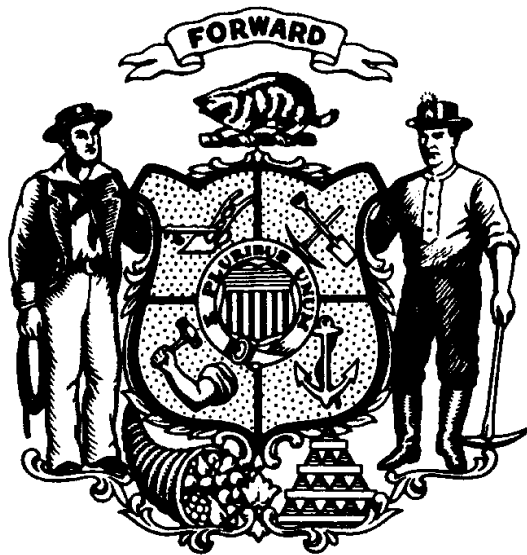


WISCONSIN ADMINISTRATIVE REGISTER

No. 518



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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (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

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
Hearing Date: March 3, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Uniform Dwelling, Chs. Comm 20-25)

Rules adopted revising **Chs. Comm 20,21,22 and 23**, relating to energy efficiency in one- and 2-family dwellings.

Finding of Emergency

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

The rule change that was to go into effect on February 1, 1999 consists of a complete rewrite of chapter Comm 22, which relates to energy efficiency in one- and 2-family dwellings, as well as miscellaneous changes to chapters Comm 20, 21 and 23. The department planned for a lead time of approximately 2 months between the time the code was made available and the code effective date. Because of difficulties in preparing and printing the code, the anticipated lead time could not be achieved. Several constituent groups, including builders, inspectors, and the Uniform Dwelling Code Council have asked for extra time to become familiar with the changes, once the complete code is made available. If this is not done, a great deal of confusion and economic hardship could result for builders, as well as homeowners. Enforcement of the new requirements could vary greatly from one municipality to the next.

This emergency rule delays the effective date of the proposed changes to chs. Comm 20, 21, 22 and 23 from February 1, 1999 to May 1, 1999.

Publication Date: January 23, 1999
Effective Date: February 1, 1999
Expiration Date: July 1, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce & Natural Resources

(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 Departments of Commerce and Natural Resources find 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 Dates: January 1 & February 5, 1999

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

Hearing Dates: March 11 and 25, 1999

[See Notices this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

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

1. 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

2. Rules adopted revising **ch. Comm 113**, relating to the annual allocation of volume cap on tax-exempt private activity bonds.

Finding of Emergency & Rule Analysis

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

Several areas in the State of Wisconsin have recently experienced severe economic distress due to large plant closings which have put hundreds of Wisconsin residents out of work. As a result of two large paper mills being shut down a year ago, 1997 Wisconsin Act 237

created s. 560.147, Stats., authorizing the Rapid Response Fund within the Wisconsin Development Fund. The fund is part of the Rapid Response Initiative, which assists areas affected by these and future closings. Commerce is now proposing as part of this initiative a Rapid Response Set Aside within the volume cap allocation process which will enable businesses in these distressed areas to obtain the financing they need to make the necessary capital investments to create and retain jobs. Several projects are pending in that need this change in order to move forward with their plans. Allocation of volume cap is in highest demand in the spring and summer due to the construction cycle. The Rapid Response set-aside must be in place as soon as possible in order for projects to receive allocation and begin construction as soon as possible. Jobs cannot be created or retained until projects go forward.

Publication Date: January 15, 1999

Effective Date: January 15, 1999

Expiration Date: June 14, 1999

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

Hearing Dates: March 1 and 3, 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

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
Hearing Dates: March 1, 2 and 3, 1999

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the

reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

Publication Date: January 20, 1999
Effective Date: January 20, 1999
Expiration Date: June 19, 1999
Hearing Dates: March 16 & 19, 1999
 [See Notices this Register]

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
Hearing Date: March 3, 1999

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

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 criminogenic 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 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
Hearing Date: March 11, 1999
 [See Notices this Register]

2. Rules adopted creating **ch. HFS 114**, relating to neonatal intensive care unit training grants.

Exemption From Finding of Emergency

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking

procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

Analysis Prepared by the Department of Health and Family Services

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

Publication Date: January 21, 1999
Effective Date: January 21, 1999
Expiration Date: June 20, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Insurance

1. 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
Hearing Date: March 12, 1999

2. Rules adopted amending s. **Ins 3.39 (34)(b)1. and 2., 3.b., and 6.**, relating to guarantee issue eligibility for Medicare Supplement insurance.

Finding of Emergency

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:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance Commissioners) model Medicare Supplement regulations. In order to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

Publication Date: January 28, 1999
Effective Date: February 1, 1999
Expiration Date: July 1, 1999
Hearing Date: March 3, 1999

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 creating s. NR 20.33 (5), relating to special closure of the sturgeon spearing season if harvest reaches or exceeds 80% of the total allowable harvest.

Finding of Emergency

The department of natural resources finds that an emergency exists and rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter water clarity in Lake Winnebago has been improving steadily over the last decade at a rate faster than anticipated, which has substantially increased the potential for overharvest of sturgeon by spearers. Even with the new harvest restrictions passed in 1996, exceptionally clear water during the 1998 spearing season resulted in a total harvest of 2,051 fish, which was in excess of our total allowable harvest goals. An emergency order is needed to prevent overharvest of sturgeon during the 1999 season while permanent rules are being developed for implementation in the year 2000.

Publication Date: February 5, 1999
Effective Date: February 5, 1999
Expiration Date: July 5, 1999
Hearing Date: March 16, 1999
 [See Notices this Register]

EMERGENCY RULES NOW IN EFFECT

Public Instruction

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

EMERGENCY RULES NOW IN EFFECT

Public Service Commission

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 Dates: January 13 & 14, 1999

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 developed 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 of 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

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

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

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

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

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 5 – Relating to issuance, renewal and revocation of credentials.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to codify new provisions relating to the issuance, renewal, denial, suspension and revocation of licenses, certifications and registrations issued by the Department when the applicant or licensee does not provide required information or is delinquent in tax payments or child support payments.

