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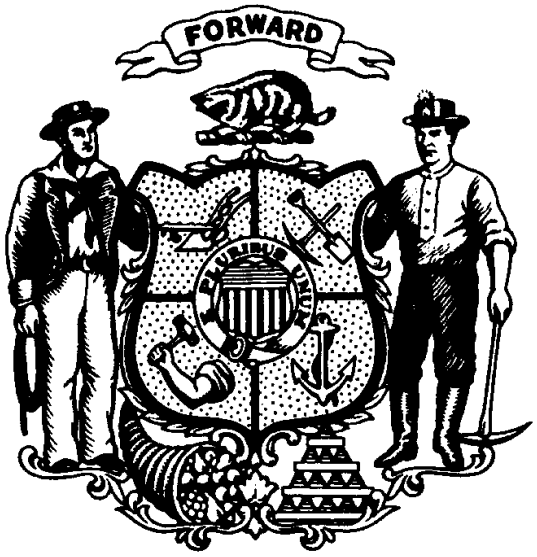

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TABLE OF CONTENTS

Natural Resources:	(CR 97–131) – S. NR 485.04
Natural Resources:	(CR 97–146) – S. NR 5.21 (3)
Natural Resources:	(CR 98–20) – Ch. NR 21
Natural Resources:	(CR 98–44) – Chs. NR 8 & 45
Natural Resources:	(CR 98–56) – S. NR 46.30 (2) (a) to (c)
Natural Resources:	(CR 98–66) – Ch. NR 300
Public Instruction:	(CR 98–38) – Ch. PI 3
Public Instruction:	(CR 98–39) – S. PI 2.05 (2) (a)
Public Instruction:	(CR 98–68) – Ch. PI 11
Workforce Development:	(CR 98–26) – S. DWD 12.25

Public Notice.

Commerce:

Pages 52 to 53.

Relating to private onsite wastewater treatment systems and sanitation.

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 (4)

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**

4. Rules adopted amending **ss. ATCP 81.50 (2), 81.51 (2),** and **81.52 (2),** relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact–weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately $3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: **August 8, 1998**
Effective Date: **August 8, 1998**
Expiration Date: **January 4, 1999**
Hearing Date: **September 14, 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: **October 24, 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. Comm 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**
Hearing Date: **August 14, 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**
Hearing Date: **August 31, 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**
Extension Through: **October 18, 1998**

EMERGENCY RULES NOW IN EFFECT

Financial Institutions
(Division of Securities)

Rules adopted revising **chs. DFI–Sec 1** to **9**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Finding of Emergency

The Department of Financial Institutions, Division of Securities, finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

Recently enacted legislation in 1997 Wis. Act 316 that is scheduled for publication on July 8, 1998 to become effective the following day on July 9, 1998 made a number of changes to the Wisconsin Uniform Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 ("NSMIA").

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so–called "federal covered securities," but permitting states to establish certain notice filing requirements (including fees) for such "federal covered securities;" and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a "federal covered adviser," but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for "federal covered securities" and "federal covered advisers," and in addition, established statutory requirements for the licensing of "investment adviser representatives" (who previously were subject only to a qualification" process in Wisconsin). Comprehensive administrative rules are needed immediately to implement the statutory changes contained in 1997 Wisconsin Act 316, particularly relating to the filing requirements for federal covered securities, federal covered advisers and investment adviser representatives. In order to have such rules in place contemporaneously with the effectiveness of 1997 Wis. Act 316, these emergency rules are adopted on an interim basis until identical permanent rules can be promulgated using the standard rule–making procedures.

Publication Date: **July 7, 1998**
Effective Date: **July 9, 1998**
Expiration Date: **December 6, 1998**
Hearing Date: **September 24, 1998**

EMERGENCY RULES NOW IN EFFECT

Health and Family Services
(Community Services, Chs. 30––)

Rule was adopted amending **s. HFS 94.24 (2)(e)**, relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

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

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti–social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: **August 15, 1998**
Effective Date: **August 15, 1998**
Expiration Date: **January 11, 1999**

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**
Extension Through: **October 9, 1998**

2. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk–Sharing Plan.

Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a $1,000 deductible. Plan 2 has a $500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out–of–pocket maximum of $2,000 (which includes the $1,000 deductible) per individual and $4,000 per family for major medical and $500 per individual for Medicare supplement. There is a lifetime limit of $1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than $20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk–Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance RiskSharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re–creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

–Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

–Deletion of a physician certification requirement in connection with applications of some persons for coverage;

–Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

–Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

–Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

–Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

–Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost–effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

–Continuation of an alternative plan of health insurance that has a $2500 deductible (this was added by emergency order effective January 1, 1998);

–Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

–Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**
Hearing Date: **September 29, 1998**
[See Notice this Register]

3. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead–based paint hazards.

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:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children,

causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead–based paint. When lead–based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead–based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead–based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead–based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead–based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead–based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3–year certification period from the completion date of the most recent training course instead of a one–year or 2–year period from the date certification is issued.
- Revises how worker–safety training is received by requiring that worker–safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead–based paint activities.

Accreditation

- Adds a mandatory hands–on skills assessment for hands–on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker–safety training, followed by a 16–hour worker course, with an additional 16–hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no–expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker–homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria.

In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: **August 29, 1998**
Effective Date: **August 29, 1998**
Expiration Date: **January 25, 1999**

EMERGENCY RULES NOW IN EFFECT (5)

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. 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**

3. 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**

4. 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**

5. 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**

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**
Extension Through: **October 27, 1998**

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 35,** relating to the Milwaukee parental school choice program.

Finding of Emergency

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

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998–99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996–97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: **August 5, 1998**
Effective Date: **August 5, 1998**
Expiration Date: **January 1, 1999**

2. Rules adopted creating **ch. PI 38**, relating to grants for peer review and mentoring.

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:

Under s. 115.405 (2), Stats., the state superintendent shall allocate $500,000 annually, for one–year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998–99 school year. since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: **August 15, 1998**
Effective Date: **August 15, 1998**
Expiration Date: **January 11, 1999**

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. 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**
Extension Through: **September 23, 1998**

2. Rules were adopted amending **s. PSC 4.30 (4) (a)** and **(5) (a)** and **(b)**, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: **July 17, 1998**
Effective Date: **July 17, 1998**
Expiration Date: **December 14, 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**
Extension Through: **October 27, 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:	**September 28, 1998**

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATCP 81 – Relating to grade standards for colby and monterey (jack) cheese.

Description of policy issues:

Preliminary objectives:

Under current DATCP rules, colby and monterey (jack) cheese must have numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

DATCP recently adopted an emergency rule which temporarily eliminated rule provisions requiring mechanical openings in colby and monterey (jack) cheese. Under the emergency rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body, depending upon the method of manufacture. When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. This emergency rule went into effect upon publication on August 8, 1998.

The emergency rule remains in effect for only 150 days. The Department is therefore proposing to make the same rule changes on a "permanent" basis.

Preliminary policy analysis:

DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body characteristics required by this state's top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact–weight" pieces with minimal variation and waste.

Under current rules, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

Wisconsin's dairy industry plays a major role in our state's economy. Approximately $3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

Policy alternatives:

Do nothing. If the Department takes no action, the emergency rule will expire after 150 days. Failure to adopt the changes in state grade standards on a permanent basis will harm the economy of Wisconsin's dairy industry and have a negative impact on the general economy and public welfare of the citizens of this state.

Statutory authority:

The Department proposes to revise ch. ATCP 81, Wis. Adm. Code, under authority of ss. 97.09 (1) and 97.177 (1), (2) and (4), Stats.

Staff time required:

The Department estimates that it will use approximately 0.1 FTE (Full–Time Equivalent) staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The Department will assign existing staff to develop this rule.

Chiropractic Examining Board

Subject:

Chir Code – Relating to the diagnosis of a patient by a chiropractor; and to the responsibility of a chiropractor to refer a patient to a practitioner in an area of health care other than chiropractic.

Description of policy issues:

Objective of the rule:

1) Identify the circumstances when a chiropractor is required to refer a patient to a medical doctor or another health care practitioner or to explain to a patient the potential need for benefits of receiving a diagnosis by a practitioner other than a chiropractor.

2) Clarify the nature of a chiropractor's responsibility to make a determination that a patient presents a condition that is treatable through chiropractic means.

3) Clarify the extent of the chiropractor's responsibility and ability to make a determination that a patient needs medical care.

Policy analysis:

In *Goldstein v. Janusz Chiropractic Clinics*, 218 Wis. 2d 683 (1998) and *Kirkman v. Hintz*, 142 Wis. 2d 404 (1988), Wisconsin courts concluded that in making a diagnosis, chiropractors have a duty to determine whether the patient presents a problem which is treatable through chiropractic means. Chiropractors are to refrain from further chiropractic treatment when a reasonable chiropractor should be aware that the patient's condition will not be responsive to further treatment.

According to these decisions, if a patient presents a condition outside the scope of chiropractic care, the chiropractor is to inform the patient that the ailment is not treatable through chiropractic means and, in such situation, has no legal responsibility to refer the patient to a medical doctor when a type of medical treatment is indicated.

Rulings by Wisconsin courts on the responsibility of a chiropractor to refer a patient to another health care practitioner are based, in part, on administrative rules of the Board. The Board intends to modify its rules on the scope of chiropractic practice and practice requirements in order to achieve the objectives identified above.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 446.03 and 446.04, Stats.

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

100 hours.

Medical Examining Board

Subject:

Med Code – Relating to the time limits for initiating action against physicians under Section 4 of 1997 Wis. Act 311.

Description of policy issues:

Objective of the rule:

To:

1) Define terms used in Section 4 of 1997 Wis. Act 311, relating to the time for initiating disciplinary actions;

2) Describe procedures for administering Section 4; and

3) Establish standards for granting an extension of time.

Policy analysis:

Rules of the Medical Examining Board will clarify terms in the act, including "initiate disciplinary action, "initiating an investigation," and "allegation involving the death of a patient."

Rules of the Department will define standards to help determine when an extension of time is necessary for the Board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats., and ss. 448.02 (3) (cm) and 448.40 (1), Stats., as created by 1997 Wis. Act 311.

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

100 hours.

Military Affairs

Subject:

Ch. DMA 1 – Relating to procedures for the Badger Challenge program.

Description of policy issues:

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

The Badger Challenge is a state–funded program for disadvantaged youth designed to promote positive lifestyle changes. The rule will establish procedures and eligibility requirements for the Badger Challenge program. The rule will establish criteria under which the Department of Military Affairs may assess fees.

Groups likely to be interested in the rule include school districts that have participated in the program, county human services departments, local municipal government offices, and technical schools.

Explain the facts that necessitate the proposed rule:

Section 21.25, Stats.

Statutory authority:

Sections 20.465 (4) (g), 21.25 and 227.11 (2) (a), Stats.

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

20 hours. One public hearing will be held in Madison on November 4, 1998.

Natural Resources

Subject:

Chs. NR 150 and 170 – Relating to power plant review.

Description of policy issues:

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

1997 Wis. Act 204 has changed the regulation of power plants by the Public Service Commission (PSC) and the Department. The threshold for PSC review has been raised from 20 to 100 megawatts (MW), and shorter time frames for PSC and DNR review have been imposed. To be consistent with these changes, and changes in the power industry, it is necessary to revise the ch. NR 150 Type listing for power plants (currently any power plant larger than 20 MW requires an EIS (Environmental Impact Statement)). The wording and specificity of the statute removes the need for a procedural code; therefore, the DNR proposes to delete ch. NR 170, which prescribes procedures for reviewing Engineering Plans filed in compliance with the Power Plant Siting Law.

Groups interested or affected include the utilities, independent power producers, the PSC, electric power cooperatives and municipal utilities, consumer groups, industrial power customers, environmental groups and ordinary citizens.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Recent legislation has changed the thresholds for power plant review from 12 to 100 MW. New technologies require fewer permits and less land, and produce less pollution. Environmental controls imposed since the original enactment of the 1975 siting law have reduced the environmental impacts of power plants. The roles of the PSC and DNR in overall power plant review are being reduced in a transition to an open market for electricity. All these factors indicate that EIS decisions for power plants should be made on the basis of the size, type of technology and proposed location, rather than an arbitrary numerical threshold.

Statutory authority:

1997 Wis. Act 204 (s. 196.491, Stats.).

Anticipated time commitment:

105 hours. One public hearing is proposed to be held in October, 1998 at Madison.

Regulation & Licensing

Subject:

RL Code – Relating to:

1) Establishing requirements and standards for the practice of music, art and dance therapy;

2) Establishing registration requirements; and

3) Establishing renewal requirements.

Description of policy issues:

Objective of the rule:

To fulfill the mandate of 1997 Wis. Act 261, which requires the Department to promulgate administrative rules establishing requirements and standards for the practice of music, art and dance therapy by a registrant.

Policy analysis:

Under 1997 Wis. Act 261, the Department is required to promulgate rules establishing criteria for the scope of practice of music, art and dance therapy.

Statutory authority:

Section 227.11 (2), Stats., and s. 440.03 (14) (d), Stats., as created by 1997 Wis. Act 261.

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

100 hours.

Veterans Affairs

Subject:

Ch. VA 1 – Relating to the authorization for the Department of Veterans Affairs to release information from a veteran's file to a collection agency under contract with the state to collect delinquent Department loans.

Description of policy issues:

Objective of the rule:

The Department is required to maintain as confidential information contained in a veteran's loan application, subject to release as authorized by an administrative rule. The Department is currently analyzing the propriety and cost–effectiveness of outsourcing its collection activity. The rule objective is to explicitly authorize the disclosure of relevant information to a collection agency engaged in collection activity for the Department.

Policy analysis:

Other state agencies have cost–effectively contracted with private collection agencies either directly or through a Department of Administration contract to collect delinquent debts. This rule change will position the Department to engage in such activity in the event it is determined that outsourcing is appropriate and cost–effective.

Statutory authority:

Sections 45.35 (3) and 45.36 (6), Stats.

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

Approximately 10 staff hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On August 27, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule affecting chs. ATCP 10 and 11 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends chs. ATCP 10 and 11, Wis. Adm. Code, relating to fish farms, fish diseases and imports of live fish and fish eggs.

Agency Procedure for Promulgation

Public hearings are required, and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Animal Health is primarily responsible for promulgation of this rule.

Contact People

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

Lynn Jarzombeck
Division of Animal Health
Telephone (608) 224–4883

or

Attorney Ruth Heike
Telephone (608) 224–5025

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On August 20, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule affecting ch. ATCP 30 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides.

Agency Procedure for Promulgation

Public hearings are required, and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Agriculture Resource Management is primarily responsible for promulgation of this rule.

Contact People

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

Jim VandenBrook
Division of Agriculture Resource Management
Telephone (608) 224–4501

or

Attorney Jim Matson
Telephone (608) 224–5022

Barbering & Cosmetology Examining Board

Rule Submittal Date

On September 2, 1998, the Barbering and Cosmetology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2), 454.08 (1) (a) and (4), Stats.

The proposed rule–making order relates to licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 5, 1998, at 10:00 a.m. at the Department offices located at 1400 East Washington Avenue, Room 179A, Madison, Wisconsin.

Contact Person

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

Commerce

Rule Submittal Date

On August 31, 1998, the Department of Commerce submitted a proposed rule affecting ch. Comm 65 to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects ch. Comm 65, relating to soil erosion control at commercial building sites.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled.

Contact Person

Ron Acker
Dept. of Commerce
Telephone (608) 267–7907

Health & Family Services

Rule Submittal Date

On August 31, 1998, the Department of Health and Family Services submitted a proposed rule affecting ch. HSS 98 to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Section 51.375 (3), Stats.

The proposed rule–making order affects ss. HSS 98.28 to 98.32, relating to lie detector testing of sex offenders in community placements.

Reason for rules, intended effects, requirements:

Section 51.375 (3), Stats., directs the Department of Health and Family Services to promulgate rules that establish a lie detector testing program for sex offenders in community placements. These are persons committed to the Department for treatment under various statutes, including ch. 980, Stats., and then released to community placement or perhaps the commitment order specified a community placement. In any case, these persons are supervised in communities by agents of the Department of Corrections, who provide supervision under contract with DHFS and pursuant to DHFS administrative rules.

The same session law that directed the Department to promulgate rules for lie detector testing of sex offenders in community placements directed the Department of Corrections to promulgate rules for this purpose for sex offenders who are parolees or probationers under DOC supervision. There are many more affected DOC parolees and state probationers than DHFS clients. DOC published emergency rules in mid–December 1997 and its permanent rules went into effect on July 1, 1998.

DHFS has modeled its rules on DOC's rules.

The proposed rules permit the Department to require a client who is a sex offender to submit to the lie detector exam process set out in the rules as a condition of supervision. The rules cover:

1) The purposes of the process;

2) How participants are selected;

3) Written notice to a client about a scheduled test;

4) How the questions are determined;

5) Permission for the Department to contract for administration of the tests [for now DHFS will use DOC's independent contractor];

6) Disclosure of test information; and

7) Fees charged to clients, with collection based on ability to pay.

Agency Procedure for Promulgation

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

Contact Person

Linda Harris
Division of Care & Treatment Facilities
Telephone (608) 267–7909

Hearing & Speech Examining Board

Rule Submittal Date

On August 17, 1998, the Hearing & Speech Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.095 (1) and (3) and 459.24 (5m) (a) 1. and 3., Stats., as amended by 1997 Wis. Act 49.

