water Loan Program.

In order for the Department to meet deadlines for the capitalization grant, the rules providing eligibility criteria, priority, and application procedures must be in place by March 1, 1988. Accordingly, section 91 37(3x) of Act 27 authorizes the Department to promulgate emergency rules for the Safe Drinking Water Loan Program without providing proof that an emergency rule is needed to preserve public peace, health, safety, or welfare. The Department intends to promulgate ch. NR 166 as an emergency rule effective March 1, 1998 and to have the permanent rule in place by August 1, 1988.

The eligibility criteria and project priorities in ch. NR 166 reflect the overarching intention of s. 281.61 and the amendments to the federal Safe Drinking Water Act – to help fund projects that will facilitate compliance with national primary drinking water standards or otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

The federal and state statutes also require that the rules that determine project ranking give priority, to the extent possible, to projects that address the most serious risks to human health (especially acute health risks related to microbial organisms), that are needed to ensure compliance with the Safe Drinking Water Act, and that assist communities that are most in need on a per household basis. Ch. NR 166 therefore assigns points to projects based on criteria that include: the severity of the human health risks that can be reduced or lessened by the project, the size and median household income of the population served by the water system, secondary contaminant violations or system compliance addressed by the project, and the technical, financial, and managerial capacity of the water system. Ch. NR 166 also establishes interest rates based on financial eligibility criteria that reflect the priorities in s. 281 .61 and the Safe Drinking Water Act.

Ch. NR 166 establishes the types of financial assistance available as authorized by s. 281.61, Stats., establishes eligibility criteria for types of projects and costs, and excludes types of projects listed as ineligible in s. 281.61 and the Safe Drinking Water Act.

Ch. NR 166 details the procedures and requirements to apply for assistance, the conditions that will apply to assistance agreements, the options available to the Department in the event of noncompliance, and the review of Department decisions available to applicants.

**Publication Date:** March 18, 1998  
**Effective Date:** March 18, 1998  
**Expiration Date:** August 15, 1998

## **EMERGENCY RULES NOW IN EFFECT**

### *Natural Resources*

#### **(Water Regulation, Chs. NR 300--)**

Rules adopted revising **ch. NR 300**, relating to fees for waterway and wetland permit decisions.

#### **Finding of Emergency**

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

Land development and public infrastructure projects that affect water resources are being delayed as a result of extreme workload and high staff vacancy rate in southeastern Wisconsin and elsewhere. Fee revenue must be generated immediately in order to support positions authorized in the recent budget to address the delays.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 25, 1998.

The rules contained herein shall take effect on April 1, 1998, following publication in the official state newspaper pursuant to authority granted by s. 227.24(1)(c), Stats.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 1998

## **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 (2)**

### *Public Instruction*

1. Rules adopted creating **ch. PI 36**, relating to full-time open enrollment.

#### **Finding of Emergency**

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

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 department is responsible for administering the program, including creating uniform application forms, administering school finance provisions, administering a transportation reimbursement program for low-income parents and collecting data and making reports to the legislature, deciding appeals and conducting outreach to inform parents about the program. Administrative rules are necessary to ensure uniform procedures throughout the state.

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 is promulgating these emergency rules 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.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 17, 1998  
**Effective Date:** January 17, 1998  
**Expiration Date:** June 16, 1998

2. Rules adopted revising **ch. PI 40**, relating to the youth options program.

#### **Finding of Emergency**

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



Effective the 1998–99 school year, 1997 Wis. Act 27 renames the postsecondary enrollment options (PSEO) program to be the youth options program. For institutions of higher education (IHEs), the youth options program will operate essentially the same as it did under the PSEO program. However, the program makes several changes to the program as it relates to technical colleges and pupils attending technical colleges as described in the analysis.

The emergency rules make several modifications to ch. PI 40 in order to clarify certain provisions and to comply with statutory language changes made as a result of the Act.

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 is promulgating these emergency rules in order to notify pupils, school districts, IHEs and technical colleges of the necessary timelines and requirements to participate in the revised youth options program in time for the upcoming school year.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 16, 1998  
**Effective Date:** January 16, 1998  
**Expiration Date:** June 15, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### *Public Service Commission*

Rules adopted amending **ss. PSC 160.05, 160.11 (6) and 160.17**, relating to the provision of universal telecommunications service and administration of the universal service fund and creating **ch. PSC 161**, establishing the Education Telecommunication Access Program.

### ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Technology for Educational Achievement in Wisconsin (TEACH) initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly enacted s. 196.2 18(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department) and Technology for Educational Achievement (TEACH) in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program. Section 9141 of Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats.

These emergency rules establish the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices. These rules implement the TEACH legislation by:

- ◆ Defining the entities which may be eligible under this program, i.e., “private college,” “private school,” “public library board,” “school district” and “technical college district.”

- ◆ Defining a “data line” as a data circuit which provides direct access to the internet.

- ◆ Defining a “video link” as a 2–way interactive video circuit and associated services.

- ◆ Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.

- ◆ Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

- ◆ Including privacy protections as required by s. 196.218 (4r)(c)5., Stats.

- ◆ Providing an application procedure which (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, (3) prohibits a technical college district from applying before April 1, 1998. and (4) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under s. PSC 160.11.

- ◆ Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access, readiness of the applicant to utilize the requested access and proposed uses of the requested access.

- ◆ Requiring the Board to determine by April 1, 1998, whether there are sufficient monies in the appropriation to include technical college districts in the program on or after that date.

- ◆ Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.

- ◆ Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.

- ◆ Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.

- ◆ Providing that assessments for this program shall be made by the Commission under ch. PSC 160.

### Exemption From Finding of Emergency

In Section 9141 of 1997 Wis. Act 27, the legislature specifically exempted the Commission from the finding of emergency required by ss. 227.24, Stats.

**Publication Date:** February 27, 1998  
**Effective Date:** February 27, 1998  
**Expiration Date:** July 26, 1998  
**Hearing Date:** May 5, 1998  
 [See Notice this Register]

---

## EMERGENCY RULES NOW IN EFFECT

### *Technical College System Board*

Rules adopted creating **ch. TCS 15**, relating to Faculty Development Grants.

### Finding of Emergency

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

1997 Wis. Act 27 (the 1997-99 biennial budget bill) took effect on October 14, 1997, which was three and a half months into fiscal year 1997-98. That act created ss. 20.292(1)(eg) and 38.33, Stats. An annual appropriation of \$832,000 in each of the state fiscal years of the 1997-99 biennium was established. These funds are to be awarded by the technical college system board as grants to technical college district boards to establish faculty development programs.

The Act requires the technical college system board to promulgate rules establishing specific criteria for awarding these grants. The technical college system board has just begun the permanent rule making process for establishing administrative rules for the faculty development grants program. However, there is insufficient time to have the permanent rules in place before the local technical college districts must submit their proposals for faculty development grants under s. 38.33, Stats. It is imperative that the program be implemented and the funds be distributed before the end of the fiscal year or else the appropriated funds will lapse to the general fund. The loss of funds, including local matching funds, will have a detrimental effect on the ability of district boards to establish faculty development programs.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 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  
**Extension Through:** May 14, 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  
**Hearing Date:** March 16, 1998

---

## **EMERGENCY RULES NOW IN EFFECT**

### ***Workforce Development*** **(Wage Rates, chs. DWD 290–294)**

Rule adopted revising **ch. DWD 290**, relating to prevailing wage rates for state or local public works projects.

## **Finding of Emergency**

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

As explained in more detail in the analysis below, the Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between April 1996 and November 1997 requires that the threshold limits for prevailing wage rate determinations be raised from \$30,000 to \$32,000 for single–trade projects and from \$150,000 to \$160,000 for multi–trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/98, a single–trade project costing more than \$30,000 but less than \$32,000, or a multi–trade project costing more than \$150,000 but less than \$160,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added cost and difficulty of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this potential added cost on local governments and state agencies.

**Publication Date:** February 13, 1998  
**Effective Date:** February 13, 1998  
**Expiration Date:** July 12, 1998  
**Hearing Date:** March 27, 1998

---



---

## STATEMENTS OF SCOPE OF PROPOSED RULES

---



---

### *Accounting Examining Board*

#### **Subject:**

Accy Code – Relating to:

- 1) The education required to write the certified public accountant examination after December 31, 2000, for students graduating prior to that date, and
- 2) The time period following the certified public accountant examination in which the candidate must graduate.

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

##### *Objective of the rule:*

1) After December 31, 2000, a person may not take the examination leading to the certificate to practice as a certified public accountant unless the person has completed at least 150 semester hours of education with an accounting concentration at a recognized institution, or its reasonable equivalent, and has received a bachelor's or higher degree with an accounting concentration, under s. 442.04 (4) (bm) and (c), Stats. The Board desires to permit candidates who have *taken* the examination prior to December 31, 2000, but have not passed all portions required and are, therefore required to retake in whole or part the examination, to retake the examination after December 31, 2000, although they may not possess 150 semester hours of education.

Additionally, the statute does not address candidates who graduate prior to December 31, 2000, with less than 150 semester hours, who *did not take* the examination, for whatever reason, upon or prior to graduation, although they were eligible to do so prior to that date. The Board desires that such candidates be permitted to take the examination after December 31, 2000, although they may not possess 150 semester hours of education.

2) Under current rules of the Board, a person is permitted to sit for the certified public accountant examination if their college or university verifies that the person is expected to graduate within 45 days following the examination. The Board desires to extend the time for graduation after the examination to 60 days.

##### *Policy analysis:*

1. Section 442.04 (4), Stats., as amended by 1995 Wis. Act 333, will require a person to have either a degree representing 150 semester hours of education with an "accounting concentration," or its "reasonable equivalence" as determined by the Accounting Examining Board in order to take the qualifying examination after December 31, 2000. However, prior to that date there will be graduates with less than 150 semester hours who have either taken the examination and not successfully completed all of its parts or who, for whatever reason, chose not to take the examination prior to December 31, 2000, although they were eligible to do so. The Board believes that such individuals should be permitted to take or retake the examination after December 31, 2000, even though they may not possess 150 semester hours, because they had acquired the right to take the examination prior to the December 31, 2000 date. Good public policy and basic fairness indicates that these individuals should be "Grandparented" under the rules to permit them to exercise the right to take the examination they had acquired prior to December 31, 2000.

2. Under current rules, an individual who anticipates graduating from college or a university with a resident major in accounting within 45 days following the administration of the certified public accountant examination is permitted to sit for that examination. The board has become aware that the 45 day requirement can cause problems when graduation occurs a few days later than 45 days due to individual school graduation dates. In order to accommodate those situations, the board believes that the rule should be modified to

provide a 60 day window between the examination date and graduation.

#### **Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 442.04 (4), Stats.

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

10 hours.

### *Commerce*

#### **Subject:**

Ch. Comm 83 to 85 and 91 – Relating to private sewage systems and sanitation.

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

##### *Description of the objective of the rule:*

The objectives of the rule are to repeal and recreate ch. Comm 83 in order to:

- Minimize risk to public health and the water resources of the state, including groundwater;
- Provide measurable performance criteria for private sewage systems that ensure flexibility and predictability and facilitate improvements in system design and product development;
- Promote the recycling of constituents to minimize disposal volumes;
- Promote a wide range of treatment options that match users' needs and desires and the varied soil and site conditions in the state;
- Provide clear boundaries that are based on system performance standards that fall within the scope of the code;
- Promote competition in the design, installation and maintenance of systems, thereby providing users with efficient and cost-effective services;
- Provide procedures and establish priorities for the responsibilities of the design, installation and maintenance of systems, to ensure that the respective responsibilities are clear and consistent and that compliance is occurring;
- Provide and promote active research and development of innovative technologies and solutions in the desired directions;
- Promote public education about treatment options and proper disposal of wastewater;
- Provide timely and efficient administration and enforcement of the regulatory system; and
- Acknowledge the powers and the abilities of municipalities to determine and control development.

The rule revisions relating to private sewage systems and sanitation may necessitate revisions to other rules of the Department, including the fee code, ch. Comm 2, the one- and two-family building code, chs. ILHR 20–25, the multifamily building code, ch. ILHR 66, the commercial building code, chs. ILHR 50–64, and other rules of the plumbing code, chs. Comm 82–87, which either make reference to or address private sewage system or sanitation issues.

##### *Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Currently, ch. Comm 83 of the plumbing code establishes specific and prescriptive minimum standards for the design, installation,

inspection, and maintenance of private sewage systems. In some sense, the current rules dictate or prioritize specific solutions or the selection of certain types of private sewage systems. The current ch. Comm 83 has not been fully revised since 1980. In order for the plumbing code to be effective and reasonable, code standards must be updated periodically to address new health and safety concerns, issues and priorities, as well as to reflect changing technologies, practices and materials. An alternative would be not to revise the code, but then people would be limited to using only the technology specified in the current rules.

**Statutory authority for the rule:**

The following citations from the statutes provide the Department the authority and oversight relating to private sewage systems and sanitation:

SS. 101.02 (1), 101.63 (1), 101.73 (1), 145.02 (3) and (4), 145.045, 145.13, 145.135, 145.19 and 145.20, 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 these rule revisions relating to private sewage system and sanitation standards will require the resources of about 6 individual staff members from the Department as follows:

Administrative time	120 Hours
Code Consultant’s time	220 Hours
Program Managers’ time	880 Hours
Rules Coordination time	120 Hours
Program Support time	120 Hours
<b>TOTAL TIME:</b>	<b>1,460 HOURS</b>

***Employe Trust Funds***

**Subject:**

S. ETF 50.40 – Relating to the eligibility for disability benefits under ch. 40, Stats., and Long–Term Disability Insurance (LTDI) benefits when a participant becomes disabled due to a physical or mental disability.

**Description of policy issues:**

*Objectives of the rule:*

The amended rule will clarify the earned income test used to determine whether a terminated employe had intervening employment since the employe last worked for a covered Wisconsin Retirement System (WRS) employer for s. 40.63, Stats., and LTDI, s. ETF 50.40, Wis. Adm. Code, disability benefits.

*Policy analysis:*

Under s. 40.63, Stats., to be eligible for a disability benefit from the WRS an employe, prior to reaching normal retirement age, must be totally disabled by a mental or physical impairment which is likely to be permanent and meet the requirements listed below:

- ✓ The employe must be a participating WRS employe.
- ✓ The employe must have a total of at least five years of creditable service or, at least one–half year of creditable service in each of five of the years. The seven full calendar years before the received date of the disability application will be used to determine whether the service requirement is met.
- ✓ The employe must not be entitled to any further earnings from the employer.
- ✓ The employer must certify that the employe ceased employment due to a disability.
- ✓ The employe must be totally and permanently disabled as certified by two licensed physicians.