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:

There are no existing policies relevant to the rule. The new policy will be the denial of the issuance or renewal of a license, certification or registration when the applicant does not provide a social security number or federal employer identification number or is delinquent in the payment of taxes or child support. Also, the new policy will include the restriction, suspension or revocation of a license, certification or registration when the licensee is delinquent in the required payments. The alternative of not adopting the new policy results in not complying with the new statutory provisions.

Statutory authority for the rule:

Section 101.02 (20), Stats., as created by 1997 Wis. Act 237 and section 101.02 (21), Stats., as created by 1997 Wis. Act 191.

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

The Department estimates that it will take approximately 60 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject:

Ch. Comm 83 – Relating to private sewage systems.

Description of policy issues:

Description of the objective of the rule:

On December 8, 1998 the Joint Committee for Review of Administrative Rules (JCRAR), adopted the following motion:

“Pursuant to s. 227.26 (2) (d), Stats., and for the reasons set forth in s. 227.10 (4) (d) 6., Stats., the Joint Committee for Review of Administrative Rules suspend the first two sentences of s. Comm 83.03 (2), Wis. Adm. Code.” Motion carried: **Rule suspended.**

The rule revision being proposed is to promulgate only this specific amendment to ch. Comm 83, private sewage systems. The revision relates to the suspension of the mandate that when public sewer becomes available, a private sewage system shall be ordered abandoned and the property shall hook up to the public sewer for wastewater treatment.

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

a) Existing policies. The suspended rule usurped the authority granted to cities, villages, towns and town sanitary districts under s. 281.45, Stats., relative to public sewer connections.

b) New policies. The Department’s position is that pursuant to s. 281.45, Stats., municipalities and sanitary districts have specific authority and responsibility relative to public sewer connections and are in the best position to determine the availability of, and require connection to, public sewers.

c) Policy alternatives. The alternative of not revising the code may result in continued usurping of local decision-making authority.

Statutory authority for the rule:

The Department authority for private sewage systems is given in s. 145.02 (2), Stats.

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

The following is the estimated work time that staff will be involved in this proposed rule revision:

	<u>Hours</u>
Code topics research, language	—
Technical/Specialty support	20
Hearings, responses, revisions, etc.	60
Administrative and support	10
<u>Environmental assessment</u>	<u>10</u>
TOTAL	100

Military Affairs (Wisconsin Emergency Management)

Subject:

Ch. ERB 6 – Relating to reimbursement procedures for regional and local hazardous materials response teams.

Description of policy issues:

The funding source for the emergency response supplement was changed from the state transportation fund to general purpose revenue. In the event that a response team recovers costs after reimbursement under ch. ERB 6, the money would be deposited in the transportation fund. This rule change would reflect the statutory change and deposit the money in general purpose revenue (GPR).

This rule change will not affect existing policy.

Statutory authority for the rule:

Sections 166.20 (2) (b) and (bm), 166.215 (2), 166.22 (3m) and (4) and 227.11 (2) (a), Stats.

Anticipated time commitment:

15 hours.

Natural Resources (Water Supply, Chs. NR 800—)

Subject:

S. NR 812.05 – Relating to injection of substances into drillholes.

Description of policy issues:

Current s. NR 812.05 prohibits the injection of substances into drillholes except for those activities specifically exempted in the rule; however, there are many construction practices where injection occurs. This rule revision would authorize those practices deemed not a threat to groundwater quality. Those interested in this issue include environmental groups and people involved with the construction trade.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Many activities occur, such as the injection of grout to stabilize a foundation wall or the placement of a telephone pole in a drillhole, which, strictly speaking, violate the current s. NR 812.05. This proposed revision would allow common practice not deemed a threat to groundwater quality to continue.

Statutory authority for the rule:

Section 281.17 (8), Stats., and s. 1421, Federal Safe Drinking Water Act (42 U.S.C. s. 300h)

Anticipated time commitment:

The anticipated time commitment is 67 hours. Two public hearings will be held in July, 1999 at Madison and Wausau.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On February 8, 1999, the Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. ATCP 10 and 11, Wis. Adm. Code, relating to paratuberculosis (Johne's disease).

Agency Procedure for Promulgation

A hearing on the proposed rule is required. The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. Eleven hearings are scheduled for the following dates: March 16, March 17, March 23, March 24, March 30 and March 31, 1999 at various locations in Wisconsin. The Division of Animal Health is primarily responsible for promulgation of this rule.

Contact Information

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

Lynn Jarzombek
Division of Animal Health
Telephone (608) 224-4883

or

Attorney James Matson
Telephone (608) 224-5022

Commerce

Rule Submittal Date

On February 5, 1999, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects ch. Comm 7, relating to explosive materials.

Agency Procedure for Promulgation

A public hearing is required. Public hearings will be held on March 15, 1999 at Madison, on March 16, 1999 at Wausau and on March 17, 1999 at Appleton. The agency unit responsible for the promulgation of the proposed rule is the Division of Safety and Buildings.

Contact Information

Ronald Acker
Telephone (608) 267-7907

Commerce

Rule Submittal Date

On February 11, 1999, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects ch. Comm 46, relating to the Petroleum Environmental Cleanup Fund interagency responsibilities.

Agency Procedure for Promulgation

A public hearing is required, and will be held on March 25, 1999 at Madison. The agency unit responsible for the promulgation of the proposed rule is the Bureau of PECFA.

Contact Information

William J. Morrissey
Telephone (608) 266-7605

Health and Family Services

Rule Submittal Date

Notice is hereby given that on February 9, 1999 the Wisconsin Department of Health and Family Services submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 227.11 (2) , Stats., and s. 9122 (3ty) (c) of 1997 Wis. Act 27.

The proposed rule order creates ch. HFS 114, relating to neonatal intensive care unit training grants.

