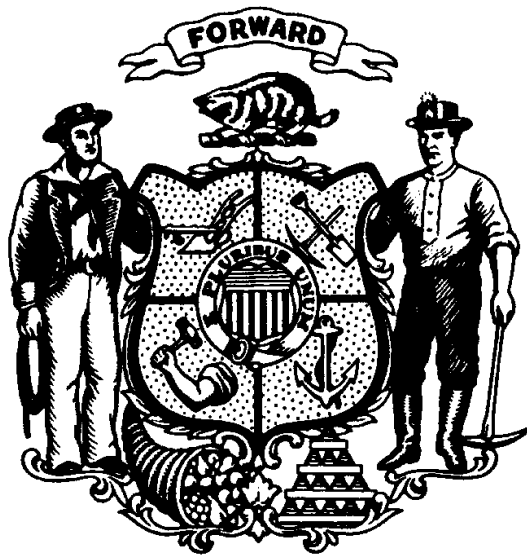


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 517**



Publication Date: January 31, 1999  
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## TABLE OF CONTENTS

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---

**Emergency Rules Now In Effect.****Pages 7 to 18.**

Agriculture, Trade and Consumer Protection:

Rules relating to grade standards for Colby and Monterey Jack cheese.

Rules relating to fish farms and imports of live fish and fish eggs.

Commerce:

Flammable and Combustible Liquids, Ch. Comm 10

Rules relating to storage tanks.

Commerce:

PECFA Interagency Responsibilities, Ch. Comm 46

Rules relating to interagency responsibilities with PECFA.

Commerce:

Rental Unit Energy Efficiency, Ch. Comm 67

Rules relating to rental unit energy efficiency.

Commerce:

Resources for Communities, etc., Chs. Comm 105–128

Rules relating to the Wisconsin Promise Challenge Grant Program.

Corrections:

Rules relating to search and seizure of probationers and parolees.

Rules relating to absconders.

Rules relating to chemical castration of child sex offenders.

Financial Institutions:

Banking

Rules relating to mortgage banking.

Health &amp; Family Services:

Management & Technology, etc., Chs. HFS 1—

Rules relating to reporting and investigating caregiver misconduct.

Rules relating to caregiver background checks.

Rules relating to criminal background checks.

Health &amp; Family Services:

Community Services, Chs. HSS/HFS 30—

Rules relating to searches at the Wisconsin Resources Center.

Health &amp; Family Services:

Health, Chs. HSS/HFS 110—

Rules relating to removal of lead-based paint.

Rules adopted amending ss. **HFS 119.07 (6) and 119.15**, relating to the Health Insurance Risk-Sharing Plan.**[FIRST APPEARANCE]**

Insurance, Commissioner of:

Rules relating to delaying effective date for NAIC valuation of life insurance policies.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to reservations for state parks, forests and other lands.

Rules relating to deer hunting in Unit 67A.

Rules relating to sport fishing for yellow perch in Sauk creek.

Rules relating to the 1998 migratory game bird season.

Public Instruction:

Rules relating to the Milwaukee Parental School Choice Program.

Rules relating to grants for peer review and mentoring.

Rule adopted relating to alternative teaching permits.

Public Service Commission:

Rules relating to draft environmental impact statements.

Rules relating to sewer main extension cost recovery.

Regulation & Licensing:	Rules relating to regulation of home inspectors. Rules relating to music, art and dance therapists. See <u>Financial Institutions--Banking</u> .
Revenue:	Rules relating to use of an alternative apportionment method.
Veterans Affairs:	Rules relating to expenditure limit for dentures.
Workforce Development:	<u>Economic Support, Chs. DWD 11 to 59</u> Rules relating to background checks for day care providers. Rules relating to child support.
Workforce Development:	<u>Prevailing Wage Rates, Chs. DWD 290 to 294</u> Rules relating to annual adjustment of estimated project costs.

**Scope Statements.****Pages 19 to 23.**

Administration (Gaming Commission):	Ch. WGC 3 – Relating to procedures to be used in contested case hearings arising from the regulatory oversight functions of the Division of Gaming, specifically regulation of par-mutuel wagering as set out in ch. 562 Stats., regulation of charitable gaming as set out in ch. 563, and certification of Tribal gaming vendors as provided in the Tribal –State gaming compacts.
Chiropractic Examining Board:	Chir Code – Relating to the definition and use of chiropractic adjustment.
Natural Resources:	Ch. NR 20 – Relating to establishing a harvest limit for the sturgeon spearing season.
Natural Resources:	Ch. NR 20 – Relating to allowing bowfishing from sunset to sunrise during the open spearing season.
Natural Resources:	Chs. NR 40 , 41 & 45 – Relating to property boundaries of state parks and regulations regarding the conduct of visitors and protection of Department properties.
Natural Resources:	S. NR 149.05 – Relating to approval of laboratory certification budget and fees for FY 2000.
Natural Resources:	Ch. NR 439 – Relating to the adoption of the U.S.. EPA capture efficiency test methods promulgated June 16, 1997 for VOC's emitted form coating operations.
Natural Resources:	S. NR 485.04 – Relating to emission limitations for motor vehicles. The objective of the proposed rule is to ensure that the emission limitations will continue to be at levels which vehicles are reasonably capable of achieving and maintaining.
Podiatrists Affiliated Credentialing Board:	Podiatrists Code – Relating to credentialing, practice and discipline of podiatrists.
Public Defender:	S. PD 6.04 (5) – Relating to multiple appointments on the same case.
Transportation:	Ch. Trans 2 – Relating to the Department's administrative interpretation of s. 85.22, Stats., including the administration of assistance under the federal sec. 5310 program (formerly sec. 16) , and prescribes administrative policies and procedures for implementing the elderly and disabled transportation capital assistance program authorized under s. 85.22, Stats.
Transportation:	Ch. Trans 316 – Relating to the definition of "wood harvesting slasher".

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

Agriculture, Trade & Consumer Protection:

Commerce:

Medical Examining Board:

Social Workers, Marriage & Family Therapists & Professional Counselors:

**Page 24.**

Chs. ATCP 29 & 40 – Relating to agricultural chemical cleanup surcharge fees.

Chs. Comm 2, 18 & 69 – Relating to elevators and mechanical lifting devices.

Med Code – Relating to licensure and regulation of physician assistants.

SFC Code – Relating to criteria for approval of other human service degree programs for eligibility for a social workers training certificate.

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

Agriculture, Trade and Consumer Protection:

Commerce:

Commerce:

Corrections:

Public Service Commission:

Veterans Affairs:

Workforce Development:

**Pages 25 to 33.**

Hearings to consider ss. ATCP 10.68 and 11.58, created by emergency rule, relating to fish farms and live fish and fish egg imports.

Fee Schedule, Ch. Comm2

Elevators, Ch. Comm 18

Barrier-Free Design, Ch. Comm 69

Hearings to consider emergency revisions to chs. Comm 2, 18 and 69, relating to elevators and mechanical lifting devices.

Uniform Dwelling, Chs. Comm 20–25

Hearing to consider an emergency rule relating to delaying the effective date of the UDC changes.

Hearing to consider rule relating to holding in municipal lockup facilities juveniles who are alleged to have committed a delinquent act.

Hearing to consider ch. PSC 117, relating to assignment of costs and opportunity sales.

Hearing to consider revision of ch. PSC 4, relating to small generating plants.

Hearing to consider s. VA 1.19, relating to internal loan write-off criteria.

Hearing to consider amendment to s. VA 1.10 (7), relating to release pertinent information from a veteran's file to a party attempting to collect a delinquent debt.

Prevailing Wage, Chs. DWD 290–294

Hearing to consider amendment to s. DWD 290.155, relating to threshold for prevailing wage rates for public works projects.

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

Agriculture, Trade and Consumer Protection:

Financial Institutions:

Natural Resources:

Natural Resources:

Natural Resources:

Revenue:

Technical College System:

Transportation:

Transportation:

**Page 34.**

(CR 98–97) – Chs. ATCP 102 & 105

(CR 98–137) – SS. DFI–SB 1.03 & 15.01 and DFI–SL 1.03 & 15.01

(CR 98–41) – Ch. NR 25

(CR 98–92) – Ch. NR 10

(CR 98–93) – S. NR 50.23

(CR 98–184) – Ch. Tax 2

(CR 98–104) – Chs. TCS 6, 7, 8 & 9

(CR 98–143) – S. Trans 510.04

(CR 98–145) – Ch. Trans 31

Transportation: (CR 98-147) – S. Trans 305.27 (3) (a)  
 Transportation: (CR 98-153) – Ch. Trans 300  
 Transportation: (CR 98-167) – Ch. Trans 200  
 Transportation: (CR 98-185) – S. Trans 101.02 (1) (c), (d)

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

Regulation & Licensing:

**Page 35.**

(CR 98-116) – Chs. RL 90 to 94

**Rules Published in This Wis. Adm. Register.**

Accounting Examining Board:

**Page 36.**

(CR 98-91) – Chs. Accy 3 & 7

Architects, Landscape Architects, Professional Geologists,  
Professional Engineers, Designers and Land Surveyors:

(CR 98-30) – Chs. A-E 1 to 10

Commerce:

(CR 97-138) – Chs. Comm/ILHR 20-23

Health & Family Services:

(CR 98-108) – Ch. HFS 119

Health & Family Services:

(CR 98-134) – Ch. HFS 124

Insurance:

(CR 98-78) – Chs. Ins 6 & 28

Insurance:

(CR 98-79) – Chs. Ins 6 & 26

Insurance:

(CR 98-98) – Ch. Ins 3

Natural Resources:

(CR 98-23) – Chs. NR 20, 21, 23, 25 & 26

Natural Resources:

(CR 98-42) – Ch. NR 749

Natural Resources:

(CR 98-45) – Ch. NR 113

Natural Resources:

(CR 98-84) – Chs. NR 12 & 19

Natural Resources:

(CR 98-86) – S. NR 20.037 (2)

Regulation & Licensing:

(CR 98-107) – Ch. RL 8

Regulation & Licensing:

(CR 98-132) – Chs. RL 80, 81 to 87

Transportation:

(CR 98-31) – Ch. Trans 29

Transportation:

(CR 98-105) Chs. Trans 325, 326 & 328

Transportation:

(CR 98-111) – Ch. Trans 197

Transportation:

(CR 98-121) – Chs. Trans 231 & 233

Transportation:

(CR 98-122) – Ch. Trans 210

Transportation:

(CR 98-125) – Ch. Trans 57

**Sections Affected by Rule Revisions and Corrections.**

**Page 37 to 39.**

**Revisions**

Accounting Examining Board:

Chs. Accy 3 & 7

Architects, Landscape Architects, Professional Geologists,  
Professional Engineers, Designers and Land Surveyors:

Chs. A-E 2-10

Commerce (Uniform Dwelling, Chs. Comm 20-25):

Chs. Comm 20, 22, 23

Health and Family Services (Health, Chs. HFS 110-):

Chs. HFS 119 & 124

Insurance:

Chs. Ins 3, 6, 26 & 28

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

Chs. NR 12, 19, 20, 21, 23 & 26

Natural Resources (Environmental Protection-General,  
Chs. NR 100-):

Chs. NR 113

Natural Resources (Environmental Protection–Investigation and Remediation, Chs. NR 700–):

Ch. NR 749

Regulation and Licensing:

Chs. RL 8, 80, 81, 83 to 87

Revenue:

Ch. Tax 11

Transportation:

Chs. Trans 29, 57, 197, 210, 231, 233, 325, 326 & 328

**Editorial Corrections**

Commerce (Uniform Dwelling, Chs. Comm 20–25):

Chs. Comm 20, 21, 23, 24 & 25

Health and Family Services (Health, Chs. HFS 110–):

Ch. HFS 124

Insurance:

Chs. Ins 3 & 6

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

Chs. NR 12, 19, 20, 21 & 23

Natural Resources (Environmental Protection–General, Chs. NR 100–):

Ch. NR 113

***Final Regulatory Flexibility Analyses.***

***Pages 40 to 42.***

Accounting Examining Board:

(CR 98–91) – Chs. Accy 3 & 7

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:

(CR 98–30) – A–E Code

Commerce:

(CR 97–138) – Chs. Comm/ILHR 20–25

Health & Family Services:

(CR 98–134) – Ch. HFS 124

Health & Family Services:

(CR 98–108) – Ch. HFS 119

Insurance:

(CR 98–78) – Ch. Ins 6 & 28

Insurance:

(CR 98–98) – Ch. Ins 3

Insurance:

(CR 98–79) – Chs. Ins 6 & 26

Natural Resources:

(CR 98–23) – Ch. NR 20

Natural Resources:

(CR 98–86) – S. NR 20.037 (2)

Natural Resources:

(CR 98–45) – Ch. NR 113

Natural Resources:

(CR 98–42) – Ch. NR 749

Regulation & Licensing:

(CR 98–107) – Ch. RL 8

Regulation & Licensing:

(CR 98–132) – Chs. RL 80, 81, 83 to 87

Revenue:

(CR 98–67) – Ch. Tax 11

Transportation:

(CR 98–31) – Ch. Trans 29

Transportation:

(CR 98–105) – Chs. Trans 325, 326 & 328

Transportation:

(CR 98–111) – Ch. Trans 197

Transportation:

(CR 98–121) – Chs. Trans 231 & 233

Transportation:

(CR 98–122) – Ch. Trans 210

Transportation:

(CR 98–125) – Ch. Trans 57

***Executive Orders.***

***Pages 43.***

Executive Order 357:

Relating to designation of a Valued Historical Landmark and an Architectural Masterpiece.