Pursuant to s. 40.63 (2), Stats., a participant shall be considered a participating employe only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated and if the termination of active service for the participating employer was due to disability. Section 40.63 (11), Stats., defines “substantial gainful activity” as employment for which the annual compensation exceeds a specified dollar amount for a specific period of time. The current rule, s. ETF 50.30 (1m), for disability benefits under s. 40.63, Stats., relies on a monthly test to determine if the employe was gainfully employed since employment with the WRS covered employer. The amended rule will clarify the period of time on which the Department will rely to determine whether the employe was gainfully employed.

The LTDI program provides an alternative to s. 40.63, Stats., disability benefits. Many of the provisions under s. ETF 50.40, Wis. Adm. Code, are very similar to the eligibility provisions for disability benefits under s. 40.63, Stats. The current rule, s. ETF 50.50 (1) (c) 3., for disability benefits under the LTDI program, also relies on a monthly test to determine gainful employment. The rule will be amended to clarify that the Department will rely on an annual period of time rather than the monthly test to determine whether the employe was gainfully employed.

*Policy alternatives to the proposed rule:*

The amendment to the current rules is intended to re–evaluate the existing rule.

**Statutory authority for rule–making:**

S. 40.03 (6), (7) and (8), Stats.

**Staff time required:**

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

***Health and Family Services***

**Subject:**

Chs. HSS 45, HFS 46, HSS 52, HSS 54, HFS 55, HSS 57 and HSS 59 – Relating to licenses issued by the Department of Health and Family Services to certain facilities, agencies and programs that serve children.

**Description of policy issues:**

*Description of objective(s):*

To amend the Department’s rules for licensing day care centers for children, child welfare agencies (child–placing agencies and child care institutions), group homes for children and shelter care facilities for youth to provide for non–expiring licenses and replacement of a process for applying for renewal of a license with a process for applying for continuance of a license, which were changes made in the program statutes by 1997 Wis. Act 27.

*Description of policies—– relevant existing policies, proposed new policies and policy alternatives considered:*

The current Budget Act, 1997 Wis. Act 27, amended several provisions in chs. 48 and 938, Stats., effective October 14, 1997, to provide that regular licenses issued by the Department of Health and Family Services for operation of family and group day care centers for children, child–placing agencies, nonsecure child care institutions, group homes for children and shelter care facilities for youth are to continue in effect indefinitely, for 2 years at a time, without expiration and need for renewal. A license must still be reviewed by the Department every 2 years on the basis of an application for continuance that the licensee submits to the Department, but it does not expire.

The Department will amend through one rulemaking order its licensing rules for the 7 types of facilities, agencies and programs:

- To remove references to expiration and renewal;
- To provide that a license will be valid until revoked or suspended;
- To require a licensee every 2 years to submit an application for continuance of the license to the Department in the form and containing information specified by the Department, for review by the Department, and to pay the license fee; and

■ To permit the Department to revoke a license if the licensee does not apply for continuance of it within 30 days after receipt of a warning from the Department that the licensee has missed the prescribed deadline for applying for continuance.

**Statutory authority:**

Sections 48.60 (1), 48.625 (1), 48.65 (1), 48.66 (5), 48.67 and 938.22 (7) (a), Stats., as affected by 1997 Wis. Act 27.

**Estimates of staff time and other resources needed to develop the rules:**

Estimated 50 hours of staff time from the Department's Bureau of Regulation and Licensing, Quality Assurance and Public Health and the Office of Legal Counsel to develop the rulemaking order.

In addition, client advocates and industry representatives will participate in the review of drafts of the rulemaking order.

## *Health and Family Services*

**Subject:**

Ch. HSS 51 – Relating to adoption of children with special needs.

**Description of policy issues:**

*Description of objective(s):*

To clarify that any adoption agency providing adoption services under contract with the Department must follow the same standards as the Department.

*Description of policies— relevant existing policies, proposed new policies and policy alternatives considered:*

Currently ch. HSS 51 applies to the Department and any child placing agency providing adoption services under contract with the Department. There has been a question whether or not a county agency falls within the definition of "child placing agency" since a county agency is not licensed as a child placing agency but derives authority directly from statutes [s. 48.57 (1) (e) and (hm), Stats.].

The proposed rule change would clarify that a county agency providing services under contract with the Department must follow the same standards as the Department. This will provide for consistency whether services are provided directly by the Department or by a licensed child placing agency or a county agency under contract with the Department. The only county agency with a current contract for adoption services is Milwaukee County and the current contract requires that county to comply with ch. HSS 51. Thus this rule change is consistent with that contract.

**Statutory authority:**

Sections 48.01 (1) (f), 48.48 (8) and 227.11(2), Stats.

**Estimates of staff time and other resources needed to develop the rules:**

Estimated hours of staff time – 4 hours.

## *Health and Family Services*

**Subject:**

S. HSS 73.11 – Relating to long-term support Community Options (COP) and Community Integration (CIP) programs:

- ☐ Criteria for determining when in-home services are not feasible for a person, thereby allowing use of COP, COP–Waiver or CIP II funds to pay for services in a community-based residential facility (CBRF).

**Description of policy issues:**

*Description of objective(s):*

Rules are mandated by 1997 Wis. Act 27 which amended ss. 46.27 (7) and (11) (c) and 46.277 (5) (d), Stats., to establish circumstances under which Community Options and certain MA Waiver funds may be used for services for persons not living in their own home.

*Description of policies— relevant existing policies, proposed new policies and policy alternatives considered:*

Under Community Options and related home- and community-based medical assistance (MA) waivers, funds are provided to implement care plans for eligible individuals to enable them to live in community-based settings rather than nursing homes despite disabilities and/or functional limitations.

Statutory language was added by 1997 Wis. Act 27 that limited the use of Community Options and certain MA Waiver funds (COP–W and CIP II) to persons living in their own homes, except under certain circumstances. These funds may be used for services to persons residing in CBRF's if additional conditions are met. One of those conditions is if the county long-term support agency "documents that the option of in-home services has been discussed with the person, thoroughly evaluated and found to be infeasible as determined by the county department or aging unit in accordance with rules promulgated by the Department of Health and Family Services." Of the five conditions, this is the only one that is required to be determined in accordance with rules.

The proposed rules will provide criteria by which county agencies will determine that home care is not possible for the program participant. Upon meeting the criteria in the rule, along with the other four criteria in the statutes, the county agency is permitted to use COP, COP–W or CIP II funds to pay for services in the CBRF.

**Statutory authority:**

Sections 46.27 (7) (cj) 3. b. and (11) (c) 5n. b. and 46.277 (5) (d) 1n. b., as created by 1997 Wis. Act 27.

**Estimates of staff time and other resources needed to develop the rules:**

DHFS staff time to convert proposed policy to rule: 80 hours

## *Health and Family Services*

**Subject:**

Chs. HSS 82, HFS 83, HSS 88, HFS 124, HFS 127, HSS 131, HFS 132, HSS 133 and HFS 134 – Relating to licenses, certifications and approvals issued by the Department of Health and Family Services to certain residential care facilities for adults, health care facilities and health care agencies.

**Description of policy issues:**

*Description of objective(s):*

To amend the Department's rules for licensing community-based residential facilities (CBRF's), hospices, nursing homes, home health agencies, facilities for the developmentally disabled (FDD's), rural medical centers and licensed adult family homes, for certifying certified adult family homes and for approving hospitals, to do the following:

- 1) Provide for non-expiring licenses and non-expiring certification;
- 2) Replace a process for applying for renewal of a license or certification with a requirement that the licensee or certificate holder submit an annual or biennial report to the Department in the form and containing the information that the Department requires; and
- 3) In regard to hospitals, for which there has not been a requirement in statute or rule for renewal of an approval, add a requirement that the approval holder submit an annual report to the Department in the form and containing the information that the Department requires.

These are changes made in the program statutes by 1997 Wis. Act 27.

*Description of policies—relevant existing policies, proposed new policies and policy alternatives considered:*

The current Budget Act, 1997 Wis. Act 27, amended several provisions in ch. 50, Stats., effective October 14, 1997, to provide that regular licenses issued by the Department of Health and Family Services for operation of community-based residential facilities (CBRF's) for adults, hospice programs, nursing homes, home health agencies, facilities for the developmentally disabled (FDD's), rural medical centers and licensed adult family homes, and certification issued by the Department for certified adult family homes, are to remain in effect indefinitely, unless suspended or revoked, instead of being subject to renewal every year or every 2 years.

The Department will amend through one rulemaking order its licensing, certification and approval rules for the 9 types of facilities and agencies:

- To remove references to expiration and renewal;
- To provide that a license, certification or approval will be valid until revoked or suspended;
- To require a licensee, certificate holder or approval holder to submit a report to the Department every 12 months (nursing home, FDD, certified adult family home, home health agency, hospital, hospice) or 24 months (CBRF, rural medical center, licensed adult family home) in the form and containing information specified by the Department, and to pay the license, certification or approval fee; and
- To permit the Department to revoke a license, certification or approval if the licensee, certificate holder or approval holder does not submit the required complete report within 60 days after the report date established by the Department.

**Statutory authority:**

Sections 50.02, 50.03 (4) (c), 50.032 (2) and (2r), 50.033 (2) and (2m), 50.355, 50.36, 50.49 (2) and (6), 50.51 (2), 50.52 (4), 50.535, 50.93 (2) and (3m) and 50.95, Stats., as affected by 1997 Wis. Act 27.

**Estimates of staff time and other resources needed to develop the rules:**

Estimated 70 hours of staff time from the Department's Bureau of Quality Assurance and Office of Legal Counsel to develop the rulemaking order.

In addition, client advocates and industry representatives will participate in the review of drafts of the rulemaking order.

## ***Natural Resources***

**Subject:**

Ch. NR 7 – Relating to the creation of rules to determine whether a Recreational Boating Facilities project is of statewide or regional significance.

**Description of policy issues:**

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

Currently, the Department may cost-share with an eligible sponsor, with the approval of the Wisconsin Waterways Commission, at a rate of up to 50% of a Recreational Boating Facilities project. In addition, the Department may provide an additional 10% cost-sharing if:

- 1) The sponsor conducts an approved boating safety enforcement and education program; and
- 2) The Commission approves.

The first of the proposed changes would create a rule which determines whether a project is of statewide or regional significance. If the project were determined to be of statewide or regional significance, and the Commission approved, the project cost-share rate could be increased from 50% to 80%.

Currently, the Department may allow the substantiated value of donated materials, equipment services or labor to be used as a part of the sponsor's share of the project. The second rule change would clarify that the new statutory provision allowing for in-kind contributions as part of the local cost-share is contained in the existing donation policy in the rule.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Two legislative changes contained in 1997 Wis. Act 27, the biennial budget bill, require the proposed rules. The bill directs the Department to promulgate rules to determine whether a project is of statewide or regional significance. The bill also introduces in-kind costs as an eligible part of the local cost-share of a project. Because of the confusion that sometimes exists with the definition of this term, and the presence of an existing donation policy in code, in-kind will be given the same operational meaning as donations.

This rule does not represent an opportunity for pollution prevention and/or waste minimization. This rule only deals with an evaluation of a project for additional cost-sharing funds.

**Statutory authority for the rule:**

Section 30.92, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 33 hours. One hearing is proposed to be held in mid–August at a location in Central Wisconsin.

## ***Natural Resources***

**Subject:**

Ch. NR 300 – Relating to a system for expedited decisionmaking on proposed physical alterations to lakes, streams and wetlands.

**Description of policy issues:**

Ch. NR 300 is repealed and recreated to set up a system for expedited decisionmaking on proposed physical alterations to lakes, streams and wetlands. It establishes standard timeframes and sets supplemental fees that will support staff positions dedicated to delivering decisions faster than the standard timeframes. If expedited timeframes are exceeded, the supplemental fee will be refunded. The rule specifies a process for requesting an expedited decision.

In addition, the new ch. NR 300 would increase base fees for permit application review from \$30 to \$50 for simple activities, from \$100 to \$300 for normal activities, and from \$300 to \$500 for complex activities.

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

A 1994 study of waterway protection funding mechanisms identified the following issues surrounding these fees:

- 1) Proportion of program costs to be covered by applicants through fees, in contrast to paid for by the general public for whom the waters are protected;
- 2) Amount of fees in relation to forfeitures for violations. The proportion of program costs to be paid with fee revenue was essentially set in the 1995 and 1997 budgets, which authorized four and three positions respectively, to be supported with fee revenues. The proposed base fee increases keep base fees comparable to the forfeiture amounts.

Affected groups include builders and developers, municipalities and waterfront property owners.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Extreme workload and high vacancy rates have resulted in delays in decisionmaking on land development and public infrastructure projects. The 1997 budget bill provided the authority and direction for an expedited decision review program.

Currently, Department specialists review permit applications on a first in – first out basis. A few applications per year are expedited to remedy ongoing environmental damage, address public infrastructure needs, or meet similarly exceptional needs. Under the new ch. NR 300, additional resources, including three new staff positions authorized in the budget, supported by fees, will be dedicated solely to expedited review.

The base fees, as set in 1995, do not generate sufficient revenue to fully support the existing fee-funded positions. Analysis of fee collection indicates several reasons for the deficit, including initial difficulty in predicting numbers of multiple permit projects (for which only a single fee is charged) and numbers of fee-exempt projects (those receiving federal, state or local funding).

This action represents an opportunity for pollution prevention and/or waste minimization.

**Statutory authority for the rule:**

Sections 30.28 (2m) and (2r), 31.39 (2m) and (2r), 281.22 (2d) and (2m), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 242 hours. Two hearings are proposed to be held on May 26 and 27, 1998 at Woodruff and Waukesha.

***Social Workers, Marriage & Family  
Therapists and Professional Counselors  
Examining Board***

**Subject:**

SFC Code – Relating to applications, other human services degree programs, and supervised social work internships and social work employment under s. 457.09, Stats.

**Description of policy issues:**

*Objective of the rule:*

To establish, modify or clarify procedures and requirements for application for a social worker training certificate, criteria for approval of other human services degree programs for eligibility for a social worker training certificate, and procedures relating to qualification and approval of social work courses, supervised social work internships and supervised social work employment for purposes of determining fulfillment of social worker training certificate requirements under s. 457.09, Stats.