Reason for rules, intended effects, requirements:

These are all-new rules that establish criteria and procedures for awarding up to 10 grants a year in state fiscal years 1999 and 2000 to hospitals with neonatal intensive care units to pay for a particular type of specialized training and on-site consultation for staff of a hospital's neonatal intensive care unit.

The Department is directed by s. 9122 (3ty) (b) of 1997 Wis. Act 237 to distribute \$170,000 each of those years to pay for the training and consultation.

Section 9122 (3ty) (c) of 1997 Wis. Act 237 makes rules a condition of awarding the grants.

The Department on January 21, 1999, published emergency rules. The proposed permanent rules at this point are identical to the emergency rules.

Agency Procedure for Promulgation

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

Contact Information

Laurie Tellier
Division of Public Health
(608) 267-9662

Health and Family Services**Rule Submittal Date**

Notice is hereby given that on February 12, 1999 the Wisconsin Department of Health and Family Services submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 46.973 (2) (c), 51.42 (7) (b) and 51.45 (8) and (9), Stats.

The proposed rule order affects ch. HFS 75, relating to standards for community substance abuse prevention and treatment services.

Reason for rules, intended effects, requirements:

This order renumbers, updates and otherwise revises the Department's rules for certification of community alcohol and drug abuse (a. k. a. substance abuse) prevention and treatment programs. The current rules are in ch. HFS 61, which also includes rules for community mental health programs and community developmental disabilities programs. The revised rules make up a separate chapter, ch. HFS 75, which is only for AODA community programs. In the revised rules, a certified service-providing agency or facility is called a "service" rather than a "program."

There are 819 (3/98) community substance abuse (AODA) services certified by the Department.

The principal revisions to the rules are the following:

- 1) Addition of a requirement that level of care placement decisions be made using the Department's Uniform Placement Criteria (WI-UPC) or the placement criteria developed by the American Society of Addiction Medicine (ASAM) or other similar placement criteria approved by the Department.
- 2) Addition of a requirement for clinical supervision of counselor staff by certified clinical supervisors. This is seen by BSAS staff as an important means to upgrade and standardize service delivery.
- 3) Expansion and strengthening of the program/service evaluation subsection to make sure that there is more attention to identifying client progress and treatment outcomes.
- 4) Revision of the list of types of certified services (programs) that make up the community substance abuse service system.
- 5) Expansion of standards for what are called methadone treatment programs in the current rules (that is, programs that use methadone in the treatment of narcotic addiction), with the new material drawn largely from federal regulations (21 CFR Pt 291), in expectation that the federal government will be depending more on the states for regulation. In the revised rules, the service is called narcotic treatment service for opiate addiction. The Department's Bureau of Substance Abuse Services is the State Methadone Authority, as designated by the Governor under 21 CFR 291.505 (9).

Forms:

HFS 75.03 (2) (b) Application for Certification (under revision)

HFS 75.03 (24) Client/Patient Death Determination (HSS-54)

Agency Procedure for Promulgation

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

Contact Information

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

Vincent Ritacca
Division of Supportive Living
Telephone (608) 266-2754

Natural Resources

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

Rule Submittal Date

Notice is hereby given that on February 10, 1999 the Wisconsin Department of Natural Resources submitted a proposed rule order [Board Order No. WM-1-99] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 10, 15 and 27, relating to hunting and trapping regulations.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 12, 1999.

Contact Information

Lisa Johnson
Bureau of Wildlife Management
Telephone (608) 266-1877

Natural Resources

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

Rule Submittal Date

Notice is hereby given that on February 10, 1999 the Wisconsin Department of Natural Resources submitted a proposed rule order [Board Order No. FH-6-99] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 20, 21, 23 and 26, relating to fishing regulations for inland, outlying and boundary waters and fish refuges.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 12, 1999.

Contact Information

Tim Simonson
Bureau of Fisheries Management and Habitat Protection
Telephone (608) 266-5222

Natural Resources

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

Rule Submittal Date

Notice is hereby given that on February 10, 1999 the Wisconsin Department of Natural Resources submitted a proposed rule order [Board Order No. SS-10-99] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects s. NR 150.03 (8) (a) 1. and ch. NR 170, relating to power plant siting.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 16, 1999.

Contact Information

Steve Ugoretz
Bureau of Integrated Science Services
Telephone (608) 266-6673

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

Notice is hereby given that on February 10, 1999 the Wisconsin Department of Natural Resources submitted a proposed rule order [Board Order No. RR-18-99] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 169, relating to dry cleaner environmental response program.

Agency Procedure for Promulgation

A public hearing is required and public hearings will be held on March 19, 22, 24 and 25, 1999.

Contact Information

Robin Schmidt
Bureau of Remediation and Redevelopment
Telephone (608) 266-2111

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

Notice is hereby given that on February 10, 1999 the Wisconsin Department of Natural Resources submitted a proposed rule order [Board Order No. AM-58-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 409, 439 and 484, relating to incorporating federal nitrogen oxides (NO_x) emission requirements into the Department's air pollution control program.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 25, 1999.

Contact Information

Al Hubbard
Bureau of Air Management
Telephone (608) 266-3450

Public Defender**Rule Submittal Date**

On February 12, 1999, the Office of the State Public Defender submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates s. PD 6.04 (5), relating to multiple appointments on the same case.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 26, 1999. The organizational unit primarily responsible for promulgation of the rule is the SPD's Office of Legal Counsel.

Contact Information

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

Gina Pruski
Deputy Legal Counsel
Telephone (608) 266-6782

Public Instruction**Rule Submittal Date**

On February 12, 1999 the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 3, relating to teacher education program approval and licenses.

Agency Procedure for Promulgation

A public hearing is required. Public hearings will be held on March 8, 9, 10, 16, 17, 18 and 23, 1999 at various locations in Wisconsin. The Division for Learning Support: Instructional Services is primarily responsible for promulgation of this rule.

Contact Information

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

Peter Burke, Director
Teacher Education, Licensing and Placement
Telephone (608) 266-1879

Revenue**Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on February 10, 1999, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends ss. Tax 11.26, 11.32, 11.41 and 11.83, relating to the sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles.