The proposed rule–making order relates to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations, and unlicensed practice.

Agency Procedure for Promulgation

A public hearing is required and will be held on Monday, September 14, 1998, at 1:30 p.m. at the Department offices located at 1400 East Washington Avenue, Room 179A, Madison, Wisconsin.

Contact Person

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

Regulation & Licensing

Rule Submittal Date

On August 17, 1998, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

S. 227.11 (2), Stats., and s. 440.972, Stats., as created by 1997 Wis. Act 156

The proposed rule–making order relates to the practice of massage therapy and bodywork.

Agency Procedure for Promulgation

A public hearing is required and will be held on Tuesday, September 15, 1998, at 10:15 a.m. at the Department offices located at 1400 East Washington Avenue, Room 291, Madison, Wisconsin.

Contact Person

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

Regulation & Licensing

Rule Submittal Date

On August 28, 1998, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

S. 227.11 (2), Stats.

The proposed rule–making order relates to statutory authority, definitions and contribution limits relating to charitable organizations.

Agency Procedure for Promulgation

A public hearing is required and will be held on Wednesday, September 30, 1998, at 10:00 a.m. at the Department offices located at 1400 East Washington Avenue, Room 179A, Madison, Wisconsin.

Contact Person

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

Regulation & Licensing

Rule Submittal Date

On September 2, 1998, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 227.11 (2) and 458.03 (1) (b) and (e), Stats., and s. 458.085, Stats., as amended by 1997 Wis. Act 225.

The proposed rule–making order relates to real estate appraisers.

Agency Procedure for Promulgation

A public hearing is required and will be held on Wednesday, September 30, 1998, at 10:00 a.m. at the Department offices located at 1400 East Washington Avenue, Room 291, Madison, Wisconsin.

Contact Person

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

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on August 31, 1998, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends s. Tax 11.09, relating to the sales and use tax treatment of medicines, and s. Tax 11.28, relating to the sales and use tax treatment of gifts and other advertising specialties.

Agency Procedure for Promulgation

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

Contact Person

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

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

Transportation

Rule Submittal Date

On August 28, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 57 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 57, relating to standards for airport siting.

Agency Procedure for Promulgation

A public hearing is required, and a public hearing is scheduled for Wednesday, September 30, 1998 at 1:00 p.m. in Room 901–A, Hill Farms State Transportation Building, 4802 Sheboygan Ave., Madison.

The Division of Infrastructure Development, Bureau of Aeronautics is the agency organizational unit responsible for promulgation of the proposed rule.

Contact Person

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

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266–8810

Transportation

Rule Submittal Date

On August 28, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 210 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 210, relating to the major highway project numerical evaluation process.

Agency Procedure for Promulgation

A public hearing is required, and a public hearing is scheduled for Thursday, October 1, 1998 at 9:00 a.m. in Room 144–B, Hill Farms State Transportation Building, 4802 Sheboygan Ave., Madison.

The Division of Investment Management, Bureau of State Highway Programs is the agency organizational unit responsible for promulgation of the proposed rule.

Contact Person

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

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266–8810

Transportation

Rule Submittal Date

On August 28, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting chs. Trans 231 and 233 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects chs. Trans 231 and 233, relating to the division of land abutting a state trunk highway or connecting highway.

Agency Procedure for Promulgation

A public hearing is required, and a public hearing is scheduled for Monday, September 28, 1998 at 9:00 a.m. in Room 421, Hill Farms State Transportation Building, 4802 Sheboygan Ave., Madison.

The Division of Infrastructure Development, Bureau of Highway Development is the agency organizational unit responsible for promulgation of the proposed rule.

Contact Person

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

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266–8810

Transportation

Rule Submittal Date

On August 28, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 400 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 400, relating to the Wisconsin Environmental Policy Act.

Agency Procedure for Promulgation

A public hearing is required, and a public hearing is scheduled for Thursday, October 1, 1998 at 1:00 p.m. in Room 144–B, Hill Farms State Transportation Building, 4802 Sheboygan Ave., Madison.

The Division of Infrastructure Development, Bureau of Environment is the agency organizational unit responsible for promulgation of the proposed rule.

Contact Person

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

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266–8810

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 public hearings on a proposed department rule related to fish farms and live fish and fish egg imports (proposed chapters ATCP 10 and 11, Wis. Adm. Code). The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **October 30, 1998**, for additional written comments. An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **October 5, 1998**, either by writing to Lynn Jarzombeck, P. O. Box 8911, Madison, WI 53708–8911, or by calling 608–224–4883. TTY users call 608–224–5058.

Hearing Information

October 13, 1998	**Dept. of Agriculture, Trade**
Tuesday	**& Consumer Protection**
commencing at 5:30 p.m.	**Board Room**
	2811 Agriculture Drive
Handicapped accessible	**Madison, WI**
October 14, 1998	**Dept. of Natural Resources**
Wednesday	**1125 N. Military Ave.**
commencing at 5:30 p.m.	**Green Bay, WI**
Handicapped accessible	
October 15, 1998	**Dept. of Agriculture, Trade**
Thursday	**& Consumer Protection**
commencing at 5:30 p.m.	**3610 Oakwood Hills Parkway**
Handicapped accessible	**Eau Claire, WI**

Written Comments

Written comments will be accepted until **October 30, 1998**.

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: ss. 93.07(10) and 95.60

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

- Establishing fish farm registration requirements.
- Regulating imports of live fish and fish eggs.
- Regulating the introduction of fish into the waters of the state.
- Requiring persons to report certain fish disease findings to the department.

Fish Farms

Annual Registration

Under s. 95.60, Stats., the department of agriculture, trade and consumer protection (DATCP) must annually register fish farms in Wisconsin. This new registration program replaces an annual licensing program previously administered by the department of natural resources (DNR).

Who Must Register

Under this rule, a person must hold an annual fish farm registration certificate from DATCP to do any of the following:

- Hatch fish eggs or hold live fish for any of the following purposes:
  - *Sale or distribution.
  - *Introduction into the waters of the state.
  - *Fishing.
  - *Use as bait or fertilizer.
  - *Use as human food or animal feed.
  - *Education, demonstration or research.
- Hold live fish or fish eggs owned by another person.

Exemptions

There are some exemptions to the fish farm registration requirement. Under this rule, a person may do any of the following without a fish farm registration certificate:

- Hatch or hold "ornamental" fish, including tropical fish, goldfish and koi.
- Hold bait fish under a bait dealer license issued by the Wisconsin department of natural resources (DNR).
- Hatch or hold fish in a fully enclosed building solely for purposes of demonstration, education or research within that building.
- Exhibit fish in a public forum for not more than 15 days in a calendar year, or for a longer period of time which the department authorizes in writing.
- Hold fish for not more than 30 days at a food processing plant, retail food establishment or restaurant pending slaughter or sale to consumers at that facility.
- Transport live fish or fish eggs to or from a fish farm.

Type 1 or Type 2 Registration

This rule establishes 2 types of fish farm registration:

- Type 1: The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2: The holder of a type 2 registration certificate may operate a fish farm, and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish from the fish farm.

Annual Expiration Date

A fish farm registration certificate expires on December 31 of the calendar year for which it is issued.

Persons Operating 2 or More Fish Farms

A person who operates 2 or more fish farms must obtain a separate registration certificate for each fish farm. A person may register 2 or more fish farms by filing a single annual application and paying a single annual fee. There is no additional fee for additional fish farms.

Applying for a Registration Certificate

To obtain or renew a registration certificate, a fish farm operator must file an application with DATCP. The application must include:

- The name, address and telephone number of the fish farm operator.
- The fish farm location.
- The required fee (see below).
- The name, address and telephone number of the individual responsible for administering the fish farm on behalf of the operator, if other than the operator.
- Each species of fish hatched or kept at the fish farm.
- A description of the fish farm, including fish farm facilities and activities.

• A statement indicating whether the operator seeks a type 1 or type 2 registration certificate. To obtain a type 2 registration certificate, the applicant must pay a higher fee and provide a fish farm health certificate (see below).

DATCP must grant or deny an application for a fish farm registration certificate within 30 days after the department receives a complete application.

Registration Fees

An operator must pay the following fee to register one or more fish farms:

• A total fee of $25 if the operator registers all of the fish farms as type 1 fish farms.

• A total fee of $50.00 if the operator registers any of the fish farms as a type 2 fish farm.

The following persons are exempt from fish farm registration fees:

• A bona fide scientific research organization that is operating a fish farm solely for the purpose of scientific research.

• A primary or secondary school.

A person applying for a fish farm registration certificate must pay, in addition to the normal annual registration fee, a surcharge equal to the amount of that fee if DATCP determines that, within 365 days prior to submitting that application, the applicant operated a fish farm without a required registration certificate.

Type 2 Fish Farm; Annual Health Certificate

Under this rule, no person may obtain a type 2 fish farm registration certificate for any calendar year beginning after December 31, 2001 unless a fish inspector or accredited veterinarian issues a health certificate for that fish farm not earlier than January 1 of the preceding calendar year.

The fish inspector or accredited veterinarian must issue the annual health certificate on a form provided by the department, based on a personal inspection of the fish farm. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form. An annual health certificate must certify that the fish farm is free of all of the following:

• Visible signs of disease.

• Whirling disease (*Myxobulus cerebralis, or WD*) if trout, salmon or other salmonidae are hatched or kept at the fish farm.

• Other diseases, if any, which the department specifies on the certification form.

The fish inspector or accredited veterinarian who issues an annual health certificate must file the original certificate with the department, and must provide at least 2 copies to the fish farm operator. The fish farm operator must include a copy with the operator's application for a type 2 fish farm registration certificate.

Denying, Suspending or Revoking a Registration Certificate

DATCP may deny, suspend or revoke a fish farm registration certificate for cause. Grounds include:

• Filing an incomplete or fraudulent application, or misrepresenting any information on an application.

• Violating ch. 95, Stats., or department rules.

• Violating the terms of the registration certificate.

• Interfering with inspection.

• Failing to keep or provide required records.

Recordkeeping

A fish farm operator must keep the following records related to fish or fish eggs which the operator ships from or receives at the fish farm:

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

An operator must retain these records for at least 5 years, and must make them available to the department, upon request, for inspection and copying.

Misrepresenting Fish Source or Disposition

Under this rule, no person selling or distributing fish or fish eggs may misrepresent, directly or by implication, the source or disposition of those fish or fish eggs.

Live Fish Imports

Annual Import Permit Required

Under this rule, a person importing live fish or fish eggs into this state for any of the following purposes must have an annual import permit from DATCP:

• Introducing the live fish or fish eggs into waters of the state.

• Using the live fish or fish eggs as bait.

• Holding the live fish or hatching the fish eggs at a fish farm for which a registration certificate is required under this rule.

• Selling or distributing the live fish or fish eggs for any of the above purposes.

Import Permit; Exemptions

There are some exemptions to this import permit requirement. No permit is required to import any of the following:

• Live ornamental fish, or the eggs of ornamental fish.

• Live fish or fish eggs that will be held, for the remainder of their lives, in fully enclosed buildings solely for purposes of display or research.

• Live fish imported directly to a food processing plant, retail food establishment or restaurant where they will be held for not more than 30 days pending slaughter or sale to consumers at that facility.

Issuing an Import Permit

The department may issue an import permit for all or part of a calendar year, based on a permit application from the importer. An importer may, at any time, apply for an amendment to an annual import permit.

Import Shipments

A single annual permit authorizes multiple import shipments, as long as the importer complies with the terms of the permit. A copy of the annual permit must accompany each import permit.

Import Recipients

A person holding an import permit may import live fish or fish eggs to the following persons, and no others:

• A person holding a current DATCP fish farm registration certificate.

• A person holding a current DNR fish stocking permit.

• A person holding a current DNR bait dealer license.

• Other persons identified by DATCP in the import permit.

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 for which it is issued, unless DATCP specifies an earlier expiration date.

• The name, address and telephone number of the permit holder.

• Each species of fish or fish eggs that the permit holder may import under the permit.

• The size of fish of each species, and quantity of fish or fish eggs of each species, that the permit holder may import under the permit.

• The sources from which the permit holder may import fish or fish eggs under the permit. The permit may incorporate, by reference, sources identified in the permit application.

Applying for an Annual Import Permit

A person must apply for an annual import permit on a form provided by DATCP. There is no fee. A permit application must include all of the following:

• The applicant's name, address and telephone number.

• Each species of fish or fish eggs that the applicant proposes to import.

• The size of fish of each species, and the quantity of fish or fish eggs of each species, that the applicant proposes to import.

• Every wild source from which the applicant proposes to capture and import fish or fish eggs.

• The name, address and telephone number of every fish farm from which the applicant proposes to import fish or fish eggs, and a copy of any annual health certificate issued for that out–of–state fish farm under this rule (see below).

Action on Permit Application

DATCP must grant or deny an import permit application within 30 days after it receives a complete application.

Denying, Suspending or Revoking an Import Permit

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

• Filing an incomplete or fraudulent permit application, or misrepresenting any information on a permit application.

• Violating ch. 95, Stats., or DATCP rules.

• Violating the terms of the import permit.

• Interfering with inspection.

• Failing to keep or provide required records.

Import Records

A person importing fish or fish eggs under a DATCP permit must keep all of the following records related to each import shipment:

• The date of the import shipment.

• The wild source, if any, from which the importer obtained the imported fish or fish eggs.

• The name, address and telephone number of the fish farm, if any, from which the importer obtained the imported fish or fish eggs.

• The name, address and telephone number of the person receiving the import shipment if that person is not the importer. The importer must also record the recipient's fish farm registration number, stocking permit number and bait dealer license number, if any.

• 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.

An importer must retain these records for at least 5 years, and must provide them to DATCP upon request. DATCP may suspend or revoke an import permit if the importer fails to provide the required records.

Health Certificate Required

Under this rule, no person may import any shipment of live fish or fish eggs into this state unless one of the following applies:

• The import shipment is accompanied by a health certificate issued for that particular shipment (see below).

• The import shipment originates from a fish farm and all of the following apply:

*The shipment is labeled with the name and address of that fish farm.

*No fish or fish eggs in the import shipment were ever collected from a wild source.

*A fish inspector or accredited veterinarian has issued an annual health certificate for that fish farm (see below), and has filed a copy with DATCP.

*The importer has included a copy of the annual fish farm health certificate with the importer's application for an annual import permit.

Health Certificate for Individual Import Shipment

A health certificate issued for an individual import shipment must comply with all of the following:

• A fish inspector or accredited veterinarian must issue the health certificate in the state of origin, on a form provided by the department, based on a personal inspection of the import shipment. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.

• The health certificate must certify that the import shipment is free of all the following:

*Visible signs of disease.

*Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobulus cerebralis, or WD*), if the import shipment includes salmonidae.

*Iridovirus (white sturgeon disease) if the import shipment includes sturgeon.

*Other diseases, if any, which the department specifies on the certification form.

• The fish inspector or accredited veterinarian who issues the health certificate must file the original certificate with the department, and must provide at least 2 copies to the importer. The importer must include a copy with the import shipment.

Fish Imported from Fish Farm; Annual Health Certificate

An annual health certificate issued for an out–of–state fish farm, to justify import shipments from that fish farm, must comply with all the following:

• A fish inspector or accredited veterinarian must issue the annual health certificate in the state of origin, on a form provided by the department, based on a personal inspection of the fish farm. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.

• The annual health certificate must certify that the fish farm is free of all the following:

*Visible signs of disease.

*Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobulus cerebralis, or WD*), if the health certificate is used for imports of salmonidae.

*Iridovirus (white sturgeon disease) if the health certificate is used for imports of sturgeon.

*Other diseases, if any, which the department specifies on the certification form.

• The fish inspector or accredited veterinarian who issues the annual health certificate must file the original certificate with the department, and must provide at least 2 copies to the fish farm operator. The importer must include a copy with the importer's application for an annual import permit.

Fish Introduced Into Waters of the State

This rule prohibits any person from introducing live fish or fish eggs into waters of the state unless one of the following applies:

• The fish or fish eggs originate from a fish farm registered as a type 2 fish farm under this rule.

• The fish or fish eggs are imported in compliance with this rule.

This rule prohibits any person from introducing live fish or fish eggs into waters of the state if that person knows, or has reason to know, that those fish or fish eggs are infected with or have been exposed to any reportable disease (see below).

Reportable Diseases

Under this rule, a person who diagnoses or finds evidence of any of the following diseases must report that diagnosis or finding to DATCP, in writing or by telefax, within 10 days:

• Any aquatic animal disease that is foreign or exotic to Wisconsin.

• Channel catfish virus (CCV).

• Enteric septicemia of catfish (ESC).

• Infectious hematopoietic necrosis virus (IHN).

• Iridovirus (white sturgeon disease).

• Myctobacteriosis infection.

- Proliferative kidney disease.
- Streptococcus iniae.
- Viral hemorrhagic septicemia (VHS).
- Whirling disease (*Myxobulus cerebralis, or WD*).

Fiscal Estimate

The complete fiscal note is available on request.

For purposes of this fiscal estimate, it is estimated that 2,400 fish farms will register with the department during 1999. These farms will register under one of two types; it is estimated that 2,250 will register as type 1 and 150 will register as type 2.