*Policy analysis:*

Section 457.09, Stats., enacted in 1995, created a social worker training certificate, the intent of which was to enable non-social work educated persons to pursue “social work degree equivalency” and become certified social workers. Under s. 457.09, Stats., a person with certain non-social work bachelor degrees from regionally accredited colleges or universities may apply for and be granted a social worker training certificate, authorizing the person to use the title “social worker” and practice social work thereunder, for a period of up to 2 years, while the person also fulfills 4 additional specified college level social work courses and either a supervised human services internship or supervised one year social work employment. Upon fulfillment of the coursework and experience requirements, the person is eligible for taking the examinations required for permanent social worker certification. Section 457.09, Stats., provides that while the person holds a social worker training certificate, the person is a social worker certified under ch. 457, Stats., for purposes of any law governing social workers certified under ch. 457, Stats.

Section 457.09, Stats., provides that a person with a bachelor’s degree from an accredited college or university in psychology, sociology, criminal justice or *another human service program approved by the Social Worker Section* is eligible to apply for a social worker training certificate.

Section 457.09 (4m), Stats., provides that the social worker section shall determine whether a course, internship or employment satisfies the requirements under sub. (4) and whether a social worker training certificate holder has attained social worker degree equivalency. The statute also provides that the social worker section shall apply qualifying coursework or internships completed, or employment held, as part of the program leading to the degree that the training certificate holder specified to satisfy the degree eligibility requirement for originally obtaining the social worker training certificate.

In December 1996, the Board established s. SFC 3.13, implementing s. 457.09, Stats. Based on its experience in administering the social worker training certificate program, the social worker section intends to request the Board to amend s. SFC 3.13, and other sections of chapters SFC 1 to 6, as appropriate, to incorporate changes and criteria which have emerged as necessary and appropriate for administering s. 457.09, Stats. The changes and criteria to be considered relate to application procedures and requirements, approval of other human services degree programs and qualification and approval of supervised social work internships and social work employment under s. 457.09, Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 457.09, Stats.

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

40 hours.

***Technical College System***

**Subject:**

TCS Code – Relating to faculty development grants.

**Description of policy issues:**

*Description of the objective of the rule:*

The rule will establish criteria for awarding grants to local technical college district boards and detail the application instructions and procedures that the technical college district boards must follow when submitting grant proposals. The rule will include specific conditions under which a technical college district may use the funds that have been awarded to it by the Technical College System Board and also provides for mid- and end-of-year reporting requirements for each award.

*Description of existing relevant policies and new policies to be included in the rule and analysis of policy alternatives:*

In the 1997–99 state budget, 1997 Wis. Act 27, created a new categorical aid program in which technical college district boards would be eligible to receive a grant to partially fund the establishment of faculty development programs that promote three major areas required by law:

- ✦ Instructor awareness of, and expertise in, a wide variety of newly-emerging technologies;
- ✦ Integration of learning technologies in curriculum and instruction; and
- ✦ Use of instructional methods that involve emerging technologies.

When granting an award, the Technical College System Board will consider a number of factors, including the extent to which a district’s program promotes the use and integration of technology in curriculum development and instructional delivery and the extent to which a district conducts its program through in-service activities. Other conditions related to the granting of awards under a faculty development grant program include a minimum of a 50% matching fund, excluding in-kind matching funds, for each award; and a limit set by the Technical College System Board on the amount of funds that may be used to purchase or lease equipment or to purchase supplies. Additionally, no award under this program may be used for administrative or indirect costs.



Section 38.33, Stats., created this new categorical aid program and appropriated a sum certain in each of the fiscal years of the biennium. There are no alternatives to this new policy. The law mandates that the Technical College System Board award funds, in the form of grants, to eligible technical college districts, specifically for faculty development.

**Statutory authority for the rule:**

Section 38.33, Stats., mandates that the Technical College System Board award grants to technical college district boards to establish faculty development programs.

Section 38.33 (2), Stats., mandates that the Technical College System Board promulgate administrative rules to implement and administer faculty development grants, which include establishing criteria for awarding the grants.

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

Estimated time to be spent by state employees: 80 hours. No other resources are necessary.

***Transportation***

**Subject:**

Ch. Trans 197 – Relating to the collection of fees under s. 344.42, Stats.

**Description of policy issues:**

*Description of the objective of the rule:*

This rule-making creates ch. Trans 197. It will establish procedures for the collection of fees under s. 344.42, Stats., as created by 1997 Wis. Act 27. That legislation requires the Department to collect a \$1.50 fee per certification filed by an insurance company in paper form if the insurer files more than 1000 certifications per year. No fee is charged on certifications that are filed electronically.

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

Section 344.42, Stats., as created by 1997 Wis. Act 27, established a new program that requires the Department to assess a \$1.50 per certification fee to any insurance company that files more than 1000 certifications in paper form with the Department in a year. This rule-making will establish the manner and form of electronic certification filing, provide for periodic billing of insurers who file more than 1000 certifications and do not do so electronically, and provide incentives for insurers to pay such bills in a timely fashion.

**Statutory authority for the rule:**

Section 344.42, Stats., as created by 1997 Wis. Act 27.

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

15 hours.

---



---

## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

---



---

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

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

#### **Commerce**

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

Notice is hereby given that on March 30, 1998 the Department of Commerce submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. Comm 87.

##### ***Analysis***

The subject matter of the proposed rule relates to private onsite wastewater treatment system (POWTS) replacement and rehabilitation grant program (Wisconsin Fund).

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

A public hearing is required and two hearings will be held, one hearing at Wausau on April 27, 1998 and one hearing at Madison on May 6, 1998. The agency unit responsible for the promulgation of this proposed rule is the Department of Commerce.

##### ***Contact Person***

If you have any questions, you may contact:

Margaret Slusser  
Program Development Bureau  
Telephone (608) 261-6546 or  
(608) 264-8777 (TTY)

#### **Employe Trust Funds**

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

Notice is hereby given that on March 26, 1998 the Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order creating ch. ETF 52.

##### ***Analysis***

The subject matter of the proposed rule relates to administration of the duty disability benefit program under s. 40.65, Stats.

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

A public hearing is scheduled for May 11, 1998.

##### ***Contact Person***

If you have any questions, you may contact:

Peg Narloch  
Insurance Services Division  
Telephone (608) 267-9035

#### **Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board**

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

On April 1, 1998, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### ***Analysis***

*Statutory authority:* ss. 15.08 (5) (b), 227.11 (2), 457.03 (3) and 457.22, Stats.

The proposed rule-making order relates to biennial continuing education requirements for social worker certification renewal.

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

A public hearing is required.

##### ***Contact Person***

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266-0495

---



---

## NOTICE SECTION

---



---

### Notice of Hearing

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

#### **Emergency Rules related to Fish Farms**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a department emergency rule related to fish farms and live fish and fish egg imports (chs. ATCP 10 and 11, Wis. Adm. Code). The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the rule. An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by April 19, 1998, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708–8911, or by calling 608–224–4883. TTY users call 608–224–5058.

#### **Hearing Information**

**April 27, 1998**  
**Monday**  
**commencing at 5:00 p.m.**

**Dept. of Agriculture, Trade  
 and Consumer Protection  
 Board Room  
 2811 Agriculture Drive  
 Madison, WI**

**Handicapped accessible**

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) & (5)

Statute interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

- Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.
- Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.
- Requiring fish farm operators and fish importers to keep records.

#### **Fish Farms**

##### Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

##### Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

##### Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:

- \*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

- \*Allows public fishing, for a fee, for fish hatched at that fish farm.

- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

- \*Allows public fishing at the fish farm for a fee.

- \*Sells or trades fish, from the fish farm, to any person.

- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

- \*Sell minnows to any person

- \*Sell fish or fish eggs to a type A registrant.

- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- \*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

- \*The fish farm consists solely of ponds used to hold or grow fish.

- \*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

##### Registration Fees

This emergency rule establishes the following registration fees:

- Type A registration \$50.00

- Type B registration \$25.00

- Type C registration \$ 5.00

- Type D registration \$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

##### Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997,

DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.
- DNR informs DATCP that DNR has approved the facility.

#### Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.
- The date on which the operator received or delivered the fish or fish eggs.
- The location at which the operator received or delivered the fish or fish eggs.
- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

#### Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.
- Violating the terms of the registration
- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.
- Physically assaulting a DATCP employee performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.
- Paying registration fees with a worthless check.

### **Fish Imports**

#### Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.
- Selling them as bait, or for resale as bait.
- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

#### Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.
- The number of each fish farm registration certificate, if any, held by the importer.
- Each species of fish or fish eggs which the importer is authorized to import under the permit.
- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.
- The purpose for which the fish or fish eggs are being imported.

- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.

- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

#### Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

#### Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employe while the employe is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

#### Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

#### Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine

a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

## **Fiscal Estimate**

The complete fiscal note is available on request.

For purposes of this fiscal estimate, it is estimated that 2,574 fish farms will register with the department during 1998.

Revenue:

Per s.95.60, Stats., the department shall specify the fee for registration of fish farms. This proposal would establish a 1998 registration fee of \$50 for a Type A registration, \$25 for a Type B registration, and \$5 for a Type C registration and \$5 for a Type D registration. These fees are applicable as of January 1, 1998, for the calendar year 1998. Any private fish hatchery licensed by the Department of Natural Resources in 1997 would be eligible for renewal with the Department of Agriculture, Trade and Consumer Protection during 1998. Revenue for 1998 is estimated at \$23,900. Revenues from the fish farm registrations will be used to administer the fish farm program within the Division of Animal Health.

Expenses associated specifically with this rule follow:

Administrative expense will be incurred by the department with registering fish farms, issuing permits for the importation of live fish or fish eggs, investigatory and enforcement activities, veterinary services and in providing educational and technical assistance to the public by providing information and responding to questions on various aspects of the program, on statutory requirements related to fish farming and on aquaculture in general. Expenses for 1998 are estimated at \$74,000.

## **Initial Regulatory Flexibility Analysis**

### General Overview

This emergency rule establishes policies and procedures for the department of agriculture, trade and consumer protection to implement 1997 Wisconsin Act 27 which transferred the primary authority for regulating fish farms from the department of natural resources to the department of agriculture, trade and consumer protection.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in farming fish and importing live fish and fish eggs into Wisconsin.

### Fish Farm Registration

The statute requires that any person who operates a fish farm must annually register the fish farm with the department. This emergency rule identifies four categories of fish farms that must register and imposes annual registration fees, as an interim procedure for registering fish farms in 1998, as follows:

- A type A registration (\$50 annual fee) is required if the fish farm operator does any of the following:
  - \* Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.
  - \* Allows public fee fishing, for a fee, for fish hatched at that fish farm.
- A type B registration (\$25 annual fee) is required if the fish farm operator does any of the following and does not hold a type A registration:
  - \* Allows public fishing, for a fee, at the fish farm.
  - \* Sells or trades fish, from the fish farm, to any person.
- A type C registration (\$5 annual fee) authorizes the registrant to operate a fish farm. A type C registration does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:
  - \* Sell minnows to any person.
  - \* Sell fish to a type A registrant.

· A type D registration (\$5 annual fee) authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- \* The operator does not hatch fish, produce fish eggs or permit public fishing, for a fee, at the fish farm.
- \* The fish farm consists solely of ponds used to hold or grow fish.
- \* The operator holds a type A or B registration for another fish farm located on a nonadjacent parcel of land.

All private fish hatcheries previously licensed by the department of natural resources in 1997 are eligible for renewal by registering with the department of agriculture, trade and consumer protection in 1998. The department will deny an application from a previously licensed applicant if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources. In registering, fish farm operators will need to complete a form providing owner and custodian name and address and fish farm information such as the type and number of fish kept on the fish farm.

The rule requires fish farm operators to maintain records relating to all fish and fish eggs which the operator receives from or delivers to another person, including the names, addresses and fish farm registration numbers, if applicable, of the parties involved, the date and location of each transaction and the size, quantity and species of fish or fish eggs involved in each transaction.

About 2,300 fish farms scattered across Wisconsin will be affected by the fish farm requirements in this rule. These farms were previously licensed by the department of natural resources, by completing an annual license application form, paying an annual fee and submitting year end reports on business operations. Under the department of agriculture, trade and consumer protection, the annual fees for 1998 will remain the same as the 1997 department of natural resources fees. While this rule requires fish farm operators to maintain records of transactions, this requirement is less burdensome to the operators than the department of natural resources requirement of annual reporting.

### Fish Imports

The statute requires any person who brings live fish or fish eggs into this state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm to have an annual permit issued by the department of agriculture, trade and consumer protection. The permit may authorize multiple import shipments. A copy of the permit must accompany every import shipment. In addition, imports on non-native species must also be approved by the department of natural resources. There is no fee for an import permit.

In requesting an import permit, a person will need to complete a form providing name and address information of the requester, fish farm registration number, if applicable, the size, quantity and species of fish or fish eggs to be imported, source location information and destination information.

The statute also requires any person bringing fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Varden, whitefish, cisco or inconnu) into this state for the purpose of introduction into the waters of the state to have those fish or fish eggs certified. In requesting an import permit, a person will need to provide a health certificate for each source from which the requester proposes to import fish or fish eggs of the family salmonidae, certifying the source to be free of 5 specific diseases.

The rule requires a person importing live fish or fish eggs to maintain records relating to each import shipment, including the import source, the import destination, and the size, quantity and species of fish or fish eggs imported.

Under the department of natural resources a person importing live fish and fish eggs had to acquire a permit and for fish or fish eggs in the family salmonidae, had to provide health certification for 5 specific diseases. The department of agriculture, trade and consumer protection, during 1998, is continuing the same practice. Therefore since these rule requirements were already in place, this rule provision does not add costs for the business person. The requirement to maintain import records will add minimal costs since these records are standard business operational records.

Notice of the proposed rule has been delivered to the department of development, as required by s. 227.114(5), Stats.

### **Copies of Rule**

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

Animal Health Division  
Wis. Dept. of Agriculture, Trade  
& Consumer Protection  
P. O. Box 8911  
Madison, WI 53708-8911

## **Notice of Hearing**

### *Agriculture, Trade and Consumer Protection*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection will hold a public hearing on an emergency rule related to the use of herbicides containing clomazone, sold under the product name, "Command".

A "plain language" analysis and the emergency rule are set forth below. The emergency rule took effect on **March 14, 1998**, and will remain in effect until **August 11, 1998**.

### **Hearing Information**

The public hearing will be held:

**April 28, 1998**  
**Tuesday**  
**1:00 p.m. to**  
**5:00 p.m.**

**Board Room**  
**Prairie Oak State Office Bldg.**  
**DATCP**  
**2811 Agriculture Dr.**  
**MADISON, WI**

### **Written Comments**

The public is invited to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until **May 15, 1998** to receive additional written comments.