Agency Procedure for Promulgation

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

Contact Information

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

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

NOTICE SECTION

Notice of Hearing

Agriculture, Trade and Consumer Protection

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

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules (proposed chs. ATCP 29 and 40, Wis. Adm. Code) relating to agricultural chemical cleanup surcharge fees.

Hearing Information

The hearing will be held on:

March 1, 1999	Board Room
Monday	DATCP
1:00 p.m. – 4:00 p.m.	2811 Agriculture Dr.
6:00 p.m. – 8:00 p.m.	MADISON, WI

Written Comments

The public is invited to attend the hearing and comment on the proposed rule. The Department also invites comments on the regulatory flexibility analysis that accompanies the rule. Following the public hearing, the hearing record will remain open until **March 9, 1999**, for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by calling 608/224-4523. Copies will also be available at the public hearing.

An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **February 24, 1999**, either by writing to Karen Ayers, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearing.

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

Statutory authority: ss. 93.07 (1) and 94.73 (15), Stats.

Statutes interpreted: ss. 94.64, 94.681, 94.685, 94.703, 94.704 and 94.73, Stats.

This rule extends, for 2 more years, a moratorium on agricultural chemical license fee surcharges used to fund the Department's agricultural chemical cleanup program. The cleanup fund is currently running a substantial surplus. The moratorium applies to license fee surcharges paid by pesticide manufacturers, pesticide dealers and pesticide commercial applicators. It also applies to license and tonnage fee surcharges paid by fertilizer manufacturers.

Under s. 94.73 (15), Stats., the Department must adjust license fee surcharges to maintain a cleanup fund balance (at the end of each fiscal year) of at least \$2,000,000 but not more than \$5,000,000. The cleanup fund balance currently exceeds the \$5,000,000 maximum target level. In order to remedy the current surplus, the Legislature suspended surcharge collections for 2 years.

The Department projects that the cleanup fund balance will remain above the \$5,000,000 maximum target level even after the legislatively-imposed surcharge moratorium expires. Based on projections of a continuing surplus, this rule extends the surcharge moratorium for an additional 2 years. When the moratorium expires, surcharges will again take effect at previously established

levels. Moratorium expiration dates vary, depending on current fee collection effective dates and annual licensing cycles.

This rule incorporates, without change, current fertilizer license and tonnage fees established by statute, except that this rule extends for 2 years the current statutory moratoriums on fertilizer license and tonnage fee surcharges used to fund the agricultural chemical cleanup fund.

Fiscal Estimate

See page 26 of the Mid-February, 1999 *Wisconsin Administrative Register*.

Initial Regulatory Flexibility Analysis

See page 26 of the Mid-February, 1999 *Wisconsin Administrative Register*.

Notice of Hearings

Agriculture, Trade and Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed Department rule related to paratuberculosis (Johne's disease) which affects all breeds of cattle (beef and dairy) and goats (proposed chs. ATCP 10 and 11, Wis. Adm. Code).

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **April 9, 1999**, for additional written comments.

Preceding each public hearing, the Department's Division of Animal Health along with the Wisconsin Veterinary Medical Association will provide a presentation on Johne's disease, including a review of the proposed rule and a question and answer period.

Copies of Rule and Contact Information

A copy of the proposed rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, P. O. Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4872. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **March 5, 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. Handicap access is available at the hearings.

Hearing Information

Eleven hearings are scheduled:

March 16, 1999	Holiday Inn
Tuesday	(Junction
Johne's Disease	Hwys. 41
Presentation,	and 151)
10:30 a.m. –	625 West Rolling
11:30 a.m.	Meadows Dr.
Public Hearing,	Fond du Lac, WI
11:30 a.m. –	
1:00 p.m.	

March 16, 1999
Tuesday
Johne's Disease
Presentation,
7:30 p.m. –
8:30 p.m.
Public Hearing,
8:30 p.m. –
10:00 p.m.

Sister Bay Room
Holiday Inn
-- Airport
(Junction
Hwys. 41
and 172)
2580 Ashland Ave.
Green Bay, WI

March 24, 1999
Wednesday
Johne's Disease
Presentation,
8:00 p.m. –
9:00 p.m.
Public Hearing,
9:00 p.m. –
10:00 p.m.

Auditorium
First Floor
Barron Co.
Courthouse
330 E. LaSalle
Barron, WI

March 17, 1999
Wednesday
Johne's Disease
Presentation,
10:30 a.m. –
11:30 a.m.
Public Hearing,
11:30 a.m. –
1:00 p.m.

Craig Center
Rock County
4H Fairgrounds
Randall St.
Janesville, WI

March 30, 1999
Tuesday
Johne's Disease
Presentation,
10:30 a.m. –
11:30 a.m.
Public Hearing,
11:30 a.m. –
1:00 p.m.

County Board
Meeting Room
Monroe Co.
Courthouse
112 South Court St.
Sparta, WI

March 17, 1999
Wednesday
Johne's Disease
Presentation,
7:30 p.m. –
8:30 p.m.
Public Hearing,
8:30 p.m. –
10:00 p.m.

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

March 30, 1999
Tuesday
Johne's Disease
Presentation,
7:30 p.m. –
8:30 p.m.
Public Hearing,
8:30 p.m. –
10:00 p.m.

Pippin Conference Ctr.
Melvill Hall
(formerly the
Administration Bldg.)
UW-Richland Campus
1200 Hwy 14 West
Richland Center, WI

March 23, 1999
Tuesday
Johne's Disease
Presentation,
10:30 a.m. –
11:30 a.m.
Public Hearing,
11:30 a.m. –
1:00 p.m.

Blue Top Restaurant
3425 Church St.
(Hwy Bus 51)
Stevens Point, WI

March 31, 1999
Wednesday
Johne's Disease
Presentation,
10:30 a.m. –
11:30 a.m.
Public Hearing,
11:30 a.m. –
1:00 p.m.