Executive Order 358:

Relating to Proclamation of an Energy Emergency.

Executive Order 359:

Relating to a Finding of a Pork Producing Industry Emergency Situation.





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## EMERGENCY RULES NOW IN EFFECT

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*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.*

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### EMERGENCY RULES NOW IN EFFECT (2)

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

1. 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  
**Extension Through:** March 4, 1999

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

#### Finding of Emergency

(1) This emergency rule implements s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Under s. 95.60, Stats., a person who operates a fish farm must register annually with the Wisconsin department of agriculture, trade and consumer protection (DATCP). A person who imports live fish or fish eggs into Wisconsin must meet fish health requirements and obtain an import permit from DATCP. DATCP must establish registration and import permit standards by rule.

(3) On December 9, 1998, the Board of Agriculture, Trade and Consumer Protection (DATCP Board) approved final draft "permanent" rules to implement s. 95.60, Stats. Among other things, the rules establish fish farm registration standards and fish import standards. Before DATCP may adopt these final draft "permanent" rules, it must submit them for legislative committee review under s. 227.19, Stats. DATCP must then adopt and file the rules under s. 227.20, Stats., and publish them under s. 227.21, Stats. As a result, the final draft "permanent" rules will not take effect for several months.

(4) Current fish farm registration certificates will expire on December 31, 1998, before the final draft "permanent" rules take effect. The department must adopt a temporary emergency rule so it can process registration renewals pending the effective date of the final draft "permanent" rules. This emergency rule adopts, on a temporary basis, registration provisions contained in the department's proposed final draft "permanent" rules.

(5) This emergency rule also adopts, on a temporary basis, rules to prevent imports of diseased live fish and fish eggs that threaten the health of fish in Wisconsin fish farms and the Wisconsin natural environment. These temporary import requirements are based on requirements previously administered by the Wisconsin department of natural resources (DNR). The final draft "permanent" rules, when adopted, will expand upon these interim requirements.

(6) This emergency rule is needed to protect the public peace, health safety and welfare. Without this rule, DATCP would not be able to process fish farm registrations for 1999, or issue permits for live fish imports. Without the protections afforded by this emergency rule, Wisconsin fish farms and wild fisheries would also be exposed to an unnecessary risk of disease.

**Publication Date:** December 28, 1998  
**Effective Date:** December 28, 1998  
**Expiration Date:** May 27, 1999  
**Hearing Date:** February 3, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

#### 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, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this

order is in response to environmental issues associated with non-upgraded tank systems.

**Publication Date:** December 11, 1998  
**Effective Date:** December 11, 1998  
**Expiration Date:** May 10, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

Rules were adopted creating **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

#### 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 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. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directs the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. The rule included with this order is in response to that directive.

**Publication Date:** January 1, 1999  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999

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## 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  
**Extension Through:** January 25, 1999

## **EMERGENCY RULES NOW IN EFFECT**

### **Commerce**

#### **(Financial Resources for Communities, Chs. Comm 105 to 128)**

Rules adopted creating **ch. Comm 118**, relating to the Wisconsin Promise Challenge Grant Program.

### **Finding of Emergency**

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated \$424,000 for fiscal year 1998-99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from \$3,000 to \$15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

**Publication Date:** September 12, 1998  
**Effective Date:** September 12, 1998  
**Expiration Date:** February 9, 1999  
**Hearing Date:** November 30, 1998

## **EMERGENCY RULES NOW IN EFFECT (3)**

### **Department of Corrections**

1. Rules were adopted amending **s. DOC 328.21**, relating to absconders.

### **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: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender.

**Publication Date:** December 3, 1998  
**Effective Date:** December 3, 1998  
**Expiration Date:** May 2, 1999

2. Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

### **Finding of Emergency**

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.
2. Defines the term secure custody status.

3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.

4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.

5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.

6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.

7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.

8. Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.

9. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

**Publication Date:** December 10, 1998

**Effective Date:** December 10, 1998

**Expiration Date:** May 9, 1999

**Hearing Date:** February 15, 1999

[See Notice this Register]

3. Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency

rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

**Publication Date:** January 1, 1999

**Effective Date:** January 1, 1999

**Expiration Date:** May 31, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Financial Institutions

#### (Division of Banking)

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI-Bkg 41**, relating to mortgage banking.

### Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registrations and renewals of registrations.

**Publication Date:** December 4, 1998

**Effective Date:** December 4, 1998

**Expiration Date:** May 3, 1999

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## EMERGENCY RULES NOW IN EFFECT (3)

### Health & Family Services

#### (Management, Technology & Finance,

#### Chs. HFS 1--)

#### (Health, Chs. HFS 110--)

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

### Finding of Emergency

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

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** January 12, 20 & 26, 1999

## 2. Rules adopted creating ch. HFS 12, relating to caregiver background checks.

### 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:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of

licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employees or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employees and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employe or prospective employe having or expected to have access to any of its clients. If the background information form returned to an entity by an employe or prospective employe indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities

hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** January 12, 20 & 26, 1999

3. Rules adopted amending **chs. HFS 12**, relating to background checks.

### Finding of Emergency

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

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts,

Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

**Publication Date:** December 12, 1998  
**Effective Date:** December 12, 1998  
**Expiration Date:** May 11, 1999

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## 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 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  
**Hearing Date:** December 17, 1998  
**Extension Through:** March 11, 1999

## EMERGENCY RULES NOW IN EFFECT (2)

### Health and Family Services (Health, Chs. HSS/HFS 110—)

1. 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  
**Hearing Dates:** November 30, December 1, 7 & 9, 1998

## 2. Rules adopted amending ss. HFS 119.07 (6) (b) and 119.15, relating to the Health Insurance Risk-Sharing Plan.

### Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

### 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. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in



accordance with the authority and requirements set Out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

**Publication Date:** December 31, 1998  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Insurance

Rule adopted amending s. **Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, ("XXX"), from January 1, 1999 to July 1, 1999.

### Finding of Emergency

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created Ins 2.80, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX". This new rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

**Publication Date:** December 23, 1998  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999

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## EMERGENCY RULES NOW IN EFFECT (4)

### Natural Resources

#### (Fish, Game, etc., Chs. NR 1--)

1. A rule was adopted revising s. **NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

### Exemption From Finding of Emergency

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

Summary of Rules:

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

2. Establishes time frame for making reservations.

**Publication Date:** December 15, 1997  
**Effective Date:** April 1, 1998  
**Expiration Date:** April 1, 1999  
**Hearing Date:** January 12, 1998

2. Rules adopted 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

3. 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  
**Extension Through:** January 22, 1999

4. Rules adopted revising s. **NR 10.01 (1)**, relating to the 1998 migratory game bird season.

### Finding of Emergency

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

**Publication Date:** September 15, 1998  
**Effective Date:** September 15, 1998  
**Expiration Date:** February 12, 1999  
**Hearing Date:** October 15, 1998

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## **EMERGENCY RULES NOW IN EFFECT (3)**

### **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 of 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  
**Hearing Date:** October 13, 1998  
**Extension Through:** March 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  
**Hearing Date:** October 20, 1998  
**Extension Through:** March 11, 1999

3. Rule adopted revising **s. PI 3.03 (6) (b) 3.**, relating to alternate teaching permits.

## **Finding of Emergency**

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

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Dates:** January 4, 5, 6 & 7, 1999

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## **EMERGENCY RULES NOW IN EFFECT (2)**

### **Public Service Commission**

1. 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

2. Rules adopted creating **ch. PSC 187**, relating to Sewer Main Extension: Cost Recovery.

### **Exemption From Finding of Emergency**

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Date:** January 8, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Regulation & Licensing

1. Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

### Exemption From Finding of Emergency

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

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to develop administrative rules which must be in effect on the effective date of the new regulation.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Date:** December 17, 1998

2. Rules adopted creating **chs. RL 140 to 142**, relating to the registration of music, art and dance therapists.

### Finding of Emergency

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration if it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

- (1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.
- (2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.
- (3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately

determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

**Publication Date:** November 29, 1998  
**Effective Date:** December 1, 1998  
**Expiration Date:** April 30, 1999  
**Hearing Date:** January 12, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Revenue

Rules adopted amending **s. Tax 2.39** and creating **s. Tax 2.395**, relating to the use of an alternative apportionment method.

### Finding of Emergency

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

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

**Publication Date:** September 29, 1998  
**Effective Date:** September 29, 1998  
**Expiration Date:** February 26, 1999  
**Hearing Date:** December 28, 1998

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## EMERGENCY RULES NOW IN EFFECT

### Veterans Affairs

Rules adopted amending **s. VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

### Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate perseverance of the public peace, health, safety or welfare. A statement of the facts considering the emergency is:

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code., the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures.

Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

**Publication Date:** October 12, 1998  
**Effective Date:** October 12, 1998  
**Expiration Date:** March 11, 1999  
**Hearing Date:** December 11, 1998

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Workforce Development*

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering ss. **HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

### Finding of Emergency

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

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

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

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

### Finding of Emergency

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

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the

provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

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

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## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

(Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted amending s. **DWD 290.155**, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

### Finding of Emergency

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

The Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between November 1997 and December 1998 requires that the threshold limits for prevailing wage rate determinations be raised from \$32,000 to \$33,000 for single-trade projects and from \$160,000 to \$164,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/99, a single-trade project costing more than \$32,000 but less than \$33,000, or a multi-trade project costing more than \$160,000 but less than \$164,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added complication of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this additional administrative burden on local governments and state agencies.

**Publication Date:** January 4, 1999  
**Effective Date:** January 4, 1999  
**Expiration Date:** June 3, 1999  
**Hearing Date:** February 11, 1999

[See Notice this Register]

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### **Administration**

#### **(Wisconsin Gaming Commission)**

##### **Subject:**

Ch. WGC 3 – Procedures to be used in contested case hearings arising from the regulatory oversight functions of the Division of Gaming, specifically regulation of pari-mutuel wagering as set out in ch. 562 Stats., regulation of charitable gaming as set out in ch. 563, and certification of Tribal gaming vendors as provided in the Tribal-State gaming compacts.

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

*Statement of the objective of the proposed rule:*

The Department of Administration proposes to amend the chapter to reflect the fact that the regulatory responsibilities set out above are, with the dissolution of the Wisconsin Gaming Board as required by 1997 Wis. Act 27, no longer overseen by a standing board to decide contested case proceedings. In addition, the rules are being amended to reflect amendments to ch. 227, Stats., which have become effective since the last time the rule was amended.

*Description of policy issues:*

The Department of Administration has the responsibility to grant contested case hearings to certain persons affected by regulatory decisions of its Division of Gaming. Examples would be suspension/revocation of pari-mutuel or charitable gaming licenses or assessments of forfeitures for violations of the statutes and regulations regarding pari-mutuel wagering. Prior to the formation of the Division of Gaming within the Department of Administration, these responsibilities were discharged by the predecessor agencies to the Division of Gaming, the Wisconsin Gaming Board, Wisconsin Gaming Commission and Wisconsin Racing Board. These hearings were ultimately heard and/or decided by the full Board/Commission pursuant to the Open Meetings Law. This mechanism is no longer available for disposition of these cases, and the rules are being amended to accommodate this change. In addition, the rules are being amended to reflect changes in the statute governing contested case hearings, ch. 227, Stats.

##### **Statement of the statutory authority for the rule:**

Sections 562.02 (1) (a) and 562.04 (1) (b) 6, Stats.

##### **Staff time required:**

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

### **Chiropractic Examining Board**

##### **Subject:**

Chir Code – Relating to the definition and use of chiropractic adjustment.

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

*Objective of the rule:*

To define the term “chiropractic adjustment.”

*Policy analysis:*

Individuals in other professions are providing chiropractic adjustments to clients without proper training and experience. A definition of chiropractic adjustment will remove ambiguity as to who may use chiropractic adjustment as a method of treatment and serve to protect the safety, health and welfare of the public by limiting the use of such procedures to professionals who have

received the proper training and experience and who are able to use the method effectively.

##### **Statutory authority for the rule:**

Sections 15.08 (5) (b), 227.11 (2), and 446.01, Stats.

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

160 hours.

