WISCONSIN ADMINISTRATIVE REGISTER

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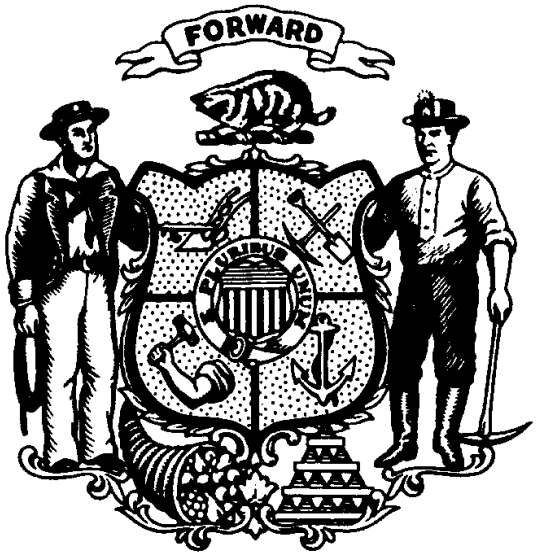

Publication Date: July 14, 1998
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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (3)

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**

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**

3. Rules adopted amending **s. ATCP 75.015 (7)(c),** relating to the retail food establishment license exemption for restaurant permit holders.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Petroleum Environmental Cleanup Fund, Ch. ILHR 47)

Rules adopted revising **ch. ILHR 47**, relating to the petroleum environmental cleanup fund.

Finding of Emergency and Rule Analysis

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

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over $15,000,000 per month. Approximately $7,500,000 per month is allotted to the fund for the

payment of claims. The fund currently has a backlog of $250,000,000 representing almost a 30–month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

Administrative Elements.

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

Progress Payments.

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

Remedial Alternative Selection.

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non–active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

· A documented expansion of plume margin;

· A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;

· Soil contamination within bedrock or within 1 meter of bedrock;

· Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and

· Documented contamination discharges to a surface water or wetland.

Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for $80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost–effective remediations would also be provided.

Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 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: **April 21, 1998**
Effective Date: **April 21, 1998**
Expiration Date: **September 18, 1998**
Hearing Date: **May 29, 1998**

EMERGENCY RULES NOW IN EFFECT (2)

Department of Commerce

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

(Uniform Multifamily Dwellings, Ch. ILHR 66)

1. 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**
Extension Through: **August 25, 1998**

2. Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

Finding of Emergency and Rule Analysis

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

Chapter ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered

multifamily housing as defined in s. 101.132 (1) , Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132,Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

Publication Date: **June 17, 1998**
Effective Date: **June 17, 1998**
Expiration Date: **November 14, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. ILHR 67,** relating to rental unit energy efficiency.

Finding of Emergency

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

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

· Buildings of one or two rental units that were constructed after December 1, 1978.

· Buildings of three or more rental units that were constructed after April 15, 1976.

· Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

· Attics

· Furnaces and boilers

· Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building

· Sill boxes

· Heating and plumbing supply in unheated crawlspaces

· Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: **June 30, 1998**
Effective Date: **June 30,1998**
Expiration Date: **November 27,1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Barrier–Free Design, Ch. Comm 69)

Rule adopted creating **s. Comm 69.18 (2) (a) 2. c.**, relating to vertical access to press box facilities.

Finding of Emergency and Rule Analysis

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

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

Publication Date: **May 15, 1998**
Effective Date: **May 15, 1998**
Expiration Date: **October 12, 1998**

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

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

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**
Extension Through: **July 28, 1998**

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

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. Kliesmet, 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 Kliesmet 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**
Hearing Date: **June 26, 1998**

EMERGENCY RULES NOW IN EFFECT (3)

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**
Hearing Date: **May 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**

3. Rules adopted revising **chs. HFS 172, 175, 178, 195, 196, 197 & 198,** relating to permit and related fees for regulated entities.

Finding of Emergency

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

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective July 1, 1998 to increase, for Department–regulated facilities only, permit fees by 18%, the penalty for late payment of a permit fee from $50 to $75 and the pre–inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries), and to impose on Department–regulated facilities only a one–time technology improvement surcharge of $15 to $25 payable on July 1, 1998.

These rule changes are being promulgated by emergency order to protect public health and safety. Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one–time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This rulemaking order also amends the definition of "incidental food service" in ch. HFS 196, the Department's rules for restaurants. The significance of that definition is that s. HFS 196.04 (1) (b) exempts an incidental food service from the requirement to have a restaurant license. An incidental food service is currently defined as meals offered to the general public by a retail food establishment, such as a grocery store, a convenience store or a bakery, licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP), which are not a primary activity of the retail food establishment, comprise no more than 25% of the gross annual food sales of the business and do not involve full service food preparation. This order modifies the definition, mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals from at most 25% to less than *50%*. The effect of the change is to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken jointly by the Department and DATCP to eliminate "double licensing" that is, regulation (inspections, approvals and fees, enforcement) of an establishment by both the Department and DATCP for the same purpose of protecting the public's health.

The modification of the definition of "incidental food service" will be effective for permits issued by the Department starting with the permit period beginning July 1, 1998, but as a mandated change will be delayed for one year, by amendment of the agent agreements, for permits issued by agent local health departments.

This rule change is being promulgated by emergency order for preservation of the public welfare. Retail food establishments licensed by DATCP that serve meals on the premises to the public will be required to have only a license issued by DATCP and not also

a permit issued by the Department. It has become possible at this time, at the beginning of a new restaurant permit period and regulatory cycle and in view of changes occurring lately in the retail food industry, to eliminate duplicative and at times conflicting regulation that does not serve a public purpose, and therefore it should be eliminated promptly.

Publication Date: **June 24, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**
Hearing Date: **August 5, 1998**
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (5)

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**
Extension Through: **June 30, 1998**

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**
Extension Through: **June 30, 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**
Extension Through: **June 30, 1998**

4. Rules were adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, to limit fund fee refund requests to the current and immediate prior year only, and to establish standards for the application of the aggregate underlying liability limits upon the termination of a claims–made policy.

Finding of Emergency

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

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 98–48, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1998. Because the provisions of this rule first apply on July 1, 1998, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 8, 1998.

Publication Date: **May 28, 1998**
Effective Date: **June 1, 1998**
Expiration Date: **October 29, 1998**

5. A rule was adopted amending **s. Ins 17.01 (3) (intro.), (a)** and **(b)**, relating to annual patients compensation fund and

mediation fund fees for the fiscal year beginning July 1, 1998.

Finding of Emergency

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

This emergency rule relating to mediation fees corresponds to the emergency rule relating to fund fees published in the Wisconsin State Journal on May 28, 1998. As the permanent rulemaking process takes a minimum of nine months to complete, and the fund's actuaries' recommendations are made in February each year, the commissioner was unable to promulgate the permanent rule, clearinghouse rule no. 98–048, in time for the patients compensation fund (fund) to notify and bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

This emergency rule is necessary to establish mediation fees applicable to the fiscal year 1998–99 in a timely manner. A germane amendment to the permanent rule was made on June 12, 1998 to include the reduced mediation fees. The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1998. Because the provisions of this rule first apply on July 1, 1998, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 8, 1998.

Publication Date: **June 19, 1998**
Effective Date: **June 19, 1998**
Expiration Date: **November 16, 1998**

EMERGENCY RULES NOW IN EFFECT (6)

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

1. 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**
Hearing Date: **January 12, 1998**

2. 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**

3. Rule was adopted amending **s. NR 20.037 (2)**, relating to readjustment of daily bag limits for walleye in response to tribal harvest.

Finding of Emergency

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

The Chippewa bands set harvest goals for walleye on several waters each year prior to the spring spearing season. The Department then reduces daily bag limits on individual waters for anglers in response to these harvest goals. Frequently, the Chippewa harvest goals are not met on many waters and notification that harvesting is complete is not given to the Department. The unused tribal harvest results in unnecessarily low walleye bag limits for anglers. On waters where Chippewa harvest goals are established but not met, the resulting reduced bag limits are not needed to protect walleye populations. Walleye bag limits lower than 3 per day result in reduced fishing opportunities and have led to tensions between anglers and the Chippewa tribes. The reduced daily bag limits also result in hardships on businesses dependent upon tourism and sportfishing in the ceded territory. The foregoing rule will allow the Department of Natural Resources to increase the walleye daily bag limits for anglers on waters where the Chippewa harvest goals are not met.

Publication Date: **May 30, 1998**
Effective Date: **May 30, 1998**
Expiration Date: **October 27,1998**
Hearing Date: **July 16, 1998**

4. Rules adopted revising **chs. NR 10 and 11,** relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: **June 24, 1998**
Effective Date: **October 1, 1998**
Expiration Date: **February 28, 1999**

5. Rules were adopted revising **ch. NR 19,** relating to wildlife damage abatement and claims program.

Exemption From Finding of Emergency

Pursuant to s. 9137(11s)(b), 1997,Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**

6. Rules adopted revising **s. NR 20.03 (1)(k),** relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

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

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: June 27, 1998
Effective Date: June 27, 1998
Expiration Date: November 24, 1998
Hearing Date: July 24, 1998
[See Notice this Register]

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
Hearing Dates: March 13 and 16, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–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, 1 998, 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
Hearing Dates: May 27 and 28, 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**
Hearing Date:	**January 14, 1998**
Extension Through:	**July 29, 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**
Hearing Dates:	**February 17, 18 and 19, 1998**
Extension Through:	**August 14, 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**
Hearing Dates:	**February 17, 18 and 19, 1998**
Extension Through:	**August 14, 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. 196.2l8 (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**

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**
Hearing Date: **June 30, 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**
Extension Through: **July 30, 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

Commerce

Subject:

Ch. ILHR 57, Subch. II – Relating to covered multifamily dwelling units.