Youth and Ag. Ctr.
Grant Co.
Fairgrounds
916 E. Elm St.
Lancaster, WI

March 23, 1999
Tuesday
Johne's Disease
Presentation,
8:00 p.m. –
9:00 p.m.
Public Hearing,
9:00 p.m. –
10:00 p.m.

Best Western
Midway Hotel
(Hwy 51,
Exit 190)
2901 Martin Ave.
Wausau, WI

March 24, 1999
Wednesday
Johne's Disease
Presentation,
10:30 a.m. –
11:30 a.m.
Public Hearing,
11:30 a.m. –
1:00 p.m.

Department of
Agriculture, Trade
and Consumer
Protection
3610 Oakwood Hills
Parkway
Eau Claire, WI

Written comments will be accepted until April 9, 1999.

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

Statutory authority: ss. 93.07 (1) and 95.195 (2)

Statute interpreted: s. 95.195

This rule repeals and recreates current rules related to paratuberculosis in cattle and goats. Paratuberculosis is commonly known as Johne's disease.

Background

Johne's disease is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

There is, at the present time, no test which can definitively rule out Johne's disease in an individual animal or herd of animals. However, annual herd test results can help buyers and sellers assess

the risk that symptom-free animals may be infected with Johne's disease. Herd testing can also help herd owners manage or eliminate the disease in their herds.

Currently, under s. 95.195, Stats., there is in every contract for the sale of cattle and goats an "implied warranty" that the animals are free of Johne's disease. If an animal is infected with Johne's disease at the time of sale, the buyer may hold the seller liable under this "implied warranty" (even if the seller did not know that the animal was infected) unless the seller does one of the following prior to sale:

- Complies with testing and disclosure requirements prescribed by the Department. (Under current Department of Agriculture, Trade and Consumer Protection (DATCP) rules, the seller must conduct annual herd tests and disclose test results to the buyer.)
- Gives the buyer a written disclaimer that the animals are being sold "as is," without any Johne's disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the "as is" disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne's disease testing. Current DATCP rules also discourage testing by prohibiting the sale of confirmed Johne's disease reactors, even when the seller discloses that the animals are reactors.

Herd testing is critical for the control of Johne's disease. If herd owners do not test, this serious disease will continue to spread. The Department does not propose to mandate statewide herd testing for Johne's disease (no other state has taken that step). However, the Department proposes the following steps to encourage more voluntary herd testing by sellers who wish to avoid liability under the "implied warranty" law:

- First, the Department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne's disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.
- Second, the Department proposes legislation to eliminate the "as is" disclaimer option under s. 95.195, Stats. Such legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the "implied warranty" on one hand, and testing and disclosure on the other.

Rule Contents: General

Under this rule, a sale of cattle or goats is exempt from the "implied warranty" under s. 95.195, Stats., if the seller discloses all of the following to the buyer, in writing:

- The current Johne's disease classification of the herd from which the animals are sold. Herd classifications (see below) are based on annual herd tests. If the source herd is not tested annually, the herd is automatically classified "Maximum risk for Johne's disease."
- That the animals are confirmed Johne's disease reactors, if that is the case.

Under this rule, a sale of cattle or goats is also exempt from the "implied warranty" under s. 95.195, Stats., if the animals are being sold directly to slaughter. (No testing or disclosure is required; however, if an animal has been tested and is a reactor, it must be permanently marked.)

Test Eligible Animals

Under this rule, all bulls over 3 years old are considered "test eligible" animals. All other cattle over the average age of second lactation in the herd are considered test eligible. All goats over the age of 18 months are considered test eligible.

Annual Herd Test

An annual herd test may be a "whole herd test" or a "random herd test." A "whole herd test" must include every test eligible animal in the herd. In a "random herd test," an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals in the herd, whichever group is larger.

The date of the first annual herd test under this rule establishes an "anniversary date" for each subsequent annual herd test. Each year's test must be conducted on the "anniversary date," or within 2 months before or after the "anniversary date."

Herd Classifications

Under this rule, every herd of cattle and goats is classified in one of the following categories, in ascending order of risk for Johne's disease (herd owners who manage for Johne's disease can improve their classification over time):

- *Johne's preventive management level A.* The Department will classify a herd as "Johne's preventive management level A" if an annual herd test (random or whole herd) reveals no Johne's disease reactors. The Department will add a star to a herd's "Johne's disease preventive management level A" classification for each consecutive year the herd maintains that classification.
- *Johne's preventive management level B.* The Department will classify a herd as "Johne's preventive management level B" if fewer than 5% of the animals in a whole herd test are Johne's disease reactors.
- *Johne's preventive management level C.* The Department will classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15% of the animals in a whole herd test are Johne's disease reactors.
- *Johne's preventive management level D.* The Department will classify a herd as "Johne's preventive management level D" if any of the following apply:

➤ A random herd test reveals one or more Johne's disease reactors, unless the Department classifies the herd as "Johne's preventive management level B" or "C" based on a follow-up whole herd test.

➤ A whole herd test reveals more than 15% Johne's disease reactors.

- *Maximum risk for Johne's disease.* A herd is automatically classified "Maximum risk for Johne's disease," without any action by the Department, if the herd owner fails to complete a timely annual herd test. "Maximum risk for Johne's disease" is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne's disease.

This rule does not require a herd owner to have an annual herd test, or to have the herd classified based on herd testing. But if a herd owner does **not** have the herd classified based on annual herd tests that comply with this rule, the herd is automatically classified "Maximum risk for Johne's disease."

A herd owner is not required to disclose the herd classification when selling animals from the herd. But if the herd owner does **not** disclose the herd classification, the owner sells the animals subject to an "implied warranty." If it turns out that the animals were infected with Johne's disease at the time of sale, the seller may then be liable to the buyer for any damages which result. There is no "implied warranty" if the herd owner discloses the herd classification at the time of sale, or sells the animals directly to slaughter.