Revenue:

Per s. 95.60, Stats., the department shall specify the fee for registration of a fish farm. This proposal would establish a 1999 registration fee of $25 for a type 1 registration and $50 for a type 2 registration. These fees are applicable as of January 1, 1999, for the calendar year 1999 and after. Any fish farm registered by the department in 1998 is eligible for renewal with the department in 1999. Revenue for 1999 is estimated at $63,800. Revenues from the fish farm registrations will be used to administer the fish farm program within the Division of Animal Health. In addition to these proposed program revenues, $265,000 of GPR funds and 5.0 FTE positions have been appropriated to support the program within the division (for 1998–99, $97,900 and 2.0 FTE are frozen).

Expense:

Administrative expense will be incurred by the department in providing a fish farm\aquaculture program. The department will register fish farms, issue permits for the importation of live fish or fish eggs, provide veterinary services and fish related lab work, inspect fish farms, perform investigatory and enforcement activities and provide educational and technical assistance to the public by providing information on various aspects of the program, on rules and regulations related to fish farming and on aquaculture in general. Expenses for 1998 are estimated at $328,800 with 5.0 FTE positions.

Initial Regulatory Flexibility Analysis

General Overview

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

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

Fish Farm Registration

The statute requires that any person who operates a fish farm must annually register the fish farm with the department. This rule identifies two categories of fish farms that must register and imposes annual registration fees, as follows:

• Type 1 ($25 annual fee): The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.

• Type 2 ($50 annual fee): The holder of a type 2 registration certificate may operate a fish farm and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish and fish eggs from the fish farm.

All private fish hatcheries previously licensed by the department of natural resources in 1997 were eligible for renewal with the department of agriculture, trade and consumer protection under the department's fish farm emergency rule in 1998. This rule establishes a permanent registration system for fish farms. In registering, fish farm operators will need to complete a form providing owner and custodian name and address and fish farm information such as the species of fish kept on the fish farm and a description of the fish farm.

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

The rule also requires that a person obtaining a type 2 registration certificate for any calendar year beginning after December 31, 2001, must have a health certificate issued by an accredited veterinarian or a fish inspector for the fish farm not earlier than January 1 of the preceding calendar year. This annual health certificate must certify that the fish on the fish farm are free of all visible signs of disease, whirling disease (*Myxobulus cerebralis,* or WD), if trout, salmon or other salmonidae are kept on the fish farm and any other disease which the department of agriculture, trade and consumer protection specifies on the health certification form.

About 2,400 fish farms scattered across Wisconsin will be affected by the fish farm requirements in this rule. These farms were previously licensed by the department of natural resources, by completing an annual license application form, paying an annual fee ($5, $25 or $50 depending upon the classification) and submitting year end reports on business operations. Under the department of agriculture, trade and consumer protection, the proposed annual fees are $25 for a type 1 and $50 for a type 2 registration. Most small business fish farms will have no change in fees. Recordkeeping requirements will be less burdensome for fish farm operators since they will only be required to maintain records and not file yearend reports. Beginning in 2002, the requirement for an annual health certificate for all type 2 registered fish farms will increase the costs of operating a fish farm. The weight of this expense will be offset in the future with better fish health leading to increased production and marketability of product due to higher fish health standards.

Live Fish Imports

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

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

The rule requires a person who imports live fish or fish eggs to obtain a health certificate for each shipment of fish, if the fish originate from a wild source, or an annual health certificate, if the fish originate from an out–of–state fish farm. Issued by an accredited veterinarian or a fish inspector, the health certificate must certify that the shipment or fish farm is free of all the following:

• Visible signs of disease.

• Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobulus cerebralis,* or WD), if the health certificate is for salmonidae imports.

• Iridovirus (white sturgeon disease) if the health certificate is for sturgeon imports.

• Other diseases, if any, which the department specifies on the health certification form.

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

Under the department of natural resources a person importing live fish and fish eggs had to acquire a permit and for salmonidae fish or fish eggs, had to provide health certification for five specific diseases. The department of agriculture, trade and consumer protection is requiring a permit and health certification for all imports of live fish or fish eggs. The fish or fish eggs must be certified free of the diseases listed above. The requirement of health certification might increase

the cost of importing live fish and fish eggs from out–of–state fish farms and will increase the cost of importing from wild sources, since this requirement did not exist before. It is assumed the source of the fish and fish eggs will pass the cost of the certification on to the importer. Health certification for imports will offer some degree of assurance that a healthy product is being imported which will result in savings for fish farms in the long run and reduced risks of diseased fish being released into the waters of the state. The requirement to maintain import records will add minimal costs since these records are standard business operational records.

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

Copies of Rule

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

Animal Health Division

Wis. Dept. of Agriculture, Trade & Consumer Protection

P. O. Box 8911

Madison, WI 53708–8911

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **October 9, 1998** for additional written comments.

A copy of this rule may be obtained, free of charge, form the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling (608) 224–4505. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **September 23, 1998** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, **(608/224–4505)** or by contacting the message relay system (TTY) at **608/224–5058**. Handicap access is available at the hearings.

Hearing Information

Each hearing will be held at the following times:

afternoon session: 1:00 – 4:00 p.m.
evening session: 6:00 – 8:00 p.m.

October 5, 1998	**Holiday Inn**
Monday	**Hwy 51 & Northpoint Dr.**
	Stevens Point, WI 54481
October 6, 1998	**Marquette Co. Courthouse**
Tuesday	**77 West Park St.**
	Montello, WI 53949
October 7, 1998	**Best Western**
Wednesday	**815 Park Ave.**
	Beaver Dam, WI 53916
October 8, 1998	**Governor Dodge Motor Inn**
Thursday	**& Convention Center**
	Hwy 151
	Platteville, WI 53818

Written Comments

Written comments will be accepted until **October 9, 1998.**

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

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

Statutes interpreted: ss. 94.69, 160.19(2) and 160.21(1)

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards.

Based on new groundwater test data, this rule expands the number of areas in which atrazine use is prohibited.

Atrazine Prohibition Areas

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 98 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule repeals and recreates 3 current prohibition areas to expand those areas, and creates 3 new prohibition areas, resulting in a new total of 101 prohibition areas throughout the state. The rule includes maps describing each of the new and expanded prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATCP 29.151(2) to (4), Wis. Adm. Code.

Fiscal Estimate

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 3 existing prohibition areas (PAs), and creating 3 additional PAs.

Administration and enforcement of the proposal will involve new costs for the department. Specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs (0.1 FTE, cost approximately $4,000). Enforcement activities will be conducted in conjunction with current compliance inspections but at increased levels to ensure compliance with the additional prohibition areas. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the PAs require education to comply with the new regulations.

Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated $2,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be $4,000.

Total Annual Costs: $10,000

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural

Resources and local health agencies may receive short term increased interest by individuals requesting samples.

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on weed control strategies with reduced reliance on atrazine. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

The complete fiscal estimate is available upon request.

Initial Regulatory Flexibility Analysis

Businesses Affected:

The amendments to the atrazine rule will affect small businesses in Wisconsin. The greatest small business impact of the rule will be on users of atrazine –– farmers who grow corn. The proposed prohibition areas contain approximately 14,000 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 3,500 acres of corn will be affected. This acreage would represent between 20 and 50 producers, depending on their corn acreage. These producers are small businesses, as defined by s. 227.114 (1)(a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance:

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current atrazine rule.

Atrazine cannot be used in certain areas of the State where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10 Wis. Adm. Code.

Professional Skills Required to Comply:

The rule affects how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in the State, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past this type of assistance has been provided by University Extension personnel and farm chemical dealers. In recent years many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Notice to Department of Development

The department has given notice of this proposed rule to the Wisconsin department of development, as required by s. 227.114(5), stats.

Draft Environmental Impact Statement

The Department has prepared a draft environmental impact statement (EIS) for proposed 1999 amendments to rules on the use of pesticides containing atrazine. Copies are available from the Department on request and will be available at the public hearings. Comments on the EIS should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI, 53708 in care of Jeff Postle. Phone 608/224–4503. Written comments on the EIS will be accepted until October 9, 1998.

Notice of Hearings

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposal to repeal and recreate Ch. ATCP 127, Wis. Adm. Code, relating to home solicitation selling. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **November 6, 1998** for additional written comments.

A copy of this rule may be obtained, free of charge, from the Bureau of Consumer Protection, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, or by calling 608/224–4965. Copies will also be available at the hearings.

If an INTERPRETER for the deaf and hard of hearing people is required, please notify this office by **September 25, 1998** either by writing to James Rabbitt, P.O. Box 8911, Madison, WI 53708–8911, or by contacting the message relay system (TTY) at 608/246–5058.

Hearing Information

October 5, 1998	**Dept. of Agriculture, Trade**
Monday	**& Consumer Protection**
commencing at 1:00 p.m.	**Board Room**
	2811 Agriculture Drive
Handicapped accessible	**Madison, WI**
October 6, 1998	**Dept. of Agriculture, Trade**
Tuesday	**& Consumer Protection**
commencing at 1:00 p.m.	**Suite C**
	10930 W. Potter Road
Handicapped accessible	**Milwaukee, WI**
October 7, 1998	**State Office Bldg.**
Wednesday	**200 N. Jefferson Street**
commending at 1:00 p.m.	**Green Bay, WI**
Handicapped accessible	
October 8, 1998	**North Central Tech. College**
Thursday	**1000 Schofield Road**
commencing at 1:00 p.m.	**Wausau, WI**
Handicapped accessible	
October 9, 1998	**Dept. of Agriculture, Trade**
Friday	**& Consumer Protection**
commencing at 1:00 p.m.	**3610 Oakwood Hills Parkway**
Handicapped accessible	**Eau Claire, WI**

Written comments will be accepted until **November 6, 1998**.

Analysis by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: s. 100.20(2)

Statute interpreted: s. 100.20

This rule protects Wisconsin consumers against unfair and deceptive home solicitation selling practices. Home solicitation selling includes telemarketing, direct mail and door–to–door selling.

This rule updates and strengthens the department's current home solicitation selling rules under ch. ATCP 127, Wis. Adm. Code, to address new telemarketing and home solicitation selling practices. This rule also expands current rules to address new selling methods, such as electronic mail.

This rule is based, in part, on Federal Trade Commission telemarketing rules under 16 CFR 310, which took effect on December 31, 1995. However, this rule also protects consumers in other transactions, including direct mail and door–to–door transactions. It also goes beyond FTC telemarketing rules to cover intrastate transactions and new electronic sales methods such as e–mail.

This rule is consistent with federal rules, but incorporates other state law requirements related to home solicitation selling. By adopting this rule under Wisconsin's "Little FTC Act," s. 100.20, Stats., the department will provide more effective redress to Wisconsin consumers. Violations of this rule may be prosecuted under state law in Wisconsin courts. Consumers who suffer a monetary loss because of a violation of this rule may also sue the violator directly, and may recover double damages, costs and reasonable attorney fees.

Coverage

This rule applies to the sale of consumer goods or services by means of "home solicitations" including:

• Telephone and other electronic solicitations (e.g., electronic mail) to a consumer's residence.

• Mail solicitations (other than catalog sales).

• Door–to–door and other "transient" solicitations. A "transient" solicitation means a face–to–face solicitation at any of the following places:

*A consumer's residence

*A location, other than the seller's home or regular place of business, to which the seller invites the consumer by means of a home solicitation.

*A location, other than the seller"s home or regular place of business, at which the seller offers consumer goods or services for delivery at a later date.

This rule does not apply to any of the following:

• Mass advertisements (e.g., in a newspaper, television, radio or internet home page) which are not addressed to individual consumers or consumer residences.

• Transactions at a seller's home or regular place of business.

• Transactions at places like a farmer's market, where goods are delivered at the point of sale.

• Catalog sales.

• Transactions initiated by a consumer (except in response to a home solicitation).

• Business–to–business sales.

• Banks, savings and loan associations, insurance companies, public utilities or telecommunications carriers whose activities are exempt under s. 93.01(1m), Stats.

• Real estate sales, other than sales of cemetery lots and "time shares" as defined in s. 707.02(24), Stats.

• Securities sold in compliance with ch. 551, Stats., or franchise investments sold in compliance with ch. 553, Stats.

• Pay–per–call services sold in compliance with s. 196.208, Stats.

• Charity raffles, unless the raffle is part of a seller's plan or scheme to sell consumer goods or services.

Opening Disclosures

Under this rule, a seller making a "home solicitation" must clearly disclose all of the following as part of that solicitation:

• The seller's correct name. If a seller (e.g., a contract telemarketing firm) makes a home solicitation for another seller, it must also disclose the name of the other seller.

• The name of the individual making the home solicitation, if the solicitation is a telephone or transient solicitation. For example, if Mary Smith makes telephone or transient solicitations for the ABC firm, she must disclose her name to the consumer. Smith may disclose a fictitious name which uniquely identifies her if the ABC firm keeps a record of that uniquely identifying fictitious name.

• That the seller is offering or promoting the sale of consumer goods or services.

• The kind of goods or services which the seller is offering or promoting.

A seller must make these opening disclosures in the following ways:

• Orally, if the home solicitation involves an oral or face–to–face communication. The seller must make the oral disclosures before asking any questions or making any statements to the consumer (other than an initial greeting).

• In writing, if the home solicitation involves a written or face–to–face solicitation.

Disclosures Prior to Sale

In a home solicitation transaction, a seller must disclose all of the following before the consumer agrees to buy or receive any consumer goods or services, and before the seller accepts any payment from the consumer:

• The nature and quantity of the consumer goods or services.

• The cost of the consumer goods or services, including material delivery and handling costs. If the cost may vary, the seller must disclose the maximum cost or the formula by which the total cost will be computed.

• All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any. (Cost disclosures in consumer credit transactions must comply with applicable requirements under ch. 422, Stats., and federal law.)

• The seller's policy related to refunds, cancellations and exchanges.

• The seller's correct name, mailing address, and telephone number if any.

A seller must make these disclosures in writing. However, a seller may make the disclosures by telephone if the seller confirms them in writing. The seller must give the written confirmation at or before the time that the seller first delivers consumer goods or services to the consumer, or accepts payment from the consumer.

Prize Promotions

This rule regulates sweepstakes and other prize promotions that involve an element of chance. Home solicitation sellers who use these promotions may not require consumers to make any purchase or payment as a condition to entry. A seller must also disclose all of the following in writing, before the consumer agrees to buy anything or makes any payment to the seller:

• The verifiable retail value of each offered prize.

• The odds of receiving each offered prize or, if the odds cannot be calculated in advance, the factors used in calculating the odds.

• That the consumer is not required to make any purchase or payment in order to participate in the prize promotion.

• Instructions on how the consumer may participate in the prize promotion without making a purchase or payment.

• All actions which the consumer must take, and all conditions which the consumer must meet, in order to receive or be eligible for a prize.

Prize Promotions; Misrepresentations

• The approximate length of any sales presentation which the consumer is invited to hear, view or attend, and the nature of the consumer goods or services that will be offered or promoted.

• All shipping, handling or other fees which the consumer must pay in order to receive or use a prize.

Prize Promotions; Misrepresentations

This rule prohibits any seller from misrepresenting the material terms of a prize promotion, including any of the following:

• The odds of winning a prize.

• The nature or value of a prize.

• The nature or existence of any conditions which a consumer must meet in order to obtain a prize or participate in a prize promotion.

Unauthorized Payment

Under this rule, no home solicitation seller may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The following authorizations are considered verifiable:

• An express written authorization. Express written authorization may include the consumer's signature on the check, draft or negotiable instrument.

• An express oral authorization if all of the following apply:

*The oral authorization is tape recorded and made available upon request to the consumer's bank.

*The oral authorization clearly authorizes payment for the goods and services offered to the consumer.

*The oral authorization clearly indicates that the consumer received information specifying all of the following:

–The date and amount of the check, draft or instrument.

–The payor's name.

–The number of payments, if more than one.

–A telephone number for consumer inquiries that is answered during normal business hours.

–The date of the consumer's oral authorization.

• An authorization which the seller confirms in writing, provided that all of the following apply:

*The seller sends the written confirmation to the consumer before the seller submits the check, draft or other negotiable instrument for payment.

*The written confirmation includes all of the following information:

–The date and amount of the check, draft or instrument.

–The payor's name.

–The number of payments, if more than one.

–A telephone number for consumer inquiries that is answered during normal business hours.

–The date of the consumer's authorization.

–A procedure by which the consumer can obtain a refund from the seller if the written confirmation is inaccurate.

Credit Card Laundering

This rule prohibits "credit card laundering" related to home solicitation transactions. In "credit card laundering" schemes, unscrupulous sellers gain access to the credit card system –– from which they might otherwise be excluded –– by processing credit card transactions under the name of another merchant.

This rule prohibits a merchant from presenting for payment, to a credit card system, any credit card sales draft generated by a home solicitation transaction that is not a sale by that merchant to that credit card holder. No home solicitation seller may obtain access to a credit card system under the name of another merchant unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed by the credit card system operator.

Misrepresentations

This rule prohibits a seller from doing any of the following in a home solicitation transaction:

• Misrepresenting seller's identity, affiliation, location or characteristics.

• Misrepresenting the nature, purpose or intended length of a home solicitation.

• Misrepresenting the nature or terms of a home solicitation transaction, or any document related to that transaction.

• Misrepresenting the cost of goods or services offered or promoted by the seller, or failing to disclose material costs payable by the consumer.

• Misrepresenting the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by the seller.

• Misrepresenting or failing to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by the seller.