### **Natural Resources**

#### **(Fish, Game, etc., Chs. NR 1--)**

##### **Subject:**

Ch. NR 20 – Relating to establishing a harvest limit for the sturgeon spearing season.

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

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

The Department of Natural Resources is proposing to develop a safe harvest system for sturgeon harvest. Recent legislation has authorized the Department to establish harvest limits for sturgeon. The DNR is planning to meet with constituent groups to develop a proposal to take to hearings this summer. Sturgeon spears, Sturgeons for Tomorrow, and various sports clubs around the Lake Winnebago system will be interested in the issue. The proposal may be controversial, depending on the way the DNR proposes to limit harvest, but this has yet to be determined.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Spear harvest of sturgeon continues to increase annually. In years of high water clarity, the DNR’s harvest goal for female sturgeon is often exceeded. Until this year, the DNR did not have statutory authority to limit harvest. The DNR hopes to propose a safe harvest system that protects the sturgeon resource and is acceptable to sturgeon spearmen around the Winnebago system.

##### **Statutory authority:**

Section 29.174, Stats.

##### **Anticipated time commitment:**

The anticipated time commitment is 110 hours. Hearings will be scheduled in the spring of 1999.

### **Natural Resources**

#### **(Fish, Game, etc., Chs. NR 1--)**

##### **Subject:**

Ch. NR 20 – Relating to allowing bowfishing from sunset to sunrise during the open spearing season.

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

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

A petition was received from the Bowfishing Association of America. The Bureau of Fisheries Management and Habitat Protection does not have biological concerns, although the Bureau of Law Enforcement has reservations because the proposal could increase the opportunity for illegal activity (i.e., spearing gamefish) and it may result in increased complaints from lake shore property owners who witness night-time bowfishing enthusiasts.

This action represents a change from past policy.

##### **Statutory authority:**

Sections 29.014 and 227.16, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 47 hours. The Department is obligated to hold public hearings on the petition, pursuant to s. 227.12, Stats. Two public hearings are proposed to be held in March or April at Fitchburg and Wausau.

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

**Subject:**

Chs. NR 40 and 41 – Relating to property boundaries of state parks and forests, and

Ch. NR 45 – Relating to regulations regarding the conduct of visitors and protection of Department properties.

**Description of policy issues:**

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

Department staff review ch. NR 45 every two years and suggest revisions that are desired to ensure the health and safety of people using Department properties. In addition, they suggest regulations needed to protect natural resources (such as rules granting authority to close parts of Department properties to certain uses).

Groups and individuals interested in this rule package include any group or individual who uses Department properties for recreational activities.

This action does not represent a change from past policy.

*Explain the facts that necessitate the proposed change:*

Department staff have reviewed ch. NR 45 and recommend revisions needed to ensure the health and safety of people using the property, or needed to protect the resources found on the property. Examples include:

- A rule to prohibit using studded tires on mountain bike trails (they damage trails);
- A rule to authorize issuing citations for the possession of small amounts of marijuana (less than 25 grams); and
- A rule allowing anyone to use electric motors on Ottawa Lake in the Kettle Moraine State Forest (currently restricted to people with disabilities).

The rule package would rescind chs. NR 40 and 41, since rules are not needed to document which lands are part of state parks and forests. The current rule is always outdated as the Department acquires additional land.

**Statutory authority:**

SS. 23.09 (2), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 116 hours. Three public hearings were proposed to be held in May, 1999 at Madison, Milwaukee and Wausau.

**Natural Resources**  
(*Environmental Protection--General,*  
*Chs. NR 100--*)

**Subject:**

S. NR 149.05 – Relating to approval of laboratory certification budget and fees for FY 2000 (Fiscal Year 2000) per s. NR 149.05, Wis. Adm. Code, and presentation of 1999 registered lab of the year awards.

**Description of policy issues:**

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

No policy issues to resolve. The Department is not proposing rule changes with these items. Affected groups include all certified and registered laboratories.

This action does not represent a change from past policy.

**Statutory authority:**

Section 299.11 (5), Stats., and s. NR 149.05, Wis. Adm. Code.

**Anticipated time commitment:**

The anticipated time commitment is 116 hours. Although not required, the Department would like to hold two public informational meetings early in 1999 on the program's proposed budget and fees for the benefit of the regulated community. The two informational meetings will be held in late January or early February at Madison and Oshkosh. The Department will meet with the Certification Standards Review Council in January, 1999 to discuss the proposed budget and fees.

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

**Subject:**

Ch. NR 439 – Relating to the adoption of the U.S. EPA capture efficiency test methods promulgated June 16, 1997 for volatile organic compounds (VOC's) emitted from coating operations.

**Description of policy issues:**

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

The United States Environmental Protection Agency (U.S. EPA) has promulgated as of June 16, 1997 capture efficiency test methods for measuring the capture efficiency of volatile organic compounds (VOC's) from surface coating operations. These test methods are 204, 204A, 204B, 204C, 204D, 204E and 204F. All of these methods require the use of a temporary total enclosure or a permanent total enclosure. This rule revises ch. NR 439, Wis. Adm. Code, to adopt these methods.

For flexibility, EPA has added two sets of statistical approval criteria which, when either of them is met, allow the use of data obtained with alternative capture efficiency test methods such as mass balance, to demonstrate compliance with capture efficiency limits. These two sets of criteria are denoted as the data quality objective (DQO) method and the lower confidence limit (LCL) method. EPA has required the use of such capture efficiency methods as a condition of state implementation plan (SIP) approval under the Clean Air Act.

The parties likely to be impacted or interested in this issue are printers and coaters. Some degree of controversy is anticipated.

This action does not represent a change from past policy.

*Explain the facts that necessitate the proposed change:*

The U.S. EPA is requiring the adoption of the 204 series of capture efficiency test methods as a condition of state implementation plan (SIP) approval.

**Statutory authority:**

40 CFR Part 60 and 40 CFR Part 51, Appendix M; ss. 285.11 (1) and 285.17 (2), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 136 hours. Two hearings are proposed to be held in April, 1999 at Milwaukee and Appleton.

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

**Subject:**

S. NR 485.04 – Relating to emission limitations for motor vehicles. The objective of the proposed rule is to ensure that the emission limitations will continue to be at levels which vehicles are reasonably capable of achieving and maintaining.

**Description of policy issues:**

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

The proposed rule will relax the motor vehicle emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, for inspections conducted on and after December 1, 1999, for model year 1980–1986 cars, 1984–1986 light trucks, and 1979–1986 heavy trucks. As a result of this revision, the emission limitations for all vehicle categories will indefinitely remain at the levels currently in use. The Department staff briefed the Natural Resources Board on its intention to promulgate this revision on October 28, 1998. There appear to be no policy issues that still need to be resolved. The groups likely to be impacted by or interested in this issue are the owners of vehicles subject to the state's inspection and maintenance program and the vehicle repair industry in southeastern Wisconsin.

This action does not represent a change from past policy.

*Explain the facts that necessitate the proposed change:*

The proposed rule will not impose requirements on any previously regulated source. It will only relax the emission limitations for some of the motor vehicles already subject to the requirements of the state's motor vehicle inspection and maintenance (I/M) program.

The proposed rule is necessary to avoid costly repairs to older vehicles. Some of these repairs would be ineffective in keeping emissions low.

**Statutory authority:**

SS. 227.11 (2) (a), 285.11 (1) and 285.30 (2), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 270 hours. One hearing is proposed to be held in April, 1999 at Milwaukee.

***Podiatrists Affiliated Credentialing Board*****Subject:**

Podiatrists Code – Relating to credentialing, practice and discipline of podiatrists.

**Description of policy issues:**

*Objective of the rule:*

To fulfill the mandate of 1997 Wis. Act 175 which requires the new Podiatrists Affiliated Credentialing Board to promulgate rules relating to the regulation and credentialing of podiatrists.

*Policy analysis:*

Under newly-created subchapter IV of ch. 448, Stats., the Podiatrists Affiliated Credentialing Board is required to promulgate rules relating to the regulation and licensure of podiatrists.

**Statutory authority:**

Sections 15.08 (5) (b) and 227.11 (2), Stats., s. 448.40 (1), as amended by 1997 Wis. Act 175, and ss. 448.665 and 448.695, Stats., as created by 1997 Wis. Act 175.

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

100 hours.

***Public Defender*****Subject:**

Section PD 6.04 (5) – Relating to multiple appointments on the same case.

**Description of policy issues:**

The Office of the State Public Defender (SPD) is statutorily required to collect fees from its adult clients as payment for legal representation. Generally, each separate appointment results in a separate fee to be paid by the client. Under limited circumstances, however, a client may be required to pay one fee rather than multiple fees even though the client's same case results in multiple appointments.

The proposed rule would create an additional circumstance under which a public defender adult client is charged one fee for his or her case. Specifically, if a client's case is remanded for a new trial after an appellate court reverses the conviction based on ineffective assistance of counsel grounds, the client would be charged one fee rather than two fees for his or her case.

**Statutory authority for rule:**

Section 977.02 (4m), Stats.

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

Estimated amount of time agency employes will spend developing the proposed rule: 15 hours. No other resources are necessary.

***Transportation*****Subject:**

Ch. Trans 2 – Relating to the Department's administrative interpretation of s. 85.22, Stats., including the administration of assistance under the federal sec. 5310 program (formerly sec. 16), and prescribes administrative policies and procedures for implementing the elderly and disabled transportation capital assistance program authorized under s. 85.22, Stats.

**Description of policy issues:**

*Description of the objective of the proposed rule-making:*

Chapter Trans 2 establishes the Department's administrative interpretation of s. 85.22, Stats., including the administration of assistance under the federal sec. 5310 program (formerly sec. 16), and prescribes administrative policies and procedures for implementing the elderly and disabled transportation capital assistance program authorized under s. 85.22, Stats. The purpose of this rule-making is to clarify existing provisions of the rule as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures. For each item below, a description of the objective of the proposed change, a description of existing policies relevant to the amendment, and an analysis of policy alternatives are described.

PROPOSED AMENDMENT 1  
TRANSPORTATION SERVICE PROPOSALS

**Description of objective of the amendment:**

Amend current s. Trans 2.045 to remove the requirement that all applicants must provide an opportunity for other transportation providers to submit proposals for the service to be furnished with the vehicles applied for under this chapter.

**Description of existing policies relevant to the amendment:**

Current policy provides an opportunity for other transportation providers to submit service proposals. If a proposal is rejected by the applicant, the other provider can request the Department to review the rejection. Minimum evaluation criteria are prescribed by the Department. The Federal Transit Administration has recently issued a decision specific to our procedures that transportation service proposals are not subject to its review where no program dollars are involved. Since our program funds are limited to the purchase of vehicles, the requirement for all applicants to provide an opportunity for other transportation providers to submit proposals and our review of any proposal rejections is no longer necessary.

Analysis of policy alternatives:

Amend s. Trans 2.045 to eliminate all reference to transportation service proposals. This would include reference to the need to provide an opportunity for other transportation providers to submit service proposals, evaluation of service proposals, and the determination of fully allocated costs. The notification to other transportation providers of intent to apply for a grant would be retained. It would allow the decision-making matters to remain at the local level where there is no financial involvement through this program.

Another alternative is to retain the existing rules which require a substantial amount of staff time to administer. Since the Federal Transit Administration has no jurisdiction in matters where no program funds are involved, it seems onerous for the state to impose unnecessary notification procedures on applicants for aid under this chapter.

PROPOSED AMENDMENT 2  
REQUEST FOR REVIEW PROCEDURES

Description of objective of the amendment:

Amend current s. Trans 2.045 to establish the process used for considering procedural complaints or conflicts.

Description of existing policies relevant to the amendment:

Section Trans 2.045 (5) requires the Department to investigate any request for review filed by any transportation provider whose service proposal is rejected by an applicant. The current rule does not specify the review procedures. The Department has used several review procedures in this program in the past. This rule-making will clarify what is subject to review and how the request for review is administered.

Analysis of policy alternatives:

Amend s. Trans 2.045 to specify when the review is applicable and what the process is. This would make it clear to the applicant and the protester what our procedures are and the level of internal appeals available.

The other alternative is to not change the administrative rule with regard to procedural complaints and conflicts. This alternative would allow the Department the flexibility to change its procedures but will result in the program participants' continued uncertainty as to when and how this provision applies.

PROPOSED AMENDMENT 3  
APPLICATION EVALUATION

Description of objective of the amendment:

Section Trans 2.06 establishes the criteria and their relative weight for evaluating applications for aids under this statewide competitive program. It also establishes the minimum point score necessary to be eligible to receive a grant. A review of the appropriateness of these three factors would be beneficial since transportation priorities and capabilities change over time. Program participant input is essential to that review.

Description of existing policies relevant to the amendment:

The application evaluation rules have evolved over the years. Since it is a statewide competitive program, it is necessary to provide an appropriate ranking process for all applications. The evaluation is made utilizing established criteria which has been weighted and all eligible applicants are ranked. A 100 point minimum score is required to be eligible to receive a grant. The Department awards grants to eligible applicants based upon the amount of funds available.