A herd owner may elect to test (and cull) animals without having the test results used for herd classification purposes. However, all Johne's disease test results must be reported to the Department, and all confirmed Johne's disease reactors must be permanently identified as such. No confirmed reactors may be moved or sold (even to slaughter) unless they are identified as reactors.

Commingle Animals: Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. However, if animals from herds with different classifications are temporarily assembled for sale or shipment (other than for a consignment sale), the least desirable herd classification applies to all of the temporarily assembled animals.

Notice to Herd Owner

Whenever the Department classifies a herd based on an annual herd test, the Department must promptly provide the herd owner with all of the following information in writing:

- The individual test results for each animal included in the herd test. Test results must be identified with each animal's official individual identification.
- The herd classification. A herd classification takes effect when the Department issues the classification notice, and immediately supersedes any prior classification.

Test Procedure

The person conducting an annual herd test must be an accredited veterinarian, or an employe of the Department or USDA-APHIS. The person must select the test group, determine the type of test to be performed, collect an appropriate sample from each test animal, identify each sample with the animal's official individual identification and sample collection date, and transmit the samples to the testing laboratory.

Annual herd test samples must be tested by the Department, the federal bureau, or a laboratory approved by the Department or the federal bureau. The laboratory must use one of the following tests:

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.
- The fecal culture test.
- Another test approved by the Department.

Test Results

A laboratory performing Johne's disease tests must report the test results to the Department within 10 days. The Department will not use the test results to classify a herd unless the herd owner asks the Department to do so. If the herd owner asks the Department to classify the herd based on the test results (and if the test procedure complies with this rule), the Department will classify the herd within 30 days.

Johne's Disease Reactors

Under this rule, an animal is a Johne's disease reactor if any of the following applies:

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)
- It tests positive on the fecal culture test.
- It tests positive on any other test which the Department approves.

Current rules prohibit the sale of Johne's disease reactors (except to slaughter). This rule permits the sale of Johne's disease reactors if all of the following apply:

- ✓ The seller discloses to the prospective buyer in writing, prior to sale, that the animals are reactors.
- ✓ The animals are permanently identified as reactors.

Under this rule, an accredited veterinarian must permanently identify a confirmed Johne's disease reactor, even if the herd owner does not sell the animal or sells it only to slaughter. The veterinarian must identify the animal within 30 days after the animal tests positive on an ELISA or fecal culture test. If the herd owner wishes to confirm a positive ELISA test with a fecal culture, the veterinarian must collect the fecal sample within 30 days. If the fecal culture also tests positive, the veterinarian must then identify the animal as a Johne's disease reactor within 30 days.

Herd Vaccination

Under this rule, no person may vaccinate cattle for Johne's disease except under a herd agreement with the Department. The Department may not authorize vaccination in any herd in which the percentage of reactors in the last annual whole herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

Misrepresenting Herd Classification

Under this rule, no person may misrepresent the classification of the herd from which cattle or goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied

warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats. The Department may investigate alleged misrepresentations.

Department Disclosure of Herd Classification

Under this rule, the Department may disclose a herd classification to a 3rd party with the written authorization of the herd owner.

Interstate Sales

Wisconsin's implied warranty law and this rule apply to cattle and goats from outside Wisconsin that are sold in this state (subject to Wisconsin contract law). Wisconsin's implied warranty law and this rule do not apply to sales of cattle and goats that occur outside this state (subject to another state's contract law).

Delayed Effective Date

This rule has a delayed effective date of July 1, 2000. The delayed effective date is intended to give producers time to complete testing and receive classifications before the new disclosure provisions take effect.

Fiscal Estimate

The complete fiscal note is available on request.

For purposes of this fiscal estimate, it is estimated that Johne's disease testing in Wisconsin will increase by 20,000 tests in SFY 2001 (State Fiscal Year 2001) due to the proposed rule.

Revenue:

Presently, the Wisconsin Animal Health Laboratory charges a user fee for Johne's disease tests. The user fee offsets the cost of performing the tests. An increase of 20,000 tests would generate an estimated PR fund revenue increase of \$105,300.

Expense:

The Wisconsin Animal Health Laboratory will incur \$105,300 of salary, fringe and supply expense in performing an additional 20,000 Johne's disease tests. Additionally, the Department will expend \$15,500 of GPR funds to support the Johne's disease program purposed in this rule. Veterinary staff time will increase to cover classifying the additional herds testing for Johne's disease and to provide education to the state's producers and private veterinarians on Johne's disease and the proposed rules. Program assistant staff time will increase due to the increased testing, with increased computer entry of test information, herd classification certificate issuing, correspondence and filing.

Initial Regulatory Flexibility Analysis

General Overview

Johne's disease (paratuberculosis) causes significant financial losses for Wisconsin's cattle (both dairy and beef) and goat producers. In the past, the producers have been unable to make informed judgments about the risk of Johne's disease in the animals they purchase because the information was not available. This rule establishes a voluntary program designed to permit producers who want to make informed decisions to obtain the necessary information. It is also designed to permit people who will be selling cattle or goats to provide beneficial information to potential buyers, avoid the threat of an implied warranty claim, and fairly represent the extent to which his animals have tested negative for Johne's disease.

Section 95.195, Stats., establishes an implied warranty that animals sold are free of Johne's disease and gives the purchaser a cause of action against a seller if the animal is infected unless the seller has either sold the animal "as is" or has complied with the Department's rules for avoiding the implied warranty. This rule modifies existing rules by implementing a herd risk based classification and exempting the animal seller from the implied warranty if the seller discloses the herd risk classification in writing prior to the sale. (The Department intends to seek legislation to eliminate the "as is" loophole in the implied warranty statute since it is no longer needed to permit sellers to sell animals without testing or being subject to the implied warranty provision.)

Since this program is totally voluntary, it won't have any impact on farmers or producers unless the person chooses to participate. If

the person chooses to participate in the program the rule will have effects. Its primary impact is to give people more choices and to provide information to assist them in making those choices.