Description of policy issues:

Part I. Description of the objective of the rule:

The objective of the rule revisions is to do the following:

- ❑ Exempt multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws as specified in the 1997 Wis. Act 237.
- ❑ Clarify the existing multifamily housing requirements for fulfilling the objective of ensuring multifamily housing is accessible to people with disabilities.
- ❑ Address code requirements relative to accessibility that are substantially different from the national model building codes or federal and state fair housing laws.

The above objectives may be accomplished by more than one rule–making initiative.

Part II. 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:

a) Existing policies. Currently, ch. ILHR 57, Subch. II of the Commercial Building Code establishes design and construction standards for providing reasonable access in multifamily housing for people with disabilities. The requirements apply to both new and existing construction.

b) New policies. The objective of these rules is to create a code that is consistent with and reflects the intent of the federal and state fair housing laws.

c) Analysis of policy alternatives:

☛ Policy Alternative: Promulgate the emergency rule into a permanent rule and consider changes to clarify the rules relating to accessibility in multifamily housing.

Analysis: It is the intent of this agency to develop accessibility requirements that provide reasonable access and usability of multifamily housing without requiring owners to provide additional features beyond the state and federal laws.

☛ Policy Alternative: Do not promulgate the emergency rule into a permanent rule and do not clarify existing requirements to improve application and enforcement.

Analysis: If the agency does not proceed with the development of permanent rules for the emergency rule or clarify existing rules, the objectives of Part I would not be achieved.

Statutory authority for the rule:

☞ Section 101.02 (1), Stats.: Requires the Department to promulgate rules that establish reasonable standards for the design and construction of commercial buildings.

☞ Section 101.02 (15), Stats.: Requires the Department to ascertain, fix, and order reasonable standards for the construction, repair and maintenance of public buildings so as to be safe.

☞ Section 101.132, Stats.: Requires the Department to promulgate rules that ensure people with disabilities have access to and throughout covered multifamily housing.

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

The following is the estimated work time that staff will be involved in these multiple code change initiatives:

Conduct code research, preparation of code draft =	120 hours
Hold public hearings, prepare responses, revise draft accordingly =	100 hours
Prepare environmental assessment =	30 hours
Adoption process, including proofreading =	16 hours
Total time =	266 hours

Insurance

Subject:

SS. Ins 3.48, 3.50 and 3.52 – Relating to health benefit plans.

Description of policy issues:

A statement of the objective of the proposed rule:

Additions and amendments to these rules are needed to accommodate and implement changes to chs. 609 and 632, Stats., resulting from the passage of 1997 Wis. Acts 155 and 237, creating new requirements for all health benefit plans.

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

The purpose of this proposed rule is to provide definitions and standards pertaining to health benefit plans, including managed care plans, to complement the legislation. The specific areas of concern include access standards, continuity of care, quality assurance, emergency room care, experimental treatment, information and data reporting and oversight by the Office of the Commissioner of Insurance. The policy of this rule is to carry out legislative mandates. There is no policy alternative.

A statement of the statutory authority for the rule:

1997 Wis. Act 237, chs. 609 and 632, Stats., and s. 601.41, Stats.

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

500 hours.

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

Subject:

Ch. NR 20 – Relating to sport fishing for yellow perch in a tributary to Lake Michigan.

Description of policy issues:

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

This rule will protect Lake Michigan yellow perch attracted to a heated water discharge at the mouth of Sauk Creek. It is consistent with established policy of protecting Lake Michigan yellow perch during this period of population decline. This rule will affect a small number of sport fishers.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Sport fishing regulations for yellow perch in Lake Michigan include a June closure and a 5–fish daily bag limit during the

remainder of the year. Those restrictions are designed to limit the harvest of yellow perch until the population recovers from its current low level of abundance. During early summer, a heated water discharge near the mouth of Sauk Creek attracts yellow perch from Lake Michigan to an area defined as inland waters. Because sport fishing rules for inland waters differ from those for Lake Michigan, it is possible for anglers fishing in this area to take yellow perch during June, with a daily bag limit of 25 fish. This emergency order will protect yellow perch at that site during the summer of 1998, while a permanent order is developed to address the issue.

Statutory authority for the rule:

Sections 29.085, 29.174 (3) and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 24 hours. One public hearing is proposed to be held in August, 1998 at Port Washington.

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

Subject:

NR Code – Relating to amphibian and reptile (herptile) regulations.

Description of policy issues:

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

Due to a potentially long delay in seeing the Captive Wildlife law passed, the Department would like to proceed with a portion of that law dealing with the bag, possession and sale of herptiles. This portion has already had extensive public review and involved numerous public meetings as part of the overall captive wildlife proposal.

The Bureau of Endangered Resources is requesting that the Natural Resources Board grant to them permission to proceed with this rule.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

This rule package is believed necessary because the demand for these animals by the public is increasing (and has been for the past 15–20 years) and existing regulations provide almost no protection of this resource, short of the new rules to better protect turtles under chs. NR 19, 21 and 22. Snakes, frogs, salamanders and lizards, except for those listed as endangered and threatened or as protected wild animals, are totally open to unlimited harvest with little or no season limits (only frogs have a season, and it does not protect them when they are most vulnerable to harvest).

Statutory authority:

Section 29.175 (1), Stats.

Anticipated time commitment:

The anticipated time commitment is 59 hours. One public hearing is proposed to be held in October, 1998 at Madison.

Natural Resources (Environmental Protection––WPDES, Chs. NR 200––)

Subject:

Ch. NR 200 – Relating to applications for discharge permits.

Description of policy issues:

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

The policy issues to be resolved are effluent testing requirements for various categories of dischargers, use of permit application forms, and modification of time periods for Department action on applications and modifications.

Groups to be impacted are the various permittee categories.

This action does not represent a change from past policy.

Since promulgation of chs. NR 105 and 106 (criteria and effluent limitations for toxic substances), the Department has, on a case–by–case basis, requested that effluent testing be performed as part of permit applications. This information is used to determine the content of permits. As requests have become more standardized and requirements have been incorporated into the permit application, revision of this rule has become necessary. Other changes are to formalize current Department procedures.

Statutory authority for the rule:

Sections 227.11 (2) and 283.37, Stats.

Anticipated time commitment:

The anticipated time commitment is 116 hours. One public hearing is proposed to be held in November, 1998 at Madison.

Natural Resources (Environmental Protection––Hazardous Waste Management, Chs. NR 600––) (Environmental Protection––Investigation & Remediation, Chs. NR 700––)

Subject:

NR Code – Relating:

- To establishing PCB (polychlorinated biphenyl) soil criteria protective of human and ecological health in order to regulate land application of dredged sediments, sludges and other materials that have been contaminated with PCB's; and
- To creating or amending relevant PCB language in other codes to assure consistency among DNR programs.

Description of policy issues:

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

The need to pursue these activities stems from several considerations, including lack of cumulative PCB soil limits for land application of sludge, and a longstanding request by Jeff Finley, former director of the Green Bay Port Authority, for the Department to approve methods for disposing of PCB–contaminated dredged spoils. Although the Bay Port dredged sediment disposal facility has an extensive remaining service life, the Port Authority has been seeking alternative uses for Green Bay–dredged spoils such as land application and road bed support. The Department currently has no land application guidelines/rules for sediments or commercial products contaminated with PCB's.

The potential impacts of land application of PCB–contaminated dredged spoil (and other similar materials, such as sludges and commercial products from sediment/sludge) need to be fully examined, with careful consideration of the toxic hazard of the material, the potential for exposure and bioaccumulation in the environment, and the resulting implications for humans and biota. Others who have expressed interest in this issue include the Oneida Nation, environmental groups, municipalities and EPA.

EPA's Great Lakes National Program Office is beginning to explore development of guidelines for land application of PCB–contaminated sediment. EPA headquarters reportedly has plans to propose draft regulations by December 1999 for the land application of biosolids (sewage sludge) with PCB's. Codification of DNR criteria for land application of PCB–contaminated sediment and sludges may become controversial, and will likely take until the end of 1999 to complete.

This action does not represent a change from past policy.

Statutory authority for the rule:

Disposal of PCB's and products containing PCB's taken out of service for disposal are regulated by s. 299.45 (7), Stats. Disposal of PCB's in sludge produced by wastewater treatment systems is regulated by ss. 283.31 (1) and 289.05 (1), Stats.

Anticipated time commitment:

The anticipated time commitment is 984 hours. Three public hearings are proposed to be held in August, 1999 at Milwaukee, Green Bay and Madison.