An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **April 22, 1998** either by writing to Karen Fenster, Agricultural Resource Management Division, P.O. Box 8911, Madison, WI 53708-8911 or by calling the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

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

*Statutory authority:* ss. 93.07(1), 94.69 and 227.24

*Statutes interpreted:* ss. 94.67 to 94.71

This rule restricts the sale and use of pesticides containing the active ingredient clomazone. Clomazone is the pesticide active ingredient contained in "Command" herbicide, manufactured and distributed by FMC Corporation. "Command" is registered for use on soybeans, cotton, tobacco, peppers, pumpkins, and peas. It is also specially registered in Wisconsin for cabbage and cucumbers.

#### Background

Clomazone is volatile and can move from applications to non-target plants hundreds of feet from the application site. Clomazone inhibits the formation of chlorophyll, causing non-target plants to turn yellow or white. While the damage is usually temporary, it has resulted in many complaints to the Department.

In 1997, after a new formulation of "Command" was widely used in Wisconsin, the Department received 49 complaints of movement to non-target plants. These complaints comprised 20% of all pesticide complaints received by the Department in 1997. Department field staff report that these complaints represented only a fraction of the total number of "Command" incidents that occurred.

The damage to non-target plants was also more severe and long-lasting than in prior years.

#### Emergency Rule

The Department is adopting this emergency rule to reduce non-target damage associated with the use of "Command." The Department believes that regulation can prevent non-target damage without halting the use of this highly-effective herbicide.

Soybeans are the primary crop on which "Command" is used. The herbicide is applied in the spring of the year when soybeans are being planted. The Department is adopting this rule as an emergency rule under s. 227.24, Stats., so that the rule will be in place prior to the 1998 soybean planting season. This would not be possible using normal rulemaking procedures. Early implementation of this rule is necessary to protect the public peace and welfare.

#### General Restrictions

Under this rule:

♣ Individuals who purchase or use "Command" must be certified by the Department as commercial or private applicators. They must also be trained by the product manufacturer (registrant).

♣ An applicator must inspect each application site before applying the herbicide.

♣ An applicator may not apply the herbicide to fields where more than half of the surface area is classified, on soil maps published by the United States Department of Agriculture, as being "poorly drained" or "very poorly drained."

#### Microencapsulated Formulations: Use Restrictions

According to federally-registered product labels, "Command" herbicide in microencapsulated formulations must be applied to the land surface and may not be incorporated into the soil. Under this rule, no microencapsulated formulation may be applied at a rate exceeding 0.75 pounds of active ingredient per acre.

Current labels prohibit surface applications within 1,200 feet of "towns and housing developments, commercial fruit/nut or vegetable production, commercial greenhouses or nurseries," but do not restrict applications near individual residences. This rule prohibits surface applications within 600 feet of any residential property (including residential structures, lawns, gardens and ornamental plantings) without the occupant's written permission.

#### Emulsifiable Concentrate Formulations: Use Restrictions

According to federally-approved product labels, "Command" herbicide in emulsifiable concentrate formulation must be incorporated into the soil to a depth of at least one inch within 8 hours of application. This rule includes the same requirement. It also prohibits soil-incorporated applications to overly-wet soil, and prohibits the use of a drill and drag to incorporate the herbicide into the soil. Under this rule, both the person making the herbicide application and the person tilling the land are responsible for ensuring that the herbicide is properly incorporated into the soil.

Current labels prohibit soil-incorporated applications within 1,000 feet of "towns and housing developments, commercial fruit/nut or vegetable production, commercial greenhouses or nurseries," but do not restrict soil-incorporated applications near individual residences. Under this rule, the herbicide must first be incorporated into the soil in those parts of the application site that are closest to residences or other sensitive areas. This rule does not prohibit soil-incorporated applications near individual residences.

### **Finding of Emergency**

► Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

► Clomazone is volatile. Off-target movement from clomazone applications can affect non-target plants located hundreds of feet from the application site. Off-target movement from clomazone applications can damage non-target plants by inhibiting the formation of chlorophyll in those plants.

► Off–target movement has occurred in many clomazone applications to date. Non–target plants exposed to off–target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long–lasting than in prior years. In 1997, the Department received 49 complaints of off–target movement to non–target plants. These complaints comprised 20% of all pesticide complaints received by the Department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off–target movement incidents that occurred. Off–target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

► The Department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non–target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off–target movement and nontarget damage during the 1998 planting and growing season.

► Clomazone herbicides are commonly applied during spring planting. The Department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The Department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

## **Text of Emergency Rulemaking Order**

SECTION 1. Chapter ATPC 36 is created to read:

### **Chapter ATPC 36 CLOMAZONE PESTICIDES**

**ATPC 36.01 Definitions.** In this chapter:

(1) “Clomazone” means 2–(2–Chlorophenyl)methyl–4,4–dimethyl–3–isoxazolidinone.

**Note:** Clomazone is commonly known as “Command” herbicide.

(2) “Clomazone pesticide” means any pesticide containing clomazone.

(3) “Occupant” means an adult individual who owns or resides at a residential property.

(4) “Residential property” means a dwelling unit in which one or more individuals currently reside on a permanent or temporary basis. “Residential property” includes lawns, gardens and ornamental plantings pertaining to a dwelling unit.

**ATPC 36.02 Use restrictions; general.** (1) **APPLICATOR CERTIFIED AND TRAINED.** No individual may apply a clomazone pesticide unless that individual meets all of the following requirements:

(a) The individual has completed a training program, provided by the pesticide registrant and approved by the department, which trains the individual to use clomazone pesticides properly.

(b) The individual is one of the following:

1. A commercial applicator licensed under s. 94.704, Stats., and certified under s. 94.705, Stats., in the appropriate certification category.

2. A private applicator certified under s. 94.705, Stats.

(2) **INSPECTING THE APPLICATION SITE.** Before any person applies a clomazone pesticide to any site, that person shall inspect the site and plan the application to minimize the risk of pesticide movement off the target application site. No person may apply a clomazone pesticide to a site where there is a significant potential for off–target movement to occur.

**Note:** Cold air movements from target application sites have a tendency to transport clomazone to non–target areas at lower elevations.

(3) **PROHIBITED SITES.** Clomazone may not be applied to a site if more than 1/2 of the site is classified, on a soil survey published by the United States department of agriculture, as being poorly drained or very poorly drained.

**Note:** Clomazone pesticides have shown a greater propensity to move off target in wet, poorly drained areas.

**ATPC 36.03 Micro encapsulated formulations; use restrictions.** (1) **MAXIMUM APPLICATION RATE.** No micro encapsulated formulation of a clomazone pesticide may be applied at a rate exceeding 0.75 pounds of active ingredient per acre.

(2) **APPLICATION NEAR RESIDENCE.** No person may apply any micro encapsulated formulation of a clomazone pesticide within 600 feet of a residential property unless the occupant of that residential property authorizes the application in writing after receiving notice that clomazone may move off target to the residential property and may damage plants there. This subsection does not apply to a residential property owned or occupied by the person making or contracting for the clomazone pesticide application.

**ATPC 36.04 Emulsifiable concentrate formulations; use restrictions.** (1) **SOIL INCORPORATION.** A clomazone pesticide in emulsifiable concentrate formulation shall be incorporated into the soil, to a depth of at least one inch, within 8 hours after it is applied. The size of the treated site shall be such that the pesticide can be effectively incorporated into the soil within 8 hours after it is applied. The soil shall be tilled so that it is mixed uniformly to the depth of incorporation. The pesticide shall first be incorporated into the soil in those parts of the application site that are closest to residences or other sensitive areas. The pesticide may not be incorporated into the soil by means of a soybean drill and drag.

**Note:** The federally registered pesticide label for the emulsifiable concentrate formulation of clomazone identifies tillage implements that can be used to incorporate the pesticide into the soil.

(2) **WET SOIL.** No clomazone pesticide in emulsifiable concentrate formulation may be applied to soil that is too wet, either at the soil surface or at the depth of incorporation, to permit effective soil incorporation. Soil is too wet if it forms a cast when squeezed in the hand, or if it forms a wire when rolled between the hands.

(3) **RESPONSIBILITY.** The following persons are individually and jointly responsible for ensuring that clomazone pesticide in emulsifiable concentrate formulation is incorporated into the soil according to this section:

(a) The individual who makes the pesticide application, and that individual’s employer if any.

(b) The person who owns or controls the land on which the pesticide is applied, and any individual assigned on behalf of that person to incorporate the pesticide into the soil.

**ATPC 36.05 Sale of clomazone pesticides.** After May 15, 1998, no person may sell any clomazone pesticide to any individual, for application by that individual, unless the purchaser meets all of the requirements under s. ATPC 36.02 (1).

## **Effective Date**

The emergency rules took effect upon publication on **March 14, 1998** and shall remain in effect for 150 days as provided in s. 227.24 (1) (c), Stats.

## **Fiscal Estimate**

The Department does not expect this emergency rule to have any fiscal effect.

## **Copies of Rule and Contact Person**

A copy of the emergency rule and fiscal estimate can be obtained at no charge by making a written request to:

Karen Fenster, (608) 224–4542  
Agricultural Resource Mgmt. Division, DATCP  
P.O. Box 8911  
Madison, WI 53708–8911

## Initial Regulatory Flexibility Analysis

A regulatory flexibility analysis as required under s. 227.114, Stats., will be prepared and published as part of a proposed permanent rule to create ch. ATCP 36, Wis. Adm. Code.

## Notice of Hearings

### Commerce

#### (Plumbing, Chs. Comm 82–87)

Notice is hereby given that pursuant to ss. 227.14 (4m) and 227.17, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules affecting ch. Comm 87, relating to private onsite wastewater treatment system (POWTS) replacement and rehabilitation grant program (Wisconsin Fund).

## Hearing Information

The public hearings will be held as follows:

<b>April 27, 1998</b> <b>Monday</b> 10:30 a.m. – 12:30 p.m. (noon)	<b>Council Chambers</b> <b>Wausau City Hall</b> 407 Grant St. WAUSAU, WI
<b>May 6, 1998</b> <b>Wednesday</b> 10:30 a.m. – 12:00 p.m. (noon)	<b>Room 3B</b> <b>WHEDA Bldg.</b> 201 W. Washington Ave. MADISON, WI

*These hearings are held in accessible facilities. If you have special needs or circumstances that 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

*Statutory authority:* ss. 101.02 (1), 101.63 (1), 101.73 (2) and 145.02 (3) and (4)

*Statutes interpreted:* ss. 145.02 (4), 145.045, 145.13, 145.135, 145.19, 145.20, 145.245 (7) (c) and (e), and 145.245 (8) (e)

Under s. 145.02, Stats., the Department of Commerce (Commerce) has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81–87.

Under s. 145.245 (7) (c), Stats., Commerce shall revise the grant awards tables when it determines that 60% of current costs of private onsite wastewater treatment system rehabilitation or replacement exceeds the amount in the grant award tables by more than 10%, except that the Department may not revise the grant award tables more often than once every two years. Since these tables were last revised July 1, 1991, current format and updated grant award amounts have been incorporated into this rule revision.

Under s. 145.245 (7) (e), Stats., Commerce shall promulgate rules that shall specify how the Department will select, monitor and allocate the state share for experimental private onsite wastewater treatment systems (POWTS) that the Department funds under this chapter. Up to 10% of the annual funds shall be available for allocation for experimental private onsite wastewater treatment systems, including monitoring of these systems. The rule revision includes sections relating to application and eligibility for grants awards for experimental systems.

The rule revision also includes incorporation of Department authority granted in the Wisconsin State Statutes as created in various 1995 and 1997 Wisconsin Acts, including the creation of the Department of Commerce.

The chapter is being repealed and recreated due to the many amendments which relate to form, style, placement, table format, clarity and plain language of the current rules which have not been revised, except for slight corrections, since March 1992. The chapter title is being changed to reflect current terminology for sewage systems.

## Written Comments

Interested people are invited to appear at the hearings 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 **May 20, 1998**, to permit submittal of written comments from people who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to:

ATTN: Ms. Jean M. MacCubbin  
Program Development Bureau  
Department of Commerce  
P.O. Box 2689  
Madison, WI 53701-2689

## Copies of Rules and Contact Person

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

Margaret Slusser, (608) 261-6546 or  
(608) 264-8777 (TTY)  
Program Development Bureau  
Dept. of Commerce  
P.O. Box 2689  
Madison, WI 53701

Copies will also be available at the public hearings.

## Fiscal Estimate

There are no additional duties or responsibilities for those counties that currently participate in the grant fund program. The rule revisions would require the Department to track, review and monitor annual applications relating to the monitoring of experimental systems; the current staffing levels are expected to be adequate to perform this additional workload.

## Initial Regulatory Flexibility Analysis

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

Small businesses that test, maintain, design and install private onsite wastewater treatment systems (POWTS) will be minimally affected by this rule in that detailed cost accounting may be required for individual applicants to submit to the participating governmental unit or the Department for reimbursement.

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

See notation in #1 above.

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

No changes in the professional skills are required for compliance.

## Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant



impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

ATTN: Ms. Margaret Slusser  
Telephone (608) 261–6546 or  
TTY (608) 264–8777  
Safety & Buildings Division  
Dept. of Commerce  
P.O. Box 2689  
Madison, WI 53701–2689

Written comments will be accepted until **May 20, 1998**.

## Notice of Hearing

### State Elections Board

Notice is hereby given that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 11.21 (2), (9) and (16), 11.31 (6) and 20.510 (1) (i), Stats., and according to the procedure set forth in s. 227.17, Stats., the State of Wisconsin Elections Board will hold a public hearing on the adoption of the rule proposed in this notice at the time and place indicated below to consider creation of s. EIBd 6.05, relating to filing campaign finance reports in electronic format.

### Hearing Information

May 13, 1998  
Wednesday  
9:30 a.m.

G.A.R. Memorial Conference Rm.  
Fourth Floor  
Wis. State Capitol  
MADISON, WI

### Analysis

*Statutory authority:* ss. 5.05 (1) (f) and 227.11 (2) (a)

*Statutes interpreted:* ss. 11.21 (2), (9), (16), 11.31 (6) and 20.510 (1) (i)

This rule interprets ss. 11.21 (2), (9) and (16), 11.31 (6) and 20.510 (1) (i), Stats. The rule provides standards for those registrants who are required to file campaign finance reports in electronic format and those registrants who may elect to file campaign finance reports in electronic format. The rule requires the registrant to use the Elections Board's software or use software that is compatible with the Board's campaign finance data base. The rule further requires registrants who file electronically to also file a hard copy of their reports.