Analysis of policy alternatives:

There are three different areas that will be examined:

1. The evaluation criteria covers four general categories:

(a) The extent of service coordination,

(b) The extent that service can be provided to the general elderly and disabled public,

(c) The extent to which transportation needs of elderly and disabled persons are identified, and

(d) Financial and managerial capabilities.

2. Each of the criteria in the above categories has an assigned weight.

3. The minimum point score is 100 points.

PROPOSED AMENDMENT 4  
VEHICLES OFFERED

Description of objective of the amendment:

Amend s. Trans 2.07 to provide the Department with greater latitude for establishing what types of vehicles may be applied for on an annual basis as long as they meet human service vehicle (HSV) or yellow school bus specifications. The Department is also contemplating a requirement that all program vehicles be lift-equipped. This would ensure compliance by the grantee with the Americans with Disabilities Act (ADA) requirements.

Description of existing policies relevant to the amendment:

The current rule specifies that small, medium and large school bus type vehicles and 15-passenger vans shall be offered under this program. Whereas the human service vehicle rule, ch. Trans 301, was recently changed to allow other than school bus type vehicles to be designated as HSV's, the transit industry produces vehicles which offer alternatives to the school bus type vehicle. The Department needs to update its current rule to reflect this change. Additionally, the Department believes that it should have the ability to make decisions on an annual basis as to the types of vehicles it wants to offer potential program participants since this is an evolving industry with changing needs and capabilities.

The current rule also allows the purchase of nonlift-equipped vehicles if the applicant certifies that it provides equivalent service to persons with disabilities. The Department must monitor those grantees that have received nonlift-equipped vehicles to ensure that the ADA requirements are being met. Such compliance monitoring will require a substantial amount of program staff time.

Analysis of policy alternatives:

The Department could just revise the current rule to reflect that other than school bus type vehicles can be purchased. This would mean that if transportation needs or innovations present themselves in the future, the Department would need to go through the rule-making process to respond. By continuing to allow the purchase of nonlift-equipped vehicles, the Department will be devoting a substantial amount of staff and financial resources to an activity that does not provide any additional transportation services.

By changing the rule to allow the Department to determine what types of vehicles to offer on an annual basis, it can respond to the changing conditions within the transit industry in a more timely manner. Requiring that all vehicles be lift-equipped, will ensure that all grantees are in compliance with ADA and the Department will save a substantial amount of staff time and program financial resources.

PROPOSED AMENDMENT 5  
CASH GRANT OPTION

Description of objective of the amendment:

Repeal s. Trans 2.08 to eliminate the option for successful grantees to procure vehicles. This option has not been effective and would relieve the Department from having to train grantees on the federal procurement process and to monitor the grantee to ensure that all federal procurement requirements have been met.

Description of existing policies relevant to the amendment:

The Department procures vehicles for the grantees in conformance with federal procurement regulations. In 1993, the rule was changed to allow a grantee to procure its vehicles rather than participate in the Department procurement. Since then, several grantees have attempted to use the option but have found that either no bids were received or the bids were substantially higher than the state bids. Federal program management regulations require the Department to ensure that a grantee who procures vehicles complies with all federal procurement procedures. Program staff must train and provide technical assistance to any grantee who chooses this option plus monitor the procurement process.



Analysis of policy alternatives:

Repealing s. Trans 2.08 would free up program staff time which is needed to perform other program monitoring responsibilities. It would not reduce the effectiveness of the program since the option has been ineffective since its inception.

PROPOSED AMENDMENT 6  
REPORTING REQUIREMENTS

Description of objective of the amendment:

The establishment of a provision in the rule that addresses the general reporting requirements and any penalties for non-compliance is a more formal administrative tool for ensuring compliance with program requirements.

Description of existing policies relevant to the amendment:

The existing policy on reporting requirements is specified in the grant contract. While it specifies what reports are required, there are no penalties specified for non-compliance.

Analysis of policy alternatives:

The Department could continue to use the contract as the primary vehicle for specifying reporting requirements but it would not be as effective as a provision in the rule. However, a penalty for non-compliance should be added to ensure compliance.

If a provision is added to the rule which addresses general reporting requirements and the penalties for non-compliance, it will provide a more formal tool for program administration and should improve the compliance rate. Without a penalty clause, there is no strong incentive for compliance.

PROPOSED AMENDMENT 7  
TRANSPORTATION COORDINATING COMMITTEE

Description of objective of the amendment:

The committee membership requirements in s. Trans 2.10 (1) is very prescriptive. Some counties may not be able to have representation from a particular prescribed category or there may not be anyone within a particular category willing to serve on the committee. The rule should be changed to allow more flexibility as reflected in these kinds of situations. The objective of a change to s. Trans 2.10 (1) (a) is to ensure that the appropriate parties representing agencies and individuals with transportation needs are asked to be members of a coordinating committee. The member list should also be expanded to include the "County Department of Social Services" which is different than an aging unit or 51.42/437 Board and an important segment in any coordinating efforts.

Description of existing policies relevant to the amendment:

The existing version of s. Trans 2.10 (1) which was implemented in 1994 provides an opportunity for a public body to be an eligible applicant. The objective is to encourage coordination of transportation services within the applicant's service area through the formation of a transportation coordinating committee. Experience shows that the literal interpretation of the rule regarding the membership of the committee could preclude a local public body from becoming an eligible applicant.

Analysis of policy alternatives:

Revising s. Trans 2.10 (1) (a) to reflect that efforts must be made to include all of the listed categories of individuals and agencies would be a more realistic approach to the formation of a transportation coordinating committee.

PROPOSED AMENDMENT 8  
REGIONAL REVIEW PROCESS

Description of objective of the amendment:

Part of the process for preparing an application (s. Trans 2.05 (3)) is that copies are sent to the appropriate area agency on aging and Department of Health and Family Services' regional offices of

strategic finance for review and comments. Historically, these agencies have provided very little input into the review process. As the applications involve numerous pages that must be copied in order to comply with this provision, the Department proposes to require the applicant only provide copies upon request. This will save the applicant time and money.

Description of existing policies relevant to the amendment:

The existing policy is to require that copies be sent to the appropriate agencies regardless if the agency desires to review and comment.

Analysis of policy alternatives:

If the applicant were to send a notification of intent to file an application to the review agencies noted above, it would alert the agency that an application is to be filed. The notification would also offer to send copies to the agencies upon request. The interested agencies would still have an opportunity to review and comment and the applicant would potentially save time and money. Such notification could also be used to encourage agencies to participate in the review process.

PROPOSED AMENDMENT 9  
TECHNICAL AMENDMENTS

Description of objective of the amendment:

There are a number of references in the existing rule that are no longer accurate and need to be updated.

**Statutory authority for the rule:**

SS. 85.16 (1), 85.22 and 227.11 (2), Stats.

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

200 hours.

***Transportation*****Subject:**

Ch. Trans 316 – Relating to the definition of "wood harvesting slasher".

**Description of policy issues:**

*Description of the objective of the rule:*

1997 Wis. Act 269 created s. 341.05 (25), Stats., which mandates the Department to define "wood harvesting slasher" by administrative rule. This rule-making will create ch. Trans 316 to permit wood harvesting slashers to be included in the list of vehicles exempt from registration, and permit uniform enforcement of its exemption from vehicle registration requirements by both law enforcement and operators.

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

Existing vehicle registration exemptions would be amended to include wood harvesting slashers, but would not include the units as "implements of husbandry". Law enforcement would be able to easily identify the units from the administrative rule definition and uniformly enforce law relating to the units' limited operation on Wisconsin roads.

**Statutory authority for the rule:**

S. 341.05 (25), Stats., as created by 1997 Wis. Act 269.

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

40 hours.

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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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### **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 and Consumer Protection**

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

On January 15, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule affects chs. ATCP 29 and 40, Wis. Adm. Code, relating to agricultural chemical cleanup surcharge fees.

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

A public hearing is required. The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Food Safety is primarily responsible for promulgation of this rule.

##### **Contact Information**

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

Karen Ayers  
Division of Agricultural Resource Management  
Telephone (608) 224-4523

or

Attorney James Matson  
Telephone (608) 224-5022

#### **Commerce**

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

On January 15, 1999, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule affects chs. Comm 2, 18 and 69, relating to elevators and mechanical lifting devices.

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

A public hearing is required, and public hearings are scheduled for March 8, 9 and 10, 1999 at Madison, Eau Claire and Milwaukee. The Department of Commerce is the agency unit primarily responsible for promulgation of the proposed rule.

##### **Contact Information**

Diane Meredith  
Telephone (608) 266-8982

#### **Medical Examining Board**

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

On January 6, 1999, the Medical 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 s. 448.05 (5) (a) (intro.), Stats.,  
as amended by 1997 Wis. Act 67.

The proposed rule-making order relates to licensure and regulation of physician assistants.

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

A public hearing is required and will be held on February 24, 1999 at 9:00 a.m. in Room 179A, 1400 East Washington Ave., Madison.

##### **Contact Information**

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

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

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

On January 6, 1999, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 457.09, Stats.  
The proposed rule-making order relates to criteria for approval of other human service degree programs for eligibility for a social worker training certificate.

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

A public hearing is required.

##### **Contact Information**

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

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## NOTICE SECTION

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### Notice of Hearing

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

► (Reprinted from Mid-January, 1999 *Wis. Adm. Register*.)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a department emergency rule relating to fish farms and live fish and fish egg imports (proposed chapters ATCP 10 and 11, Wis. Adm. Code). The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the emergency rule. An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by January 22, 1999, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608-224-4883. TTY users call 608-224-5058.

### Hearing Information

**February 3, 1999**  
**Wednesday**  
**commencing at 4:30 p.m.**

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

Handicapped accessible

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

Statutory authority: ss. 93.07(1), 95.60(4s)(d) and (5),  
and 227.24(1)(a)

Statute interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., created by 1997 Wis. Act 27. Among other things, s. 95.60, Stats., directs the Department of Agriculture, Trade and Consumer Protection (DATCP) to register fish farms and regulate live fish imports. Act 27 transferred these functions to DATCP from the Department of Natural Resources. This emergency rule establishes interim registration and import standards, pending adoption of "permanent" rules.

The DATCP Board approved final draft "permanent" rules on December 9, 1998. However, DATCP may not adopt the "permanent" rules until those rules undergo legislative committee review. Annual fish farm registration renewals will come due on January 1, 1999, before the "permanent" rules take effect. Interim rules are needed to administer the annual registration renewals, and to prevent imports of diseased fish, pending the effective date of the "permanent" rules.

This emergency rule adopts, on a temporary basis, the registration provisions contained in the final draft "permanent" rule approved by the DATCP Board. This emergency rule also continues interim fish import requirements based on import provisions previously administered by DNR. The final draft "permanent" rules, when adopted, will expand on these interim requirements.

#### Fish Farm Registration

##### Who Must Register

Under this emergency rule, a person (including the state of Wisconsin or an agency of the state) operating a fish farm for any of the following purposes must hold an annual fish farm registration certificate from DATCP:

- Hatching fish eggs or holding 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.

- Holding live fish or fish eggs owned by another person.

##### Exemptions

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

- Hatch or hold "ornamental" fish (including goldfish, koi, tropical freshwater fish that cannot survive in temperatures below 38°F, and saltwater fish) unless commingled with non-ornamental fish or reared for bait, human food or animal feed.
- 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, provided that no untreated water used to hold those fish is discharged to waters of the state.
- 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, provided the facility does not discharge to waters of the state any untreated water used to hold or process those fish.

- Transport live fish or fish eggs to or from a fish farm.

##### Type 1 or Type 2 Registration

This emergency 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.

##### Expiration Date

A fish farm registration certificate issued under this emergency rule expires on December 31, 1999.

##### Persons Operating 2 or More Fish Farms

Under this emergency rule, 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 application and paying a single 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.

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 \$25.00 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.
- The state of Wisconsin and its agencies.

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

### **Live Fish Imports**

#### Import Permit Required

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

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

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

#### Import Permit Contents

An import permit must specify all of the following:

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

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

- The purpose for which the fish or fish eggs are being imported.
- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.
- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

#### Applying for an Import Permit

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

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

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

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

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

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.

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

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

#### Import Records

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

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

#### Salmonidae Import Sources: Health Certificates

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

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

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the

state of origin as being competent to perform health inspections of fish.

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

### **Fiscal Estimate**

The complete fiscal note is available on request.

(See page 27 of the Mid-January, 1999 *Wis. Adm. Register*.)

### **Initial Regulatory Flexibility Analysis**

(See page 27 of the Mid-January, 1999 *Wis. Adm. Register*.)