Natural Resources (Environmental Protection––Water Supply, Chs. NR 800––)

Subject:

Ch. NR 809 – Relating to the addition of capacity development requirements for public water systems in ch. NR 809.

Description of policy issues:

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

Nationally, EPA has determined that many of the violations of the Safe Drinking Water Act occur because water systems lack the capacity to adequately develop, finance and operate a public water system. Therefore, as part of the 1996 Amendments to the Safe Drinking Water Act, states were required to implement a Capacity Development program or forfeit a portion of the State Revolving Loan Fund (SRLF) capitalization grant. The Capacity Development program must contain two components:

- A component that reviews the system capacity for all new non–transient non–community and community water systems; and
- A component that reviews the system capacity of all existing public water systems.

Should the state not develop and implement a complete capacity development program, it would forfeit 20% of the SRLF capitalization grant.

The proposed rule modifications would allow the state to implement a program for review of new water system capacity at non–transient non–community and community water systems. It would impact new water systems for schools, mobile home parks, municipal water systems, subdivisions, and businesses with 25 or more employes on–site. The rule may also include requirements for system capacity at existing public water systems, if deemed necessary during program development.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Requirement of 1996 Amendments to the Federal Safe Drinking Water Act.

Statutory authority for the rule:

1996 Amendments to the Federal Safe Drinking Water Act.

Anticipated time commitment:

The anticipated time commitment is 169 hours. Two public hearings are proposed to be held in November, 1998 at Stevens Point and Madison.

Public Service Commission

Subject:

PSC Code – Relating to fees for connection to subdivision sewer lines.

Description of policy issues:

Objective of the rules:

On April 28, 1998, the Governor signed 1997 Wis. Act 213. This new law concerns the payment of costs incurred by a municipality for construction of sewer systems in new subdivisions. Section 2 of the law created s. 166.076 (1) (b), Stats., which reads:

> 66.076 (1) (b) If the extension of a sewer line or water main that is described under par. (a) is required because of a new subdivision, as defined in s. 236.02 (12), or commercial development, the municipality may recoup some or all of the costs that it has incurred for the extension by a method described under par. (a) or by any other method of financing agreed to by the municipality and the developer. If a person, whose property is outside of the subdivision for which a developer is paying, or has paid, the costs of a sewerage project under this paragraph, connects an extension into the sewerage project after the amount is established that the developer is required to pay under this paragraph, that person shall pay to the developer an amount determined by the public service commission. <u>The public service commission shall promulgate rules to determine the amount that such a person shall pay to a developer. The rules promulgated under this paragraph shall be based on the benefits accruing to the property that connects an extension into the sewerage project.</u> (emphasis added)

The Commission has not yet drafted the rules directed by s. 66.076 (1) (b), Stats.; however, the scope of these proposed rules will follow the legislative directive quoted directly above as to the basis for calculating the fees to be paid.

Existing policies relevant to the proposed rules:

Commission policies with respect to connection of new customers to existing water facilities are presently contained in utility tariffs Cz–1 (Water Lateral Installation Charge), X–2 (Water Main Extension Rule) and X–3 (Water Main Installations in Platted Subdivisions). While the Commission does not presently regulate stand–alone sewer utilities, these water tariffs applicable to the regulation of water service should provide a good beginning for the development of the rules required by 1997 Wis. Act 213.

New policies proposed:

While the Commission's current utility tariffs––Cz–1 (Water Lateral Installation Charge), X–2 (Water Main Extension Rule), and X–3 (Water Main Installations in Platted Subdivisions) –– will provide a guide to calculating the correct charge for a new customer who wishes to connect to a developer–financed sewer system, some modification may be necessary because of the direction in the new law requiring the Commission to adopt rules which are "based on the benefits accruing to the property that connects an extension into the sewerage project."

Analysis of alternatives:

No rules have been drafted at this point, but when preliminary rules are drafted, the Commission will solicit comments and alternatives from municipalities, developers, and consumer groups.

Statutory authority:

The rules being proposed are mandated by Section 2, 1997 Wis. Act 213.

Time estimates for rule development and other resources necessary to develop rule:

Completing the rulemaking process should take approximately 100 staff hours. No additional or other agency resources are anticipated for this rulemaking. If you have specific questions or comments regarding this proposed rulemaking, please contact Mr. Tom McDonald at (608) 266–7236.

Public Service Commission

Subject:

Ch. PSC 111 – Relating to plans and certificates for major electric facilities, and to establishing requirements and applicable procedures related to a strategic energy assessment of electric power in Wisconsin.

Description of policy issues:

Description of objective and policy issues:

1997 Wis. Act 204 created s. 196.491 (2) (ag), Stats., which requires the Public Service Commission to promulgate administrative rules that establish requirements and procedures to be applied when preparing and issuing a strategic energy assessment for electric power.

The new law was created in part to enhance reliability in the generation and transmission of electric power to Wisconsin citizens. As part of the process, a new report analyzing Wisconsin's electric power supply and demand situation over the next few years was created. Rules will need to be promulgated in sufficient time to allow the first strategic energy assessment to be created by **July 1, 2000**.

The rules are to identify:

1) Large electric generating facilities on which an electric utility plans to commence construction within three years;

2) High–voltage transmission lines on which an electric utility plans to commence construction within three years;

3) Any plans for assuring that there is an adequate ability to transfer electric power into the state and the transmission area in a reliable manner;

4) Projected demand for electric energy and the basis for determining the projected demand;

5) Activities to discourage inefficient and excessive power use; and

6) Existing and planned generation facilities that use renewable energy sources.

The rules are to be established in such a way as to allow the Commission to assess:

[1] The adequacy and reliability of purchased generation capacity and energy to serve the needs of the public;

[2] The extent to which the regional bulk power market is contributing to the adequacy and reliability of the state's electrical supply;

[3] The extent to which effective competition is contributing to a reliable, low–cost, and environmentally sound source of electricity for the public; and

[4] Whether sufficient electric capacity and energy will be available to the public at a reasonable price.

Groups likely to be affected include: citizens, public utilities, independent power producers, and those retail providers of electricity or energy services.

Statutory authority:

Sections 196.491 (2) (ag) and 227.11 (2), Stats.

Estimates of time and resources needed to develop the rules:

The Commission estimates that approximately 750 hours of employe time will be required to develop the proposed rules. If you have any questions, you may contact Mr. Robert Norcross at (608) 267–9229 or David Ludwig at (608) 266–5621 of the Electric Division.

Veterans Affairs

Subject:

Ch. VA 1 – Relating to the cancellation of indebtedness under the Veterans Trust Fund stabilization loan and personal loan programs.

Description of policy issues:

Objective of the rule:

The Department of Veterans Affairs has the statutory authority under the Veterans Trust Fund stabilization loan and personal loan programs to compromise indebtedness and write off indebtedness that it considers to be uncollectible. Currently the write–off criteria are contained in policy directives. The decision to write–off debt is not clearly a decision subject to the administrative hearing process. It is the Department's objective to codify the write–off criteria and to clearly provide a hearing process to review a decision relative to writing off indebtedness.

Policy analysis:

Codifying the write–off criteria and providing a hearing process to review such decisions provides more access to veterans to influence decision–making by this Department. It will assist in assuring that the Department has complete information regarding a veteran's financial status prior to incurring collection costs for both the Department and the veteran.

Statutory authority:

Sections 45.35 (3) and 45.356 (7) (c), Stats.

Estimate of the amount of time and other resources necessary to develop the rule:

Approximately 15 staff hours. If you have any questions, you may contact John Rosinski, Chief Legal Counsel, at (608) 266–7916.

Workforce Development

Subject:

Ch. DWD 12 – Relating to two–parent families under Wisconsin Works (W–2).

Description of policy issues:

Description of the objective of the rule:

Implement new participation requirements for two–parent families under the Wisconsin Works (W–2) program, including changes made by the 1997 state budget act (1997 Wis. Act 27).

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:

This proposed rule will create definitions for "disabled parent" and "severely disabled child" in the W–2 administrative rule (ch. DWD 12). It will also create rule language relating to the obligation of both parents to participate in employment and training activities under W–2 if a two–parent family is receiving federally–funded child care and the second parent in a W–2 group is not disabled or caring for a severely disabled child. In addition, the proposed rule will provide for the offer of activities to both parents by the W–2 agency's financial and employment planner (FEP) even when a two–parent family is not receiving child care.

Statutory authority for the rule:

Sections 49.15 and 49.151, Stats.

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

Approximately 40 hours of state employe time will be necessary to develop the rule.

Workforce Development

Subject:

Ch. DWD 16 – Relating to emergency assistance for families with needy children.

Description of policy issues:

Description of the objective of the rule:

Implement the emergency assistance program under s. 49.138, Stats., including changes made by the 1997 state budget act (1997 Wis. Act 27).

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:

DWD currently has rules in place for AFDC emergency assistance (s. DWD 11.055, Wis. Adm. Code). These rules need to be modified and renumbered to reflect the program change from AFDC emergency assistance to emergency assistance for families with needy children, to define the term "needy person," and to reflect that, in most instances, W–2 agencies now administer the emergency assistance program.

Statutory authority for the rule:

Sections 49.138 and 103.005 (1), Stats.