• Misrepresenting the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

• Misrepresenting that a seller is offering consumer goods or services free of charge or at a reduced price.

• Misrepresenting that a seller is affiliated with, or endorsed by, any government or 3rd–party organization.

• Misrepresenting that a seller has specially selected the consumer, or misrepresenting the basis on which a consumer has been selected.

• Misrepresenting any material aspect of an investment opportunity, including risk, liquidity, earnings potential or profitability.

• Failing to disclose, in connection with every purported offer of free goods or services in a home solicitation transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services.

• Making any other false, deceptive or misleading representation to a consumer.

Prohibited Practices; General

This rule prohibits a seller from doing any of the following in a home solicitation transaction:

• Threatening, intimidating or harassing a consumer.

• Failing to leave a consumer's premises upon request.

• Requesting or receiving payment for "credit repair" services until the seller provides the consumer with all of the following:

*All of the "credit repair services" for which the seller is requesting or receiving payment.

*A consumer report, from a bona fide consumer reporting agency, which demonstrates that the "credit repair services" have achieved all of the results promised to the consumer.

• Requesting or receiving payment for helping a consumer recover money lost in a prior home solicitation transaction until at least 7 days after that consumer recovers that money. (This provision addresses so–called "recovery room" schemes, which prey on previously victimized consumers.)

• Requesting or receiving payment for "loan finder" services until the consumer actually receives the promised loan.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

This rule updates and modernizes existing rules related to home solicitation selling. It also harmonizes state regulations with federal telemarketing rules. The revised rule requires information be given to consumers who are solicited away from regular business establishments about the product, costs, and identity of seller. The bill also prohibits certain deceptive practices.

The department already handles over 4,000 complaints annually from consumers about transactions which are initiated or consummated away from the sellers regular place of business. It is assumed that the number of complaints will not increase due to this revision. It is also assumed that this law will assist department staff by providing clearer definitions which, when applied, will enhance our efficiency in dealing with these problems.

Based on these assumptions, the department believes there is no fiscal effect associated with amendment of this rule.

Initial Regulatory Flexibility Analysis

Proposed ch. ATCP 127, Wis. Adm. Code

Home Solicitation Selling

This rule regulates businesses that solicit and sell consumer goods by mail, telephone, or other means away from a regular place of business. The rule provides methods whereby buyers can be informed of the conditions of their agreements in a manner that is meaningful and available to the consumer after the transaction is done and the seller is no longer at the same location.

These requirements should have little if any impact on small business. It is general business practice to inform potential customers who you are and the product you are selling and to produce invoices following the sale. It is also general practice to retain business records for a period of time for tax and other purposes. The practices regulated by the prize promotion, unauthorized payment, telephone solicitation, and credit card laundering sections have been identified at federal rules hearings as practices which have lead to abuse of consumers and are already in effect for any business that solicits on an interstate scale. Businesses recordkeeping requirements are necessary for meaningful enforcement of the rules and should be already the norm for most businesses.

Scope

This rule is based, in part, on Federal Trade Commission telemarketing rules yet also protects consumers in intrastate transactions, direct mail, door–to–door, and electronic sales.

This rule does not apply to sales at a regular place of business, catalog sales, mass advertising, business to business sales, financial institutions, utilities, and real estate sales.

Opening Disclosures

This rule requires initial disclosures such as the seller's correct name, the name of the individual making the solicitation, the fact that the seller is offering or promoting a sale of goods or services, and the kind of goods or services the seller is offering or promoting.

These disclosures must be made orally, if the home solicitation involves an oral or face–to–face communication and in writing, if the home solicitation involves a written or face–to–face solicitation.

These requirements should have no significant impact on small business. Most sellers prefer to leave written information about their company and products with the consumer already.

Disclosures Prior to Sale

Before the sale or acceptance of payment a seller must disclose all of the following; the nature, quantity, cost, and material terms and conditions affecting the sale, receipt or use of the goods or services, and the seller's policy related to refunds, cancellations and exchanges.

These requirements add no additional cost to legitimate small business who already provide this information to consumers in part to protect themselves from excessive customer dissatisfaction.

Prize Promotions

This rule regulates sweepstakes and other prize promotions. Sellers who use these promotions may not require any purchase or payment as a condition to entry. A seller must also disclose the verifiable retail value of each offered prize, the odds of receiving each offered prize, instructions on how to participate without making a purchase or payment, all actions which the consumer must take, and all conditions which the consumer must meet. This rule also prohibits any seller from misrepresenting the material terms of a prize promotion.

This requirement reflects conditions contained in Wisconsin's lottery and selling with pretense of a prize laws. It should have no fiscal impact on small business.

Unauthorized Payment

Under this rule, no seller may obtain or submit any negotiable instrument drawn on a consumer's account without express, verifiable authorization. Authorizations may be written or oral and must be verifiable by writing or tape recording.

This section may require businesses who currently do not have the facility to tape record oral authorizations to make a one time purchase of necessary equipment.

Credit Card Laundering

This rule prohibits "credit card laundering" schemes by which unscrupulous sellers gain access to the credit card system by processing credit card transactions under the name of another merchant.

This section targets only those sellers engaged in unscrupulous practices and should have no impact on legitimate small business.

Misrepresentations

This rule prohibits misrepresentation including:

The seller's identity, affiliation, location or characteristics or the nature, purpose or intended length of a home solicitation.

The cost, nature or terms including restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services or any document related to that transaction. Failing to disclose is also prohibited.

The nature, quantity, or material characteristics of the goods or services.

That a seller is affiliated with, or endorsed by, any government or 3rd–party organization or has specially selected the consumer.

Any material aspect of an investment opportunity, including risk, liquidity, earnings potential or profitability.

Prohibited Practices; General

This rule prohibits a seller from doing any of the following in a home solicitation transaction:

Threatening, intimidating, harassing, or failing to leave a consumer's premises upon request.

Requesting or receiving payment for "credit repair" services until the consumer receives the "credit repair services" verified by a consumer report, from a consumer reporting agency, demonstrating all of the results promised to the consumer.

Requesting or receiving payment for helping a consumer recover money lost in a prior home solicitation transaction until at least 7 days after that consumer recovers that money.

Requesting or receiving payment for "loan finder" services until the consumer actually receives the promised loan.

Prohibited Telephone Solicitation Practices

This rule prohibits a home solicitation seller from doing any of the following:

Initiating a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from the seller.

Repeatedly causing a consumer's telephone to ring, or repeatedly engaging a consumer in telephone conversation, with intent to annoy, abuse or harass a consumer.

Initiating a telephone solicitation before 8:00 AM or after 9:00 PM without the prior consent.

Recordkeeping

This rule requires a home solicitation seller to keep copies of all solicitation scripts and documents, transaction receipts, a description of each prize offered and the name and address of every consumer who received a prize. The rule also requires a seller to keep the real names, any fictitious name(s) used, address and telephone number, and job title or titles of individual solicitors acting on the seller's behalf.

This section is similar to the federal telemarketing rule requirements. Additionally, the records to be kept are generally held by small business for other purposes. Therefore there should be no fiscal impact to small business.

Assisting Violations

No person may knowingly assist any seller to engage in any activity or practice in violation of this chapter.

Small Business Impact

The impact on small business should be limited to those who are not already marketing under the federal telemarketing rules. Some small businesses may need to purchase equipment to tape record telephone authorizations from consumers. Most other requirements should be covered by practices already common in the business community.

Notice of Hearing

Barbering & Cosmetology Examining Board

Notice is hereby given that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b), 227.11 (2), 454.08 (1) (a) and (4), Stats., and interpreting ss. 454.01, 454.02, 454.04, 454.06, 454.07, 454.08, 454.10, 454.13 and 454.145, Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise chs. BC 1 to 9, relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Hearing Information

October 5, 1998 **Room 179A**
Monday **1400 E. Washington Ave.**
10:00 a.m. **Madison, WI**

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **October 12, 1998** to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 454.08 (1) (a) and (4)

Statutes interpreted: ss. 454.01, 454.02, 454.04, 454.06, 454.07, 454.08, 454.10, 454.13 and 454.145

This proposed rule–making order of the Barbering and Cosmetology Examining Board contains amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

Rules are amended to clarify the procedures for safety and sanitation, to include defining levels of disinfection, modifying protocol for disinfecting instruments and standards necessary to protect the public health, safety and welfare. Rules are created relating to the clarification of the roles and responsibilities of the establishment owner and licensed manager for maintaining and providing training and supervision consistent with chapter 454, Stats. Rules are amended to clarify the conditions under which a manager may manage multiple establishments. Rules are revised to clarify the requirements for a basin to wash hands in between clients. Rules are created to identify references for disposing of contaminated paper products and the disposal of sharps. Rules are repealed and recreated to define the apprenticeship program that is consistent with current policy and practice of the board. Rules are amended to clarify the different requirements for applicants from other states seeking licensure in Wisconsin. Rules are revised to clarify the requirements for renewal and reinstatement.

Text of Rule

SECTION 1. BC 1.01 (1) is renumbered BC 1.01 (1a).

SECTION 2. BC 1.01 (1) is created to read:

BC 1.01 (1) "Antiseptic" means a chemical that kills or inhibits the growth of organisms on skin or living tissue.

SECTION 3. BC 1.01 (2) is repealed and recreated to read:

BC 1.01 (2) "Chemical relaxing" means the process of straightening over–curly hair by use of chemical agents.

SECTION 4. BC 1.01 (2a) is created to read:

BC 1.01 (2a) "Chemical waving" means a system of permanent waving employing chemicals rather than heat.

SECTION 5. BC 1.01 (5) is renumbered BC 1.01 (15) and amended to read:

BC 1.01 (15) ~~"Direct supervision"~~ "Supervision" means ~~maintaining visual contact~~ regular on premise coordination, direction and inspection of the practice of another.

SECTION 6. BC 1.01 (6) is amended to read:

BC 1.01 (6) "Disinfectant" means ~~an agent that destroys or neutralizes harmful microorganisms~~ a chemical that is capable of destroying disease–causing organisms on inanimate objects, with the exception of bacterial spores.

SECTION 7. BC 1.01 (8) is amended to read:

BC 1.01 (8) "Infectious" means that which is capable of being transmitted without ~~physical~~ contact.

SECTION 8. BC 1.01 (9) is repealed and recreated to read:

BC 1.01 (9) "Intermediate level disinfection" means application of a process that may be accomplished by any of the following:

(a) Immersion of the object to be disinfected in 70% to 90% isoproplyl or ethyl alcohol for at least 10 minutes followed by air drying.

(b) Immersion of the object to be disinfected in household bleach, diluted to one tablespoon per quart of water, for at least 10 minutes (100 ppm available chlorine/ 1:250 dilution).

(c) Use of a phenolic germicidal detergent solution prepared and used according to manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

(d) Use of an iodophor germicidal detergent solution prepared and used according to manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

SECTION 9. BC 1.01 (10a) is created to read:

BC 1.01 (10a) "Low level disinfection" means application of a process that may be accomplished by any of the following:

(a) Immersion of the object to be disinfected in 70% to 90% isopropyl or ethyl alcohol for at least 10 minutes followed by air drying.

(b) Immersion of the object to be disinfected in household bleach, diluted to one tablespoon per quart of water, for at least 10 minutes (100 ppm available chlorine**/** 1:250 dilution)**.**

(c) Use of a phenolic germicidal detergent solution prepared and used according to manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

(d) Use of an iodophor germicidal detergent solution prepared and used according to manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

(e) Immersion of the object to be disinfected in a quaternary ammonium germicidal detergent solution prepared and used according to manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

SECTION 10. BC 1.01 (13a) is created to read:

BC 1.01 (13a) "Personal care services" means shampooing, setting, combing, brushing, cutting, chemical waving, chemical relaxing, bleaching or coloring the hair. "Personal care services" also includes electrology, manicuring and aesthetic services.

SECTION 11. BC 1.01 (14) is amended to read:

BC 1.01 (14) "Practitioner" means a person who holds ~~the initial~~ a current license to practice barbering and cosmetology issued under s. 454.06 (2), Stats.

SECTION 12. BC 1.01 (16) is created to read:

BC 1.01 (16) "Training permit holder" means a person who holds a current training permit issued pursuant to s. 454.06 (9), Stats.

SECTION 13. BC 2.01 is repealed.

SECTION 14. BC 2.02 (3) is amended to read:

BC 2.02 (3) No licensee, having a known infectious or contagious disease, may provide ~~services~~ a service to a patron ~~while having a known infectious or contagious disease~~ if the licensee is, by reason of

the disease, unable to safely and competently perform the ~~duties customarily provided by a license holder~~ service.

SECTION 15. BC 2.03 (4) is repealed and recreated to read:

BC 2.03 (4) Licensees may neither consume alcohol nor take controlled substances during practice, unless prescribed by a physician.

SECTION 16. BC 2.03 (5) is amended to read:

BC 2.03 (5) Licensees shall take adequate and necessary precautions to protect the patron from health and safety hazards when performing services. Licensees shall not smoke while performing personal services on a patron.

SECTION 17. BC 2.03 (6) is repealed.

SECTION 18. BC 2.045 is created to read:

BC 2.045 SERVICES OUTSIDE OF A LICENSED ESTABLISHMENT. (1) Licensees shall not provide personal care services outside of a licensed establishment except for persons who are unable to leave their homes because of illness or disability or for persons who are in hospitals, nursing homes, correctional institutions or other institutions. Licensees may provide any personal care service for inmates or patients regardless of whether it is done in a designated area or in the personal room of an inmate, patient or infirm person within an institution or private home.

(2) Licensees shall comply with all practice standards set forth in s. BC 2.03 in providing services outside of a licensed establishment.

SECTION 19. BC 2.06 (1) and (2) (intro.) are renumbered BC 2.06 (intro.) and amended to read:

BC 2.06 RESPONSIBILITIES OF OWNERS. (intro.) The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4. The owner shall:

SECTION 20. BC 2.06 (2) (a) is renumbered BC 2.06 (5) and amended to read:

BC 2.06 (5) ~~Appoint~~ The owner of a barbering and cosmetology establishment shall in addition appoint a manager who shall have direct authority over the operations of the establishment.

SECTION 21. BC 2.06 (2) (b) and (c) are repealed.

SECTION 22. BC 2.06 (2) (d) is renumbered BC 2.06 (2).

SECTION 23. BC 2.06 (3) and (4) are created to read:

BC 2.06 (3) Ensure the provision of supervision and training of apprentices, temporary permit holders and training permit holders.

(4) The owner shall maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners including employment records to enable apprentices or practitioners to meet the requirements of s. 454.06 (3) (b), 440.63 (3) (a) 1. or 454.10 (2), Stats., for credentialing as a practitioner, manager or instructor.

SECTION 24. BC 2.07 (1) is amended to read:

BC 2.07 (1) The licensed manager of a barbering and cosmetology establishment shall be responsible for the daily operations of an establishment and ~~shall provide training or supervision to an apprentice in accordance with s. BC 6.04 (1), temporary permit holder, aesthetician–in–training, manicurist–in–training or electrologist–in–training, and shall maintain and provide appropriate records for apprentices, temporary permit holders, aestheticians–in–training, manicurists–in–training, electrologists–in–training, and practitioners~~ ensure that the establishment is in compliance with ch. 454, Stats., and chs. BC 3 and 4. The manager shall maintain supplies and equipment necessary to ensure safe and sanitary establishment conditions.

SECTION 25. BC 2.07 (1a) and (1b) are created to read:

BC 2.07 (1a) The manager shall be responsible for the provision of training and supervision to an apprentice in accordance with s. BC 6.04 (1), and to temporary permit holders and training permit holders. Supervision and training must be conducted by a currently licensed manager or practitioner with sufficient education, training and experience to provide the supervision and training.

(1b) The manager shall maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners, including employment records to enable apprentices or practitioners to meet the requirements of s. 454.06 (3) (b), 440.63 (3) (a) 2., or 454.10 (2), Stats., for credentialing as a practitioner, manager or instructor.

SECTION 26. BC 2.07 (2) is repealed and recreated to read:

BC 2.07 (2) The manager shall be responsible for the posting of all required licenses, permits and notices.

SECTION 27. BC 3.01 (2) is repealed.

SECTION 28. BC 3.01 (5) and (6) are amended to read:

BC 3.01 (5) ~~Public toilet facilities for the establishment shall be provided within the building. Toilet facilities shall be kept clean, sanitary and in working order at all times. Soap, disposable towels and a wash basin with hot and cold running water shall be provided. The~~ A toilet room shall not be used as a dispensary or for the providing of services. ~~Items stored in the toilet rooms shall be in closed cabinets. Poisonous substances stored in the toilet room shall be locked in a cabinet or closet.~~

(6) Establishments shall provide safe and secure areas ~~designated~~ for storing, cleaning and disinfecting equipment. Poisonous substances stored in public areas shall be locked in a cabinet or closet.

SECTION 29. BC 3.01 (12) is amended to read:

BC 3.01 (12) Establishments shall provide a basin ~~appropriate for services offered by the establishment~~ which has hot and cold running water, and a chair which is designed for the service to be provided. At least one basin shall be constructed and available to permit licensees to wash their hands prior to serving each patron and following removal of gloves. Establishments shall provide the equipment and supplies necessary to perform services offered. Basins may be shared with other establishments located on the same premises.

SECTION 30. BC 3.01 (13) and (14) are created to read:

BC 3.01 (13) The establishment license must be posted in the establishment.