Cattle and Goat Sellers

All herds of cattle and goats will be classified as to risk level for Johne's disease based on test results. If the herd owner chooses not to test, or not to request classification on the basis of a test, the herd will be classified "Maximum risk for Johne's disease." If the herd owner tests and requests classification the Department will classify the herd "Johne's Preventative Management Level A, B, C, or D" based on the prevalence of disease in the animals and the number of animals tested.

The most desirable classification "Johne's Preventative Management Level A" may be obtained by testing 30 animals or 10% of the herd, whichever is a larger number. If all of the animals test negative, the herd will be classified at the "A" level. If any animal tests positive, the herd will be classified at the "D" level. Levels "B" and "C" will only be assigned if the whole herd was tested and will reflect the prevalence of test positive animals in the herd.

This program specifically permits the herd owner to have tests performed without being used for classification. Therefore, the owner may have a random test (30 animals or 10% of the herd) performed without seeking classification. If no positive animals are identified, the owner may seek classification and will receive the "A" classification. If there are positive animals identified, the owner may undertake an immediate whole herd test to determine whether he can be classified upward to a level "B" or level "C." It also permits the owner to undertake a whole herd test and cull approach and once all positive animals are culled the herd would be eligible for the "A" classification. In this way, this rule increases the choices available to the herd owners and permits the herd owner to attain the most desirable classification in a relatively short time.

Herd owners who choose to participate in the program will incur the costs of testing at least 30 animals annually. However, since the program is voluntary, the owner would be able to weigh that cost against the benefits to be gained by having information on the status of the herd.

Cattle and Goat Purchasers

At the present time, the person who plans to purchase cattle or goats has no way of determining the risk that the purchased animals are infected with Johne's disease. Producers who have experienced the financial impact of having their herds become infected with Johne's disease and have incurred the expense required to clean up their herds will frequently seek to purchase animals which they have reason to believe have a lower risk of being infected. This rule provides a way for those producers to make an informed judgment about which animals have the lower risk.

Since the program is completely voluntary, no producer is required to purchase animals of any specific classification. For example, if the purchaser already has a herd which is classified as a level "B" herd and adds animals from a level "C" herd, the combined herd retains its "B" classification (although the "C" animals do not achieve the "B" classification until they have been in the herd for 120 days).

The producer can decide for himself or herself what level risk the producer is willing to undertake and refuse to purchase animals with a level of risk higher than the level the producer is willing to accept. If purchasers produce more demand for low risk animals than sellers are putting on the market, the purchaser will decide for himself or herself whether to bid up the price to get the more desirable animals or to accept higher risk animals at a price the purchaser finds more acceptable. The effect of the rule is to create options for the purchaser, and to provide information the purchaser can use to evaluate the risk associated with purchasing specific animals.

Veterinarians

The third group of small business people potentially affected by this rule are veterinarians. They may experience an increase in their business associated with additional testing to be performed. The rule does not change reporting requirements for the veterinarians.

Nor does it require veterinarians to expend additional money for the supplies and services they utilize to provide their service to the producers, except that the veterinarian may need to obtain a new supply item to be used for permanently identifying reactor animals.

Notice to Dept. of Commerce

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

Notice of Hearings

Commerce

(Explosive Materials, Ch. Comm 7)

Notice is hereby given that pursuant to s. 101.15 (2) (e), Stats., the Department of Commerce announces that it will hold public hearings on proposed rules affecting ch. Comm 7, relating to explosive materials.

Hearing Information

The public hearings will be held as follows:

Date and Time:

Location:

March 15, 1999
Monday
10:00 a.m.

Conference Room 3B
WHEDA Building
201 W. Washington Ave.
Madison, WI

March 16, 1999
Tuesday
10:30 a.m.

Room E102
Northcentral Tech. College
1000 W. Campus Dr.
Wausau, WI

March 17, 1999
Wednesday
10:30 a.m.

Room B115
Fox Valley Tech. College
1825 N. Bluemound Dr.
Appleton, WI

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 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.

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 rule-making will remain open until **March 31, 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.

Analysis of Proposed Rules

Statutory authority: Section 101.15 (2) (e), Stats.

Statute interpreted: Section 101.15 (2) (e), Stats.

The Division of Safety and Buildings within the Department of Commerce is responsible for adopting and enforcing rules to effect the safety of mines, explosives, quarries and related activities. Ch. Comm 7 contains safety and health standards for the manufacture, storage, handling and use of explosive materials, including the regulation of blasting resultants, in public buildings and at places of employment.

The proposed rules consist of a complete update of ch. Comm 7 in order to bring the chapter into conformance with current technology, federal standards, and nationally recognized practices published by the Institute of Makers of Explosives. The following is a summary of the major changes being proposed in ch. Comm 7.

1. Clarifying that ch. Comm 7 applies in public buildings and at places of employment. [Comm 7.01]
2. Updating the definitions for consistency with nationally recognized terminology. [Comm 7.04]
3. Requiring notification within 24 hours to local authorities, of the initial storage of explosive materials and of any subsequent changes in the location of that storage. [Comm 7.20 (1)]
4. Eliminating the requirement for obtaining a storage permit from the Department of Commerce for storing explosive materials in a community. [Comm 7.20 (2)]
5. Revising the transportation requirements and clarifying that the requirements apply only to on-site transportation of explosive materials. [Comm 7.25]
6. Updating the rules for blasting with non-electric systems by revising the requirements for blasting with cap and fuse, and adding new requirements for blasting with detonating cord and shock tube. [Comm 7.32]
7. Updating the rules for blasting with electric systems by revising the wording and separation distances to be consistent with nationally recognized terminology and practices. [Comm 7.33 and Tables 7.33-1 to 7.33-7]
8. Clarifying the requirements relating to surface blasting warnings and guarding of access roads to the blast area. [Comm 7.34 (1)]
9. Updating the minimum information required to be contained in each blasting log. [Comm 7.37 (3)]
10. Removal of the rules relating to smokeless propellants. [Comm 7.55 and 7.56]
11. Revising the rules for preblasting surveys and decreasing the required distance to determine the affected dwellings that would be offered a preblasting survey. [Comm 7.61]
12. Removing the rules for the maximum peak particle velocity limits and the scaled-distance equation as options for establishing the maximum ground vibration, and requiring the maximum ground vibration to be established in accordance with the currently optional blasting-level chart. [Comm 7.64 (4)]
13. Requiring a seismographic record to be made for all blasts. [Comm 7.64 (4)]

Copies of Rule and Contact Information

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.