### **Notice to Dept. of Development**

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

### **Copies of Emergency Rule**

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

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

## **Notice of Hearings**

### **Commerce**

*(Fee Schedule, Ch. Comm 2)*

*(Elevators, Ch. Comm 18)*

*(Barrier-Free Design, Ch. Comm 69)*

Notice is hereby given that pursuant to ss. 101.02 (1) and (15), 101.13 and 101.17, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to chs. Comm 2, 18 and 69, relating to elevators and mechanical lifting devices.

### **Hearing Information**

The public hearings will be held as follows:

<b>Date &amp; Time:</b>	<b>Location:</b>
<b>March 8, 1999</b> <b>Monday</b> <b>10:00 a.m.</b>	<b>Conference Room #3B</b> <b>Third Floor, WHEDA Bldg.</b> <b>201 West Washington Ave.</b> <b>MADISON, WI</b>
<b>March 9, 1999</b> <b>Tuesday</b> <b>11:00 a.m.</b>	<b>Conference Room 105</b> <b>Eau Claire State Office Bldg.</b> <b>718 W. Clairemont Ave.</b> <b>EAU CLAIRE, WI</b>
<b>March 10, 1999</b> <b>Wednesday</b> <b>10:30 a.m.</b>	<b>Conference Center</b> <b>Goodwill Industries</b> <b>6055 North 91st St.</b> <b>MILWAUKEE, WI</b>

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Diane Meredith at (608) 266-8982 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audiotape format will, to the fullest extent

possible, be made available upon request by a person with a disability.

### **Analysis of Proposed Rules**

Statutory authority: ss. 101.02 (1) and (15), 101.13 and 101.17, Stats.

Statute interpreted: s. 101.17, Stats.

The Department of Commerce is responsible for adopting standards to protect the safety and health of employes and frequenters in places of employment and public buildings using elevators and other mechanical lifting devices.

The purpose of ch. Comm 18, Elevator Code, is to establish safety requirements for elevators and other mechanical lifting devices installed in or at public buildings and places of employment. Chapter Comm 18 is being rewritten to adopt by reference the 1996 edition of the American Society of Mechanical Engineers (ASME) A17.1 Safety Code for Elevators and Escalators, to modify certain sections within ch. Comm 69 relating to elevators and other mechanical lifting devices and to change terminology and cross-referencing in ch. Comm 2. The purpose of the code changes is to eliminate outdated requirements that have been modified by the ASME A17.1 Safety Code for Elevators and Escalators and provide for reasonable safety of elevators and other mechanical lifting devices.

The following proposed changes are the major items being considered for revision.

1. Adopt by reference the 1996 edition of the American Society of Mechanical Engineers (ASME) A17.1, Safety Code for Elevators and Escalators. [Comm 18.14]

2. Establish a rule that requires owners to notify the Department within 48 hours of any failure of an elevator or other installation covered by this code that caused injury to a person using the equipment. [Comm 18.08 (2)]

3. Reorganize the plan submittal requirements for clarity. [Comm 18.09]

4. Modify s. Comm 2.15 to correct cross-referencing to s. Comm 18.09 and to use the terminology of "permit to operate" instead of "certificate of operation." [Comm 2.15, Comm 18.09 and Comm 18.12]

5. Eliminate the 24 inches of refuge space at the top and bottom of an elevator car since this is now covered in the ASME A17.1 standard. Require the refuge space specified in the ASME A17.1 standard to be outlined and identified with a sign. [Comm 18.24]

6. Eliminate the requirement for a stretcher-sized elevator to be provided in all healthcare facilities and medical clinics, regardless of the number of stories of the building. Stretcher-sized elevators will be required in all buildings 4 or more stories in height. [Comm 18.295]

7. Eliminate the previous code restriction that side emergency doors could not be provided on elevator cars and use the ASME A17.1 210.2 (s) standard that allows side emergency doors.

8. Eliminate the previous requirement that a metal box be provided on all elevators to hold the elevator switch keys for emergency personnel. Local emergency personnel may specify a uniform type of lock box to contain the necessary keys as specified in A17.1 211.8.

9. Eliminate the requirement for a 12-inch pit depth for a residential elevator and modified the rules to be consistent with A17.1 107.1 or A17.1 2500.8b. relating to limited-use limited-access elevators. [Comm 18.361 (2)]

10. Modify rules by placing maneuvering spaces at elevator and lift doors in ch. Comm 69 and by adding cross-references to this section. [Comm 18.361 (4) (b) and Comm 69.28 (2)]

11. Permit the use of bumper supports for residential elevators providing they comply with A17.1 2501.2. [Comm 18.364]

12. Require hand elevators to comply with Comm 18 and A17.1 Part 7. [Comm 18.43]

13. Reorganize inspection requirements to modify the A17.1 Part 10 standards. [Comm 18.48 to Comm 18.59]

14. Modify vision panel and running clearance requirements for vertical platform lifts. [Comm 18.69 (1) (b) and (c)]

15. Permit the use of a side entrance to a vertical platform lift. The platform size shall be at least 39 inches in width and at least 60 inches in length. The door shall be at least 42 inches in width. [Comm 18.69 (4)]

16. Modify the mounting height of the hall call button for vertical platform lifts to comply with ch. Comm 69, ADAAG 4.27. [Comm 18.74 (2)]

17. Eliminate the Wisconsin requirements relating to Department staff witnessing drop tests; prohibition of an in-car stop switch; and provision of a separate pumping unit for collection of oils.

### Written Comments

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 **Friday, March 26, 1999**, 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. Written comments should be submitted to:

Diane Meredith  
Department of Commerce  
Program Development Bureau  
P. O. Box 2689  
Madison, WI 53701-2689

### Copies of Rules

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

### Initial Regulatory Flexibility Analysis

Chs. Comm 2, 18 and 69 – Relating to elevators and mechanical lifting devices

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

Small architectural, engineering and elevator and mechanical lift manufacturing and supply firms will be affected by the proposed rules. If a small business operator is remodeling or altering an existing building or constructing a new building, the remodeling, alteration and new construction must comply with the proposed rules.

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

Small business owners must report failures of elevators or other mechanical lifting devices where the failure caused injury to people using the equipment. These accidents must be reported to the Department within 48 hours from the occurrence.

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

None known.

### Fiscal Estimate

#### Assumptions Used in Arriving at Fiscal Estimate

The existing rules in ch. Comm 18 relating to the design and construction of elevators and other mechanical lifting devices are modified. The changes include the adoption by reference of the 1996 edition of the American Society of Mechanical Engineers (ASME) A17.1 National Safety Code for Elevators and Escalators, the clarification of requirements relating to the enforcement of ch. Comm 18 and the clarification of technical requirements. These changes will not create a fiscal impact.

### Environmental Assessment

Comm 2, 18 and 69 – Relating to elevators and mechanical lifting devices.

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with ch. ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

### Notice of Hearing

#### Commerce

#### *(Uniform Dwelling, Chs. Comm 20-25)*

Notice is hereby given that pursuant to ss. 101.02 (1), 101.63 (1), 101.73 (1) and 227.24, Stats., the Department of Commerce announces that it will hold a public hearing on an emergency rule relating to delaying the effective date of the UDC changes from February 1, 1999 to May 1, 1999.

### Hearing Information

**February 17, 1999**  
**Wednesday**  
**10:00 a.m.**

**Conference Rm.**  
**WHEDA Bldg.**  
**201 W. Washington Ave.**  
**Madison, WI 53703**

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 **February 24, 1999**, 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.

The 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) 266-8741 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 Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

### Initial Regulatory Flexibility Analysis

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

Any small business related to dwelling construction will be affected. This emergency rule provides an additional 3 months to become familiar with changes to the code that have already been approved for implementation.

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

There are no procedures that are required to comply with this rule. This emergency rule simply provides for a delay in the effective date of previously approved code revisions.

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

There are no professional skills needed to comply with these rules.

## Fiscal Estimate

The Uniform Dwelling Code has been in effect since 1980. There are no new regulation schemes contained in these proposed changes. Although there is a time lag or learning curve involved in any administrative rule change, we do not expect revenues to be affected. This emergency rule merely delays the effective date of the rules for 3 months, from 2/1/99 to 5/1/99.

## Notice of Hearing

### Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.24 (4), and 938.209 (2m) (b), Stats., the department of corrections will hold a public hearing on the emergency rule and proposed permanent rule relating to holding in municipal lockup facilities juveniles who are alleged to have committed a delinquent act.

### Hearing Information

February 15, 1999  
Monday  
10:00 A.M.

State Office Building  
141 N.W. Barstow Street, Room 120  
Waukesha, Wisconsin 53188

The public hearing site is accessible to people with disabilities.

### Analysis Prepared by the Department of Corrections

In response to Legislative Council Clearinghouse Report, the department made several changes to clarify the meaning of the proposed rule, specifically, the department made changes to ss. DOC 349.01(3), DOC 349.03(4m), and DOC 349.21(2). The department also modified the analysis to reflect the Clearinghouse Report comments.

The above changes are reflected in the following proposed rule:

1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility.

This order:

1. Adopts the statutory definitions of adult and juvenile.
2. Defines the terms "delinquent act" and "secure custody status".
3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.
6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.
7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.

8. Provides that the lockup facility administrator may authorize the holding of juveniles only if the department has approved the facility to hold juveniles.

9. Provides that the lockup administrator may authorize the holding of juveniles only if the administrator has developed and implemented policies and procedures to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.

10. Requires that the lockup administrator may authorize the holding of juveniles only if the administrator has developed and implemented policies and procedures to maintain juvenile records in a confidential manner and to keep juvenile records separate from adult records, in accordance with s. 938.396, Stats.

11. Provides that the lockup administrator may authorize the holding of juveniles who are alleged to have committed a delinquent act for investigative purposes.

12. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is exhibiting behavioral or mental problems, such as mental disturbance, suicidal tendency, or being under the influence of drugs or alcohol, the observations shall be at least once every 15 minutes at irregular intervals.

### Text of Rule

The proposed rule provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

**SECTION 1.** DOC 349.01 is renumbered DOC 349.01(1), and as renumbered is amended to read:

**DOC 349.01 Purpose and authority.** (1) The purpose of this chapter is to establish minimum standards for the design, construction and security of municipal lockup facilities, for maintaining sanitary and safe conditions in lockups and for the development of ~~inmate~~ written program standards for municipal lockup facilities relating to holding inmates and juveniles who are alleged to have committed a delinquent act. ~~The rules are promulgated under the authority of ss. 227.11(2)(a), 301.03(5), 301.37, and 302.365, Stats.~~

**SECTION 2.** DOC 349.01(2) and (3) are created to read:

DOC 349.01(2) The purpose of this chapter as it applies to juveniles is to protect the health, safety and welfare of juveniles held in municipal lockup facilities, and to ensure compliance with 42 USC 5601 to 5761 and 28 CFR Part 31.

(3) This chapter is promulgated under the authority of ss. 227.11(2)(a), 301.03(5), 301.36, 301.37, 302.365, and 938.209(2m), Stats.

**SECTION 3.** DOC 349.03(1m), (4m), and (10m) are created to read:

DOC 349.03(1m) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

DOC 349.03(4m) "Delinquent act" means an act committed by a juvenile, which is a violation of any state or federal criminal law, except as provided in ss. 938.17, 938.18, and 938.183, Stats., or which constitutes a contempt of court, as defined in 785.01(1), Stats., as specified in s. 938.355(6g), Stats.

DOC 349.03(10m) "Juvenile" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

DOC 349.03(14m) "Secure custody status" means the status of a juvenile in a lockup facility, which begins when the juvenile is placed in a cell, holding room, or other locked or secure room within the lockup until the juvenile is released from custody or is removed from the secure portion of a police station.

**SECTION 4.** DOC 349.04(1) is renumbered to DOC 349.04.

**SECTION 5.** DOC 349.04(2) is renumbered DOC 349.21(1), and as renumbered is amended to read:

DOC 349.21(1) A lockup may not be used for the secure detention of juveniles as defined under s. DOC 346.03(4), except a lockup may be used to hold juveniles who are alleged to have committed a delinquent act.

**SECTION 6.** DOC 349.16(1)(c) is renumbered DOC 349.16(1)(d), and as renumbered is amended to read:

DOC 349.16(1)(d) Statement of the procedure for notification of inmates and juveniles of each policy under par. (b) and (c).

**SECTION 7.** DOC 349.16(1)(c) is created to read:

DOC 349.16(1)(c) Statement of policies and procedures for detention of juveniles who are alleged to have committed a delinquent act, consistent with s. DOC 349.21.

**SECTION 8.** DOC 349.21(title) and (2) are created to read:

DOC 349.21 Detention of juveniles.

(2) A lockup administrator may authorize the holding of a juvenile who is alleged to have committed a delinquent act only if all of the following criteria are met:

(a) Except as provided in this section, the lockup facility meets the provisions of this chapter and has been approved by the department as a suitable place for holding juveniles in custody.