(14) All facilities shall be equipped with a ventilation system adequate to comply with minimal occupational safety and health standards.

Note: See section ILHR 64.18, Wisconsin administrative code.

SECTION 31. BC 3.02 is repealed and recreated to read:

BC 3.02 ADDITIONAL ESTABLISHMENT REQUIREMENTS. (1) No barbering or cosmetology establishment may operate without a licensed manager appointed by the owner who, together with the owner, shall have direct responsibility to ensure compliance with ch. 454, Stats., and rules of the board in the operation of the establishment. The manager is required to work full–time. The manager is not required to be in an establishment at all times when an establishment is open for business.

(2) A person who is licensed as a manager may be employed as the manager for any number of establishments so long as the license for all of the establishments are held by the same person.

(3) A person may be employed as the manager for 2 or more establishments when the licenses for the establishments are held by different persons only if the manager works for each establishment full time.

(4) A barbering and cosmetology establishment may offer any specialty service under their license, except any licensed establishment which offers electrology shall obtain a separate electrology establishment license.

SECTION 32. BC 3.03 is repealed.

SECTION 33. BC 3.04 (1), (2) and (3) are amended to read:

BC 3.04 (1) Before a person may open a new establishment, or relocate or change the ownership of an existing establishment, the person shall submit an application to the board on a form specified by the board~~, and secure the board's approval of the application~~.

(2) The ~~application shall be notarized, and the~~ board ~~may~~ shall require identification of the owner, business address, manager, type of business, and a copy of the floor plan showing dimensions and required equipment, in addition to other information which may be needed to approve the issuance of a license.

(3) Upon approval of the application and ~~posting~~ issuance of the license in the establishment, the establishment may open for business.

SECTION 34. BC 3.06 is created to read:

BC 3.06 CHANGE OF OWNERSHIP OR LOCATION. (1) Change of ownership of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

(2) Change of location of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

SECTION 35. BC 4.01 (2) is created to read:

BC 4.01 (2) Licensees shall wash their hands thoroughly with soap and running water prior to serving each patron and following removal of gloves. Waterless hand washing agents are not an acceptable substitute for washing hands with soap and running water.

SECTION 36. BC 4.02 (3) is amended to read:

BC 4.02 (3) (intro.) All combs, lifts and brushes, rollers and any other contact equipment and all clipper blades, razors, scissors, tweezers and all other cutting instruments shall be thoroughly cleaned with soap ~~or detergent~~ and water~~, dried,~~ and then disinfected prior to use~~. Disinfection may be accomplished by immersion as described in sub. (1). Clean contact equipment shall be placed in one or more covered containers. One or more separate containers shall be provided for the immediate storage of soiled contact equipment until cleaned and disinfected.~~ as follows:

SECTION 37. BC 4.02 (3) (a) and (b) are created to read:

BC 4.02 (3) (a) Low level disinfection is acceptable unless the item has been contaminated by contact with blood.

(b) In the event that the item is contaminated by contact with blood, a practitioner shall apply intermediate level disinfection or sterilization to the item prior to reuse.

SECTION 38. BC 4.02 (3a) is created to read:

BC 4.02 (3a) Clean and disinfected contact equipment shall be placed in one or more covered containers. One or more separate containers shall be provided for the immediate storage of soiled contact equipment until cleaned and disinfected.

SECTION 39. BC 4.02 (4) is amended to read:

BC 4.02 (4) Powder puffs, sponges, and emery boards and other contact equipment that cannot be cleaned with soap or detergent and water shall be disposed of following each use.

SECTION 40. BC 4.03 is amended to read:

BC 4.03 (1) Sterilization, as required by ss. BC 4.07, 4.09 and 4.10 shall be accomplished by use of a ~~FDA−registered~~ dry heat or steam sterilizer cleared for marketing by the FDA, used according to manufacturer's instructions. If steam sterilization , moist heat, is utilized, heat exposure shall be at a minimum of 121 degrees C., 250 degrees F., for at least 30 minutes. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171 degrees C., 340 degrees F., for at least 60 minutes.

(2) ~~Equipment used to sterilize~~ Sterilizers shall be maintained in working order. Equipment should be checked periodically to ensure that it is reaching required temperatures based upon manufacturer's recommendations.

SECTION 41. BC 4.04 (1) is amended to read:

BC 4.04 (1) All work stations shall be supplied with at least one of the topical ~~disinfectants~~ antiseptics listed in s. BC 4.05 for use by licensees in case of injury.

SECTION 42. BC 4.05 (1) is amended to read:

BC 4.05 (1) When any patron or licensee is exposed to blood by scissors cut, razor cut, needle stick, laceration or other exposure to broken skin or a mucous membrane, the licensee shall stop, thoroughly wash the exposed area or wound on the patron's or the licensee's body with soap and water, and disinfect the exposed area or wound with a topical ~~disinfectant~~ antiseptic such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent. In the case of mucous membrane exposure, the licensee shall wash or rinse the affected area with plenty of water.

SECTION 43. BC 4.06 (2) is amended to read:

BC 4.06 (2) A licensee shall use disposable protective gloves when dealing with patrons with oozing or open lesions or weeping dermatitis. These gloves shall be changed between patrons and disposed of after use. Gloves shall be removed upon completion of patron services, and hands washed after glove removal. It is recommended that licensees use protective gloves in handling caustic chemicals such as permanent waving solution and neutralizer or hair straightening preparations. The handling of these substances without protection can cause skin damage which may provide a route for infection to be transmitted to the licensee.

SECTION 44. The Note following BC 4.06 (2) is repealed.

SECTION 45. A Note following BC 4.06 (3) is created to read:

Note: Paper products contaminated with blood may be disposed of in the regular trash unless saturated with blood. See Wis. Admin. Code sec. NR 526.05 (Department of Natural Resources).

SECTION 46. BC 4.07 (intro.), (1), (3), (4) and (5) are amended to read:

BC 4.07 EAR PIERCING. (intro.) Licensees performing ear piercing shall do all of the following:

(1) Wear disposable protective gloves. These gloves shall be changed between patrons and disposed of after each use. Hands shall be washed after removal of gloves.

(3) Apply a topical ~~disinfectant (as listed in s. BC 4.05)~~ antiseptic to the skin surface of the area to be pierced and allow the ~~disinfectant~~ antiseptic to air dry~~;~~.

(4) Sterilize earrings, needles, or other piercing instruments prior to insertion. Pre−sterilized earrings may be utilized~~; and,~~.

(5) ~~Disinfect prior~~ Prior to each use all other surfaces that come into contact with the skin of the patron should be subjected to intermediate level disinfection.

SECTION 47. BC 4.08 (intro.), (1) and (2) are amended to read:

BC 4.08 WAXING. (intro.) Licensees performing depilation by waxing shall do all of the following:

(1) Apply a topical ~~disinfectant (as listed in s. BC 4.05)~~ antiseptic to the skin surface of the area to be waxed and allow the ~~disinfectant~~ antiseptic to air dry~~; and~~.

(2) Dispose of spatulas after each use~~; and~~.

SECTION 48. BC 4.09 (2), (3) and (4) are amended to read:

BC 4.09 (2) Wear disposable protective gloves when working on a patron. These gloves shall be changed between patrons and disposed of following use. Hands shall be washed after removal of gloves.

(3) Thoroughly wash the skin to be pierced with soap and water. Apply a topical ~~disinfectant (as listed in s. BC 4.05)~~ antiseptic to the skin surface of the patron and allow the ~~disinfectant~~ antiseptic to air dry prior to commencing electrolysis.

(4) Dispose of needles in a puncture resistant container specifically designed for disposal. Full sharps containers shall be disposed of appropriately.

SECTION 49. BC 4.10 (1) (a) and (b) are amended to read:

BC 4.10 (1) (a) Prior to use, ~~disinfect or sterilize~~ all reusable manicure instruments shall be subjected to intermediate disinfection or sterilization.

(b) ~~Disinfection shall be accomplished with a disinfectant registered with the United States environmental protection agency as a tuberculocidal agent, used in accordance with the manufacturer's instructions.~~ Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.

SECTION 50. BC Figure 5.02 VI is amended to read:

VI. Shaving, beard and mustache shaping, trimming, superfluous hair removal, waxing, facials, facial massages, facial makeup, eyelashes, light therapy, ~~tanning,~~ basic principals of electricity, and introduction to electrology.	35	60

SECTION 51. BC 6.01 (1) is amended to read:

BC 6.01 (1) The ~~manager to whom~~ owner of an establishment seeking to train an apprentice ~~is to be indentured~~ shall contact the ~~barbering and cosmetology examining board and the~~ department of ~~industry, labor and human relations~~ workforce development or the department for an application ~~and indenture forms~~.

SECTION 52. BC 6.01 (2) is repealed and recreated to read:

BC 6.01 (2) An initial apprenticeship permit shall be issued for a period of 3 years. The permit shall be renewable for one additional one year period upon all of the following:

(a) The payment of the renewal fee specified in s. 440.08 (2) (b), Stats.

(b) Certification to the board from the department of workforce development of acceptable progress by the apprentice in theory instruction and practical training.

SECTION 53. BC 6.01 (3) is repealed.

SECTION 54. BC 6.01 (4), (5), (6) and (7) are amended to read:

BC 6.01 (4) An apprentice shall not engage in any barbering and cosmetology work or attend school until a permit has been issued ~~by the board. A permit will not be issued until the indenture is completed with the department of industry, labor and human relations~~.

(5) Each apprentice shall ~~be indentured to a manager who has been appointed by the owner who shall have direct responsibility over the operations of the establishment to ensure compliance~~ enter an apprenticeship contract with an establishment owner or his or her designated agent who shall have direct responsibility for the provision of employment and for making arrangements for training of the apprentice in accordance with ch. 454, Stats., and the rules of the board.

(6) The ~~manager~~ owner or his or her designated agent shall provide the apprentice with the equipment necessary to learn all phases of practical barbering and cosmetology as listed in s. BC 6.04 and keep records of all apprentice practical work hours.

(7) An apprentice ~~transferring from one~~ seeking to transfer his or her apprenticeship contract to another establishment ~~to another within the state~~ owner shall contact the ~~board~~ department of workforce development or the department for transfer procedures. An apprentice shall not transfer without prior approval of the board.

SECTION 55. BC 6.01 (7) and (8) are created to read:

BC 6.01 (7) Cancellation of an apprenticeship contract by the department of workforce development shall result in an automatic suspension of an apprenticeship permit.

(8) An apprentice who has failed to complete an apprenticeship within 4 years from the date of issuance of his or her initial permit may apply for reentry into the apprenticeship program. Upon its review of the applicant's apprenticeship records, the board may in the exercise of its discretion deny the application or issue another apprenticeship permit under specified terms and conditions. The board may allow an apprentice credit for theory and practical training actually obtained under a previous permit.

SECTION 56. BC 6.02 is amended to read:

BC 6.02 THEORY AND PRACTICAL INSTRUCTION. ~~Apprentices~~ Following issuance of an apprenticeship permit, apprentices shall ~~complete a~~ enroll in the first available course of theory instruction ~~of not less than 288 hours~~ at a school of barbering and cosmetology~~. Theory~~ and shall maintain acceptable attendance and progress in their instruction ~~shall be completed within the first 22 months from the date the permit is issued. After the first 22 months of the apprenticeship the apprentice may not continue working in an establishment until all theory instruction has been completed~~ and practical training. The manager shall pay the apprentice for the hours of school attendance and practical training.

SECTION 57. Figure BC 6.03 (1) VI is amended to read:

VI. Shaving, beard and mustache shaping, trimming, superfluous hair removal, waxing, facials, facial massages, facial makeup, eyelashes, light therapy, ~~tanning,~~ basic principals of electricity, and introduction to electrology.	30

SECTION 58. BC 6.04 (1) is amended to read:

BC 6.04 (1) The ~~manager~~ establishment owner to whom an apprentice is indentured shall appoint a licensed manager to be responsible to supervise the training ~~and work~~ of the apprentice. Apprentices shall not work without the supervision of a licensed manager.

SECTION 59. Figure BC 6.04 (3) IV is amended to read:

IV. Shaving, beard and mustache shaping, trimming, superfluous hair removal, waxing, facials, facial massages, facial makeup, eyelashes, light therapy, ~~tanning,~~ basic principles of electricity, and introduction to electrology.	80

SECTION 60. BC 6.05 (2) is amended to read:

BC 6.05 (2) Students transferring to an apprenticeship program shall be granted credit for hours attained at a ratio of one ~~student~~ apprentice theory hour to one ~~apprentice~~ student theory hour and one ~~student~~ apprentice practical hour to one ~~apprentice~~ student practical hour.

SECTION 61. BC 6.05 (3) is created to read:

BC 6.05 (3) The department shall grant transferees to an apprenticeship program credit for calendar time spent in prior training.

SECTION 62. BC 7.03 is amended to read:

BC 7.03 (1) BARBER AND COSMETOLOGIST. An applicant for licensure as a barber or cosmetologist shall ~~pass~~ complete a written examination and each part of a practical examination which includes the following parts: haircut, chemical waving, chemical relaxing, thermal curling, tint and shampoo (one part), and blow drying.

(2) MANAGER. An applicant shall ~~pass~~ complete a written examination.

(3) AESTHETICIAN, ELECTROLOGIST OR MANICURIST. An applicant for a license as an aesthetician, electrologist or manicurist shall ~~pass~~ complete a written and a practical examination.

SECTION 63. BC 7.04 (1) is amended to read:

BC 7.04 (1) BARBER AND COSMETOLOGIST. The applicant's score shall be the average of the written examination and each part of the practical examination. The passing score of the examinations for licensure as a barber and cosmetologist shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

SECTION 64. BC 7.09 (1) is amended to read:

BC 7.09 (1) An applicant may retake ~~any~~ failed ~~part~~ parts of an examination within one year from the date of the ~~original~~ initial examination. Applicants ~~need repeat only those~~ shall take all parts failed. ~~Applicants who fail the written examination shall retake it in its entirety.~~

SECTION 65. BC 7.09 (2) is renumbered BC 7.09 (3).

SECTION 66. BC 7.09 (3) is renumbered BC 7.09 (2) and amended to read:

BC 7.09 (2) Applicants who do not ~~pass all~~ successfully complete an examination ~~parts~~ within one year shall retake ~~and pass~~ the entire examination ~~in order to be licensed~~.

SECTION 67. BC 7.09 (4) is created to read:

BC 7.09 (4) Scores of retake examinations for barbering and cosmetology practitioners shall be combined with examination parts previously passed to determine the score for the entire examination.

SECTION 68. Chapter BC 8 (title) and BC 8.01 (title) are amended to read:

Chapter BC 8 (title)
~~RECIPROCITY OF~~ LICENSEES
OF OTHER JURISDICTIONS

BC 8.01 (title) LICENSING REQUIREMENT.

SECTION 69. BC 8.01 (1) (intro.), (a), (b) and (c) are renumbered BC 8.01 (intro.), (1), (2) and (3) and BC 8.01 (1), (2) and (3) are amended to read:

BC 8.01 (1) The board has entered into a written reciprocal agreement with the licensing authority of another state, where the education and services practiced are substantially equivalent to those in Wisconsin; ~~and~~ or

(2) The applicant holds a current license in the other jurisdiction;~~and~~

(3) The applicant pays the appropriate fee as indicated in s. 440.05, Stats.~~.~~ and

SECTION 70. BC 8.01 (4) is created to read:

BC 8.01 (4) The applicant has at least 4,000 hours of experience in licensed practice.

SECTION 71. Chapter BC 9 (title) and BC 9.01 (title) are amended to read:

Chapter BC 9 (title)
RESTORATION RENEWAL AND REINSTATEMENT

BC 9.01 (title) RENEWAL OF LICENSE.

SECTION 72. BC 9.01 (3) is renumbered BC 9.02 and amended to read:

BC 9.02 REINSTATEMENT OF LICENSE. If the application for renewal is 5 years or more after the expiration of the applicant's last license, the board in its discretion may require as a condition of renewal that the applicant ~~may renew the license by completing the requirements for obtaining an initial license under s. 454.06 (2), (3), (4), (5), or (6), Stats~~ successfully pass the examination.

SECTION 73. BC 9.02 is repealed.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: $0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: $0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: $0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495

Notice of Hearing

Commerce

(Soil Erosion Control, Ch. Comm 65)

Notice is hereby given that pursuant to ss. 101.02 (1), 101.19 (1), and 101.1205, Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules to be contained in ch. Comm 65, relating to soil erosion control at commercial building sites.

Hearing Information

September 29, 1998
Tuesday
10:00 a.m.

WHEDA Bldg., Room 3B
201 W. Washington Ave.
Madison, WI 53703

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1), 101.19 (1), 101.1205

Statute Interpreted: s. 101.1205

In accordance with s. 101.1205, Stats., the department, in consultation with the department of natural resources, has the responsibility to establish statewide rules for erosion control at building sites for the construction of public buildings and buildings that are places of employment. The proposed rules establish statewide soil erosion standards where more than 2,000 square of land surface is disturbed at commercial building sites.

Under the proposed rules an erosion control plan would be have developed and implemented at each construction site to minimize the transport, due to a storm event, of disturbed soil off the site or into public inlets or the waters of the state. Erosion control measures for overland flow are to be based upon a 2–year, 24–hour storm event and erosion control measures for channelized flow are to be based upon a 10–year, 24–hour storm event. The code recognizes that the utilization of erosion control practices that follow the guidelines of the department of natural resources or the department of transportation as fulfilling the performance standards.