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

Approximately 40 hours of state employe time will be necessary to develop the rule.

Workforce Development

Subject:

Ch. DWD 17 – Relating to training of income maintenance workers.

Description of policy issues:

Description of the objective of the rule:

Update the rule on the training of income maintenance workers to reflect current policies of the W–2 program and remove references to AFDC. Chapter HSS 217 will be renumbered ch. DWD 17 and amended.

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

The sections of ch. HSS 217 which require updating include ss. HSS 217.01 (introduction), 217.02 (definitions), 217.03 (training requirements), 217.04 (initial training), 217.05 (ongoing training), 217.06 (trainer qualifications), and 217.07 (records). In all of these sections, the changes involve the removal of outdated references to programs that have been changed or discontinued and the inclusion of updated references, primarily to the W–2 program.

Statutory authority for the rule:

Sections 49.143 (2) (c), 49.33 (3) and 103.005 (1), Stats.

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

Approximately 40 hours of state employe time will be necessary to develop the rule.

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.

Accounting Examining Board

Rule Submittal Date

On June 25, 1998, the Wisconsin Accounting Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule relates to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after **December 31, 2000**.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 14, 1998**.**

Contact Person

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

Pharmacy Examining Board

Rule Submittal Date

On June 25, 1998, the Wisconsin Pharmacy Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

The proposed rule–making order relates to the transmission and receipt of electronic prescription orders.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 12, 1998.

Contact Person

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

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold hearings on proposed rule revisions relating to the department's drainage district program (ch. ATCP 48, Wis. Adm. Code). Four hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule revisions.

A copy of the proposed rule revisions may be obtained, free of charge, by calling (608)224–4620 or by writing to:

Drainage District Program
Land & Water Resources Bureau
Department of Agriculture, Trade
and Consumer Protection
PO Box 8911
Madison, Wisconsin 53708–8911

Copies of the proposed rule revisions will also be available at the public hearings.

The hearing record will remain open for one week beyond the last public hearing. All written comments received by **4:30 p.m. on Friday, August 7, 1998,** will become part of the official hearing record. All written comments should be sent to the address listed above.

Hearing Information

Each public hearing listed below will have two sessions: 2:30–4:30 p.m. and 6:30–8:30 p.m.

July 27, 1998 **Monday**	**Mead Inn** **451 E. Grand Ave.** **Wisconsin Rapids**
July 28, 1998 **Tuesday**	**Liberty Hall** **800 Eisenhower Drive** **Kimberly**
July 29, 1998 **Wednesday**	**Jefferson County Courthouse** **Room 202** **Jefferson**
July 30, 1998 **Thursday**	**Green Lake County Courthouse** **Safety Building Room** **Green Lake**

Persons requiring an interpreter may request one prior to **July 10, 1998**, by contacting Sheila Vanney at (608) 224–4620 or by contacting the message relay system (TTY) at (608) 266–4399 which will forward your call to the department. Handicap access is available at the hearings. Requests may also be made by writing to: Sheila Vanney, PO Box 8911, Madison, WI 53708–8911.

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

Statutory authority: ss. 88.11 and 93.07(1)

Statutes interpreted: ch. 88

The department of agriculture, trade and consumer protection (DATCP) supervises the operation of drainage districts under ch. 88, Stats. This rule modifies the department's current rules, under ch. ATCP 48, Wis. Adm. Code, related to drainage districts.

Drainage districts are special purpose districts formed to drain land for agricultural or other purposes. Lands within a drainage district are drained by means of common drains that cross individual property boundaries. Ch. 88, Stats., spells out procedures for creating, modifying and dissolving drainage districts.

All drainage districts within a county are operated by the county drainage board, which is appointed by the circuit court. The county drainage board must operate drainage districts in compliance with ch. 88, Stats., and DATCP rules. The county drainage board may levy assessments against landowners in a drainage district to pay for the design, construction and maintenance of district drains, and to pay other district operating costs. The county drainage board is primarily responsible for resolving drainage disputes within and between drainage districts.

DATCP monitors county drainage board compliance with ch. 88, Stats., and DATCP rules, and approves construction projects in drainage districts. The state of Wisconsin department of natural resources must also approve certain construction projects in drainage districts.

Drainage District Specifications

Under current rules, a county drainage board must file drainage district specifications for every drainage district under the drainage board's jurisdiction. The county drainage board must file the specifications with DATCP and the county zoning administrator. The specifications must include all of the following:

· ·The boundaries of the drainage district, as last confirmed by the circuit court or the county drainage board.

· ·The location and extent of every district drain.

· ·The location and width of every district corridor. The district corridor is an access corridor and buffer strip established around each district ditch according to current rules.

County drainage boards were required to file specifications for all existing drainage districts by December 31, 1995. However, many county drainage boards have not yet filed them. This rule expands and clarifies the current requirements, and extends the filing deadline to December 31, 2000. Under this rule:

· ·The county drainage board must file a map showing all of the following:

*Drainage district boundaries.

*The alignment and extent of every district drain.

*The location and width of every district corridor.

· ·The county drainage board must document the "cross–section" and "grade profile" of every district drain. This rule defines what is meant by a "cross–section" and "grade profile."

· ·The county drainage board must give landowners notice and an opportunity to object to its proposed drainage district specifications.

· ·The county drainage board must obtain DATCP approval of drainage district specifications. DATCP approval does not preclude a landowner from challenging a specification that violates ch. 88, Stats., or this rule.

· ·After the county drainage board adopts the approved specifications, the county drainage board must file them with DATCP, the county zoning administrator and the county register of deeds.

Drainage District Boundaries

The initial boundaries of a drainage district are specified by the circuit court. A county drainage board may modify drainage district boundaries according to statutory procedures prescribed under ss. 88.77 to 88.80, Stats.

This rule prohibits a county drainage board from changing drainage district boundaries except by the procedures prescribed under ss. 88.77 to 88.80, Stats. If court records documenting current boundaries are not available or are unclear, a county drainage board may clarify the boundaries using the same statutory procedures. If a county drainage board changes a drainage district boundary, it must file a record of the change with DATCP, the county zoning administrator and the county register of deeds.

Designating District Drains

In many cases, lands within a drainage district are drained by "private drains" that empty into "district drains" constructed and operated by the county drainage board. In some cases, it is unclear whether an existing drain is a "private drain" or a "district drain." This rule prohibits a county drainage board from designating a drain as a "district drain," over the objection of a landowner who owns or holds an easement to the land on which the drain is located, unless the county drainage board does one of the following:

· ·Documents that a circuit court has designated the drain as a district drain.

· ·Documents that the drain has historically been operated and maintained as a district drain.

· ·Condemns the land required for the district drain and district corridor, if any, using statutory condemnation procedures.

· ·Properly designates the drain as a district drain in a proceeding under s. 88.73 or 88.77 to 88.80, Stats.

Under this rule, if a county drainage board redesignates a private drain as a "district drain," the county drainage board must file a record of the change with DATCP, the county zoning administrator and the county register of deeds.

Drain "Cross–Section" and "Grade Profile"

The circuit court initially establishes the "cross–section" and "grade profile" of each district drain. The "cross–section" and "grade profile" are important, because they determine drainage access and efficacy. Subsequent construction activity or neglect may cause a deviation from the "cross–section" or "grade profile" established by the circuit court. Over time, additional runoff from upstream development may also cause a deviation from the established "grade profile." These deviations may deprive landowners of drainage to which they are entitled, and may seriously affect land use and land values. In extreme cases, they may cause disastrous flooding.

Under this rule, a county drainage board must:

· ·Document the formally established "cross–section" and "grade profile" of each district drain.

· ·Restore and maintain each district drain to prevent deviations from the formally established "cross–section" or "grade profile."

This rule defines "cross–section" and "grade profile" more clearly. Under this rule:

· ·A "cross–section" is a series of vertical sections of a drain, taken at periodic intervals along the length of a drain at right angles to the center line of the alignment of the drain. Each vertical section in the formally established "cross–section" of a district ditch must include all of the following:

*The top and bottom width of the ditch.

*The design depth of the ditch.

*The side slope angle of the ditch.

· ·A "grade profile" is a vertical section along the alignment of a drain. The formally established "grade profile" of a district ditch must include all of the following:

*The grade elevations at the top and bottom of the ditch.

*The estimated water surface elevations in the ditch at base flow.

*The estimated water surface elevations in the ditch in the event of a 10–year peak discharge.

In some cases, court records establishing the "cross–section" or "grade profile" of a district drain may be unavailable or incomplete. In those cases, a county drainage board may reconstruct the documentation based on physical evidence in the drainage district. (For example, a county drainage board may be able to reconstruct a historical grade profile based on soil conditions and the historical elevation of structures in a district drain.)

If a county drainage board cannot document a formally established "cross–section" or "grade profile" based on court records or physical evidence, it must establish an appropriate cross–section or grade profile with department approval. If a currently established "cross–section" or "grade profile" lacks some of the elements required by this rule (e.g., water surface elevations in a "grade profile"), the county drainage board must also establish those missing elements.