### Text of Rule

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates s. EIBd 6.05, interpreting ss. 11.21 (2), (9) and (16), 11.31 (6) and 20.510 (1) (i), Stats., as follows:

**SECTION 1.** EIBd 6.05 is created to read:

**EIBd 6.05 Filing campaign finance reports in electronic format.** (1) DEFINITIONS. As used in this rule:

(a) "Campaign period" for a candidate, personal campaign committee or support committee has the same meaning as provided in s. 11.26 (17), Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.

(b) "Contribution" has the same meaning as provided in s. 11.01 (6), Stats.

(c) "Electronic format" means computer diskette, modem, or other means of electronic transfer, using either software designated by the board or software that meets the board's specifications for a standard file format.

(d) "Filing officer" means the state elections board.

(e) "Registrant" has the same meaning as provided in s. 11.01 (18m), Stats.

(f) "Report" means any filing required by ss. 11.05, 11.06, 11.12 (5) and (6), 11.20 and 11.23, Stats.

(2) Beginning with any campaign finance report filed on or after January 1, 1999, covering activity on or after January 1, 1999, any registrant who files with the state elections board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by Chapter 11, Stats., in an electronic format.

(3) Beginning with the Fall 1998 preprimary report, covering activity from July 1, 1998, through the close of the reporting period, any registrant not required to file reports electronically may elect to file any campaign finance report in an electronic format.

(4) Any campaign finance report filed in an electronic format shall be transmitted in time to be received by the filing officer no later than the time provided by law for filing the report.

(5) If a registrant uses its own software to file electronically, it must submit a trial report to the board before the end of the report period to determine if the software can generate a report in a format that is compatible with the board's campaign finance data base.

(6) Each registrant who files a report in an electronic format shall file, with the filing officer, a paper copy of the report that complies with the format set forth in Forms EB–2, EB–3, EB–7, EB–10, EB–12 or EB–24. The paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report.

### Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

### Fiscal Estimate

There is no fiscal effect.

### Contact Person

George A. Dunst, Legal Counsel  
Telephone (608) 266–0136

## Notice of Hearing

### Employe Trust Funds

In accord with s. 227.16 (1), Stats., the Wisconsin Department of Employee Trust Funds will hold a public hearing to discuss a proposed rule, which creates ch. ETF 52, Wis. Adm. Code, relating to the administration of the duty disability benefit program under s. 40.65, Stats.

### Hearing Information

May 11, 1998  
Monday  
1:00 p.m.

Board Room, 4th Floor  
Wis. Public Broadcasting Bldg.  
3319 W. Beltline Hwy.  
MADISON, WI

### Written Comments

The record will be held open until **4:30 p.m. on Friday, May 15, 1998**, for the receipt of any written comments from people unable to attend the public hearing. Written comments should be addressed to:

Peg Narloch, Disability Programs Policy Specialist  
Disability Programs Bureau  
Dept. of Employee Trust Funds  
P.O. Box 7931  
Madison, WI 53707–7931

## Contact Person

Peg Narloch, Disability Programs Policy Specialist  
 Telephone: (608) 267-9035  
 FAX: (608) 267-0633  
 Disability Programs Bureau  
 Department of Employe Trust Funds  
 P.O. Box 7931  
 Madison, Wisconsin, 53707-7931

## Copies of Rule

Copies of the proposed rule are available free upon request by calling or writing Peg Narloch at the address or phone number previously given.

## Analysis Prepared by the Dept. of Employe Trust Funds

*Authority for rule:* ss. 40.03 (2) (i) and 227.11 (2)

*Statutes interpreted:* ss. 40.03 (1) (i) and 40.65

The proposed rule codifies policies and procedures of the Department of Employe Trust Funds in administering the duty disability benefit program established by s. 40.65, Stats. The proposed rule codifies the ruling of the Wisconsin Supreme Court in *Coutts v. Wisconsin Retirement Bd.*, 209 Wis. 2d 655; 562 N.W.2d 917 (1997) reviewing a decision of the Wisconsin Court of Appeals reported at 201 Wis. 2d 178, 547 N.W.2d 821 (Ct. App. 1996). The Supreme Court determined that "payable" as used in s. 40.65 (5) (b) 3., Stats., and (by implication) throughout s. 40.65 (5) (b), Stats., refers to sums presently owing or to be remitted in the future. The DETF had previously reduced duty disability benefits by worker's compensation benefits received, regardless of when received, provided they were not unrelated to the disability for which duty disability benefits were being paid. The rule also changes DETF's previous method of determining the effective date of duty disability benefits, retroactive to the first date on which the individual met all the qualifications under s. 40.65 (4), Stats. The Court of Appeals and Supreme Court ruled in the *Coutts* decision that duty disability benefits are not retroactive and that a person who waits to apply gives up the opportunity to receive those benefits in the interim. The proposed rule sets the effective date at the later of the date on which the individual becomes disabled within the meaning of s. 40.65 (4), Stats., or the date on which the individual's application for duty disability benefits is received. The *Coutts* decision also ruled that another DETF practice must be changed. DETF had previously carried over worker's compensation payments until the entire worker's compensation benefit had been used to reduce duty disability benefits. The Supreme Court affirmed the Court of Appeals decision, which said:

... if the combined amount of other earnings or benefits exceeds the monthly duty disability benefit payment, that participant will not receive a monthly duty disability payment and the WRB may not carry forward or "bank" the excess amount and deduct it from the participant's next month's duty disability benefit payment. That would be contrary to the statute because the statute only permits reductions for amounts payable when the monthly duty disability benefit payment is due and not amounts paid.

See *Coutts*, 201 Wis.2d 178, 547 N.W.2d 821, at 826 (Ct. App. 1996)

Accordingly, the rule adopts the interpretation that as benefits listed in s. 40.65 (5) (b), Stats., are paid to the duty disability recipient, they will be offset against the duty disability benefit for that month. The date of the payment to the participant will control, without regard for the period intended to be covered by the payment in question. Exceptions are provided in s. 40.65 (5) (b) 3. and 4., Stats., for lump sum worker's compensation benefits and lump sum retirement system benefits. The proposed rule defines DETF's interpretation of what is meant by "lump sum" in those contexts.

Under this proposed rule, all worker's compensation benefits received by a person also entitled to duty disability benefits would be offset, regardless of the nature or date of the injury. Previously, DETF had not reduced duty disability benefits for worker's compensation benefits received which were clearly unrelated to the disability which was the basis for benefits under s. 40.65, Stats. However, s. 40.65 (5) (b) 3., Stats., directs that duty disability benefits shall be reduced by the amount of "[a]ny worker's compensation benefit payable to the participant ... ." Under the proposed rule, DETF would continue its practice of ignoring worker's compensation benefits paid as attorney fees or reimbursement of expenses.

The rule codifies DETF's present interpretation of the indexing of benefits. Because duty disability benefits are intended to operate as an income guarantee, based on the "monthly salary" at the time the individual first becomes disabled as defined by s.40.65 (4),Stats., the DETF believes the annual indexing of the monthly salary is also intended to begin after the disability date, which is defined in this proposed rule as the "qualifying date." If indexing began after the effective date, then an individual with a gap of years between the qualifying date and the effective date would begin receiving duty disability benefits based upon a monthly salary amount set years before and not indexed during the interim.

This proposed rule also codifies general policies and interpretations of s. 40.65, Stats., which the Department has adopted during its administration of the duty disability benefit program. The rule clearly delegates authority of Wisconsin Retirement Board to DETF to administer the duty disability program on behalf of the Board, including the termination of benefits. Any determination made by the DETF may be appealed to the Board by the aggrieved employer or participant.

Although s. 40.65 (4) (intro.), Stats., describes those eligible for benefits as "protective occupation participants," the DETF has (since 1991) focused on the applicant's status at the time the disability arose, not at the time of application. See *Department of Employe Trust Funds v. LIRC*, 160 Wis.2d 929, 468 N.W.2d 210 (Ct. App. 1991). This proposed rule would codify that interpretation and require that the applicant have been a protective occupation participant and participating employe both on the date when injured and when the resulting disability met the description in s. 40.65 (4), Stats.

The proposed rule defines the terms "light duty," "reduction in pay or position" as used in the eligibility criteria for duty disability benefits in s. 40.65 (4), Stats. The rule also prescribes how to compute "monthly salary" and particularly what overtime pay may be included.

Other provisions related to the reductions of duty disability benefits due to income received from other sources concerns benefits received under the federal Old Age, Survivors, Disability and Health Insurance ("OASDHI") provisions of the Social Security Act and Long-Term Disability Insurance. The proposed rule codifies the current administrative practice of waiting until April to adjust the monthly reduction based on receipt of Social Security benefits. Increases in Social Security benefits are actually received beginning in January. For several months, duty disability recipients also receiving Social Security are therefore receiving benefits in excess of their entitlement under s. 40.65 (5), Stats. Under the proposed rule, DETF would treat those excess benefits as money paid in error and collect the overpayments. The proposed rule also codifies DETF's current treatment of benefits received under the long-term disability insurance program under s. ETF 50.40, Wis. Adm. Code, *et seq.* This program was created by the Employe Trust Funds Board under authority of s. 40.03 (1) (i), Stats., to replace disability annuity benefits under s. 40.63, Stats. The rule provides that the LTDI benefits operate to reduce duty disability benefits as did the benefits under s. 40.63, Stats.

The proposed rule includes a provision to establish estimated monthly reductions, so that income to a duty disability recipient will be fairly regular, with any necessary adjustments between the amount due and the amount paid being made during an annual reconciliation. The proposed rule also includes a provision for the participant to request adjustment of the estimate to more closely conform to actual income from sources listed in s. 40.65 (5) (b), Stats.

The proposed rule also clarifies that the present statutory provisions of s. 40.65 (5) (a) and (b) (intro) and (7) (a) (intro.) and (am), Stats., do not apply to state employees, in accord with the initial applicability provision found in 1987 Wis. Act 363, act s. 11 (2) and (3).

The proposed rule includes a provision that if duty disability benefits are terminated, the person may not reapply for duty disability benefits based upon the same disability.

### **Fiscal Estimate**

The duty disability program (benefits) is funded by premiums paid by the state, municipal and local government employers which employ protective occupation participants. See s. 40.05 (2) (ar), Stats. These premiums are primarily risk-based, depending on the number of duty disability recipients for the particular employer, plus the adjusted monthly benefit being paid. The proposed rule will allow participants to delay application for the duty disability benefits and receive Worker's Compensation prior to the duty disability effective date. Although there is no longer an offset for the Worker's Compensation benefit, there are also no retroactive duty disability benefits. Because of this, the benefit costs associated with the proposed rule are not determinable at this time.

Administrative costs associated with the changes to program administration necessitated by the *Coutts* decision and under the proposed rule equate to one fulltime equivalent (FTE) permanent position. The costs are projected to be \$25,000 for the SFY (State Fiscal Year) 97–99 biennium (position to start approximately January 1, 1999) and \$40,000 per year thereafter adjusted for applicable increases in salary/fringe and operational support.

### **Initial Regulatory Flexibility Analysis**

This rule affects only a benefit program open exclusively to governmental employees classified as "protective occupation participants" under s. 40.02 (48), Stats., and the state, municipal or local units of government which employ them. The Department therefore anticipates that the provisions of this proposed rule will have no direct adverse impact on small businesses.

## **Notice of Hearing**

### **Public Service Commission**

Notice is hereby given that the Commission will hold a public hearing for the purpose of obtaining comments from educational institutions, libraries, telecommunications providers and other interested parties on both the emergency rules and the proposed permanent rules revising ch. PSC 160 and creating ch. PSC 161, relating to the TEACH program. The hearing will be held according to the following schedule:

### **Hearing Information**

May 5, 1998  
Tuesday  
at 10:00 a.m.

Public Service Comm. Bldg.  
Amnicon Falls Hearing Rm.  
Room 1300  
610 N. Whitney Way  
Madison, WI 53705

**The examiner may continue the hearing at such times and places as necessary to complete the hearing.**

Notice is further given that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (Lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building and the building has some wheelchair accessible rest rooms. Any party with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267–9766.

### **Written Comments**

Notice is further given that any person may submit written comments on the emergency rules and revised, proposed rules. The

hearing record will be open for written comments from the public effective immediately, until **May 15, 1998, by noon (May 14, 1998, by noon, if filed by fax).**

All written comments on the rules must include a reference on the filing to docket 1–AC–169 and be addressed to Lynda Dorr, Secretary to the Commission.

If filing by mail, courier or hand delivery: Address comments to Lynda Dorr, Secretary to the Commission, Public Service Commission, 610 North Whitney Way, P.O. Box 7854, Madison, WI, 53707–7854. Industry parties should submit an original and 15 copies. Members of the general public need only file an original. File by **May 15, 1998, at noon.**

If filing by fax: Send fax comments to (608) 266–3957. Address comments to Lynda Dorr, Secretary to the Commission. Fax filing cover sheets **MUST** state "**Official Filing,**" the docket number (1–AC–169), and the number of pages (limited to 20 pages for fax comments). File faxes by **May 14, 1998, at noon.**

File by one mode only.

Questions regarding the hearing may be directed to Examiner John Crosetto at (608) 266–7165. Other questions on this matter should be directed to Gary Evenson, Assistant Administrator, Telecommunications Division, at (608) 266–6744 or [evensg@psc.state.wi.us](mailto:evensg@psc.state.wi.us) or Mary Stevens, Legal Counsel, Telecommunications Division, at (608) 266–1125 or [stevem@psc.state.wi.us](mailto:stevem@psc.state.wi.us). Do **not** direct any comments for the record to these addressees.

At its open meeting of February 24, 1998, the Public Service Commission of Wisconsin (Commission) adopted emergency rules establishing, on a temporary basis, the Educational Telecommunications Access Program, as part of the Technology for Educational Achievement in Wisconsin (TEACH WI) initiative.

The Commission now proposes permanent rules to amend ss. PSC 160.05, 160.11(6) and 160.17, Wis. Adm. Code, regarding the provision of universal telecommunications service and administration of the universal service fund and to create ch. PSC 161, Wis. Adm. Code, establishing the Educational Telecommunications Access Program.

### **Input from Educational Institutions, Libraries and Telecommunications Providers Expressly Invited**

The Commission specifically invites public libraries and various educational institutions, which are potentially eligible under the TEACH program; the telecommunications industry; the Technology for Educational Achievement in Wisconsin Board (Board); and the Department of Administration (Department) to comment and participate in this proceeding. Interested persons may consider the rules attached hereto as a starting point for further discussion. The Commission wants to create rules that appropriately administer the Educational Telecommunications Access Program and that are competitively neutral and, to the extent possible, technologically neutral.