(b) The lockup administrator shall have developed and implemented policies and procedures which ensure sight and sound separation between juveniles and adult inmates in all areas of the lockup facility, including entrances, booking, intake, elevators, staircases, cells, holding rooms, and all other areas in which juveniles could have contact with adult inmates.

(c) The lockup administrator shall have established and implemented policies and procedure to ensure that juvenile records are maintained in a confidential manner and kept separate from adult inmate records in accordance with s. 938.396, Stats.

(3) The lockup administrator may authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for a period of time not to exceed 6 hours.

(4) The lockup administrator may authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for investigative purposes.

(5) Lockup facility staff shall physically observe each juvenile and document each observation. The observations shall be in accordance with the following schedule:

(a) Every juvenile at least once every 20 minutes at irregular intervals.

(b) Every juvenile exhibiting behavioral or mental problems, such as mental disturbance, suicidal tendency, or being under the influence of alcohol or drugs, at least once every 15 minutes at irregular intervals.

## **Fiscal Estimate**

The department anticipates an increase in workload associated with the review of municipal lockup facilities but is able to absorb the workload without additional resources.

This rule will not increase municipal governments' costs and may, in fact, reduce costs. The rule requires lockup facility staff to physically observe the juvenile at least every 20 minutes while in a lockup. Until the rule is in place, municipalities must continue to operate as before, with facility staff required to physically observe the juvenile 100% of the time the juvenile is on site. This often results in the arresting officer being pulled from patrol to supervise the juvenile. Allowing municipalities the leeway to assign a single staff person to observe a group of juveniles in lockup status and to free up officers to continue patrol assignments may reduce officer overtime costs.

## **Contact Person**

Marty Ordinans  
Office of Detention Facilities  
819 North 6<sup>th</sup> Street, Room 510  
Milwaukee, Wisconsin 53203-1675  
(414)227-5199

If you are hearing or visually impaired, do not speak English, or have 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 telephone 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 received at the above address no later than **February 22, 1999**, will be given the same consideration as testimony presented at the hearing.

## **Notice of Hearing**

### **Public Service Commission**

Notice is given that the Commission will hold a public hearing to obtain public comment about the proposed rules to create ch. PSC 117, relating to assignment of costs and opportunity sales on **February 11, 1999, at 10:00 a.m., in the Amnicon Falls Hearing Room at the Public Service Commission Office Building, 610 North Whitney Way, Madison, Wisconsin.** This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building.

The Commission does not discriminate on the basis of disability in the provision of programs, services or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact Neil Michek, Case Coordinator, at (608) 267-1209.

Anyone having questions regarding the hearing schedule in this notice may call Jeffrey Patzke, Hearing Examiner, at (608) 266-7165.

Other questions regarding this matter may be directed to Neil Michek, Case Coordinator, at (608) 267-1209.

## **Analysis and Summary**

Statutory Authority: ss. 196.02(1), (3), 196.03(5m), and 227.11

Statutes Interpreted: ss. 196.01(1), 196.02(1), 196.03(1), (5m), 196.37, and 196.645

This docket proposes to create ch. PSC 117, which establishes rules for the assignment of costs and treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve. The proposed rules may apply to sales to in-state customers that the utility does not have a duty to serve.

The proposed rules classify sales to customers that the public utility does not have a duty to serve as either opportunity sales or fully allocated sales. In general, opportunity sales are firm power sales that do not extend more than three years and that could be supplied from excess electric capacity which existed at the time the sales contract was signed, and that was reasonably expected to exist during the entire term of the contract. Fully allocated sales are firm power sales that do not meet the definition of an opportunity sale.

The proposed rules require the Commission to reflect the greater of the revenues received or the incremental costs associated with an opportunity sales as a revenue credit in its determination of a public utility's rates for retail electric service. The proposed rules require the Commission to assign a proportionate share of the public utility's total revenue requirement to each fully allocated sale when setting a public utility's rates for retail electric service.

## **History**

The ratemaking treatment of sales of electric energy and capacity by public utilities in this state to wholesale and retail customers



outside this state, whom the public utility does not have a duty to serve, has been an issue in past rate cases before the Commission. The ratemaking treatment of sales of electric energy and capacity by public utilities in this state to other wholesale customers within this state has also been an issue in past rate cases. In those rate cases, the issue has generally been described as opportunity sales treatment versus fully allocated sales treatment. In the past, the Commission has addressed the ratemaking treatment for these sales in individual rate cases based on the relevant facts ascertained from the hearings for those rate cases.

1997 Wisconsin Act 204, created s. 196.03(5m), Stats. It provides:

The commission shall promulgate rules establishing requirements and procedures for the commission, in setting rates for retail electric service, to reflect the assignment of costs and the treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve.

The nonstatutory provisions of 1997 Wisconsin Act 204 established a deadline that required that the Commission submit proposed rules to the Legislative Council Staff by November 1, 1998.

On June 2, 1998, the Commission approved and submitted, to the Department of Administration (DOA), its Statement of Scope, in compliance with s. 227.135, Stats., and its notice of intent to initiate rulemaking to create ch. PSC 117.

On July 14, 1998, the Commission approved and submitted its Amended Statement of Scope to DOA.

On September 2, 1998, the Commission issued a Notice of Investigation and Request for Comments that requested interested parties to provide written comments on draft language for the proposed rule attached to that Notice of Investigation and Request for Comments.

At its open meeting of October 29, 1998, the Commission considered the written comments of interested parties and a Commission staff memorandum summarizing the comments received. After considering such information, the Commission approved proposed rules to create ch. PSC 117.

On October 30, 1998, pursuant to s. 227.15(1), Stats., the Commission submitted the proposed rules to Legislative Council Staff. The Commission also submitted copies of the proposed rules to the Revisor of Statutes and DOA.

On November 30, 1998, the Commission received the Wisconsin Legislative Council Staff's Clearinghouse Report to Agency regarding the Commission's proposed rules. The Commission intends to address the comments of the Wisconsin Legislative Council Staff before submitting the proposed rules to the Wisconsin Legislature.

Anyone wishing to receive a copy of the proposed rules submitted by the Commission to Legislative Council Staff or the Legislative Council Staff's Clearinghouse Report to Agency should contact Neil Michek, Case Coordinator, at (608) 267-1209.

### **Fiscal Estimate**

The Commission anticipates that there will be no fiscal impact of the proposed rules on state or local units of government.

### **Initial Regulatory Flexibility Analysis**

The proposed rules would apply to public utilities as defined in s. 196.01(5), Stats. The proposed rules do not affect small businesses as defined in s. 227.114, Stats.

### **Environmental Analysis**

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

## **Notice of Hearing**

### **Public Service Commission**

Notice is given that a public hearing regarding an emergency rule revising ch. PSC 4, will be held beginning on **February 22, 1999, at 9:00 a.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin**, and continuing at times to be set by the presiding Hearing Examiner. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations may contact one of the persons listed below.

The Commission requests comments on the above issues. Any party who desires to file comments should submit an original and 15 copies as indicated below. Members of the public need only file an original. These comments must be received by **noon on February 26, 1999**. Comments by fax are due one day earlier. Fax filing cover sheets must state "Official Filing" and include the docket number and the number of pages (limit of 20 pages). File by one mode only.

Questions regarding the hearing may be directed to Commission attorney David Ludwig at (608) 255-5621 or to the Commission WEPA coordinator Kathleen Zuelsdorff at (608) 266-2730.

### **Comments**

Written comments are due by **Noon on Friday, February 26, 1999**

Faxed comments are due by **Noon on Thursday, February 25, 1999**

Address comments to:

Lynda L. Dorr, Secretary to the Commission  
Public Service Commission  
P.O. Box 7854  
Madison, WI 53707-7854  
Fax (608) 266-3957

At its open meeting on January 14, 1999, the Public Service Commission of Wisconsin (Commission) adopted an emergency rule to amend Table 1.a (intro.) and Table 2.a of ch. PSC 4, Wis. Adm. Code, relating to increasing the threshold from 20 megawatts (MW) to 100 MW at which the preparation of an environmental impact statement is mandatory for electric generating plant projects. Under s. 227.24(4), Wis. Stats., a hearing is necessary following adoption of an emergency rule.

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

Statutory authority: ss. 196.02(1) and (3), 227.11, and 227.24  
Statute interpreted: s. 1.11

The Wisconsin Environmental Policy Act (WEPA) requires that all state agencies carefully examine the environmental consequences of major actions that significantly affect the quality of the human environment. Part of that examination includes the preparation of an environmental impact statement (EIS).

The Commission has implemented rules to administer its obligations under WEPA. These rules identify certain projects for which preparation of an EIS is required. These projects are listed in the Commission's rules as "Type I actions." The rules also identify other projects, categorized as "Type II actions," for which preparation of an environmental assessment must be done. For Type II projects, production of an EIS is discretionary. Instead, an environmental assessment is completed for the purpose of providing information as to whether the project is actually a major action significantly affecting the quality of the human environment. If so, the Commission then prepares an EIS. The Commission also has discretionary authority to proceed directly with an EIS concerning a Type II project, without first completing an environmental assessment.

Wisconsin Electric Power Company (WEPCO) has forecast that it will need an additional 133 MW of electric generating capacity to

meet its projected summer load in the year 2000 while continuing to maintain an 18 percent reserve margin. WEPCO has indicated that this much additional power is not available on the market at a reasonable price. As a result, WEPCO is proposing to build a new 85 MW combustion turbine generating plant at its Germantown Power Plant site, to fulfill most of its projected need. WEPCO intends to submit an application for a Certificate of Authority (CA) with the Commission early in 1999, and is seeking a CA by June 30, 1999, so it will have sufficient time to construct the new unit and have it on-line by June 1, 2000.

Over the past twelve months, the Commission has received several project applications to build small generating plants, less than 100 MW. It is reasonably likely that more projects of a similar size will also be proposed in the near future, to meet forecasted load growth over the next few years in Wisconsin.

Under current Commission rules, a project to build a new generating plant of 20 MW or more would require completion of a draft EIS and a final EIS. This work could not be completed in time to complete the Commission's review of WEPCO's 85 MW project by June 30, 1999, or of other small generating projects on the same schedule. In order to ensure a reliable energy supply in 2000 and beyond for Wisconsin ratepayers, it is necessary to amend the Commission's rules to allow discretionary, rather than mandatory, production of an EIS for such projects. 1997 Wisconsin Act 204 amended state law governing the issuance of a CPCN. One of its changes involved increasing the threshold at which a generating plant project requires a CPCN, from 12 MW to 100 MW. It is reasonable to use the same 100 MW threshold in this emergency rule change.

### **Fiscal Estimate**

The Commission anticipates that there will be no fiscal impact of the proposed rules on state or local units of government.

### **Statement of Emergency**

In order to preserve the health, safety, and welfare of Wisconsin ratepayers by ensuring a reliable energy supply in 2000 and beyond, the Commission's review process of proposed new generating plants that are less than 100 MW in size must be amended. A revision is needed so the review process for such projects can be completed in time to allow construction of necessary projects, if approved, by June 1, 2000. Permanent rules cannot be adopted in time to affect the Commission's review period. An emergency rule is necessary to change the Commission's review process immediately.

### **Environmental Analysis**

This is a Type III action under s. PSC 4.10(3), Wis. Adm. Code. Since no unusual circumstances have come to the attention of the Commission which indicate that significant environmental consequences are likely, neither an environmental impact statement under s. 1.11, Wis. Stats., nor an environmental assessment is required.

## **Notice of Hearing**

### ***Veterans Affairs***

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **18th day of February, 1999 at 10:15 a.m., in the 8th floor board room at 30 West Mifflin Street in Madison, Wisconsin.**

### **Analysis Prepared by the Department of Veterans Affairs**

Statutory authority: s.45.35(3)

Statutes interpreted: ss.45.351(2), 45.356, 1995, Stats., 45.356 and 45.80, 1981, Stats.

The creation of VA 1.19 codifies the Department's internal loan write-off criteria. It will also assure that veterans have a full

opportunity to provide relevant information by subjecting the decisionmaking to the administrative hearing process.

### **Initial Regulatory Flexibility Analysis**

This rule is not expected to have an adverse impact on small businesses.

### **Fiscal Estimate**

A copy of the proposed rules and the full fiscal estimate may be obtained by writing to:

John Rosinski  
Wisconsin Department of Veterans Affairs  
P.O. Box 7843  
Madison WI 53707-7843  
(608) 266-7916

## **Notice of Hearing**

### ***Veterans Affairs***

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **18th day of February, 1999 at 10:30 a.m., in the 8th floor board room at 30 West Mifflin Street in Madison, Wisconsin.**

### **Analysis Prepared by the Department of Veterans Affairs**

Statutory authority: s.45.35(3) and 45.36

Statute interpreted: s.45.36

The amendment of s. VA 1.10 (7), will allow the department to release pertinent information from a veteran's file to a party attempting to collect a delinquent debt from the veteran. The information may only be released to a party under contract with the state, which would assure that the party maintain the confidentiality of the information.