This rule spells out a procedure by which a county drainage board may establish missing or poorly documented elements of a "cross–section" or "grade profile." The procedure is designed to protect landowners whose drainage rights may be affected. The county drainage board may use the same procedure to change a formally established "cross–section" or "grade profile," should that become necessary.

A county drainage board may not establish or change a "cross–section" or "grade profile" without specific DATCP approval. A county drainage board may not change an established "grade profile" over the objection of any landowner whose access to drainage is affected. Whenever a county drainage board changes an established "cross–section" or "grade profile" with DATCP approval, the county drainage board must file that new "cross–section" or "grade profile" with DATCP, the county zoning administrator and the county register of deeds.

Drain Alignment

The circuit court initially approves the "alignment" of a district drain. This rule requires a county drainage board to restore and maintain district drains so they conform to their formally established "alignments."

This rule prohibits a county drainage board from changing the formally established "alignment" of a district drain without specific DATCP approval. A county drainage board may not take new land for a drain realignment unless the landowner consents or the county drainage board formally condemns that land. The county drainage board must file the new "alignment" with DATCP, the county zoning administrator and the county register of deeds.

County Drainage Boards; Compliance Plans

Under current rules, a county drainage boards must develop a plan for bringing drainage districts into compliance with DATCP rules. Among other things, the plan must explain how the county drainage board will correct and prevent deviations from established "cross–sections" and "grade profiles."

County drainage boards were originally required to file compliance plans by December 31, 1996, and bring all drainage districts into compliance by December 31, 1999. In districts where drains have been neglected for many years, extensive restoration may be needed to comply with DATCP rules.

For various reasons, few county drainage boards have filed compliance plans with DATCP. Few, if any, drainage boards will bring all of their drainage districts into compliance with DATCP rules by December 31, 1999. This rule extends the plan filing deadline to December 31, 2001, and extends the actual compliance deadline to December 31, 2004.

This rule also spells out minimum requirements for compliance plans. A county drainage board must file a separate plan for each

drainage district in the county. The plan must include all of the following:

· ·A professionally drawn map of the drainage district.

· ·A restoration plan that identifies:

*Drain segments, if any, that do not conform to established "cross–sections," "grade profiles" or "alignments."

*A priority sequence and schedule for restoring non–complying drains to their established "cross–sections," "grade profiles" and "alignments."

*An estimate of the amount of material to be dredged from drains scheduled for restoration.

*The intended disposition of dredged materials, including the locations at which the materials will be deposited.

*The projected costs of restoration, and a plan for financing those costs.

· ·A repair and maintenance plan that includes:

*A plan for routine maintenance of drainage structures.

*A plan for maintaining district corridors and controlling woody vegetation in those corridors.

*A plan for special maintenance projects, if any.

*The projected costs of maintenance, and a plan for financing those costs.

· ·A plan for controlling soil erosion and runoff in the drainage district. The plan must include the estimated cost to implement the plan.

Persons Obstructing or Altering District Drains

This rule prohibits any person from obstructing or altering a district drain (e.g., by installing or changing the height of a dam) without prior written approval from the county drainage board. However, an owner of land adjacent to a district drain may, without prior drainage board approval, withdraw water from a district drain and place an obstruction in the district drain for that purpose if all of the following apply:

· ·The landowner notifies the county drainage board before withdrawing the water.

· ·The landowner obtains a DNR permit if required under s. 30.18(2)(a)2., Stats. (No DNR permit is currently required for cranberry growers.)

· ·The obstruction does not elevate the water level in the district drain above the base flow elevation specified as part of the formally established "grade profile" for that district drain.

· ·The withdrawal does not reduce the base flow, in a district drain that has a navigable stream history, below the minimum base flow level which the Wisconsin department of natural resources has established for that district drain under s. 88.31, Stats.

· ·The withdrawal does not injure a district drain.

A county drainage board may require a landowner to provide information showing that the landowner's withdrawal of water complies with this rule. A county drainage board may prohibit a landowner from withdrawing water if the drainage board reasonably concludes that the withdrawal violates this rule.

Structures Impeding Drainage

This rule prohibits a county drainage board from installing or modifying any structure in a district drain, or approving the installation or modification of any structure in a district drain, if the installation or modification causes or aggravates a deviation from the formally established "grade profile." This prohibition does not apply to any of the following:

· ·A temporary structure or modification that is reasonably necessary to protect the public health, safety or welfare in an emergency.

· ·A temporary structure or modification that is necessary for other lawful construction or maintenance operations under this rule.

· ·A temporary structure or modification to provide essential crop irrigation during a drought if all of the following apply:

*The county drainage board gives notice to upstream landowners whose access to drainage may be affected.

*The county drainage board resolves any objections from affected landowners to the satisfaction of those landowners.

*The county drainage board imposes written conditions to protect the public interest and the interests of all landowners in the drainage district.

· ·A temporary structure or modification to provide water for cranberry harvest, or for cranberry winter ice cover, if all of the following apply:

*The structure or modification is installed for no more than 14 days for cranberry harvest, and no more than 14 days for cranberry winter ice cover.

*The county drainage board gives notice to upstream landowners whose access to drainage may be affected.

*The county drainage board resolves any objections from affected landowners to the satisfaction of those landowners.

*The county drainage board imposes written conditions to protect the public interest and the interest of all landowners in the drainage district.

Restoration Projects; Notice to DATCP

Under current rules, a county drainage board must obtain DATCP approval before undertaking or approving a drainage district "restoration project" involving the dredging or excavation of more than 3,000 cubic yards of material. A "restoration project" means dredging or other operations to bring a district drain into closer conformity with the formally established "cross–section," "grade profile" or "alignment" of that drain.

This rule eliminates the requirement for DATCP approval of "restoration projects." However, a county drainage board must notify DATCP in writing before it initiates a "restoration project" that involves the dredging or excavation of more than 3,000 cubic yards of material. A county drainage board may need to obtain a dredging permit from DNR before undertaking a "restoration project."

Construction Projects and Drainage Alterations; DATCP Approval Required

Under current rules, DATCP must approve a "construction project" before a county drainage board undertakes or approves that "construction project." This rule expands and clarifies the current rules.

With certain exceptions (described below), this rule prohibits a county drainage board from doing any of the following without written approval from DATCP:

· ·Constructing or modifying any district drain, or authorizing any person to construct or modify a district drain.

· ·Installing or modifying any structure in a district drain, or authorizing any person to install or modify any structure in a district drain.

· ·Authorizing any person (including any municipality or government entity) to connect that person's "private" drain to a district drain.

· ·Changing the formally established "cross–section," "grade profile" or "alignment" of a district drain, regardless of whether that change involves any physical alteration to a district drain or structure.

Under this rule, a county drainage board is **not** required to obtain DATCP approval for any of the following:

· ·Actions, such as routine maintenance or repair projects, that do not cause or aggravate any deviation from the formally established "cross–section," "grade profile" or "alignment" of a district drain.

· ·Restoration projects that merely restore district drains to their formally established "cross–sections," "grade profiles" or "alignments."

· ·Temporary structures or modifications that a county drainage board installs or approves according to this rule (see above).

Applying for DATCP Approval

A county drainage board seeking DATCP approval for a construction project or drainage alteration must file an application that includes all of the following:

· ·A complete description of the proposed action, including design specifications prepared by a qualified engineer.

· ·The objectives of the proposed action.

· ·A construction plan (if applicable) prepared by a qualified engineer.

· ·A hydrology analysis prepared by a qualified engineer.

· ·The cost, method of financing and effect on landowner assessments.

· ·A map of the lands and waters affected.

· ·A statement showing that the county drainage board has published a public notice, held a public hearing, and allowed for public comment on the proposed action.

· ·A description of any proposed change to the formally established "cross–section," "grade profile" or "alignment" of a district drain.

· ·A statement showing that the county drainage board has done both of the following:

*Notified upstream landowners of any proposed "grade profile" change that may affect their access to drainage.

*Resolved any objections by those upstream landowners (to the landowner's satisfaction).

· ·A discussion of significant environmental effects, if any.

· ·Additional information requested by the department.

DATCP Approval or Disapproval

DATCP may not approve any construction project or drainage alteration that causes or aggravates a deviation from the formally established "cross–section," "grade profile" or "alignment" of a district drain. However, DATCP may do any of the following:

· ·Approve a change to the formally established "cross–section." Whenever a county drainage board changes an established "cross–section" with DATCP approval, it must file the new "cross–section" with DATCP, the county zoning administrator and the county register of deeds.

· ·Approve a change to the formally established "grade profile." Neither DATCP nor the county drainage board may approve a change to an established "grade profile" over the objection of an upstream landowner whose drainage access may be impaired, unless the county drainage board resolves the landowner's objection to the satisfaction of the landowner. Whenever a county drainage board changes an established "grade profile" with DATCP approval, it must file the new "grade profile" with DATCP, the county zoning administrator and the county register of deeds.

· ·Approve a change to the formally established "alignment." A county drainage board may not take new land for a realigned drain unless the landowner consents or the county drainage board formally condemns the new land for that purpose. Whenever a county drainage board changes an established "alignment" with DATCP approval, it must file the new "alignment" with DATCP, the county zoning administrator and the county register of deeds.