### **Analysis Prepared by the Public Service Commission of Wisconsin**

Statutory Authority: ss. 196.02(1) and (3), 196.218(4r)(b), and 227.11(2)

Statutes Interpreted: ss. 16.974(7), 20.275, 20.285(1)(q), 44.70–44.71, 196.218(1), (3)(a)3.–4. and (f), (4r), (5)(a)5.–7.

The TEACH WI initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly enacted s. 196.218(4r)(b), Stats., mandates that the Commission, in consultation with the Department and Board, promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links.

Section 9141 of Act 27 mandated that the Commission also promulgate emergency rules establishing the Educational

Telecommunications Access Program, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats. Establishing for the first time the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices, the emergency rules were effective February 27, 1998.

The proposed rules which are the subject of this notice are different from the emergency rules already in effect only in regard to technical college districts. Because the Board, in consultation with the Commission, has decided that the appropriation contains sufficient monies to include technical college districts in the program on or after April 1, 1998, the prohibitions that a technical college district could not apply before April 1, 1998, or be determined eligible on or after April 1, 1998, have been eliminated. Sections PSC 161.05(4) and PSC 161.06(1)(b), Wis. Adm. Code, are provisions in the emergency rules not contained in the proposed permanent rules. These draft rules (and the emergency rules) amend ss. PSC 160.05, 160.11(6) and PSC 160.17, Wis. Adm. Code, and create ch. PSC 161, Wis. Adm. Code. The rules implement the TEACH legislation by:

- Defining the entities which may be eligible under this program, i.e., "private college," "private school," "public library board," "school district" and "technical college district."
- Defining a "data line" as a data circuit which provides direct access to the internet.
- Defining a "video link" as a 2-way interactive video circuit and associated services.
- Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.
- Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.
- Including privacy protections as required by s. 196.218(4r)(c)5., Stats.
- Providing an application procedure that (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, and (3) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under s. PSC 160.11, Wis. Adm. Code.
- Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access, readiness of the applicant to utilize the requested access and proposed uses of the requested access.
- Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.
- Providing for "alternative access," defined as a service architecture or technology not available through the Department at the time of the application.
- Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.
- Providing that assessments for this program shall be made by the Commission under ch. PSC 160, Wis. Adm. Code, in order to pay other costs of this program.

### **Initial Regulatory Flexibility Analysis**

Existing universal service fund rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. These small telecommunications utilities, of which there are 79 in Wisconsin, like other telecommunications providers (both large and small), have obligations under the universal service fund, including an obligation for payments to the universal service fund. Under the rules proposed in this proceeding, there will be further assessments for the fund per the requirements and process of the existing rules in ch. PSC 160, Wis. Adm. Code.

Other provisions of these proposed rules should have no direct impact on small businesses. The Commission already has established in s. PSC 160.18(1)(a), Wis. Adm. Code, a policy and provision to make an exemption from fund assessments to protect entry by and continued operation of small telecommunications providers as directed by statutory objectives.

The agency has considered the methods in s. 227.114(2), Stats., for reducing the impact of the rules on small businesses. Other than the provisions for exemption from assessments for small providers noted above, these methods are not appropriate nor consistent with statutory objectives.

### **Fiscal Estimate**

These rules have no independent fiscal impact from that of the TEACH legislation which mandates these rules. Appropriations for the TEACH program costs as estimated by the Legislative Fiscal Bureau, and excluding the Universal Services Fund appropriations under s. 20.155(1)(q), Stats., are \$14,188,400 for operations during the 1997-99 biennium.

### **Environmental Analysis**

This is a Type III action under s. PSC 4.10(3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

### **Text of Rule**

**SECTION 1.** Section PSC 160.05 is amended to read:

**PSC 160.05 Universal service fund programs.** Universal service fund monies may be used for fund administration and for the following purposes:

(1) For the following programs as adopted by the commission under the appropriation in s. 20.155(1)(q), Stats.:

- (1)(a) Link-Up America, as specified in s. PSC 160.061.
- (2)(b) Lifeline assistance, as specified in s. PSC 160.062.
- (3)(c) Voice mail service for the homeless, as specified in s. PSC 160.063.
- (4)(d) Special needs equipment vouchers, as specified in s. PSC 160.071(1).
- (5)(e) Telecommunications customer assistance program, as specified in s. PSC 160.08.
- (6)(f) High rate assistance credits, as specified in PSC 160.09.
- (7)(g) Alternative universal service protection plans, as specified in s. PSC 160.092.
- (8)(h) Rate shock mitigation, as specified in s. PSC 160.10.
- (9)(i) Assistance for institutions, as specified in s. PSC 160.11.
- (10)(j) Intralata toll service provider of last resort, as specified in s. PSC 160.14.

(2) For payments by the technology for educational achievement in Wisconsin board for educational telecommunications access support, as specified in s. 196.218(5)(a)5., Stats., under the appropriation in s. 20.275(1)(s), (t) and (tm), Stats.

(3) For payments to the department of administration for telecommunications services provided to the campuses of the University of Wisconsin system at River Falls, Stout, Superior and Whitewater, as specified in s. 196.218(5)(a)6., Stats., under the appropriation in s. 20.285(1)(q), Stats.

(4) For grants awarded by the technology for educational achievement in Wisconsin board prior to July 1, 2002, as specified in s. 196.218(5)(a)7., Stats., under the appropriation in s. 20.275(1)(s), Stats.

**SECTION 2.** Section PSC 160.11(6) is created to read:

(6) An institution which is receiving access to a data line or video link supported by the educational telecommunications access program under ch. PSC 161 is not eligible to receive support under this section for that data line or video link.

**SECTION 3.** Section PSC 160.17 is amended to read:

**PSC 160.17 Fund budget and assessment rate.** (1) At least annually, the commission shall set the budget for fund administration and the entire universal service fund and its individual programs specified in s. PSC 160.05(1)(2). The commission may make adjustments to the budget as needed to address unforeseen circumstances. Adjustments may include:

- (a) Reallocating the budget among programs.
- (b) Modifying the support formulas or benefits within a program.
- (c) Deferring support payments to a later period.
- (d) ~~Raising or reducing assessment levels.~~

(2) At least annually, the commission, in consultation with the technology for educational achievement in Wisconsin board and department of administration, shall determine the amounts necessary for funding the payments specified in s. 160.05(2) and (4).

(3) Based on the need for funds under subs. (1) and (2) and s. 196.218(5)(a)6., Stats., the commission shall determine the assessment rate to apply to providers. The commission may modify the assessment rate at any time based on changes in funding needs or provider revenues subject to assessment.

(4) The commission shall provide notice of the proposed ~~annual fund~~ budget under sub. (1) and any proposed changes to the budget to the universal service fund council and other interested parties with an opportunity for comment prior to commission action.

**SECTION 4.** Chapter PSC 161 is created to read:

**Chapter PSC 161  
EDUCATIONAL TELECOMMUNICATIONS ACCESS  
PROGRAM**

**PSC 161.01 Purpose and special consideration.** (1) **PURPOSE.** As required under s. 196.218(4r)(b), Stats., this chapter establishes an educational telecommunications access program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards. Under this chapter, the technology for educational achievement in Wisconsin board determines eligibility to participate in the program. The department of administration contracts with telecommunications providers under s. 16.974(7), Stats., for the requested access. The applicant makes monthly payments to the department for each data line or video link. The board pays the difference between costs under the contract and the applicant's payments from the universal service fund. The board may consider, as alternative access, service architecture or technology not available through the department at the time of the application.

(2) **SPECIAL CONSIDERATION.** Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and, upon due investigation of the facts and circumstances involved, the provision of access under this program in a manner which may be lesser, greater, other or different than provided in this chapter.

**PSC 161.02 Definitions.** In this chapter:

(1) "Alternative access" means a service architecture or technology not available through the department at the time of the application.

(2) "Board" means the technology for educational achievement in Wisconsin board.

(3) "Commission" means the public service commission.

(4) "Data line" means a data circuit which provides direct access to the internet.

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

(6) "Private college" means a private, regionally accredited, 4-year, nonprofit college or university which is incorporated in this state or which has its regional headquarters and principal place of business in this state or a tribally controlled college in this state.

(7) "Private school" has the meaning given in s. 115.001(3r), Stats.

(8) "Public library board" means a board created under ch. 43, Stats.

(9) "School district" has the meaning given in s. 115.01(3), Stats.

(10) "Technical college district" means a district organized under ch. 38, Stats.

(11) "Universal service fund" means the trust fund established under s. 25.95, Stats.

(12) "Video link" means a 2-way interactive video circuit and associated services.

**PSC 161.03 Technical standards.** (1) **GENERAL STANDARDS.** The board shall establish technical standards and specifications as necessary for access to data lines or video links provided under the educational telecommunications access program to school districts, private schools, technical college districts, private colleges and public library boards. The board shall encourage the development of internationally recognized standards, specifications and technologies, and consider adopting such standards, specifications and technologies as soon as possible, to ensure that access provided under this chapter allows maximum interaction with other networks throughout the world.

(2) **DATA LINE.** A data line shall terminate at an internet service provider unless the board determines that an alternative is acceptable. A data line may include transport and associated hardware required by the department for its management of its statewide network. A data line does not include voice services or other non-internet related data transmission or services unless the board determines that other data transmission is acceptable. The direct access to the internet provided by the data line does not include internet services such as subscription services, electronic mail, applications and other services determined by the board.

(3) **VIDEO LINK.** The video link may include transport, switching equipment and software needed to provide 2-way interactive video, maintenance, scheduling software, and equipment needed to compress and decompress video information. A video link may also include direct access to the internet through available channels within the circuit and access to a gateway for purposes of inter-system communication and compatibility. A video link may not include television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

**PSC 161.04 Privacy protections.** Any access to data lines or video links provided under the educational telecommunications access program shall include protections against the outflow of information about users of telecommunications services and protection to the users of telecommunications services from receiving privacy intrusions, as required under s. 196.218(4r)(c)5., Stats.

**PSC 161.05 Applications.** (1) Except as provided under subs. (3), (4) and (5), a school district, private school, technical college district, private college or public library board may apply to the board to participate in the educational telecommunications access program for access to a data line or video link.

(2) Notwithstanding sub. (1), a school district which operates more than one high school may apply for access to a data line and video link or access to more than one data line or video link. A school district may not apply for access to more data lines or video links than the number of high schools in that district.

(3) A school district may not apply to participate in the educational telecommunications access program for access to a data line or video link if it has received in the current state fiscal year (July 1 to June 30) an annual grant from the board under s. 196.218(4r)(g), Stats., because of a contract under s. 16.974(7)(a), Stats., in effect on October 14, 1997, for access to a data line or video link.

(4) A school district, private school, technical college district, private college or public library board may not apply to participate in the educational telecommunications access program for access to a data line or video link if it is receiving partial support funding through rate discounts from the universal service fund under s. PSC 160.11 for that data line or video link.

(5) The application shall be on a form approved by the board and include the following:

(a) The name, address and telephone number of the school district, private school, technical college district, private college or public library board and the name and telephone number of an individual to contact about the application.

(b) A description of the access requested.

(c) The specific location for each data line or video link requested.

(d) The desired date for service to begin for each data line or video link requested.

(e) A brief description of the proposed use of each data line or video link requested.

(f) Other information requested by the board.

(6) The board shall forward applications when received to the commission and department.

**PSC 161.06 Determinations of eligibility.** (1) The board shall determine if any school district, private school, technical college district, private college or public library board which applies under s. PSC 161.05 is eligible to participate in the educational telecommunications access program.

(2) In its determination of eligibility under sub. (1), the board shall use the following criteria:

(a) Availability of funds and impact of the requested access on available funds.

(b) Applicant's technology plan.

(c) Reasonableness of requested access, including economic efficiency and cost. Requests for access which requires telecommunications transport over long distances when similar access is available locally or regionally may be determined ineligible.

(d) Readiness of applicant to utilize the requested access, including whether a training plan addressing the new technology has been established.

(e) Proposed uses of the requested access.

(f) Other criteria established by the board.

(3) If the board, after consultation with the commission, determines at any time that the monies in the universal service fund for this program are insufficient to approve all pending applications, the board may prioritize applications for access. In establishing priorities, the board may consider, in addition to the criteria under sub. (2), the following:

(a) Whether an applicant already has data lines or video links in service.

(b) Whether the applicant has applied for a discount under the federal universal service program in 47 USC 254.

(c) The potential for underutilization of the access requested by the applicant.

(d) The maximization of the number of eligible applicants statewide.

(e) Geographic distribution of access to data line and video links statewide.

(f) Other criteria established by the board.

(4) The board will notify the applicant, department and commission of its determination.

**PSC 161.07 Provision of services.** (1) COORDINATE WITH DEPARTMENT. If the board determines under s. PSC 161.06 that an applicant is eligible to participate in the educational telecommunications access program, the board will coordinate with the department to provide the requested access.

(2) ALTERNATIVE ACCESS. At any time, in response to an application from an applicant or upon its own motion, the board may

coordinate with the department an investigation of the feasibility of alternative access. If alternative access is feasible, the board shall coordinate with the department for the procurement of such alternative access.

(3) NOTIFICATION. If the department is unable to contract under s. 16.974(7), Stats., for alternative access which is feasible, the department shall notify the board within 5 days.

**PSC 161.08 Payments.** (1) Any contract between an applicant and the department shall require a monthly payment from the applicant to the department for each data line or video link, not to exceed \$250 per month, except that the payment required may not exceed \$100 per month for each data line or video link which relies on a transport medium operating at a speed of 1.544 megabits per second.

(2) The board shall pay from the universal service fund the costs of annual grants under s. 196.218(4r)(g), Stats., and contracts under s. 16.974(7), Stats., as required by s. 196.218(5)(a)5., Stats., to the extent that these costs are not paid under sub. (1).

(3) The department shall recover from the universal service fund amounts necessary to pay for telecommunications services provided under s. 16.973(1), Stats., to the campuses of the University of Wisconsin System at River Falls, Stout, Superior and Whitewater, as required by s. 196.218(5)(a)6., Stats.

**PSC 161.09 Assessments.** Assessments for the educational telecommunications access program shall be made by the commission pursuant to ch. PSC 160.

## Notice of Proposed Rule Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), and interpreting ss. 79.02, 79.05, 79.08 Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **April 15, 1998**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### Contact Person

Please contact Wallace T. Tews at (608) 266-9759, if you have any questions regarding this proposed rule order.

### Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a)

Statutes interpreted: ss. 79.02, 79.05, and 79.08

SECTION 1. Chapter Tax 19(title) is amended because 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

SECTION 2. Tax 19.01 is amended because 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

SECTION 3. Tax 19.03(1)(a) is repealed because 1993 Wis. Act 16 repealed s. 79.05(2)(b), Stats., eliminating the less than 120% of average municipal per capita full value requirement.

SECTION 4. Tax 19.03(1)(b) is renumbered and amended to keep the definitions under this subsection in alphabetical order and because 1993 Wis. Act 16 changed the formula for calculating an expenditure restraint payment from using a qualifying municipality's tax rate exceeding the municipal average rate to using its tax rate in excess of 5 mills by amending s. 79.05(3)(a), Stats.

SECTION 5. Tax 19.03(1)(c) is amended for the following reasons:

1. Historically, the consumer price index change has been calculated to only one significant digit to the right of the decimal

point, so rounding the municipal budget percentage change to 2 places to the right of the decimal point is sufficient to determine if the municipality meets the budget requirement.

2. 1993 Wis. Act 16 created s. 79.05(6), Stats., providing a budget adjustment for services transferred between local governments.

SECTION 6. Tax 19.03(1)(d) and (e) are repealed because 1993 Wis. Act 16 repealed s. 79.05(2)(b), Stats., eliminating the less than 120% of average municipal per capita full value requirement.

SECTION 7. Tax 19.03(1)(f) is renumbered to keep the definitions under this subsection in alphabetical order.

SECTION 8. Tax 19.03(1)(g) is repealed because 1991 Wis. Act 39 amended s. 79.08, Stats., eliminating the special charge against the municipality procedure for payments made under s. 79.05, Stats.

SECTION 9. Tax 19.03(1)(h) is repealed because 1993 Wis. Act 16 amended s. 79.05(2)(a), Stats., eliminating the use of the average municipal tax rate in determining qualification for a payment.

SECTION 10. Tax 19.03(1)(i) and (j) are renumbered to keep the definitions under this subsection in alphabetical order.

SECTION 11. Tax 19.03(1)(k) is renumbered and amended for the following reasons:

1. The definitions under this subsection will remain in alphabetical order.

2. The percentage change in the consumer price index has historically been calculated to only one significant digit to the right of the decimal point.

3. 1991 Wis. Act 61 amended s. 79.05(2)(e), Stats., so that the 12-month period for calculating the consumer price index change is the 12 months ending on September 30 of the year before the statement under s. 79.015, Stats.

4. 1993 Wis. Act 16 created s. 79.05(am), Stats., naming the consumer price index change the inflation factor.

SECTION 12. Tax 19.03(1)(L) is renumbered to keep the definitions under this subsection in alphabetical order and is amended because 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

SECTION 13. Tax 19.03(1)(m) is renumbered to keep the definitions under this subsection in alphabetical order.

SECTION 14. Tax 19.03(1)(i) is created because 1993 Wis. Act 16 created s. 79.05(1)(d), Stats., which defines a valuation factor for determining if a municipality meets the budget requirement.

SECTION 15. Tax 19.03(2)(intro.) is amended because 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

SECTION 16. Tax 19.03(2)(a) is amended because 1993 Wis. Act 16 amended s. 79.05(2)(a), Stats., changing the municipal tax rate requirement from being greater than the municipal average tax rate to being greater than 5 mills.

SECTION 17. Tax 19.03(2)(b) is repealed because 1993 Wis. Act 16 repealed s. 79.05(2)(b), Stats., eliminating the less than 120% of average municipal per capita full value requirement.

SECTION 18. Tax 19.03(2)(c) is renumbered and amended for the following reasons:

1. Renumbering will keep these eligibility requirements in numerical order.

2. 1993 Wis. Act 16 renumbered and amended s. 79.05(2)(c)(intro.), Stats., and repealed s. 79.05(2)(c)1 and 2, Stats., changing the municipal budget increase requirement from being less than the consumer price index increase plus a set percentage to less than the total of the consumer price index increase and a valuation factor.

3. 1991 Wis. Act 39 amended the definition of municipal budget under s. 79.05(1)(b), Stats., to be the municipality's general fund budget. Standard usage refers to a municipality's "operating budget" which is defined in Tax 19.05.

SECTION 19. Tax 19.03(3) and (4)(intro.) are amended for the following reasons:

1. 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

2. 1993 Wis. Act 16 repealed s. 79.05(2)(b), Stats., eliminating the less than 120% of average municipal per capita full value requirement.

SECTION 20. Tax 19.03(4)(a) is amended because 1993 Wis. Act 16 amended s. 79.05(3)(a), Stats., changing the formula for calculating an expenditure restraint payment from using a qualifying municipality's tax rate exceeding the municipal average tax rate to using its tax rate in excess of 5 mills.

SECTION 21. Tax 19.03(4)(d) is created because the final payment calculation step was inadvertently left out of the original tax rate disparity rules created in 1991.

SECTION 22. Tax 19.04(title), (1) and (2) are amended for the following reasons:

1. 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

2. 1993 Wis. Act 16 repealed s. 79.05(2)(b), Stats., eliminating the less than 120% of average municipal per capita full value requirement.

3. The reference to s. Tax 19.04(2)(c) in the original tax rate disparity rules created in 1991 was incorrect. The reference should have been to s. Tax 19.03(2)(c), which is being renumbered and amended in section 18 of these rules.

SECTION 23. Tax 19.04(3)(a) is repealed because this paragraph affected only 1991 payments under this chapter and it is now obsolete.

SECTION 24. Tax 19.04(3)(b) and (c) are renumbered and amended for the following reasons:

1. The requirements under this subsection will remain in numerical order.

2. 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

3. Tax 19.04(3)(a) is being repealed in section 23 of these rules.

SECTION 25. Tax 19.04(4) is repealed because it is not needed or used for the following reasons:

1. 1991 Wis. Act 307 amended s. 79.02(3), Stats., requiring that payments first made in each July under s. 79.02(2)(b), Stats., which includes payments calculated under s. 79.05, Stats., be recalculated and adjusted in each November of the payment year.

2. S. 79.08, Stats., as amended by 1989 Wis. Act 336 and 1991 Wis. Act 39, clearly explains how a correction to a prior year's payment calculated under s. 79.05, Stats., is to be made.

SECTION 26. Tax 19.05(1)(intro.) is amended to correct an error in the original tax rate disparity rules created in 1991.

SECTION 27. Tax 19.05(1)(b) is amended because 1991 Wis. Act 39 amended s. 79.05(1)(b), Stats., defining the municipality's budget to be the municipality's general fund budget.

SECTION 28. Tax 19.05(2) is amended for the following reasons:

1. 1993 Wis. Act 16 amended s. 79.05(title), Stats., renaming the tax rate disparity program the expenditure restraint program.

2. The failure to comply provisions under Tax 19.04(4) are being repealed in section 25 of these rules.

Note: This proposed rule is being adopted under the procedure of s. 227.16(2)(b), Stats.

## **Text of Rule**

**SECTION 1.** Chapter Tax 19(title) is amended to read:

CHAPTER TAX 19 (title)

TAX RATE DISPARITY  
EXPENDITURE RESTRAINT PAYMENTS

**SECTION 2.** Tax 19.01 is amended to read:

Tax 19.01 **PURPOSE.** The purpose of this chapter is to establish standards and procedures for determining whether a town, village, or city is eligible for a tax rate disparity an expenditure restraint payment under s. 79.05, Stats., and the computation of the payment.

**SECTION 3.** Tax 19.03(1)(a) is repealed.

**SECTION 4.** Tax 19.03(1)(b) is renumbered Tax 19.03(1)(a) and is amended to read:

Tax 19.03(1)(b) "Excess property tax levy rate" means the amount by which the property tax levy rate for a municipality exceeds the average property tax levy rate for all municipalities 5 mills.

**SECTION 5.** Tax 19.03(1)(c) is amended to read:

Tax 19.03(1)(c) "~~Increased over its municipal budget~~" "Municipal operating budget increase" means an amount, expressed as a percentage and rounded to 9 2 places beyond the decimal, which results from dividing:

1. The difference between the amount of the municipal operating budget for the year of the statement and the amount of the municipal operating budget, including any adjustment under s. 79.05(6), Stats., for the year before the year of the statement; by

2. The amount of the municipal operating budget, including any adjustment under s. 79.05(6), Stats., for the year before the year of the statement.

**SECTION 6.** Tax 19.03(1)(d) and (e) are repealed.

**SECTION 7.** Tax 19.03(1)(f) is renumbered Tax 19.03(1)(d).

**SECTION 8.** Tax 19.03(1)(g) is repealed.

**SECTION 9.** Tax 19.03(1)(h) is repealed.

**SECTION 10.** Tax 19.03(1)(i) and 19.03(1)(j) are renumbered Tax 19.03(1)(e) and 19.03(1)(f).

**SECTION 11.** Tax 19.03(1)(k) is renumbered Tax 19.03(1)(b) and is amended to read:

Tax 19.03(1)(b) "~~The percentage change between the U.S. consumer price index~~" "Inflation factor" means an amount expressed as a percentage and rounded to 9 places one place beyond the decimal, which results from dividing:

1. The difference between the annualized index sum of the 12 monthly indexes of the U.S. consumer price index for all urban consumers, U.S. city average, for the year ending on September 30 for of the year before the year of the statement and the annualized index sum of the 12 monthly indexes of the U.S. consumer price index for all urban consumers, U.S. city average, for the year ending on September 30 for of the year prior to that year; by

2. The annualized index sum of the 12 monthly indexes of the U.S. consumer price index for all urban consumers, U.S. city average, for the year ending on September 30 for of the year prior to the year before the year of the statement.

**SECTION 12.** Tax 19.03(1)(L) is renumbered Tax 19.03(1)(g) and is amended to read:

Tax 19.03(1)(g) "The year of the statement" means the calendar year in which the statement under s. 79.015, Stats., is issued and is the year prior to the calendar year in which the tax rate disparity expenditure restraint payment is to be made.

**SECTION 13.** Tax 19.03(1)(m) is renumbered Tax 19.03(1)(h).

**SECTION 14.** Tax 19.03(1)(i) is created to read:

Tax 19.03(1)(i) "Valuation factor" has the same meaning as in s. 79.05(1)(d), Stats.

**SECTION 15.** Tax 19.03(2)(intro.) is amended to read:

Tax 19.03(2)(intro.) ELIGIBILITY. Any town, village, or city shall receive a tax rate disparity an expenditure restraint payment if all of the following requirements are met:

**SECTION 16.** Tax 19.03(2)(a) is amended to read:

Tax 19.03(2)(a) Its property tax levy rate established during the year before the year of the statement is greater than the average for all municipalities 5 mills.

**SECTION 17.** Tax 19.03(2)(b) is repealed.

**SECTION 18.** Tax 19.03(2)(c) is renumbered Tax 19.03(2)(b) and is amended to read:

Tax 19.03(2)(b) Its municipal operating budget, exclusive of principal and interest on long-term debt, for the year of the statement

increased over its municipal budget, exclusive of principal and interest on long-term debt, for the year before that year by, as defined in s. Tax 19.05(1)(b), increase is less than the percentage change under s. 79.05(2)(c), Stats., plus 3%. For 1994 and subsequent years' payments plus 0%.

**SECTION 19.** Tax 19.03(3) and (4)(intro.) are amended to read:

Tax 19.03(3) ELIGIBILITY UNDER SUB.(2)(a) ~~AND (b)~~. The department of revenue shall determine whether a municipality meets the eligibility requirements requirement under subs. sub.(2)(a) and (b). If a municipality meets these this eligibility requirements requirement, the department of revenue shall send the tax rate disparity expenditure restraint worksheet to the municipality which, when returned to the department of revenue, shall be used to determine if the municipality meets the requirement in sub.(2)(e). ~~(b)~~.

NOTE: See s. Tax 19.04 for information about the tax rate disparity expenditure restraint worksheet.

Tax 19.03(4)(intro.) PAYMENT. If the department of revenue determines that a municipality meets the requirements in sub. (2), it shall receive a tax rate disparity an expenditure restraint payment calculated by the department of revenue as follows:

**SECTION 20.** Tax 19.03(4)(a) is amended to read:

Tax 19.03(4)(a) Subtract the statewide average property tax levy rate 5 mills from the municipality's property tax levy rate.

**SECTION 21.** Tax 19.03(4)(d) is created to read:

Tax 19.03(4)(d) Multiply the amount under par. (c) by the amount of the appropriation under s. 79.01(1), Stats.

**SECTION 22.** Tax 19.04(title), (1) and (2) are amended to read:

Tax 19.04 EXPENDITURE RESTRAINT WORKSHEET. (1) GENERAL. Each municipality that meets the requirements requirement in s. Tax 19.03(2)(a) and ~~(b)~~ shall receive from the department of revenue a tax rate disparity an expenditure restraint worksheet. The department's tax rate disparity expenditure restraint worksheet shall be completed and returned to the department along with the budgets described in s. Tax 19.05.

(2) PURPOSE. The tax rate disparity expenditure restraint worksheet shall be used by the department of revenue to determine if the municipality meets the eligibility requirement in s. ~~Tax 19.04(2)(e)~~. s. Tax 19.03(2)(b).

**SECTION 23.** Tax 19.04(3)(a) is repealed.

**SECTION 24.** Tax 19.04(3)(b) and (c) are renumbered Tax 19.04(3)(a) and (b) and are amended to read:

Tax 19.04(3)(a) For purposes of the 1992 and subsequent years' tax rate disparity expenditure restraint payments, the department's tax rate disparity expenditure restraint worksheet shall be completed and returned to the department of revenue on or before May 1 of the year of the statement.

Tax 19.04(3)(b) To be considered timely filed, the tax rate disparity expenditure restraint worksheet, if mailed to the department of revenue, shall be mailed in a properly addressed envelope, postmarked before midnight of the due date in par. (a) ~~and (b)~~ and received by the department of revenue not more than 5 days after the due date in par. (a) ~~and (b)~~.

**SECTION 25.** Tax 19.04(4) is repealed.

**SECTION 26.** Tax 19.05(1)(intro.) is amended to read:

Tax 19.05 BUDGETS. (1) DEFINITIONS. In this section chapter:

**SECTION 27.** Tax 19.05(1)(b) is amended to read:

Tax 19.05(1)(b) "Municipal operating budget" means the total budget for all governmental funds, including interfund transfers, less the following adjustments: adopted general fund budgeted expenditures, including any budgeted transfers from the general fund to other funds, and less any principal and interest payments on long-term debt budgeted in the general fund.

1. Amounts included for debt service fund budgets.

2. That portion of the budget of any capital project fund which is financed by long-term debt, grant money or fund transfers.