### **Initial Regulatory Flexibility Analysis**

This rule is not expected to have an adverse impact on small businesses.

### **Fiscal Estimate**

A copy of the proposed rules and the full fiscal estimate may be obtained by writing to:

John Rosinski  
Wisconsin Department of Veterans Affairs  
P.O. Box 7843  
Madison WI 53707-7843  
(608) 266-7916

## **Notice of Hearing**

### ***Workforce Development***

### ***(Prevailing Wage Rates, Chs. DWD 290-294)***

Notice is hereby given that pursuant to ss. 66.293 (5) and 103.49 (3g), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of s. DWD 290.155, Wis. Adm. Code, on thresholds for application of the prevailing wage rates for state or local public works projects.

### **Hearing Information**

February 11, 1999  
Thursday  
9:00 - 10:00 a.m.

Room 400X, G.E.F. 1 Bldg.  
201 E. Washington Ave.  
MADISON, WI

The hearing will be held in an accessible building. If you have special needs or circumstances which may make communication or

accessibility difficult at the hearing, please call (608) 267-9403, at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio tape format will be made available on request to the fullest extent possible.

### **Analysis Prepared by the Dept. of Workforce Development**

Authority for rule: ss. 66.293 (5) and 103.49 (3g), Stats.

Statutes interpreted: ss. 66.293 (5) and 103.49 (3g), Stats.

The Wisconsin Department of Workforce Development proposes an order to amend s. DWD 290.155, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

The state prevailing wage laws require that, when a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under ss. 66.293 (5) and 103.49 (3g), Stats., and the current s. DWD 290.155, Wis. Adm. Code, the state prevailing wage rate laws do not apply to any "single-trade public works project" (a project involving the employment of only one trade) whose estimated cost is below \$32,000, and it does not apply to any "multi-trade public works project" whose estimated cost is below \$160,000.

Under ss. 66.293 (5) and 103.49 (3g), Stats., and s. DWD 290.15, the Department is required to adjust the dollar amounts of the threshold limits each year, in proportion to any change in construction costs since the limits were last determined. The proposed rule changes the threshold limits to \$33,000 for single-trade projects and \$164,000 for multi-trade projects, based on a 2.6% increase in the construction cost index between November 1997 and December 1998.

### **Text of Rule**

**SECTION 1.** DWD 290.155 is amended to read:

DWD 290.155 This chapter does not apply to any single-trade public works project for which the estimated cost of completion is

below ~~\$32,000~~ \$33,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$160,000~~ \$164,000.

### **Initial Regulatory Flexibility Analysis**

The proposed rule does not affect small business.

### **Fiscal Estimate**

Under the proposed rule, a state or local government with a public works project that costs more than \$32,000 but less than \$33,000 for a single-trade project or more than \$160,000 but less than \$164,000 for a multi-trade project will not be covered by the prevailing wage requirement.

### **Written Comments**

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. Persons unable to attend the hearing or those who wish to supplement their hearing testimony may submit written comments no later than **February 19, 1999**. Written comments will be given the same consideration as testimony presented at the hearings. Written comments may be submitted to:

Elaine Pridgen  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53708

Call (608) 267-9403 for questions on internal processing of the rule.

### **Contact Information**

For substantive questions concerning the proposed rule, call:

Gary Shealy  
Construction Wage Standards Section Chief  
Telephone (608) 266-3193

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

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

**Agriculture, Trade and Consumer Protection****(CR 98-97):**

Chs. ATCP 102 and 105 – Relating to motor vehicle fuel pricing.

**Financial Institutions (Savings Banks, Savings & Loans)****(CR 98-137):**

SS. DFI-SB 1.03 and 15.01 and DFI-SL 1.03 and 15.01 – Relating to codifying a policy authorizing savings banks and savings and loan associations to invest in limited liability companies.

**Natural Resources (CR 98-41):**

SS. NR 25.02, 25.06 and 25.09 – Relating to commercial fishing for alewife and smelt on Lake Michigan and Green Bay.

**Natural Resources (CR 98-92):**

SS. NR 10.104 (4) (b) and 10.28 (map) – Relating to deer management units 73C (Iowa and Grant counties) and 75 (Iowa and Lafayette counties).

**Natural Resources (CR 98-93):**

S. NR 50.23 – Relating to wildlife abatement and control grants for urban communities.

**Revenue (CR 98-184):**

SS. Tax 2.39 (3) (a) (intro.) and 2.395 – Relating to the use of an alternative apportionment method.

**Technical College System Board (CR 98-104):**

SS. TCS 6.05, 7.03 and 8.06 and ch. TCS 9 – Relating to procurement policies and procedures; district budget, audit and finance; contracts for services; and district reporting of student participation in compulsory school attendance, post-secondary options and technical preparation programs.

**Transportation (CR 98-143):**

S. Trans 510.05 – Relating to eligibility of Transportation Facilities Economic Assistance and Development program (TEA) projects.

**Transportation (CR 98-145):**

Ch. Trans 31 – Relating to excursion permits on state-owned rail lines.

**Transportation (CR 98-147):**

S. Trans 305.27 (3) (a) – Relating to vehicle restraining devices.

**Transportation (CR 98-153):**

SS. Trans 300.16 and 300.54 – Relating to school bus equipment standards.

**Transportation (CR 98-167):**

SS. Trans 200.01 and 200.055 – Relating to the location for placement of utility work signs.

**Transportation (CR 98-185):**

S. Trans 101.02 (1) (c) and (d) – Relating to demerit point assessment for operating after suspension and revocation offenses.

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## *ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU*

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*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.*

**Regulation and Licensing (CR 98-116):**

An order creating chs. RL 90 to 94, relating to the practice of  
massage therapy and bodywork.  
Effective 03-01-99.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the **January 31, 1999 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

**Accounting Examining Board (CR 98-91):**

An order affecting ss. Accy 3.05, 3.055 and 7.035, relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant (CPA) after December 31, 2000.

Effective 02-01-99.

**Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board (CR 98-30):**

An order affecting chs. A-E 1 to 10, relating to the registration and regulation of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors.

Effective 02-01-99.

**Commerce (CR 97-138):**

An order affecting chs. Comm/ILHR 20 to 23, relating to the Uniform Dwelling Code.

Effective 02-01-99.

**Health and Family Services (CR 98-108):**

An order repealing and recreating ch. HFS 119, relating to the Health Insurance Risk-Sharing Plan (HIRSP).

Effective 02-01-99.

**Health and Family Services (CR 98-134):**

An order affecting ch. HFS 124, relating to critical access hospitals.

Effective 02-01-99.

**Insurance, Commissioner of (CR 98-78):**

An order affecting ss. Ins 6.58 and 6.59 and ch. Ins 28, relating to the requirements for continuing education for insurance intermediaries.

Effective 02-01-99.

**Insurance, Commissioner of (CR 98-79):**

An order affecting ss. Ins 6.59 and 6.61 and ch. Ins 26, relating to the application process and requirements of prelicensing education for insurance agents.

Effective 02-01-99.

**Insurance, Commissioner of (CR 98-98):**

An order affecting ss. Ins 3.27, 3.39 and 3.46, relating to revising requirements for Medicare supplement policies to comply with recent federal and state laws.

Effective 02-01-99.

**Natural Resources (CR 98-23):**

An order affecting chs. NR 20 and 26 and ss. NR 21.04, 23.05 and 25.10, relating to recreational and commercial fishing regulations and fish refuges on the inland, outlying and boundary waters.

Effective 04-01-99.

**Natural Resources (CR 98-42):**

An order creating ch. NR 749, relating to the assessment and collection of fees for providing assistance on the remediation and redevelopment of contaminated lands.

Effective 02-01-99.

**Natural Resources (CR 98-45):**

An order affecting ss. NR 113.05, 113.07, 113.09 and 113.11, relating to septage management.

Effective 02-01-99.

**Natural Resources (CR 98-84):**

An order affecting chs. NR 12 and 19, relating to the wildlife damage abatement and claims program (WDACP).

Effective 02-01-99.

**Natural Resources (CR 98-86):**

An order amending s. NR 20.037 (2), relating to readjustment of daily bag limits for walleye in response to tribal harvest.

Effective 02-01-99.

**Regulation and Licensing (CR 98-107):**

An order creating ch. RL 8 and Appendix I of ch. RL 8, relating to the issuance and use of administrative warnings.

Effective 02-01-99.

**Regulation and Licensing (CR 98-132):**

An order affecting ss. RL 80.03, 83.01, 84.01 and 86.01 and chs. RL 81, 85 and 87, relating to real estate appraisers.

Effective 02-01-99.

**Transportation (CR 98-31):**

An order affecting ch. Trans 29, relating to accommodating utility facilities on state-owned railroad corridors.

Effective 02-01-99.

**Transportation (CR 98-105):**

An order affecting ss. Trans 325.02, 325.05, 326.01, 326.07, 328.03 and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Effective 02-01-99.

**Transportation (CR 98-111):**

An order creating ch. Trans 197, relating to charges for submission of proof of insurance.

Effective 02-01-99.

**Transportation (CR 98-121):**

An order creating s. Trans 231.01 (9) and repealing and recreating ch. Trans 233, relating to division of land abutting a state trunk highway or connecting highway.

Effective 02-01-99.

**Transportation (CR 98-122):**

An order creating ch. Trans 210, relating to the major highway project numerical evaluation process.

Effective 02-01-99.

**Transportation (CR 98-125):**

An order creating ch. Trans 57, relating to standards for airport siting.

Effective 02-01-99.

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## SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

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The following administrative rule revisions and corrections have taken place in January, 1999, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### REVISIONS

#### Accounting Examining Board:

##### Ch. Accy 3

- S. Accy 3.05 (1) (b)
- S. Accy 3.055 (1) and (3)

##### Ch. Accy 7

- S. Accy 7.035 (intro.) and (5)

#### Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board:

##### Ch. A-E 2

- S. A-E 2.01 (entire section)
- S. A-E 2.03 (2) (intro.)

##### Ch. A-E 3

- S. A-E 3.02 (entire section)
- S. A-E 3.03 (Figure)
- S. A-E 3.05 (4) and (9)
- S. A-E 3.06 (intro.) to (3)

##### Ch. A-E 4

- S. A-E 4.02 (entire section)
- S. A-E 4.03 (1) (a) to (d), (2) (a) to (e), (3) to (7) (a)
- S. A-E 4.07 (entire section)
- S. A-E 4.08 (1) (a), (3), (6) and (8)
- S. A-E 4.09 (entire section)

##### Ch. A-E 5

- S. A-E 5.02 (entire section)
- S. A-E 5.03 (1) (intro.) to (c)
- S. A-E 5.04 (1) (a), (b), (c), (e), (f), (6) and (9)
- S. A-E 5.05 (intro.) to (3)
- S. A-E 5.06 (2) (a), (b) and (d) and (5)

##### Ch. A-E 6

- S. A-E 6.02 (entire section)
- S. A-E 6.03 (1) (a) and (b)
- S. A-E 6.04 (intro.)
- S. A-E 6.05 (7) and (10)
- S. A-E 6.06 (intro.) to (3)

##### Ch. A-E 7

- S. A-E 7.05 (1) to (5) and (7)
- S. A-E 7.08 (3) (a) to (h)

##### Ch. A-E 8

- S. A-E 8.03 (2) (intro.) to (b), (3) (intro.) to (c), and (5) (intro.) to (d)
- S. A-E 8.04 (1) to (6)
- S. A-E 8.05 (1) (a) to (f)
- S. A-E 8.06 (1) and (2)
- S. A-E 8.07 (1)
- S. A-E 8.08 (1)
- S. A-E 8.09 (1)
- S. A-E 8.11 (intro.) to (4)

##### Ch. A-E 9

- S. A-E 9.02 (entire section)
- S. A-E 9.05 (1) (c), (3) and (8)

##### Ch. A-E 10

- S. A-E 10.02 (entire section)
- S. A-E 10.05 (1), (2) (a) and (b) and (8)

#### Commerce:

##### *(Uniform Dwelling, Chs. Comm 20-25)*

##### Ch. Comm 20

- S. Comm 20.07 (22), (27m), (39), (73r) and (74)
- S. Comm 20.09 (5) (b)
- S. Comm 20.24 (entire section)

##### Ch. Comm 21

- S. Comm 21.02 (1) (c) and (3) (d)
- S. Comm 21.03 (6m) (b)
- S. Comm 21.042 (5) (b) and (c)
- S. Comm 21.045 (3) (b)
- S. Comm 21.05 (3), (4) and (5)
- S. Comm 21.08 (5), (6) (b), (c), (d) and (e) and (7)
- S. Comm 21.17 (entire section)
- S. Comm 21.18 (2)
- S. Comm 21.20 (entire section)
- S. Comm 21.205 (entire section)
- S. Comm 21.22 (9)
- S. Comm 21.25 (Table 21.25-A)
- S. Comm 21.27 (3) (a)
- S. Comm 21.29 (12), (13) and (14)