DATCP must issue a written notice approving or disapproving a county drainage board application within 45 days after a county drainage board files a complete application. DATCP may approve an application subject to conditions specified by DATCP. If DATCP disapproves, it must state its reasons. DATCP may disapprove an application for any of the following reasons:

· ·The county drainage board has failed to provide required information.

· ·The proposed action or approval would violate DATCP rules or ch. 88, Stats.

· ·The proposed action is not technically feasible, is not technically sound, or is not adequately designed to achieve the county drainage board's stated objectives.

· ·The proposed action will have a substantial adverse effect on water quality, or on the human or natural environment.

DATCP must prepare a brief environmental assessment before approving a proposed action if any of the following apply:

· ·The proposed action will drain more than 200 acres of land not previously drained, or will substantially alter drainage from more than 200 acres of land.

· ·The proposed action will drain more than 5 acres of wetlands.

· ·The proposed action involves the construction or modification of a dam in a drain with a navigable stream history.

· ·The proposed action involves a cold water fishery in a district drain with a navigable stream history.

· ·The proposed action will substantially affect the base flow in surface waters of the state.

Landowner Petition

Under this rule, an owner of land in a drainage district may file a written petition with the county drainage board asking the county drainage board to do any of the following:

· ·Restore, repair, maintain and, if necessary, modify a district drain in order to conform the drain to the "cross–section," "grade profile" or "alignment" formally established for that drain.

· ·Remove an obstruction placed in a district drain in violation of this chapter or ch. 88, Stats.

· ·Correct a violation of this chapter or ch. 88, Stats.

A landowner petition must identify the grounds for the petition and the action requested of the county drainage board. A county drainage board may require the petitioner to provide further information which is reasonably necessary in order for the board to properly evaluate the petition.

Within 60 days after a landowner files a complete petition with the county drainage board, the county drainage board must provide the landowner with a written response that does all of the following:

· ·Describes and explains the action, if any, which the county drainage board will take in response to the petition.

· ·Explains the county drainage board's refusal to take action on the petition, if the county drainage board refuses to take action.

If a petitioner is not satisfied with the county drainage board's response, and believes that the county drainage board has violated this rule or ch. 88, Stats., the petitioner may file a written petition with DATCP alleging that violation. DATCP may, in its discretion, conduct an investigation to determine whether the county drainage board has violated this rule or ch. 88, Stats. If DATCP finds that a county drainage board has violated this rule or ch. 88, Stats., DATCP must issue an order which directs the county drainage board to correct the violation.

Land Ownership Change

This rule confirms that a change of land ownership does not relieve or deprive a succeeding landowner of rights or responsibilities that run with the land under ch. 88, Stats., or this rule.

Row Cropping and Obstructions in District Corridors

Under current rules, a county drainage board must establish a district corridor extending for 20 feet on each side of a district ditch. The drainage board must maintain the corridor according to current rules for the following purposes:

· ·To provide effective access to the district ditch, for inspection and maintenance.

· ·To provide a buffer against land uses that may adversely affect water quality in the district ditch.

Current rules completely prohibit "row cropping" in district corridors. This rule prohibits a landowner from doing either of the following without written permission from the county drainage board:

· ·"Row cropping" in a district corridor.

· ·Placing in a district corridor any building or other obstruction that interferes with the county drainage board's ability to inspect and maintain the district drain and corridor.

Under this rule, a county drainage board may authorize row cropping or obstructions in a district corridor, subject to conditions or limitations which the drainage board specifies in writing. A person who engages in row cropping or places any obstruction in a district corridor waives any claim for damages to that crop or obstruction that may result from lawful county drainage board activities in the corridor.

In deciding whether to permit row cropping in a district corridor, a county drainage board may consider, for example, whether row cropping will result in increased maintenance, soil erosion, or movement of suspended solids to district drains. A county drainage board may also consider, for example, the type of row cropping and tillage proposed, the topography of the district corridor, and the nature of the soils and subsoils in the district corridor.

This rule does not require a landowner to remove any building or fixture constructed or installed in a district corridor prior to the effective date of this rule. However, the owner waives any claim for damages to that building or fixture that may be caused by lawful county drainage board activities in the corridor.

Under current rules, a county drainage board must control the growth of "woody vegetation" in a district corridor, to ensure effective drainage and effective access for inspection, maintenance and repair. A county drainage board may allow the growth of woody vegetation in portions of a district corridor if it does not interfere with effective access. This rule defines "woody vegetation" but makes no other change.

Assessing Benefits to Landowners in Drainage Districts

Under current law, a county drainage board may levy assessments against landowners in a drainage district to pay for drainage district costs, including costs of construction, maintenance, restoration, district operation, and compensation to landowners. Costs must be apportioned among landowners according to the benefits which they derive from the drainage district. Benefits must be assessed according to a procedure specified in ch. 88, Stats., and current rules.

When assessing benefits to agricultural lands in a drainage district, a county drainage board is currently required to consider a number of factors including:

· ·The estimated increase in land value resulting from drainage.

· ·The amount of drainage required by, or provided to the assessed land.

· ·The thoroughness and reliability of drainage provided.

· ·The amount and frequency of flooding on the assessed land.

· ·The difficulty of draining the assessed land.

· ·Any loss of acreage resulting from the construction of district drains and corridors, or from the deposition of materials excavated during construction.

· ·Other factors which the drainage board considers relevant.

Under this rule, a county drainage board must exclude the following acreage from any assessment of benefits:

· ·Acreage in a district corridor unless the drainage board authorizes row cropping on that acreage.

· ·Acreage permanently lost to the landowner as a result of the construction, restoration or maintenance of district corridors, or as a result of the deposition of materials from that construction, restoration or maintenance.

Under current rules, a county drainage board may consider potential land uses when it estimates the increase in land value resulting from drainage. This rule clarifies that the drainage board may also consider current uses.

Under current rules, a county drainage board assessing benefits to agricultural lands must consider the type, depth, quality and character of soils and subsoils on the assessed land. Under this rule, the drainage board must also consider the depth of the water table.

Under this rule, a county drainage board assessing benefits to agricultural lands may consider any of the following potential uses of that land (or other potential uses which the board considers appropriate):

· ·Residential.

· ·Commercial.

· ·Cropland, including dryland cropland, pasture, irrigated cropland or cranberry cropland.

· ·Abandoned cropland (not used for agricultural, residential or commercial purposes).

· ·Woodlands.

· ·Wetlands, including soils with standing water that have no significant agricultural value.

Fiscal Estimate

NOTE: This fiscal estimate assumes that there are about 200 drainage districts in 30 Wisconsin counties which are required to comply with this rule. The proposed revisions to the rule further interpret ch. 88, Wis. Stats., and if adopted, will clarify the standards and procedures for the operation of drainage districts.

Impact of Rule Revision to State Government

Chapter ATCP 48 is administered by the Department of Agriculture, Trade and Consumer Protection. The proposed rule revisions clarify and, in some cases, add to the department's role in the implementation of drainage district statutory requirements. The department retains its responsibilities for review of drainage district annual reports and maintenance plans, for inspections and issuance of compliance orders, for managing and maintaining county drainage district records, and for training county drainage board members and their advisors in the requirements of the statutes and the rule. The proposed revisions give the department new responsibilities for the review and approval of technical specifications for each drainage district.

Existing staffing is insufficient to meet all requests and needs of the drainage boards. The department is not providing adequate support to the drainage boards. Adoption of the proposed revisions to ch. ATCP 48 is expected to result in increased costs to the department for administration and enforcement of the rule. The department estimates that two additional staff positions will be needed in the field, and a project position in the central office, if the department is to meet its responsibilities under the statute and the rule. All three positions will be engineering specialists; two would be located in field offices in the

eastern part of Wisconsin where the largest concentration of counties with drainage districts are found.

The engineering specialists assigned to field offices would be the primary source of contact regarding implementation of the rule. These positions would assist county drainage boards in developing district maps (with cross–sections and profiles) and would assist in the development of compliance plans. In addition, these positions would perform preliminary reviews of engineering plans submitted by drainage boards for district projects.

The third engineering specialist position will complement the activities of the existing drainage engineer position, but will predominantly be responsible for collecting drainage district data, and developing a statewide drainage district database. Accurate information about the boundaries and locations of each drainage district is essential to the department's ability to quickly and truthfully address questions from other conservation partners, realtors, developers, and drainage district landowners.

Our estimate of the cost for these three additional positions - including salary, fringe benefits, support costs and one time costs - is as follows:

Field engineering specialist – journey - Two (2) permanent positions

Fiscal Year	1999–00	2000–01
Costs	$115,600	$106,600
Fund type	GPR	GPR
Staffing (FTE)	2.0	2.0

Central Office engineering specialist – journey - One (1) project position

Fiscal Year	1999–00	2000–01
Cost	$53,400	$51,700
Fund type	GPR	GPR
Staffing (FTE)	1.0	1.0

Impact of Rule Revisions to County Drainage Boards and Drainage District Landowners

The proposed revisions to ch. ATCP 48 are expected to result in increased annual costs to county drainage boards and the district landowners they serve. In particular, the cost of administering all districts will increase, as will the cost for technical specifications to implement the rule. Drainage boards collect assessments from landowners in drainage districts to pay for drainage district operations, based on the degree of drainage benefits the land receives. Costs related to drainage district specifications, district facilities inspections, reporting, and district maintenance requirements are more clearly defined in the proposed revisions to ch. ATCP 48.