The code will require all sites to be registered with the department and will differentiate sites by their relative erosion potential. At a site where 5 or more acres are disturbed is classified as a class I site. A site where less than 5 acres are disturbed is classified as class II sites. A class I site is required to have the soil erosion control plan developed by either a professional designer such as an architect or engineer or a department certified erosion control planner. The erosion control plan for a type Class II site may be prepared by anyone. Erosion control plans will be subject to review by inspectors during the normal course of their visits to the job sites, however, plans may be voluntarily sent to the department's office for review and approval.

Municipalities may also require formal plan review, permitting or inspection. A municipality may also continue to administer and enforce a local ordinance on soil erosion control if the ordinance is more stringent than the proposed rules and the ordinance with in effect on January 1, 1994.

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **Monday, October 12, 1998,** to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

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

A copy of the proposed rules may be obtained without cost from Margaret Slusser, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608)

261–6546 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Fiscal Estimate

It is anticipated that 8,000 construction sites will be annually registered under the proposed provisions of chapter Comm 65. The $40 registration–filing fee will bring in $320,000 per year. It is estimated that 50 individuals will request an erosion control planner credential @ $80 for a 2–year certification. This will bring in $4,000 every 2 years or $2,000 per year. The anticipated increase in revenue from filing and credential fees is $322,000 per year.

Of the 8,000 annual registered construction sites, it is estimated that 100 will be 5 acres or larger. Of these 100 sites, it is predicted that 50 will undergo a voluntary in–office plan review through the Department of Commerce; at $300 per review plan, this will generate $15,000 per year. Of the remaining 7,900 sites of less than 5 acres, we estimate 300 will undergo voluntary in–office plan review through the Department of Commerce; at $200 per plan, this will generate $60,000 per year. The anticipated increase in revenue from plan review fees is $75,000 per year.

The total anticipated increase in annual revenue is therefore $397,000.

The additional staff needed to handle the workload relative to the in–office plan review, consultation, education and filing activities is anticipated to include one FTE Program Assistant I with salary and fringes of $45,600 per year and one FTE Engineering Consultant with salary and fringes of $80,700 per year. The additional staff required to provide the onsite review of erosion control measures and enforcement inspections throughout the construction of the building will be 3 FTE Commercial Building Inspectors with salary and fringes totaling $215,400 per year. The total anticipated increase in costs is $341,700.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearing. Requests for the EA and comments on the EA should be directed to:

Robert Langstroth
Division of Safety & Buildings
Department of Commerce
P.O. Box 2599
Madison, WI 53701
Telephone (608) 264–8801
or TTY (608) 264–8777

Written comments will be accepted until Monday, October 12, 1998.

Initial Regulatory Flexibility Analysis

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

Any small business that will be constructing a new commercial building or altering an existing building, either as the owner or as the contractor, will be subject to these rules.

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

The owner will be responsible for filling out a one–page site classification form. Although this is the legal responsibility of the owner, it is typically delegated to the contractor performing the actual construction as with the man other types of permits and technical documents associated with construction.

A site classification form asks for the total land area to be disturbed and asks for other information, such as the predominant slopes and soil types present at the site.

A soil erosion control plan must then be developed and maintained at the building site. This is already standard practice for many building projects.

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

Businesses involved in the construction of commercial buildings will have to become familiar with soil erosion control procedures or will have to contract with someone who is familiar. The requirements contained in these rules are already standard practice fo many building projects.

Notice of Hearing

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

Notice is hereby given that, pursuant to ss. 149.11, 149.12 (3) (c), 149.143 (2) (a) 2., 3. and 4., (3) (a) and (4), 149.144, 149.146 (2) (b) (intro.), 149.15 (5) and 149.17 (4), Stats., as affected by 1997 Wisconsin Act 27, the Department of Health and Family Services will hold a public hearing to consider the repeal and recreation of ch. HFS 119, Wis. Adm. Code, relating to operation of the Health Insurance Risk–Sharing Plan (HIRSP), and the emergency rules now in effect on the same subject.

Hearing Information

September 29, 1998
Tuesday
Beginning at 1:00 p.m.

Conf. Rm. inside Rm. 218
State Office Building
1 West Wilson Street
MADISON WI

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

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has either a $1000 deductible or a $2500 deductible. Plan 2 has a $500 deductible. On December 31, 1997, there were 7,318 HIRSP policies in effect, 83% of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out–of–pocket maximum of either $2000 or $3500 per individual, depending on the deductible, for major medical coverage, an annual out–of–pocket maximum of either $4000 or $7000 per family, depending on the deductible, for major medical coverage and $500 per individual for the Medicare supplement. There is a lifetime limit of $1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than $20,000.

The current Budget Act, 1997 Wisconsin Act 27, transferred responsibility for the Health Insurance Risk–Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance Risk–Sharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re–creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3) (a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

–Transfer of plan administration responsibility from an "administering carrier"selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

–Deletion of a physician certification requirement in connection with applications of some persons for coverage;

–Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

–Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

–Addition of a requirement that the Board submit an annual report to the Governor and Legislature regarding the operation of HIRSP;

–Modification of the respective roles of the state agency, now the Department of Health and Family Services, and the Board of Governors;

–Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost–effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

–Continuation of an alternative plan of health insurance that has a $2500 deductible (this was added by emergency order effective January 1, 1998);

–Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if deemed to be in the best interests of the State; and

–Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to approximately December 31, 1998.

The emergency rules were published to take effect on July 1, 1998.

Contact Person

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

Randy McElhose
Division of Health
P.O. Box 309
Madison WI 53701–0309
(608) 267–7127 or,
if you are hearing impaired,
(608) 266–1511 (TTY)

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

Written Comments

Written comments on the proposed rule changes received at the above address no later than **October 6, 1998** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This order repeals and recreates the Department's rules for operation of the Health Insurance Risk–Sharing Plan (HIRSP) under ch. 149, Stats., as renumbered from subch. II of ch. 619, Stats., and as otherwise affected by 1997 Wisconsin Act 27, to incorporate in the rules the statutory changes made in the program by Act 27, to carry out new directives added to the program statutes by Act 27, to update premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3) (a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year, and to bring the rules into approximately the same form as other rules of the Department following the transfer of responsibility for administering HIRSP from the Office of the Commissioner of Insurance to the Department effective January 1, 1998.

How HIRSP is to be financed is set out in s. 149.143, Stats., as created by Act 27. One of the new directives to the Department included in s. 149.143, Stats., is for the Department by rule to set the total insurer assessments and the provider payment rate for the new plan year. This has been done through this rulemaking order for the period July 1, 1998 to December 31, 1998, in accordance with the method specified in s. 149.143, Stats. The total insurer assessments is set at $4,266,874.

The rule changes will not by themselves affect the expenditures or revenues of state government or local governments. They make the rules conform to the amended statutes, adjust premiums as permitted under the program statute to help offset increased program costs and adjust the total of insurer assessments in accordance with a statute–specified methodology also to offset program costs. There is no local government involvement in the administration of HIRSP.

Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. Although the program statutes and rules provide for assessment of insurers to help finance the Health Insurance Risk–Sharing Plan (HIRSP), no assessed insurer is a small business as defined in s. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer's assessment to help finance HIRSP is to be determined

Notice of Hearing

Regulation & Licensing

Notice is herebygiven that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and interpreting ss. 440.41, 440.42, 440.43, 440.44, 440.45 and 440.455, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to renumber s. RL 5.02 (2); to renumber and amend s. RL 5.02 (1); to amend ss. RL 5.01, 5.02 (3), 5.06 (1), (2) (title) and (2); and to create ss. RL 5.02 (1) and (7), and 5.08 (3m), relating to charitable organizations.

Hearing Information

September 30, 1998
Wednesday
10:15 a.m.

Room 179
1400 E. Washington Ave.
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **October 14, 1998** to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statute authorizing promulgation: s. 227.11 (2)

Statutes interpreted: ss. 440.41, 440.42, 440.43, 440.44, 440.45 and 440.455

SECTION 1 cites an additional statutory section as authority for the rules in Chapter RL 5. This citation has been added because SECTION 7 contains an adjustment to the $100,000 limit which results in the need for a charitable organization to file an audited financial report.

SECTION 2 renumbers a subsection in order to list definitions alphabetically and amends the subsection by removing a couple of unnecessary words.

SECTION 3 creates a definition of "central organization" which does not include other adjectives which the current rules use when referring to this type of organization in reference to group returns which are addressed in the current rules at ss. RL 5.02 (3), 5.06 (2) and 5.08 (4).

SECTION 4 renumbers a subsection.

SECTION 5 parallels changes discussed under SECTION 1 above.

SECTION 6 interprets an aspect of the statutory definition of "solicit." The statutory definition is very broad in its use of the terms "direct" and "indirect" as these terms apply to requests for contributions. Therefore, these proposed rules make a distinction between the mechanical function of preparing and sending another person's mailings and the function of making a mailing under one's own name. This distinction helps the department determine whether a person must register with the department as a professional fund–raiser.

SECTION 7 cites a statute which states the registration fee for charitable organizations. This SECTION removes the specific fee from the rule which would have to be changed every time the statute changes. This SECTION also says that the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor. Section RL 5.06 (1) currently permits the department to ask a question relating to conviction; however, it does not permit the department to take any action when a conviction is discovered.

SECTION 8 increases from $100,000 to $175,000 the contribution limit which requires an audit with the opinion of an independent certified public accountant. This increase only applies to a situation when a charitable organization has received during its recently–completed fiscal year contributions from any number of contributors and the contribution or contributions of one contributor totals $75,000 or more.

Text of Rule

SECTION 1. RL 5.01 is amended to read:

RL 5.01 AUTHORITY. This chapter is adopted pursuant to ss. 227.11 (2), 440.42 (3) (am), 440.42 (8), and 440.455 (4), Stats.

SECTION 2. RL 5.02 (1) is renumbered RL 5.02 (2) and as renumbered RL 5.02 (2) (a) is amended to read:

RL 5.02 (2) (a) An organization ~~that is~~ described in section 501 (c) (3) of the internal revenue code and that is exempt from taxation under section 501 (a) of the internal revenue code.

SECTION 3. RL 5.02 (1) is created to read:

RL 5.02 (1) "Central organization" means a charitable organization that has one or more affiliated subunits under its general supervision and control, such as a chapter, local, post or unit.

SECTION 4. RL 5.02 (2) is renumbered RL 5.02 (2m).

SECTION 5. RL 5.02 (3) is amended to read:

RL 5.02 (3) "Group return" means a financial report submitted by a central~~, parent or similar charitable~~ organization ~~for 2 or more charitable organizations which are affiliated with it~~.

SECTION 6. RL 5.02 (7) is created to read:

RL 5.02 (7) "Solicit" has the meaning in s. 440.41, Stats. "Solicit" does not include the mailing of requests for contributions by a professional fund–raiser or a fund–raising counsel when the contents of the mailing only identify a charitable organization as the person requesting the contributions and do not include the name of the professional fund–raiser or the fund–raising counsel in any of the materials included in the mailing.

SECTION 7. RL 5.06 (1), (2) (title) and (2) are amended to read:

RL 5.06 (1) APPLICATION FOR REGISTRATION. An applicant for registration as a charitable organization shall submit to the department an application on a form prepared by the department, a registration statement that complies with s. 440.42 (2), Stats., and ~~a $15 registration~~ the fee specified in s. 440.42 (1) (b) 3., Stats. Pursuant to s. 440.42 (2) (m), Stats., the department may require information about a professional fund–raiser or fund–raising counsel whose services the charitable organization uses and information about whether any officers, directors, trustees or executive officers of the charitable organization have been convicted of a felony or a misdemeanor. Subject to ss. 111.321, 111.322 and 111.335, Stats., the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor.

(2) (title) REGISTRATION OF A CENTRAL ORGANIZATION. A central~~, parent or similar charitable~~ organization may file a single application for registration of the central~~, parent or similar charitable~~ organization and all of its affiliated subunits, provided that the central~~, parent or similar charitable~~ organization has complete and direct control over the solicitation activities of all subunits, receives all contributions for its use or future distribution to the subunits and is accountable for all receipts and disbursements relating to the solicited contributions.

SECTION 8. RL 5.08 (3m) is created to read:

RL 5.08 (3m) EXCEPTION FOR CONTRIBUTION LIMIT REQUIRING AN AUDIT WITH OPINION. The $100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to $175,000 in those situations when a charitable organization has received during its recently–completed fiscal year contributions from any number of contributors and the contribution or contributions of one contributor totals $75,000 or more.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: $0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: $0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: $0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies Of Rule And Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing ss. 227.11 (2) and 458.03 (1) (b) and (e), Stats., and s. 458.085, Stats., as amended by 1997 Wis. Act 225, and interpreting ss. 458.06 (3) (b), 458.06 (4) (b) and (4m), 458.08 (3) (c) and (4), 458.095, 458.11, 458.13, 458.24 and 458.26, Stats., the Department of Regulation and Licensing will hold a public

hearing at the time and place indicated below to consider an order to renumber and amend s. RL 81.04; to amend ss. RL 81.03 (2) (b), 84.01 (1) and (6) (a), 85.01 (1) and Note and (6), 85.02 (1) and (8) (a), 86.01 (2), 87.01 (1), 87.02 (1) and (2) (intro.); to create ss. RL 80.03 (8bm), (8bn) and (10n), 81.03 (2) (e), 81.04, 83.01 (3) (e), 84.01 (7) (c) and (d) and (10), 85.01 (3), and 85.02 (9) (d) and (11), relating to real estate appraisers.

Hearing Information

September 30, 1998 **Room 291**
Wednesday **1400 E. Washington Ave.**
10:00 a.m. **Madison, WI**

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **October 5, 1998** to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing

In this proposed rule–making order the Department of Regulation and Licensing amends and creates numerous provisions contained in chs. RL 80 to 87, and Appendix I, relating to the regulation of certified and licensed appraisers. Significant changes to the current rules are as follows:

1. Section RL 80.03 is being revised to include a definition for the term "federal financial institutions regulatory agencies," "federally related transaction" and "non–federally related transaction."

2. Section RL 81.01 (2) (b), which relates to temporary registration, currently requires that written verification of appraiser licensure or certification be submitted by an authorized state official from each state in which an applicant holds an appraiser license or certification. This provision is being revised to reflect that written verification of licensure or certification must be submitted only by the states in which the applicant practices as an appraiser. In addition, the applicant must provide a written statement identifying any other state in which he or she holds a credential.

3. Section RL 81.04 is being created to include the requirements for obtaining a reciprocal credential.

4. Section RL 83.01 (3) (e) is being created to state that an individual applying for an appraiser credential may not claim more than 20% appraisal experience obtained from the performance of limited appraisals or from the performance of appraisals in which the Departure provision of the Uniform Standards of Professional Appraisal Practice was invoked.

5. Sections RL 85.01, 87.01 and 8702 are being amended to reflect that starting with the January 1, 2000, renewal date appraisers will be required to report completion of 28 hours of continuing education instead of 20 hours, as required under current law.

6. Section RL 86.01 (2) is being amended to reflect that all appraisals performed in conjunction with federally related transactions and non–federally related transactions shall conform to the Uniform Standards of Professional Appraisal Practice.

7. Chapter RL 87, Appendix I, is being amended to reflect minor and technical corrections to the text of the Uniform Standards of Professional Appraisal Practice.

Text of Rule

SECTION 1. RL 80.03 (8bm), (8bn), and (10n) are created to read:

RL 80.03 (8bm) "Federal financial institutions regulatory agencies" means the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, the office of thrift supervision and the national credit union administration.

(8bn) "Federally related transaction" means any real estate related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and requires the services of an appraiser.

(10n) "Non–federally related transaction" means:

(a) Any real estate related transaction in which a federal agency, other than a federal financial instititutions regulatory agency, is required under federal law to employ the services of a licensed or certified appraiser.

(b) Any real estate related transaction which is performed at the request of or on behalf of the owner of real estate or performed pursuant to a court order.

SECTION 2. RL 81.03 (2) (b) is amended to read:

RL 81.03 (2) (b) Written verification of current appraiser licensure or certification submitted by an authorized state official for each state ~~wherein the applicant holds an appraiser license or certification~~ in which the applicant practices as an appraiser.

SECTION 3. RL 81.03 (2) (e) is created to read:

RL 81.03 (2) (e) A written statement identifying each state in which the applicant holds an appraiser license or certification.

SECTION 4. RL 81.04 is renumbered RL 81.05 and as renumbered RL 81.05 (intro.) is amended to read:

RL 81.05 SCOPE OF APPRAISAL PRACTICE. (intro.) Except as permitted by state or federal law, licensed and certified appraisers are authorized to conduct appraisals in conjunction with federally related and non–federally related transactions as follows:

SECTION 5. RL 81.04 is created to read:

RL 81.04 RECIPROCAL LICENSURE AND CERTIFICATION. (1) An individual applying for licensure or certification as an appraiser on the basis of a license or certification in another state or territory of the United States shall:

(a) Submit an application on a form provided by the department.

Note: Application forms are available upon request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935.

(b) Pay the fee specified in s. 440.05 (2), Stats.

(c) Submit evidence satisfactory to the department that he or she:

1. Holds a current appraiser license or certification in another state or territory of the United States which was granted in accordance with the requirements set forth under the financial institutions reform, recovery, and enforcement act of 1989, 12 USC 3331 et seq.