**SECTION 28.** Tax 19.05(2) is amended to read:



Tax 19.05(2) GENERAL. Municipalities that receive a ~~tax rate disparity~~ an expenditure restraint worksheet shall submit to the department of revenue the municipal operating budgets for the year of the statement and the preceding year. These budgets are due on or before the same ~~dates~~ date as the ~~tax rate disparity~~ expenditure restraint worksheet. ~~The result of failing to file these budgets is the same as provided in s. Tax 19.04(4).~~

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

The promulgation of these rules will not impact on small business as defined in s. 227.114(1)(a), Stats.

### ***Fiscal Estimate***

This rule imposes minimal costs on state or local governments.

---

---

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

---

---

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

**Agriculture, Trade and Consumer Protection**

**(CR 97-127):**

Chs. ATCP 90, 91 and 92 – Relating to:

- 1) Fair packaging and labeling;
- 2) Selling commodities by weight, measure or count; and
- 3) Weighing and measuring devices.

**Corrections (CR 98-2):**

SS. DOC 328.04, 332.015, 332.02 and 332.15 to 332.18 –  
Relating to lie detector testing of probationers and parolees  
who are sex offenders.

**Employe Trust Funds (CR 97-73):**

S. ETF 10.08 – Relating to the definition of termination of  
employment for the purposes of eligibility for benefits  
administered by the Department of Employee Trust Funds.

**State Fair Park Board (CR 98-3):**

SS. SFP 2.07, 2.16 and 2.18 and ch. SFP 7 – Relating to  
regulation of the State Fair Park and establishing a bail bond  
schedule.

**University of Wisconsin System (CR 97-149):**

S. UWS 18.06 – Relating to conduct on University lands.

---

---

## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

---

---

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

**Agriculture, Trade & Consumer Protection  
(CR 97–113):**

An order affecting ch. ATCP 30 Appendix A and s. ATCP 30.31, relating to atrazine use restrictions. Effective 05–01–98.

**Agriculture, Trade & Consumer Protection  
(CR 97–125):**

An order affecting chs. ATCP 29 and 30, relating to pesticide regulation. Effective 06–01–98.

**Commerce (CR 97–156):**

An order amending s. Comm 108.21 (1) (f), relating to emergency grant funding under the community development block grant program. Effective 05–01–98.

**Corrections (CR 97–106):**

An order affecting ch. DOC 310, relating to the inmate complaint review system. Effective 05–01–98.

**Health & Family Services (CR 97–130):**

An order repealing chs. HFS 10 and 67 and HSS 118, relating to hearings on relief from institutional charges, a low–income standard for allocating state nutrition and senior volunteer funds and maintaining the confidentiality of personal facts included in medical information obtained by Department staff in the conduct of official business. Effective 06–01–98.

**Insurance, Office of the Commissioner of (CR 97–137):**

An order amending s. Ins 3.53, relating to human immunodeficiency virus (HIV) testing procedures. Effective 06–01–98.

**Medical Examining Board (CR 97–114):**

An order creating s. Med 10.02 (2) (zb), relating to dispensing or prescribing of controlled substances for the treatment of obesity. Effective 06–01–98.

## PUBLIC NOTICE

### Public Notice Workforce Development

Below is the revised Child Care Co-Payment Schedule under s. DWD 56.08, Wis. Adm. Code. The rule provides that adjustments to the Co-Payment Schedule shall be published in the *Wisconsin Administrative Register*.

Child Care Co-Payment Schedule for Licensed and Certified Care									
On the following tables, look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income. Then look to either the table of weekly licensed care or the other table of weekly certified care, to find the appropriate co-payment by family and type of care.									
[-----Gross Monthly Family Income-----]									
FAMILY SIZE									
	2	3	4	5	6	7	8	9	10 or more
<b>70% FPL</b>	\$633	\$796	\$960	\$1,123	\$1,286	\$1,450	\$1,613	\$1,776	\$1,940
<b>75% FPL</b>	\$678	\$853	\$1,028	\$1,203	\$1,378	\$1,553	\$1,728	\$1,903	\$2,078
<b>80% FPL</b>	\$723	\$910	\$1,097	\$1,283	\$1,470	\$1,657	\$1,843	\$2,030	\$2,217
<b>85% FPL</b>	\$769	\$967	\$1,165	\$1,364	\$1,562	\$1,760	\$1,959	\$2,157	\$2,355
<b>90% FPL</b>	\$814	\$1,024	\$1,234	\$1,444	\$1,654	\$1,864	\$2,074	\$2,284	\$2,494
<b>95% FPL</b>	\$859	\$1,081	\$1,302	\$1,524	\$1,746	\$1,967	\$2,189	\$2,411	\$2,632
<b>100% FPL</b>	\$904	\$1,138	\$1,371	\$1,604	\$1,838	\$2,071	\$2,304	\$2,538	\$2,771
<b>105% FPL</b>	\$949	\$1,194	\$1,439	\$1,684	\$1,929	\$2,174	\$2,419	\$2,664	\$2,909
<b>110% FPL</b>	\$995	\$1,251	\$1,508	\$1,765	\$2,021	\$2,278	\$2,535	\$2,791	\$3,048
<b>115% FPL</b>	\$1,040	\$1,308	\$1,576	\$1,845	\$2,113	\$2,381	\$2,650	\$2,918	\$3,186
<b>120% FPL</b>	\$1,085	\$1,365	\$1,645	\$1,925	\$2,205	\$2,485	\$2,765	\$3,045	\$3,325
<b>125% FPL</b>	\$1,130	\$1,422	\$1,714	\$2,005	\$2,297	\$2,589	\$2,880	\$3,172	\$3,464
<b>130% FPL</b>	\$1,175	\$1,479	\$1,782	\$2,085	\$2,389	\$2,692	\$2,995	\$3,299	\$3,602
<b>135% FPL</b>	\$1,221	\$1,536	\$1,851	\$2,166	\$2,481	\$2,796	\$3,111	\$3,426	\$3,741
<b>140% FPL</b>	\$1,266	\$1,593	\$1,919	\$2,246	\$2,573	\$2,899	\$3,226	\$3,553	\$3,879
<b>145% FPL</b>	\$1,311	\$1,649	\$1,988	\$2,326	\$2,664	\$3,003	\$3,341	\$3,679	\$4,018
<b>150% FPL</b>	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
<b>155% FPL</b>	\$1,401	\$1,763	\$2,125	\$2,486	\$2,848	\$3,210	\$3,571	\$3,933	\$4,295
<b>160% FPL</b>	\$1,447	\$1,820	\$2,193	\$2,567	\$2,940	\$3,313	\$3,687	\$4,060	\$4,433
<b>165% FPL</b>	\$1,492	\$1,877	\$2,262	\$2,647	\$3,032	\$3,417	\$3,802	\$4,187	\$4,572
^^^-----165% of the Federal Poverty Level-----^^^									

Gross Monthly Family Income									
FAMILY SIZE									
	2	3	4	5	6	7	8	9	10 or more
170% FPL	\$1,537	\$1,934	\$2,330	\$2,727	\$3,124	\$3,520	\$3,917	\$4,314	\$4,710
175% FPL	\$1,582	\$1,991	\$2,399	\$2,807	\$3,216	\$3,624	\$4,032	\$4,441	\$4,849
180% FPL	\$1,628	\$2,048	\$2,468	\$2,888	\$3,308	\$3,728	\$4,148	\$4,568	\$4,988
185% FPL	\$1,673	\$2,104	\$2,536	\$2,968	\$3,399	\$3,831	\$4,263	\$4,694	\$5,126
190% FPL	\$1,718	\$2,161	\$2,605	\$3,048	\$3,491	\$3,935	\$4,378	\$4,821	\$5,265
195% FPL	\$1,763	\$2,218	\$2,673	\$3,128	\$3,583	\$4,038	\$4,493	\$4,948	\$5,403
200% FPL	\$1,808	\$2,275	\$2,742	\$3,208	\$3,675	\$4,142	\$4,608	\$5,075	\$5,542
<<<-----+200% of the Federal Poverty Level----->>>									

On the following tables, look to either the table of weekly licensed care or the other table of weekly certified care to find the appropriate co-payment by family and type of care.

WEEKLY LICENSED CARE CO-PAY AMOUNT					
CHILDREN IN SUBSIDIZED CARE:					
	1	2	3	4	5 or more
70% FPL	\$ 5	\$ 9	\$14	\$ 18	\$ 23
75% FPL	\$ 5	\$11	\$16	\$ 21	\$ 26
80% FPL	\$ 8	\$13	\$18	\$ 24	\$ 29
85% FPL	\$11	\$16	\$21	\$ 26	\$ 32
90% FPL	\$13	\$20	\$26	\$ 33	\$ 39
95% FPL	\$16	\$24	\$32	\$ 39	\$ 48
100% FPL	\$18	\$26	\$34	\$ 42	\$ 50
105% FPL	\$21	\$29	\$37	\$ 45	\$ 53
110% FPL	\$24	\$32	\$39	\$ 48	\$ 55
115% FPL	\$26	\$34	\$42	\$ 50	\$ 58
120% FPL	\$29	\$37	\$45	\$ 53	\$ 61
125% FPL	\$32	\$39	\$48	\$ 55	\$ 63
130% FPL	\$34	\$44	\$53	\$ 62	\$ 71
135% FPL	\$37	\$48	\$58	\$ 69	\$ 79
140% FPL	\$39	\$50	\$61	\$ 71	\$ 82
145% FPL	\$42	\$53	\$63	\$ 74	\$ 84
150% FPL	\$45	\$55	\$66	\$ 76	\$ 87
155% FPL	\$48	\$58	\$69	\$ 79	\$ 90

<b>WEEKLY LICENSED CARE CO-PAY AMOUNT (continued)</b>					
<b>CHILDREN IN SUBSIDIZED CARE:</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5 or more</b>
<b>160% FPL</b>	\$50	\$61	\$71	\$ 82	\$ 92
<b>165% FPL</b>	\$51	\$63	\$74	\$ 84	\$ 95
^^^-----165% of the Federal Poverty Level-----^^^					
<b>170% FPL</b>	\$53	\$66	\$76	\$ 87	\$ 98
<b>175% FPL</b>	\$54	\$68	\$79	\$ 90	\$100
<b>180% FPL</b>	\$56	\$70	\$82	\$ 92	\$103
<b>185% FPL</b>	\$58	\$72	\$84	\$ 95	\$105
<b>190% FPL</b>	\$59	\$74	\$87	\$ 98	\$108
<b>195% FPL</b>	\$61	\$76	\$90	\$100	\$111
<b>200% FPL</b>	\$63	\$78	\$92	\$103	\$113
<<<-----+200% of the Federal Poverty Level----->>>					

<b>WEEKLY CERTIFIED CARE CO-PAY AMOUNT</b>					
<b>CHILDREN IN SUBSIDIZED CARE:</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5 or more</b>
<b>70% FPL</b>	\$ 3	\$ 6	\$10	\$13	\$16
<b>75% FPL</b>	\$ 4	\$ 7	\$11	\$15	\$18
<b>80% FPL</b>	\$ 6	\$ 9	\$13	\$17	\$20
<b>85% FPL</b>	\$ 7	\$11	\$15	\$18	\$22
<b>90% FPL</b>	\$ 9	\$14	\$18	\$23	\$28
<b>95% FPL</b>	\$11	\$17	\$22	\$28	\$33
<b>100% FPL</b>	\$13	\$18	\$24	\$30	\$35
<b>105% FPL</b>	\$15	\$20	\$26	\$31	\$37
<b>110% FPL</b>	\$17	\$22	\$28	\$33	\$39
<b>115% FPL</b>	\$18	\$24	\$30	\$35	\$41
<b>120% FPL</b>	\$20	\$26	\$31	\$37	\$42
<b>125% FPL</b>	\$22	\$28	\$33	\$39	\$44
<b>130% FPL</b>	\$24	\$30	\$37	\$43	\$50
<b>135% FPL</b>	\$26	\$33	\$41	\$48	\$55
<b>140% FPL</b>	\$28	\$35	\$42	\$50	\$57
<b>145% FPL</b>	\$30	\$37	\$44	\$52	\$59
<b>150% FPL</b>	\$31	\$39	\$46	\$54	\$61
<b>155% FPL</b>	\$33	\$41	\$48	\$55	\$63

<b>WEEKLY CERTIFIED CARE CO-PAY AMOUNT (continued)</b>					
<b>CHILDREN IN SUBSIDIZED CARE:</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5 or more</b>
<b>160% FPL</b>	\$35	\$42	\$50	\$57	\$65
<b>165% FPL</b>	\$36	\$44	\$52	\$59	\$66
^^^-----165% of the Federal Poverty Level-----^^^					
<b>170% FPL</b>	\$37	\$46	\$54	\$61	\$68
<b>175% FPL</b>	\$38	\$48	\$55	\$63	\$70
<b>180% FPL</b>	\$39	\$50	\$57	\$65	\$72
<b>185% FPL</b>	\$40	\$52	\$59	\$66	\$74
<b>190% FPL</b>	\$42	\$54	\$61	\$68	\$76
<b>195% FPL</b>	\$43	\$55	\$63	\$70	\$78
<b>200% FPL</b>	\$44	\$57	\$65	\$72	\$79
<<<-----+200% of the Federal Poverty Level----->>>					

---

---

*NOTICE OF NONACQUIESCENCE*

---

---

---

JAMES M. CALLEN,	:	NOTICE OF NONACQUIESCENCE
Petitioner,		
v.	:	Docket No. 96-S-884
		and 96-W-885
WISCONSIN DEPARTMENT OF REVENUE,	:	
Respondent.		

---

Pursuant to sec. 73.01 (4) (e) 2, Stats., the respondent hereby gives notice that, although it is not appealing the decision and order of the Tax Appeals Commission rendered in the above-captioned matter under date of February 25, 1998, it has adopted a position of nonacquiescence in regard to that part of the decision or order that concludes that personal liability for sales tax under sec. 77.60 (9), Stats., does not attach until a failure to pay occurs; i.e., when the return is due. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale and construction of statutes in regard to that issue in the case are not binding upon or required to be followed by the respondent in other cases.



THE STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOCUMENT SALES UNIT  
P.O. BOX 7840  
MADISON, WISCONSIN 53707-7840

**First Class**  
U.S. POSTAGE PAID  
Madison, Wisconsin  
Permit Number 1369

**First Class Mail**

*Wisconsin  
Administrative  
Registrar*

**DATED MATERIAL. PLEASE DO NOT DELAY!**