The department estimates the costs to drainage boards (and, therefore, district landowners) as follows:

Increased Administrative Costs

30 county drainage boards x 6 (estimated) meetings/year =

180 meetings statewide/year (estimated)

Costs of holding one meeting = **$430**, calculated as follows:

Written notices to landowners (letters, envelopes, postage, processing time) = **$150**

Publishing legal notices in the designated county newspaper =

$250/publication (non–urban estimate)

Someone to take meeting minutes =

$10/hour x 8 hours (4 hour meeting + 4 hour minutes preparation) = **$80**/mtg.

Cost of holding 180 meetings statewide/year = $430 x 180 meetings/year = **$77,400**

Increased Technical Costs

A. Mapping Drainage District Cross–sections and Grade Profiles

Cross sections and profiles are the basis for the entire drainage district program. The "cross–section" and "grade profile" are important, because they determine drainage access and efficacy. Subsequent construction activity or neglect may cause a deviation from the "cross–section" or "grade profile" established by the circuit court. Over time, additional runoff from upstream development may also cause a deviation from the established "grade profile." These deviations may deprive landowners of drainage to which they are entitled, and may seriously affect land use and land values. In extreme cases, they may cause disastrous flooding.

Estimated cost for producing maps which show cross–sections and profiles for each drainage district:

Estimated district drain length = 10 miles

Estimated number of districts in Wisconsin = 200

Total number of district miles in Wisconsin = 200 x 10 = 2,000 drain miles

Estimated cost per mile to prepare adequate maps = $2,500/mile

Total cost to prepare maps for all drainage district miles in Wisconsin =

2,000 miles x $2,500/mile = **$5,000,000**.

Average annual cost assuming three (3) year implementation cycle = **$1,666,667**

B. Soil Core Sample Costs

In some cases, historical evidence would be needed to recreate the cross–section and grade profile of a district drain. This can be accomplished with soil core sampling. In addition, the DNR may require evidence provided by soil core samples before approving a permit for dredging. The cost of soil core samples would be in addition to the cost of creating maps with proper cross–sections and grade profiles.

Estimated cost for collecting and analyzing soil core samples necessary to prepare drainage district maps:

Total number of district miles in Wisconsin = 2,000 miles (see calculation above)

Number of samples needed per mile = 3

Total number of soil core samples needed in Wisconsin = 3 x 2,000 = 6,000 samples

Estimated cost per soil core sample = $400/each

Total estimated cost for all soil core samples needed in Wisconsin =

$400 x 6,000 = **$2,400,000**.

Average annual cost assuming three (3) year implementation cycle = **$800,000**

Note: While it has not yet determined whether any of the increased technical costs would be cost–shared by the state, the department may need an additional administrative position to process grants if a cost–share program is put into place.

Environmental Assessment

The department has prepared an environmental assessment on this rule. The public may comment on the environmental assessment, which will be available at the hearings. The assessment concludes that this rule will have no adverse impact on the environment. Alternatives to this rule will not meet program goals and responsibilities as effectively as the proposed rule. No environmental impact statement is necessary under s. 1.11(2), Stats.

Initial Regulatory Flexibility Analysis

Scope of the Rule

The proposed revision of Chapter ATCP 48, Wis. Adm. Code, does not present a significant change or impact to small businesses. The revisions mainly codify existing statutory procedures or requirements and accepted practices that have already been in use in drainage districts. The revisions also clarify and expand existing rule requirements.

Businesses Affected

The small businesses affected by the rule revisions include farms and agricultural food processors whose lands lie within the boundaries of drainage districts. In Wisconsin, there are an estimated 200 drainage districts located in 30 counties. Currently, 25 counties have drainage boards in place.

Fiscal Impact

Small businesses in drainage districts will experience a minor fiscal impact from the rule revisions as drainage districts will have some additional costs as a result of the new rule. The new rule requires a higher level of detail on the drainage district maps (cross–section, grade profile and alignment) that was not specifically required by the old rule. Likewise, the new rule requires more information in the drainage district compliance plans than the old rule did. The cost for generating this additional information will be borne by the drainage district landowners, including small businesses (farms). Under current law, each small business will be assessed a portion of the anticipated cost of providing this additional information.

Landowner Petitions to the County Drainage Board

This procedure will be beneficial to small businesses. The proposed rule establishes a procedure for landowners to file written petitions with the county drainage board asking the board to do any of the following:

a) To restore, repair, maintain and, if necessary, modify a district drain in order to conform the drain to the cross–section, grade profile or alignment formally established for that drain.

b) To remove an obstruction placed in a district drain in violation of this chapter or ch. 88, Stats.

c) To correct a violation of this chapter or ch. 88, Stats.

This procedure provides small businesses (farms) with a means to receive adequate drainage for their land which may be crucial to maximum crop production.

Assessing Benefits to Landowners in Drainage District

The proposed rule revisions regarding the assessment of benefits will be beneficial to small business (farmers) for three reasons. First, the farmer's land that is in district corridors and not being cropped will not be assessed. Second, the farmer may be assessed at a lower rate if the county drainage board decides to base their assessment on current use instead of potential use. Third, the assessment of benefits will be more equitable for all landowners since the county drainage board must also consider the depth of the water table for future assessments.

Recordkeeping

The proposed rule revision will not impose any new recordkeeping requirements on small businesses.

Professional Skills Required to Comply

Small businesses will not need to acquire or retain additional professional skills or services to comply with the rule revisions.

Notice of Hearing

Health & Family Services
(Health, Chs. HFS/HSS 110––)

Notice is hereby given that pursuant to ss. 254.47, 254.64 (1) (d), 254.68 and 254.74 (1), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of s. HFS 196.03 (11r), Wis. Adm. Code, relating to the definition of "incidental food service," and emergency rules now in effect on the same subject as well as emergency rules now in effect that amend chs. HFS 172, 175, 178 and 195 to 198, Wis. Adm. Code, relating to permit and related fees for Department–regulated public swimming pools, camps, campgrounds, hotels and motels, tourist rooming houses, bed and breakfast establishments, food vending operations and food vending commissaries.

Hearing Information

The public hearing will be held:

Date & Time	Location
August 5, 1998	**Room 260**
Wednesday	**Municipal Building**
Beginning at	**215 Martin L. King, Jr. Blvd.**
1:00 p.m.	**MADISON WI**

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

Section HFS 196.03 (11r) Proposed Permanent Rule

Many retail food establishments, that is, grocery stores, convenience stores, delicatessens and bakeries, have in recent years added a food service operation to their business, in effect establishing a restaurant within the store, often with sit–down dining and full service food preparation. Also, some restaurants have added retail food sales, a bakery operation, for instance, to their business. A retail food establishment that also operates a restaurant on the same premises and a restaurant that also operates a retail food establishment on the same premises may be subject to regulation by both the Department of Agriculture, Trade and Consumer Protection (DATCP), which regulates retail food establishments under s. 97.30, Stats., and ch. ATCP 75, and the Department of Health and Family Services (DHFS), which regulates restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196. This means that if under current regulations a business is found to be both a retail food establishment and a restaurant, the business must have two annual approvals (a license, permit), pay two annual approval (license, permit) fees, be subject to two inspections on the basis of two sets of rules that will not always require the same thing (although both sets of rules are directed at protecting the public's health), and perhaps have to deal with two different inspection agencies.

Section HFS 196.04 (1) (b) currently exempts "incidental food services" from the requirement to have a restaurant permit. "Incidental food service" is defined in s. HFS 196.03 (11r) as meals offered to the general public that are not a primary activity of a retail food establishment, comprise no more than 25% of the gross annual food sales of the business and do not involve full service food preparation. This order changes that definition to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken to eliminate "double licensing," that is, two different approval processes, both directed at protecting the public's health. The principal modification increases the percentage of the gross annual food sales of the business that may be derived from the sale of meals from at most 25% to less than 50%. The language relating to meals that do not involve "full service food preparation" is being deleted because the term which, like the definition of incidental food service, dates from 1990, has never been operationalized so that it is not a factor in deciding if a food service operated by a retail food establishment is an incidental food service for purposes of exempting it from the requirement that it have a permit to operate a restaurant.

Chs. HFS 172, 175, 178 and 195 to 198 and s. HFS 196.03 (11r) Published Emergency Rules

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective **July 1, 1998** to increase, for Department–regulated facilities only, permit fees by 18%, the penalty for late payment of a permit fee from $50 to $75 and the

pre–inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries), and to impose on Department–regulated facilities only a one–time technology improvement surcharge of $15 to $25 payable on July 1, 1998.