##### **Ch. Comm 22 (entire chapter ILHR 22 was repealed and recreated to be ch. Comm 22)**

##### Ch. Comm 23

- S. Comm 23.02 (1) and (3) (a)
- S. Comm 23.065 (entire section)
- S. Comm 23.08 (2) (b) and (5)
- S. Comm 23.15 (2) (d)

**Health and Family Services:***(Health, Chs. HFS 110--)***Ch. HFS 119 (entire chapter)****Ch. HFS 124**

- S. HFS 124.02 (1m), (6), (10m), (12), (19) and (21)
- S. HFS 124.37 (entire section)
- S. HFS 124.38 (entire section)
- S. HFS 124.39 (entire section)
- S. HFS 124.40 (entire section)
- S. HFS 124.41 (entire section)

**Insurance, Commissioner of:****Ch. Ins 3**

- S. Ins 3.27 (5) (a)
- S. Ins 3.39 (3) (akm), (aks), (akv), (cm) and (iL), (4m) (a), (c) and (d), (5) (c), (k) and (m), (7) (b), (c) and (e), (9) (b), (21) (f), (25) (d) and (30) (i) and (34) and Appendix 1, 4 and 8
- S. Ins 3.46 (9) (b)

**Ch. Ins 6**

- S. Ins 6.58 (3) (intro.), (a) and (b)
- S. Ins 6.59 (4) (a), (am) and (as)
- S. Ins 6.61 (15)

**Ch. Ins 26**

- S. Ins 26.04 (1) and (2) (f)
- S. Ins 26.05 (5)
- S. Ins 26.06 (2) (b)
- S. Ins 26.07 (2)

**Ch. Ins 28**

- S. Ins 28.04 (1) (a), (b) and (d), (1m) and (2) (c)
- S. Ins 28.06 (6) (b) and (7) (b)
- S. Ins 28.07 (1) (b) and (2)
- S. Ins 28.09 (entire section)

**Natural Resources:***(Fish, Game, etc., Chs. NR 1--)***Ch. NR 12**

- S. NR 12.001 (2)
- S. NR 12.15 (11) and (13)
- S. NR 12.16 (2) (a) and (b)

**Ch. NR 19**

- S. NR 19.76 (1), (3m), (4), (4e), (4m), (7) and (8)
- S. NR 19.775 (entire section)
- S. NR 19.78 (1) and (3)
- S. NR 19.79 (2), (3), (4) and (5)
- S. NR 19.795 (entire section)
- S. NR 19.80 (1), (3), (4) (a) and (6)
- S. NR 19.81 (1) and (5)

**Ch. NR 20**

- S. NR 20.015 (7g)
- S. NR 20.02 (1) (d) and (e)
- S. NR 20.03 (1) (a), (c) and (d), (4) (g), (6) (d) and (8) (cm)
- S. NR 20.037 (2)

**Ch. NR 21**

- S. NR 21.04 (2) (b) and (c)

**Ch. NR 23**

- S. NR 23.05 (5) (d)

**Ch. NR 26**

- S. NR 26.08 (13)
- S. NR 26.09 (3) (am) and (i) and (34)
- S. NR 26.23 (3)

*(Environmental Protection--General, Chs. NR 100--)***Ch. NR 113**

- S. NR 113.05 (3) (d)
- S. NR 113.07 (1) (b), (c) and (d) and (3) (b)
- S. NR 113.11 (3) (intro.), (a), (b) and (c)

*(Environmental Protection--Investigation and Remediation, Chs. NR 700--)***Ch. NR 749 (entire chapter)****Regulation and Licensing:****Ch. RL 8 (entire chapter)****Ch. RL 80**

- S. RL 80.03 (8ag), (8ar), (10a), (10g) and (10r)

**Ch. RL 81**

- S. RL 81.03 (2) (b) and (e)
- S. RL 81.04 (entire section)
- S. RL 81.05 (entire section)

**Ch. RL 83**

- S. RL 83.01 (3) (e)

**Ch. RL 84**

- S. RL 84.01 (1), (6) (intro.), (7) (c) and (d) and (10)

**Ch. RL 85**

- S. RL 85.01 (1), (3) and (6)
- S. RL 85.02 (1), (8) (intro.), (9) (d) and (11)

**Ch. RL 86**

- S. RL 86.01 (2)

**Ch. RL 87**

- S. RL 87.01 (1)
- S. RL 87.02 (1) and (2) (intro.)



**Revenue:****Ch. Tax 11**

- S. Tax 11.56 (1) (a), (b) and (c), (2) (a), (3) (a), (b) and (c), (5), (6) (a), (b) and (c) and (7) (b) and (c)

**Transportation:****Ch. Trans 29**

- S. Trans 29.01 (entire section)
- S. Trans 29.03 (1), (4), (8), (18) and (19)
- S. Trans 29.04 (1) (b), (3) (a), (4) (a) and (b), (5) (b) and (c)
- S. Trans 29.05 (entire section)
- S. Trans 29.07 (2)
- S. Trans 29.08 (1)
- S. Trans 29.10 (1) (b) and (2) (b)
- S. Trans 29.11 (2)
- S. Trans 29.12 (1) (b), (2) (b), (4) (a) and (b), (5) (intro.) and (c)
- S. Trans 29.13 (2) (c)
- S. Trans 29.14 (1) (a)

**Ch. Trans 57 (entire chapter)****Ch. Trans 197 (entire chapter)****Ch. Trans 210 (entire chapter)****Ch. Trans 231**

- S. Trans 231.01 (9)

**Ch. Trans 233 (entire chapter)****Ch. Trans 325**

- S. Trans 325.02 (intro.) and (8)
- S. Trans 325.05 (entire section)

**Ch. Trans 326**

- S. Trans 326.01 (intro.) and (8)
- S. Trans 326.07 (entire section)

**Ch. Trans 328**

- S. Trans 328.03 (intro.), (1), and (6)
- S. Trans 328.04 (entire section)

**EDITORIAL CORRECTIONS**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

**Commerce:**

*(Uniform Dwelling, Chs. Comm 20–25)*

**Ch. Comm 20 was renumbered from ch. ILHR 20 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. Comm 21 was renumbered from ch. ILHR 21 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. Comm 23 was renumbered from ch. ILHR 23 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. Comm 24 was renumbered from ch. ILHR 24 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. Comm 25 was renumbered from ch. ILHR 25 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

**Health and Family Services:**

*(Health, Chs. HFS 110—)*

**Ch. HFS 124**

- S. HFS 124.08 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. HFS 124.17 (1) (b) and (c), (2) (b) and (4) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. HFS 124.30 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Insurance, Commissioner of:****Ch. Ins 3**

- S. Ins 3.09 (7m) (c) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. Ins 3.13 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. Ins 3.39 (4) (b) and (14) (j) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. Ins 3.43 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. Ins 6**

- S. Ins 6.40 (4) (a) and (12) (g) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. Ins 6.41 (3) (b) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Natural Resources:**

*(Fish, Game, etc., Chs. NR 1—)*

**Ch. NR 12 had corrections made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. NR 19 had corrections made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. NR 20 had corrections made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. NR 21 had corrections made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. NR 23**

- S. NR 23.02 (5) and (8) had corrections made under s. 13.93 (2m) (b) 7., Stats.

*(Environmental Protection—General, Chs. NR 100—)*

**Ch. NR 113 had corrections made under s. 13.93 (2m) (b) 7., Stats.**

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Accounting Examining Board

(CR 98–91)

Chs. Accy 3 & 7 – The education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after December 31, 2000.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

### 2. Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (CR 98–30)

A–E Code – The registration and regulation of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

### 3. Commerce (CR 97–138)

Chs. Comm/ILHR 20–25 – Uniform Dwelling Code.

Summary of Final Regulatory Flexibility Analysis:

Comments were received from approximately 50 small businesses during public hearings and the following comment period. The rules were revised extensively based on these comments. Approximately 50% of the Uniform Dwelling Code Council consists of small business representatives. This Council was intimately involved with drafting, revising, and ultimately approving these rules. There are no additional reporting costs or enforcement costs associated with these rules.

Summary of Comments:

The were reviewed by the Assembly Committee on Housing and the Senate Committee on Economic Development and Urban Affairs. No comments were received.

### 4. Health & Family Services (CR 98–134)

SS. HFS 124.02 and 124.37 to 124.41 – Critical access hospitals.

Summary of Final Regulatory Flexibility Analysis:

The rules will not directly affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. The rules apply to the Department and to nonprofit or public hospitals in rural areas of the state that wish to apply to the Department for designation as critical access hospitals and to operate as critical access hospitals.

Summary of Comments:

No comments were reported.

### 5. Health & Family Services (CR 98–108)

Ch. HFS 119 – Operation of the Health Insurance Risk–Sharing Plan (HIRSP).

Summary of Final Regulatory Flexibility Analysis:

The rule changes will not affect small businesses as “small business” is defined in s.227. 114 (1) (a), Stats. No insurer assessed to help finance HIRSP is a small business by that definition. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer’s assessment is to be determined and the same statute prescribes how the amount of the adjustment to the health care provider payment rates is to be determined.

Summary of Comments:

No comments were reported.

### 6. Insurance (CR 98–78)

Chs. Ins 6 & 28 – Requirements for continuing education for insurance agents.

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

### 7. Insurance (CR 98–98)

Ch. Ins 3 – Revising the requirements for medicare supplement policies to comply with recent federal and state laws and revising the definition of advertising for health insurance

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

**8. Insurance (CR 98-79)**

Chs. Ins 6 & 26 – Application process and requirements of preclicensing education for insurance agents

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

**9. Natural Resources (CR 98-23)**

NR 20 – Recreational and commercial fishing regulations and fish refuges on the inland, outlying and boundary waters

Summary of Final Regulatory Flexibility Analysis:

The proposed rules regulate individuals; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Committee on Environment and Energy. The Assembly Natural Resources Committee held a public hearing on the proposed rule on July 9, 1998. The Committee on Natural Resources did not make any recommendations regarding the proposed rule.

**10. Natural Resources (CR 98-86)**

S. NR 20.037(2) – Readjustment of daily bag limits for walleye in response to tribal harvest

Summary of Final Regulatory Flexibility Analysis:

The proposed revision affects individual sport anglers in the ceded territory.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. There were no comments.

**11. Natural Resources (CR 98-45)**

Ch. NR 113 -Septage management.

Summary of Final Regulatory Flexibility Analysis:

The proposed modifications will not have a significant economic impact on a substantial number of small businesses. These revisions serve to clarify a number of issues and provide greater flexibility in general to the small businesses that service septage systems.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. There were no comments.

**12. Natural Resources (CR 98-42)**

Ch. NR 749 – Assessment and collection of fees providing assistance on the remediation and redevelopment of contaminated lands.

Summary of Final Regulatory Flexibility Analysis:

The ch. NR 749 emergency fee rule has been in effect since September 19, 1998 and most of the submittals received thus far are case closeout requests, a majority of which are likely PECFA eligible. The Department of Commerce made the fees associated with case closeout requests and certain no-further-action determinations PECFA eligible expenses, which should significantly help PECFA sites defined as a small business.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. There were no comments.

**13. Regulation & Licensing (CR 98-107)**

Ch. RL 8 – The issuance and use of administrative warnings.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**14. Regulation & Licensing (CR 98-132)**

Chs. RL 80, 81, 83, 84, 85, 86 & 87 – Real estate appraisers.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**15. Revenue (CR 98-67)**

Ch. Tax 11 – The printing industry.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

**16. Transportation (CR 98-31)**

Ch. Trans 29 – Accommodating utility facilities on state-owned railroad corridors.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

**17. Transportation (CR 98-105)**

Chs. Trans 325, 326 & 328 – Motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

**18. Transportation (CR 98-111)**

Ch. Trans 197 – Charges for submission of proof insurance.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will not have any adverse effect on small businesses, except to the extent that s. 342.42, as created by 1997 Wis. Act 27, imposes fees on businesses that submit more than 1000 insurance filings to the Department in a year and do not use electronic systems to make the filings.

Summary of Comments:

No comments were reported.

**19. Transportation (CR 98-121)**

Chs. Trans 231 & 233 – The division of land abutting a state trunk highway or connecting highway.

Summary of Final 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.

Summary of Comments:

No comments were reported.

**20. Transportation (CR 98-122)**

Ch. Trans 210 – Major highway projects numerical evaluation process.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

**21. Transportation (CR 98-125)**

Ch. Trans 57 – Standards for airport siting.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

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## *EXECUTIVE ORDERS*

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

**Executive Order 357.** Relating to Designation of a Valued Historical Landmark and an Architectural Masterpiece.

**Executive Order 358.** Relating to Proclamation of an Energy Emergency.

**Executive Order 359.** Relating to a Finding of a Pork Producing Industry Emergency Situation.

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