2. Has passed the examination on Wisconsin statutes and rules governing appraisers, as provided under s. RL 82.01.

3. Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record.

(2) In determining whether to grant a reciprocal license or certification, the department shall consider whether the requirements for a license or certification in the other state or territory are substantially equivalent to the requirements for licensure or certification as an appraiser in this state. For purposes of reciprocity, the department will consider the requirements for a license or certification in effect in the other state or territory at the time a credential was granted by the other state or territory rather than at the time of the filing of an application in this state.

SECTION 6. RL 83.01 (3) (e) is created to read:

BC 83.01 (3) (e) Include no more than 20% appraisal experience obtained from the performance of limited appraisals or from the performance of appraisals in which the departure provision of the uniform standards of professional appraisal practice was invoked.

SECTION 7. RL 84.01 (1) and (6) (a) are amended to read:

RL 84.01 (1) ~~All~~ Except as provided in sub. (10), all educational courses designed to meet the requirements in s. 458.06 (2) (d), (3) (b) or (4) (b), Stats., s. 458.08 (3) (c), Stats., and this chapter, shall be submitted to the department for approval.

(6) (a) The course is presented by an accredited college or university which offers correspondence programs in other disciplines or is approved by the appraiser qualifications board of the appraisal foundation.

SECTION 8. RL 84.01 (7) (c) and (d) and (10) are created to read:

RL 84.01 (7) (c) Be an instructor of assessor education courses who is approved bys the department of revenue to teach assessor education programs.

(d) Be an instructor who teaches appraisal courses approved by the appraiser qualifications board of the appraisal foundation.

Note: To obtain information about courses approved by the Appraisal Qualifications Board of the Appraisal Foundation write to: 1029 Vermont Avenue, NW, Suite 900, Washington, D.C. 20005–3517,

(10) An appraisal course approved by the appraiser qualifications board of the appraisal foundation may be approved by the department without receipt of an application for course approval from the course provider.

SECTION 9. RL 85.01 (1) and Note are amended to read:

RL 85.01 (1) Every certified and licensed appraiser shall complete at least ~~20~~ 28 hours of continuing education in each biennial renewal period, at least 4 of which shall include instruction in the professional standards and code of ethics applicable to appraisers.

Note: ~~For the January 1, 1998 renewal period, credential holders will be required to submit proof of completion of 20 hours of continuing education.~~ Commencing with the January 1, 2000 renewal period~~, an applicant~~ credential holders must submit proof of completion of ~~the 4 hours of~~ 28 hours of continuing education, at least 4 of which shall include instruction in the professional standards and code of ethics applicable to appraisers ~~and each biennial renewal period thereafter. In February, 1994, the Appraiser Qualifications Board of the Appraisal Foundation adopted a requirement that increases the continuing education hours for certified and licensed appraisers from 20 to 28, effective January 1, 1998. This change will not affect the January 1, 1998 reporting requirements in Wisconsin~~.

SECTION 10. RL 85.01 (3) is created to read:

RL 85.01 (3) To obtain credit for continuing education hours a licensed or certified appraiser shall sign a statement at the time of each renewal certifying that he or she has completed, within the 2 years immediately preceding the date of submission of his or her application, 28 hours of continuing education approved by the department.

SECTION 11. RL 85.01 (6) is amended to read:

RL 85.01 (6) To audit for compliance the department may require any certified or licensed appraiser to submit evidence of completion of ~~20~~ 28 hours of continuing education for the biennium preceding the renewal. Every certified and licensed appraiser shall retain records of continuing education credits for at least 5 years.

SECTION 12. RL 85.02 (1) and (8) (a) are amended to read:

RL 85.02 (1) ~~To~~ Except as provided in sub. (11), to obtain approval of a continuing education program, the program provider shall submit an application on forms provided by the department at least 45 days prior to the first date the program is offered. The program provider shall include a general description of the subject, name, and outline, name and qualifications of the instructor, date, time segments, and location. The department shall notify the provider whether the program has been approved or denied within 20 business days from the date the application is received.

(8) (a) The course is presented by an accredited college or university which offers correspondence programs in other disciplines or is approved by the appraiser qualifications board of the appraisal foundation.

SECTION 13. RL 85.02 (9) (d) and (11) are created to read:

RL 85.02 (9) (d) Be an instructor who teaches appraisal courses approved by the appraiser qualifications board of the appraisal foundation.

Note: To obtain information about courses approved by the Appraiser Qualifications Board of the Appraisal Foundation write to: 1029 Vermont Avenue, NW, Suite 900, Washington, D.C. 20005–3517.

(11) An appraisal course approved by the appraiser qualifications board of the appraisal foundation may be approved by the department without receipt of an application for course approval from the course provider.

SECTION 14. RL 86.01 (2) is amended to read:

RL 86.01 (2) All appraisals performed in conjunction with federally related transactions and non–federally related transactions shall conform to the uniform standards of professional appraisal practice set forth in Appendix I.

SECTION 15. RL 87.01 (1) is amended to read:

RL 87.01 (1) Applications for renewal shall be submitted prior to the applicable renewal date specified under s. 440/08 (2) (a), Stats., on a form provided by the department, along with the renewal fee specified under s. 440.08 (2) (a) 11., 11m. and 12., Stats., as appropriate, and proof of completion of ~~20~~ 28 hours of continuing education coursework as required under s. RL 85.01.

SECTION 16. RL 87.02 (1) and (2) (intro.) are amended to read:

RL 87.02 (1) If applying less than 5 years after the renewal date, submitting proof of completion of ~~20~~ 28 hours of continuing education as required under s. RL 85.01 and paying the renewal fees specified in s. 440.08 (2) (a) 11., 11m. and 12. and (3), Stats.

(2) (intro.) If applying 5 years or more after the renewal date, submitting proof of completion of ~~20~~ 28 hours of continuing education as required under s. RL 85.01, paying the renewal fees specified in s. 440.08 (2) (a) 11., 11m. and 12. and (3), Stats., and submitting proof of one or more of the following, as determined by the department to ensure protection of the public health, safety and welfare:

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: $0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: $0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: $0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495

Notice of Hearing

Transportation

Notice is hereby given that pursuant to ss. 114.31 (1), 227.11(2) and 227.18, Stats., and interpreting s. 114.134 (3) to (5), Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the creation of ch. Trans 57, Wis. Adm. Code, relating to standards for airport siting.

Hearing Information

September 30, 1998
Wednesday
1:00 p.m.

Room 901–A
Hill Farms State Trans Bldg.
4802 Sheboygan Ave.
MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter no later than ten days prior to the hearing.

Written Comments

The public record on this proposed rule–making will be held open until close of business on **October 2, 1998**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Mark Pfundheller
Bureau of Aeronautics, Room 701
Department of Transportation
P. O. Box 7914
Madison, WI 53707–7914

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 114.31(1), 227.11(2) and 227.18

Statute interpreted: s. 114.134 (3) to (5)

General summary of proposed rule:

Chapter Trans 57 governs issuance, duration, revocation and denial of airport site certification. Anyone wishing to operate an airport in Wisconsin must first obtain a certificate of site approval from the secretary of the Department. This proposed rule establishes criteria for the issuance, duration, revocation and denial of airport site certificates. Issuance will be based upon public safety and airspace coordination over Wisconsin. Airports built prior to June 4, 1974 are exempt from the certification process unless abandoned or permanently closed. The safety standards relating to minimum clearances over traverse ways apply to all airports.

This proposed rule:

1) Defines technical phrases and terminology.

2) Describes the standards of the Bureau. Standards are established in accordance with Wisconsin aviation statutes and applicable FAA advisory circulars. The Department will be requesting consent from the Attorney General's office and the Revisor of Statutes Bureau for incorporating these standards by reference.

3) Specifies applicable forms and details the information required in the Department's airport siting review process. It also provides guidelines for resolving conflicts including public hearings and administrative appeals.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

Copies of Rule

Copies of the rule may be obtained upon request, without cost, by writing to:

Division of Transportation Assistance, Room 701
Telephone (608) 266–2023
Wis. Dept. of Transportation
P.O. Box 7914
Madison, WI 53707–7914

Hearing–impaired individuals may contact the Department using TDD (608) 266–3351. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Transportation

Notice is hereby given that pursuant to s. 85.05, Stats., and interpreting s. 84.013 (3), Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the creation of ch. Trans 210, Wis. Adm. Code, relating to major highway project numerical evaluation process.

Hearing Information

October 1, 1998
Thursday
9:00 a.m.

Room 144–B
Hill Farms State Trans Bldg.
4802 Sheboygan Ave.
MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Written Comments

The public record on this proposed rule–making will be held open until close of business on **October 2, 1998**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Dawn Krahn
Bureau of State Highway Programs, Room 951
Dept. of Transportation
P. O. Box 7913
Madison, WI 53707–7913

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: s. 85.05, Stats., as created by 1997 Wis. Act 86

Statute interpreted: s. 84.013 (3), Stats.

General summary of proposed rule:

The Wisconsin Legislature created s. 85.05, Stats., which directs the Department to adopt a rule setting forth the procedure for numerically evaluating projects considered for enumeration under s. 84.013, Stats. The proposed rule shall establish a minimum score that a project shall meet or exceed in order to be eligible for recommendation to the Transportation Projects Commission.

This proposed rule–making will create ch. Trans 210 to describe the methodology the Department will use to numerically evaluate candidate major highway projects prior to recommending them for consideration to the Transportation Projects Commission under s. 13.489, Stats. The proposed rule describes the basic goals of the scoring process, the guidelines used for component scoring measures, the weights applied to the measures, and the calculation of the overall composite project score. In addition, this proposed rule will establish a minimum score that a project shall meet or exceed in order to be eligible for recommendation to the Transportation Projects Commission.

The Department currently evaluates candidate major highway projects using numerical factors designed to rank proposed major projects in terms of their ability to enhance Wisconsin's economy, improve highway service, improve highway safety, minimize environmental impacts and serve community objectives. A process for evaluating candidate projects has been used to advise the Transportation Projects Commission since the Commission was created in 1983. The process has evolved over time as better information on candidate projects has become available. The current process ranks projects relative to other candidates under consideration and does not establish a minimum score that a project must obtain.

Fiscal Estimate

The Department estimates that ch. Trans 210 will not have any state fiscal effect or any fiscal effect on county, city, village, town, school district, vocational, technical college district, sewerage district, or any federally–recognized American Indian tribes or bands. This outcome is anticipated because the state expenditures for major highway projects are determined by the Legislature through the budget process. This proposed rule merely outlines the numerical process that is used to recommend candidate major highway projects to the Transportation Projects Commission which, in turn, makes recommendations to the Governor and the Legislature. In addition, this proposed rule does not mandate any expenditures by local units of government.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Rule and Contact Person

Copies of the rule may be obtained upon request, without cost, by writing to:

Dawn Krahn, (608) 267–7715
Bureau of State Highway Programs, Room 951
Department of Transportation
P. O. Box 7913
Madison, WI 53707–7913

Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Transportation

Notice is hereby given that pursuant to ss. 84.25, 84.29, 84.295, 86.07 (2), 236.12 (2) (a) and (7), and 236.13 (1) (e) and (3), Stats., and interpreting ss. 236.12 (2) (a), 236.34, 236.45 and 703.11, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below, to consider the amendment of chs. Trans 231 and 233, Wis. Adm. Code, relating to division of land abutting a state trunk highway or connecting highway.

Hearing Information

September 28, 1998
Monday
9:00 a.m.

Room 421
Hill Farms State Trans Bldg.
4802 Sheboygan Ave.
MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Written Comments

The public record on this proposed rule–making will be held open until close of business **October 2, 1998**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Bonnie Tripoli
Division of Infrastructure Development, Room 651
P. O. Box 7916
Madison, WI 53707–7916

Analysis Prepared by the Wisconsin Department of Transportation

Statutory authority: ss. 84.25, 84.29, 84.295, 86.07 (2), 236.12 (2) (a) and (7), and 236.13 (1) (e) and (3)

Statutes interpreted: ss. 236.12 (2) (a), 236.34, 236.45 and 703.11

General summary of proposed rule:

The Wisconsin Legislature created s. 236.13 (1) (e), Stats., by Chapter 570, Laws of Wisconsin 1955. That law requires that approval of preliminary and final plats be conditioned upon compliance with the Department of Transportation rules relating to the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways. The Department's first rule under this statute became effective in September 1956, then known as ch. Hy 33. This rule was renumbered in August of 1996 to ch. Trans 233. No other change was made in the rule at that time.

This revision of the 1956 rule is necessary for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. The objective is to recognize state and local economic land use goals in the rule, enhance the effectiveness of the rule, provide reasonable flexibility and clarity in setback requirements and criteria for variances that do not jeopardize public investments or safety now or in the future.

In general, due to the changes in laws and practices over the years, it was determined substantive changes to the rule would be needed to truly protect the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and preserve the public interest and investment in such highways. Section 236.45, Stats., allows counties to create subdivision ordinances which are more restrictive than ch. 236, Stats., and ch. Trans 233. This option allows those plats to be created outside the Department of Administration plat review process. This is important because, unless the county forwards the plat to the Department, the Department has had no knowledge of the plat and therefore no procedure to evaluate its conformance to ch. Trans 233. However, the Department has found that some counties are not enforcing their more restrictive regulations when approving county plats. Therefore, this proposed rule now requires that these plats be reviewed by the Department.

Development around the state has evolved in such a manner that Departmental review of subdivisions alone is not providing sufficient protection of state trunk and connecting highways. Section 236.34, Stats., allows for land divisions to occur through the preparation of certified survey maps. Section 703.11, Stats., also allows for the creation of condominium plats. These two statutes, along with the above–mentioned s. 236.45, Stats., create land divisions or developments which occur outside of the Department of Administration subdivision review process, but which have similar impacts upon the state's highways. In the past, the Department has not had the opportunity to review these maps or development in terms of the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways. Section 86.07(2), Stats., requires that any person making an alteration in a highway such as constructing or modifying a driveway must obtain a permit. The Department, by revision of this rule, would now require that it review land divisions by any of these methods for compliance with this rule. Any access permit requested for a future land division which does not conform to these requirements will be denied.

This proposed rule also clarifies a number of areas which have proven unclear in the past, to both the Department and to those developing the maps. It now more clearly defines the requirements that developers and surveyors must meet. In the past, the Department's objections to a plat often resulted when the surveyor simply did not understand what exactly was required or failed to approach the Department for help. The rule now more clearly defines conceptual review, vision corners, drainage requirements, highway and driveway separation requirements, setbacks, variance procedures and noise concerns. These clarifications should make it easier for the surveyor and others to understand and comply with the rule rather

than being faced with an immediate objection to the design of the plat by the Department. Other changes, such as a clarification of requirements for specific information regarding access and existing conditions that a surveyor must show on the plat, will make it easier for the Department to locate the plat in the field and evaluate areas of possible concern.

The setback provision has always contained language limiting improvements and now these limitations are clarified. Utilities have always used the setback for some of their facilities and that continued use will be allowed. However, utilities will now be required to notify the district and request approval for those facilities if they are to be compensable if the setback area is needed for a future highway project. The Wisconsin Courts have approved such setback provisions relating to utilities imposed by local units of government. *Town of Portland v. WEPCO*, 198 Wis. 2d 775, 543 N.W.2d 559 (1996). Also related to setbacks, when variances for allowing improvements in the setback are requested, the variance procedure established in this rule will allow the Department to consider entering into an agreement to allow the variance as long as the owner understands that the improvement and any related damages will not be compensable if the department ever has the need to acquire additional right–of–way within the setback.

Initial Regulatory Flexibility Analysis

Section 236.12 (7), Stats., allows the Department to establish by rule reasonable service fees for all or part of the costs of the activities and services provided by the Department under that chapter of the statutes. Thus, this proposed rule also establishes fees to cover the Department's costs for reviewing the documents related to land divisions. Both the district and central offices must invest considerable time in verifying and field reviewing each map. An estimation of the amount of time and costs involved determined that $110 is the average cost for this review. In the past, the Department has always done this review *gratis,* but in this current climate of fiscal responsibility, it is felt that the cost should be borne by those creating the need for the review. This charge will be imposed on those who prepare the documents for review. Surveyors, developers and consultants would normally prepare the documents on behalf of the owners. The $110 cost would, in all likelihood, be passed on to the owners, some of whom will be small businesses that may recover the costs through the development.

Fiscal Estimate

With the enactment of the fee for the services provided by the Department, the review of land division maps will now be self–supporting and should not have an effect upon any county, city, village, town, school district, vocational, technical and adult education district and sewerage district liability unless they are assuming the role of developer; however, on an annual basis, that situation occurs approximately five to ten times statewide. Thus, approximately five to ten communities per year will be required to pay an additional $110 for any development they are pursuing which is adjacent to a state trunk or connecting highway. Developers will incur the additional costs of $110 per submittal, that they had not previously encountered. Surveyors who submit maps for review will pay the fees but those costs should be passed onto the developer.

Several of the Department's transportation districts may use existing personnel to review more land divisions than in the past. Any costs associated with these additional reviews will be offset by the funds received through the new fee. It is estimated that a total of ½ of a person's time per district would be involved in the review. Several of the districts review all these documents now as a courtesy to the county governments, so in those districts no additional costs would be incurred. It is expected that some of these costs will be defrayed by the Department delegating the review for some developments of land abutting connecting highways to the local municipality as allowed in s. 236.12 (2) (a), Stats. Since, in general, local officials do review these documents now, there would be no additional costs to any reviewing authority.