These rule changes have been promulgated by emergency order to protect public health and safety. Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one–time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This rulemaking order also amends the definition of "incidental food service" in ch. HFS 196, the Department's rules for restaurants. The significance of that definition is that s. HFS 196.04 (1) (b) exempts an incidental food service from the requirement to have a restaurant license. An incidental food service is currently defined as meals offered to the general public by a retail food establishment, such as a grocery store, a convenience store or a bakery, licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP), which are not a primary activity of the retail food establishment, comprise no more than 25% of the gross annual food sales of the business and do not involve full service food preparation. This order modifies the definition, mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals from at most 25% to less than 50%. The effect of the change is to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken jointly by the Department and DATCP to eliminate "double licensing," that is, regulation (inspections, approvals and fees, enforcement) of an establishment by both the Department and DATCP for the same purpose of protecting the public's health.

The modification of the definition of "incidental food service" is effective for permits issued by the Department starting with the permit period beginning July 1, 1998, but as a mandated change will be delayed for one year, by amendment of the agent agreements, for permits issued by agent local health departments.

This rule change was promulgated by emergency order for preservation of the public welfare. Retail food establishments licensed by DATCP that serve meals on the premises to the public will be required to have only a license issued by DATCP and not also a permit issued by the Department. It has become possible at this time, at the beginning of a new restaurant permit period and regulatory cycle and in view of changes occurring lately in the retail food industry, to eliminate duplicative and at times conflicting regulation that does not serve a public purpose, and therefore it should be eliminated promptly.

Contact Person

To find out more about the hearing or to request copies of the proposed permanent or published emergency rules, write or phone:

Edward Rabotski, (608) 266–8294 or,
if you are hearing–impaired, (608) 266–1511 (TTY)
Environmental Epidemiology and Prevention Section
Division of Health
P.O. Box 309
Madison WI 53701–0309

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

Written comments on the proposed rule changes received at the above address no later than **August 12, 1998** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

Section HFS 196.03 (11r) Permanent Rule

The change in the definition of "incidental food service" means that the Department and its agents will regulate fewer restaurants and therefore revenues from the issuance of permits will decrease. The Department currently (3/3/98) regulates 9,583 restaurants, whereas the 28 agents (15 cities and 13 counties) regulate 10,126 restaurants.

It is estimated that approximately 1,000 establishments that are now issued permits by the Department will be affected by the modification. The average fee collected from an establishment is $148 per year. Therefore, the Department will lose an estimated $148,000 in annual fee revenue because these facilities will no longer be required to have a restaurant permit. In addition, approximately 1,100 facilities will no longer be issued restaurant permits by local health departments serving as agents of the Department. It is estimated that the average fee collected by these agents is now $165 per facility per year, so that the total loss of fee revenue for the agents would amount to $165,200 per year. Of the $165 average fee, $14.80 is paid to the Department for training and monitoring. Consequently the Department is expected to lose an additional $16,300 received from local public health departments, which means that the total fiscal effect to the Department of the change in the definition of "incidental food service" is a loss of revenue of approximately $164,300 per year.

Chapters HFS 172, 175, 178 and 195 to 198 and s. HFS 196.03 (11r) Emergency Rules

The Department issues permits for the operation of campgrounds, camps, public swimming pools, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending machines, operators and commissaries. An annual fee (biennial for a bed and breakfast establishment) is charged for a permit. An additional fee is charged if a permit fee is paid late. There is a one–time pre–inspection fee for a new facility, which applies only to hotels, motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries. These fees must cover the costs of regulation by the Department. Fee revenue for FY 1998–99 is projected at about $2.2 million a year without fee increases.

This order increases Department fees effective July 1, 1998, to cover increased program costs. The fee increases are expected to generate $637,557 annually in increased program revenues ($372,557 from permit fees, $240,000 from preinspection fees and $25,000 from late fees).

This order also provides for a one–time technology improvement surcharge of $15 to $25 to be paid by each permit–holder at the time the permit fee is paid for the July 1, 1998 to June 30, 1999 permit period. The one–time technology improvement surcharge is expected to generate $332,355, which will be used to update the regulatory program's computerized information and processing system.

The Department directly regulates 9469 restaurants, 2346 hotels and motels, 1663 tourist rooming houses, 384 bed and breakfast establishments, 107 food vending operations (70 operators and 37 commissaries), 909 campgrounds, 196 educational and recreational camps and 977 swimming pools. A few campgrounds, camps and swimming pools are operated by the Wisconsin Department of Natural Resources (DNR), the University System and local governments. Permit fees are increased 18% and the technology improvement surcharge is a one–time payment of $15 to $25 for each permit–holder, which means that the impacts of the revised fees and the one–time surcharge on state government and local governments are minimal.

This order in addition modifies the definition of "incidental food service" in ch. HFS 196, the rules for restaurants. That definition is modified mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals to less than 50%. This will have the effect of eliminating "double licensing" of some retail food establishments by the

Department and the Department of Agriculture, Trade and Consumer Protection, because a separate restaurant permit will no longer be required. The change will also have the effect of reducing Department revenues from permit and related fees. The change, which will take effect for permits issued by the Department starting with the permit period that begins **July 1, 1998**, is expected to reduce fee revenue for the 1998–99 SFY by $148,000 (1000 establishments x average fee of $148).

Initial Regulatory Flexibility Analysis

Section HFS 196.03 (11r) Permanent Rule

The proposed amendment of the definition of "incidental food service" in the Department's rules for restaurants will affect approximately 2100 retail food establishments. These are establishments that are licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP) or one of its agent local health departments and that have offered meals for sale to the general public within the retail food establishment, the sale of which amounts to more than 25% but less than 50% of the gross annual food sales of the store, and consequently have been required to also have a restaurant permit issued by the Department of Health and Family Services or one of its agent local health departments. The effect of the change in the definition is to no longer require a separate restaurant permit for these retail food establishments.

About one–third of the 2100 affected retail food establishments are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

No new reporting, bookkeeping or other procedures are required for compliance with the rule change.

No new professional skills are necessary for compliance with the rule change.

Chapters HFS 172, 175, 178 and 195 to 198 and s. HFS 196.03 (11r) Emergency Rules

The requirement for an initial regulatory flexibility analysis does not apply to emergency rules (s. 227.114 (8) (a), Stats.). An initial regulatory flexibility analysis was published as a section of the hearing notice for the proposed permanent rules relating to permit fee increases and the technology improvement surcharge (see *Wisconsin Administrative Register*, March 31, 1998, p. 23).

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 29.085, 29.174(3), 227.11(2)(a) and 227.24(1)(a), Stats., interpreting ss. 29.085 and 29.174(2)(a), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH–48–98(E) relating to sport fishing for yellow perch in Sauk creek, Ozaukee county. The emergency rule affects Lake Michigan sport fishing rules. It closes the sport fishing season for yellow perch in Sauk creek, Ozaukee county, a tributary to Lake Michigan, during June and establishes a daily bag limit of 5 for the remainder of the year.

Hearing Information

July 24, 1998
Friday
at 1:30 p.m.

Room 709
GEF #2 Bldg.
101 S. Webster Street
Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266–8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the emergency rule may be submitted to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **July 24, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [FH–48–98(E)] may be obtained from Mr. Horns.

Fiscal Estimate

These rule changes will have no fiscal impact on state or local units of 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.

Commerce (CR 97–109):
Ch. ILHR 60 – Relating to design and construction of public buildings and places of employment used as child day care facilities.

Employe Trust Funds (CR 98–50):
Ch. ETF 52 – Relating to the administration of the duty disability benefit program under s. 40.65, Stats.

Public Instruction (CR 98–38):
SS. PI 3.03 and 3.05 – Relating to environmental education requirements and an urban education license.

Public Instruction (CR 98–39):
S. PI 2.05 (2) (a) – Relating to the school district boundary appeals board (SDBAB).

Public Instruction (CR 98–68):
Ch. PI 11 – Relating to children with disabilities.

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.

Commerce (CR 98–7):
An order creating ch. Comm 110, relating to the Brownfields grant program.
Effective 08–01–98.

Elections Board (CR 98–51):
An order creating s. ElBd 6.05, relating to filing campaign finance reports by electronic transmission.
Effective 09–01–98.

Employe Trust Funds (CR 97–143):
An order affecting s. ETF 41.02, relating to long–term care insurance.
Effective 08–01–98.

Health & Family Services (CR 97–98):
An order repealing and recreating ch. HFS 139, relating to qualifications of public health professionals employed by local health departments.
Effective 08–01–98.

Health & Family Services (CR 97–132):
An order creating ch. HFS 140, relating to required services of local health departments.
Effective 08–01–98.

Health & Family Services (CR 97–135):
An order creating ch. HFS 173, relating to regulation of tattooists and tattoo establishments and regulation of body piercers and body–piercing establishments.
Effective 08–01–98.

Health & Family Services (CR 98–46):
An order amending ss. HFS 149.02 (6) and 149.03 (7) (a), relating to vendor authorization expiration and reauthorization dates under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
Effective 08–01–98.

NOTICE OF NONACQUIESCENCE

Tax Appeals Commission

GFG CORPORATION, Petitioner,	:	NOTICE OF NONACQUIESCENCE
v.	:	Docket No. 96–I–706
WISCONSIN DEPARTMENT OF REVENUE, Respondent.	:	

Pursuant to section 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 May 29, 1998, it has adopted a position of nonacquiescence in regard to that part of the decision and order that allows the petitioner to take a tax deduction amortizing the Non–Competition Agreement. The effect of this action is that, although the decision and 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.

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