Copies of Rule and Contact Person

This proposed rule was drafted by Paul E. Nilsen, Legislative Attorney. The analysis was prepared by Bonnie Tripoli and James S. Thiel, Wisconsin Department of Transportation, (608) 266–8928. Copies of the proposed rule may be obtained upon request from:

Bonnie Tripoli, (608) 266–2372
Division of Infrastructure Development
4802 Sheboygan Ave., Room 651
P.O. Box 7916
Madison, WI 53707–7916

Notice of Hearing

Transportation

Notice is hereby given that pursuant to ss. 1.11, 85.16 (1) and 227.11 (2), Stats., and interpreting s. 1.11, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the amendment of ch. Trans 400, Wis. Adm. Code, relating to the Wisconsin Environmental Policy Act.

Hearing Information

October 1, 1998
Thursday
1:00 p.m.

Room 144–B
Hill Farms State Trans Bldg.
4802 Sheboygan Ave.
MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Written Comments

The public record on this proposed rule–making will be held open until close of business on **October 12, 1998**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Jon Novick
Bureau of Environment, Room 451
Division of Infrastructure Development
Dept. of Transportation
P. O. Box 7965
Madison, WI 53707–7965

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 1.11, 85.16 (1) and 227.11

Statute interpreted: s. 1.11

General summary of proposed rule:

The Wisconsin Department of Transportation has authority under ss. 1.11, 85.16 (1) and 227.11 (2), Stats., to promulgate this rule.

Wisconsin's Environmental Policy Act (WEPA), s. 1.11, Stats., closely follows the National Environmental Policy Act (NEPA), 42 USC 4332. As specified in s. 1.11 (2) (c), Stats., the Department is to substantially follow the guidelines issued by the United States Council on Environmental Quality under the National Environmental Policy Act (NEPA) to implement WEPA.

The Department's existing rule for implementing WEPA is overly definitive and results in environmental documents being prepared based on the size of a project rather than the importance of a project's potential impacts. Compared to the federal regulations, 23 CFR 771 et seq., which use the concept of impact magnitude, ch. Trans 400 requires an Environmental Impact Statement (EIS)

when a project is on new location for over 2.5 miles and, presumably, does not require an EIS if the project is on new location for only 2.4 miles. This contributes to the criticisms that WisDOT has spent more on environmental documents than is required by the federal regulations.

The existing rule also prescribes "matters" which must be included in a System–level Environmental Evaluation (SEE). This prescription requires the Department to address these matters even when they are not important or relevant to the system plan.

In general, ch. Trans 400 goes beyond federal requirements with regard to environmental evaluation of plans and legislation. Testimony and comments are solicited on whether the Department should continue this practice and to what extent.

The rule applies to the entire Department. The Department has long and extensive experience complying with the guidelines promulgated as rules by the United States Council on Environmental Quality and the various federal transportation agencies implementing NEPA. This rule continues the Department's long–standing and consistent policy of following these federal rules to comply with WEPA.

The Department will continue to base its decisions upon a balanced consideration of the environment, public comments, and the need for safe and efficient transportation. The Department's policy is to make the WEPA process more useful to decisionmakers and the public by reducing paperwork and delay. Its environmental documents shall be concise, clear and to the point, and emphasize real environmental issues and alternatives.

The Department categorizes its actions within four types: Type I, II, III and IV. For clarity, this rule identifies the types by the more informative nomenclature of what is required for that type of action as follows:

- Type I (EIS) –– Environmental Impact Statement
- Type II (EA) –– Environmental Assessment
- Type III (ER) –– Environmental Report
- Type IV (CE) –– Categorical Exclusion

The rule contains descriptions, consistent with federal regulations, of various Department actions normally categorized as types I, II, III or IV. It is proposed to change s.Trans 400.08 Categorization of department actions, to more closely reflect the lists of actions contained in the federal regulations published by the FHWA, FAA, FTA, and FRA. Appropriate changes to this list of actions will focus WisDOT's environmental documents on a project's environmental issues rather than its size. The SEE requirements in s. Trans 400.10 (2) would be changed to be less prescriptive by changing the phrase "shall address the following matters" to "may address environmental matters such as the following".

The categories of actions in s. Trans 400.08 are currently too restrictive in their descriptions of actions. Their specificity requires the preparation of unneeded EIS's on the one hand and may preclude the preparation of an EIS on the other simply because it is based on the magnitude of the project rather than the magnitude of the project's effects. The ch. Trans 400 Action List does not allow the flexibility to use another type of environmental document, even when an action does not produce significant environmental impacts. The FHWA/FTA regulations, on the other hand, base the type of environmental document upon the significance of impacts.

Fiscal Estimate

The proposed rule does not create any additional workload for the Department. The taxpayer will benefit from a reduction in costs. The changes will not lessen environmental protection nor will it compromise the Department's flexibility in addressing transportation needs at both the project and systems levels.

For the purposes of establishing a fiscal estimate for the rule, the following assumptions have been made:

a) The environmental evaluations (SEES and LEIS) represent a significant analytic undertaking that requires extensive data gathering, analysis and documentation;

b) The preparation of the SEE is an integral part of the detailed planning process;

c) The number of proposals or plans requiring a LEIS or SEE will range from two to four a year.

There may be some reduction in the resources presently spent on preparation of SEE's and LEIS's. The existing resources expended on EIS's and EA's will be reallocated to those actions that have more significant impacts on the quality of the human environment from those that have less.

Initial Regulatory Flexibility Analysis

This rule will have no adverse effect on small businesses.

Copies of Proposed Rule

This analysis was prepared by James S. Thiel, Office of General Counsel (608) 266–8928. Copies of the rule may be obtained upon request, without cost, by writing to:

Jon Novick, (608) 266–8287
Bureau of Environment, Room 451
Division of Infrastructure Development
Dept. of Transportation
P. O. Box 7965
Madison, WI 53707–7965

Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

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

Notice is given that pursuant to ss. 49.22 (2m) (d), 49.853 (1) (dm), 49.854 (17), 49.858 (2) and 767.027 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider chs. DWD 40 to 43, Wis. Adm. Code, relating to child support administrative enforcement.

Hearing Information

A public hearing is scheduled as follows:

October 2, 1998	**Room 400X, GEF# 1**
Friday	**201 East Washington Ave.**
9:00 a.m.	**MADISON, WI**

This hearing is held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261–8860. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Proposed Rule

DWD 43

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

The Wisconsin Department of Workforce Development proposes an order to renumber chs. HSS 80 to 82 as DWD 40 to 42, and to create ch. DWD 43, relating to child support administrative enforcement.

Analysis

Authority for rule: ss. 49.22 (2m) (d), 49.853 (1)(dm) and (2), 49.854 (17), 49.858 (2), and 767.027 (2)

Statutes interpreted: ss. 49.22, 49.853, 49.854, 49.858 and 767.027

Summary:

In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193), 1997 Wis. Act 191 became effective May 1, 1998. The Act expands the authority of the Department of Workforce Development and county child support agencies to establish and acknowledge paternity, and to enforce child support orders. The Act requires the promulgation of administrative rules before the Department may begin implementing several provisions in the Act. These are the proposed rules for the implementation of 1997 Wis. Act 191.

According to the Act, past–due support constitutes a lien against all of a child support payer's real and personal property. Child support liens will be placed on the child support lien docket and electronically delivered to the county registers of deeds. The rule describes the threshold that arrears in a court case must equal or exceed before a payer is placed on the child support lien docket, the calculation of the lien amount, the filing date of the lien, and lien payments.

To enforce a lien, the Department or child support agency may use administrative enforcement actions authorized in 1997 Wis. Act 191. These administrative remedies include:

1) Suspending and denying professional, occupational, recreational and driver licenses;

2) Seizing real and personal property, including financial accounts; and

3) Intercepting judgments, settlements, and lump–sum pension payments.

The Department or child support agency may initiate these administrative remedies if arrears owed by a payer in a court case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a court case must equal or exceed before the Department or child support agency may initiate that action. Generally, that threshold for license suspension and account seizure is 300% of the monthly amount due, and the threshold for real and personal property seizure is 600% of the monthly amount due.

In addition to considering the arrears in a court case, when considering property seizure as an administrative remedy, the Department or child support agency must determine whether property identified for seizure has sufficient value before initiating any seizure process. The rule specifies the factors that must be considered when determining the value of the property, and the amount that the property value must exceed before seizure may be initiatied. In general, the funds in a financial account must exceed $500, the payer's equity in personal property must exceed $500, and the payer's equity in real property must exceed 20 percent of the payer's proportionate share of the property's fair market value, before the Department or child support agency may seize the property.

Child support payers have an opportunity to negotiate alternative payment plans to suspend the execution of administrative enforcement actions. The rule outlines the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions of payment plans. The rule also defines noncompliance with a payment plan, and provides payers with an opportunity to renegotiate payment plans.

Notice of lien and administrative enforcement actions may be provided by regular mail to the last–known address of a child support payer. According to1997 Wis. Act 191, notice requirements are met if notice of lien or administrative enforcement action has been sent to the last–known address provided by the payer, and a diligent effort has been made to ascertain the location of the payer. The rule outlines the process the Department and child support agency will use to verify and obtain an address from a postmaster, and the diligent efforts that will be taken to obtain the current address of a payer.

The rule describes the circumstances in which a payee will be notified that an administrative enforcement action has been initiated against the payer. In general, these are circumstances in which the Department or the child support agency is aware that the payer is subject to a protective order or there is otherwise reason to believe that a payee or child may be harmed physically or emotionally by the payer.

The Department and the child support agencies have the authority to request from any person information that they determine necessary for administering the child support program. 1997 Wis. Act 191 gives the Department and child support agencies additional authority to issue administrative subpoenas to obtain financial information and other documentation necessary for child support administration. Under the Act, the Department or child support agency may require individuals or entities to pay an administrative forfeiture for failure to comply with an administrative subpoena or a request for information. The rule specifies the administrative forfeiture that may be imposed for failure to comply with an administrative subpoena or a request for information, and when the administrative forfeiture may be imposed. Generally, an administrative forfeiture for a failure to comply will not exceed $25, but if the failure to comply is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the administrative forfeiture will equal $500.

1997 Wis. Act 191 requires the Department and financial institutions operating in the state to enter into agreements to perform quarterly record matching, using automation to the extent feasible, to determine whether a delinquent child support payer has an ownership interest in a financial account. The rule outlines the procedures DWD will use to enter into agreements with financial institutions and requires DWD to reimburse financial institutions for participating in the data match program. In general, financial institutions will be reimbursed $100 per quarter for performing an automated data match with the Department.

The Department's goal is to begin implementation of these provisions in 1999.

Copies of the Rules

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

Troy Sterr, (608) 261–8860
Bureau of Child Support
Department of Workforce Development
201 East Washington Ave.
Madison, WI 53707

Copies may also be obtained at the time and place the hearing is held.

Written Comments

Interested people are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **October 9, 1998**, for inclusion in the summary of public comments submitted to the Legislature.

Any such comments should be submitted to Troy Sterr at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Initial Regulatory Flexibility Analysis

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

The rule will not affect small businesses; it affects individuals only.

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

The rule will not affect small businesses; therefore, small businesses will not need additional reporting, bookkeeping, or other procedures as a result of the rule.

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

The rule will not affect small businesses.

Fiscal Estimate

This rule implements various provisions of 1997 Wis. Act 191, related to the child support enforcement program, including

forfeitures for failing to comply with a subpoena, the financial record matching program, liens, and notice and service of process requirements.

Counties may realize cost savings by switching to mailing of notices of administrative enforcement, instead of using service of process. The amount of savings cannot be determined at this time. Although the $25 forfeiture for noncompliance with administrative subpoenas and requests for information may be imposed in a few cases, the amount of revenue generated is expected to be minimal. Local postage costs for liens are expected to be offset by the new enforcement tool. Agency workload may increase due to requests for financial records and court order review; however, these costs can be absorbed.

Long–Range Fiscal Implications

Ongoing costs include $409,200 annually beginning in SFY 2002 (State Fiscal Year 2002) for reimbursement of financial institutions. This cost includes reimbursement of 1023 financial institutions in Wisconsin, at the rate of $100/quarter for data matching. Annual postage costs of $17,375 are also expected.

Contact People

Agency contact person for substantive questions:

Carol Henry
Planning Unit Supervisor
DWD Bureau of Child Support
Telephone (608) 266–0252

Agency contact person for internal processing:

Howard Bernstein
DWD Legal Counsel
Telephone (608) 266–9427

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 98–65):
Ch. ILHR 47 – Relating to the petroleum environmental cleanup fund.

Health & Family Services (CR 98–69):
Ch. HFS 89 – Relating to residential care apartment complexes (formerly known as assisted living facilities).

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 97–109):
An order affecting ch. ILHR 60, relating to the design and construction of public buildings and places of employment used as child day care facilities.
Effective 10–01–98.

Commerce (CR 97–138):
An order affecting chs. ILHR 20, 21, 22 and 23, relating to the uniform dwelling code.
Effective 12–01–98.

Natural Resources (CR 95–223):
An order affecting chs. NR 518 and 718 and ss. NR 419.07, 500.03, 811.16 and 812.08, relating to the remediation of soil contamination through landspreading.
Effective 12–01–98.

Natural Resources (CR 97–131):
An order affecting s. NR 485.04, relating to emission limitations for motor vehicles.
Effective 11–01–98.

Natural Resources (CR 97–146):
An order creating s. NR 5.21 (3), relating to waiver of the slow–no–wake speed restriction on Lake Tombeau, Walworth County.
Effective 11–01–98.

Natural Resources (CR 98–20):
An order affecting ss. NR 21.02 21.04, 21.10, 21.11 and 21.12, relating to commercial fishing in the Wisconsin–Minnesota boundary waters.
Effective 11–01–98.

Natural Resources (CR 98–44):
An order repealing and recreating ch. NR 8 and amending s. NR 45.12 (1), relating to implementation of the automated license issuance system.
Effective 01–01–99.

Natural Resources (CR 98–56):
An order repealing and recreating s. NR 46.30 (2) (a) to (c), relating to the administration of the Forest Crop Law and the Managed Forest Law.
Effective 11–01–98.

Natural Resources (CR 98–66):
An order repealing and recreating ch. NR 300, relating to fees for waterway and wetland permit decisions.
Effective 11–01–98.

Public Instruction (CR 98–38):
An order affecting ss. PI 3.03 and 3.05, relating to environmental education requirements and an urban education license.
Effective 11–01–98.

Public Instruction (CR 98–39):
An order amending s. PI 2.05 (2) (a), relating to the school district boundary appeals board.
Effective 10–01–98.

Public Instruction (CR 98–68):
An order affecting ch. PI 11, relating to children with disabilities.
Effective 10–01–98.

Workforce Development (CR 98–26):
An order affecting s. DWD 12.25, relating to amendments to the Learnfare program.
Effective 11–01–98.

PUBLIC NOTICE

Public Notice

Commerce
(Private Onsite Wastewater Treatment Systems and Sanitation)

NOTICE of
FINAL ENVIRONMENTAL IMPACT STATEMENT
and PUBLIC HEARING

Chs. Comm 83, Comm 85, and Comm 91 –– Relating to Private Onsite Wastewater Treatment Systems and Sanitation

Notice is hereby given that the Wisconsin Department of Commerce (Department) has prepared a Final Environmental Impact Statement (FEIS) on the proposed ch. Comm 83, Wis. Adm. Code, and related rules concerning regulation of private onsite wastewater treatment systems.

Copies of Final Environmental Impact Statement (FEIS)

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

Division of Safety and Buildings
Telephone (608) 261–6546 or
Telecommunication Device for the Deaf (TDD) at (608) 264–8777
Wis. Dept. of Commerce
P.O. Box 7969
Madison, WI 53707

or at the appointed time and place that the hearing is held. The FEIS is also available in PDF format on the Internet at www.commerce.state.wi.us or http://badger.state.wi.us/agencies/commerce/. Questions on the FEIS may be directed to Robert Langstroth (608) 264–8801.

Analysis

Pursuant to s. Comm 107.08(1), Wis. Adm. Code, the Department will hold a public hearing on the Final Environmental Impact Statement. This hearing will be conducted in the same manner as a contested case proceeding under ch. 227, Stats. This hearing will be conducted in the manner of a Class 1 proceeding to the limited extent necessary to comply with the provisions of ch. Comm 107, Wis. Adm. Code. The matters asserted are that the hearing will be an opportunity for the public and interested persons to provide their comments to FEIS within the provisions of ch. Comm 107, Wis. Adm. Code.

Hearing Information

The public hearing is scheduled as follows:

Date & Time	Location
September 28, 1998 **Monday** **8:00 a.m.**	**First Floor Conference Room** **WHEDA Building** **201 West Washington Ave.** **MADISON, WI**

Written Comments

Interested parties are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to also submit their facts and views in writing. Written comments from parties unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **October 9, 1998**. Any such comments should be submitted to Robert Langstroth at the address noted above. Written comments will be given the same consideration as testimony

presented at the public hearing. People submitting comments will not receive individual responses. After the expiration of the comment period, the Department will carefully review, summarize, and weigh the comments and will enter a final decision in writing.

Note: A copy of the proposed ch. Comm 83 and related rules may be obtained from the Wisconsin Department of Commerce, Division of Safety and Buildings at the same address and telephone numbers previously indicated.

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