Environmental Analysis

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.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules:
Any business involved with the manufacture, storage, handling or use of explosive materials will be affected by the rules.
2. Reporting, bookkeeping and other procedures required for compliance with the rules:
The rules require reporting the initial storage of explosive materials, and any subsequent change in the location of that storage, to the local fire department and local law enforcement agency.
3. Types of professional skills necessary for compliance with the rules:

There are no types of professional skills necessary for compliance with the rules.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing ch. Comm 7. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing ch. Comm 7. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Local municipalities may voluntarily enforce ch. Comm 7, and they have the authority to offset any costs by charging appropriate fees.

Notice of Hearing

Commerce

(PECFA Interagency Responsibilities Ch. Comm 46)

Notice is hereby given that pursuant to ss. 101.143 and 101.144, Stats., the Department of Commerce announces it will hold a public hearing on proposed rules and current emergency rules relating to Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Hearing Information

March 25, 1999
Thursday
Commencing at 9:30 a.m.

3rd Floor
Conference Room 3B
201 W. Washington Ave.
Madison, WI

Interested persons are invited to appear at the hearing and present comments on the proposed and emergency 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 rulemaking will remain open until **April 8, 1999**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing.

This hearing will be 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.

Analysis of Proposed Rules

Statutory Authority: ss. 101.143 and 101.144

Statutes Interpreted: ss. 101.143 and 101.144

Under sections 101.143 and 101.144, Wisconsin Statutes, 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. In response to that directive, an Emergency Rule was adopted, and became effective on January 1, 1999. The permanent rule proposed now is identical to the Emergency Rule.

A copy of the proposed rules may be obtained without cost from Diane Ploessl, Department of Commerce, P.O. Box 7838, Madison,

Wisconsin 53707, telephone (608) 261-7726, or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Department of Commerce proposes an order to create Comm 46.

Initial Regulatory Flexibility Analysis

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

The rule will impact small businesses that are or will be conducting remediations of petroleum product contaminations.

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

The provisions of the rule will not create any new record keeping or procedures for individuals conducting petroleum remediations. The rules simply codify the processes used by the Departments of Natural Resources and Commerce in their administration of the remediation efforts.

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

The rules will not require any professional skills for compliance.

Fiscal Estimate

The department is promulgating the rule, as directed by the Joint Committee for Review of Administrative Rules, to implement new provisions in the Memorandum of Understanding that controls the working relationship between the Departments of Natural Resources and Commerce in the administration of the PECFA program. At this point in time, the longer term fiscal impact of some of these changes cannot be determined.

Notice of Hearings

Wisconsin Emergency Management

The Wisconsin Emergency Management has promulgated s. ERB 1.04(8) as an emergency rule and is promulgating s. ERB 1.04(8) as a permanent rule at the same time.

Hearing Information

These public hearings are being held in order to comply with administrative rule procedures which require a public hearing to be held on emergency rules and proposed rules. Therefore,

Notice is hereby given that pursuant to ss. 166.20(2)(a), (b), (5)(a)3, 227.11(2)(a), Stats., and interpreting ss. 166.20(5)(a) 3, Stats., Wisconsin Emergency Management will hold public hearings to consider s. 1.04(8) relating to inventory reporting for Petroleum Marketing Facilities under the Emergency Planning and Community Right-to-Know Act. The public hearings are scheduled as follows:

March 16, 1999 Tuesday Beginning at 10:00 a.m.	Dept. of Military Affairs Auditorium 2400 Wright St. Madison, WI 53707
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March 19, 1999 Friday Beginning at 1:00 p.m.	Marathon Co. Courthouse Room 149 500 Forest St. Wausau, WI 54403
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The hearing sites are fully accessible to people with disabilities

Analysis Prepared by Wisconsin Emergency Management

Statutory Authority: s. 166.20(2)(a), (b), (5)(a)3, 227.11(2)(a)

Statutes Interpreted: s. 166.20(5)(a)3
Plain Language Summary

Wisconsin Emergency Management proposes an order to create ERB 1.04 (8) relating to inventory reporting for petroleum marketing facilities.

This rule specifies that reporting thresholds for all hazardous substances at retail gas stations be 10,000 pounds. This will maintain reporting thresholds as they currently exist. Hazardous materials information, including information pertaining to gasoline and diesel fuel in amounts of 10,000 pounds or more, will continue to be provided to local fire departments, the Local Emergency Planning Committee, and to Wisconsin Emergency Management. This will also insure the opportunity for the continued orderly submission of section 311-312 reporting information in 1999.

Text of Rule

SECTION 1. ERB 1.04(8) is created to read:

ERB 1.04 (8) An owner or operator of a petroleum marketing facility shall submit a tier two inventory form, a site plan, and inventory form fee statement annually on or before March 1 if any of the following apply. The appropriate inventory form fee shall be due on or before the due date established by the division.

(a) The facility is required to submit an inventory form under s. 166.20 (5) (a) 3, Stats.

(b) The facility meets or exceeds the 10,000 pound reporting threshold for gasoline.

(c) The facility meets or exceeds the 10,000 pound reporting threshold for diesel fuel.

Written Comments

Persons making oral statements are requested to submit their comments in writing either at the time of the hearing or no later than **March 19, 1999**. Persons unable to make an oral statement may submit written comments which will have the same weight and effect as oral statements presented at the hearings. All written comments should be submitted to William Clare, Wisconsin Emergency Management, 2400 Wright Street, P.O. Box 7865, Madison, WI 53707-7865 and must be received no later than March 19, 1999. Persons with questions regarding this proposed rule may contact William Clare at the above address or phone 608-242-3220.

Initial Regulatory Flexibility Analysis

Section ERB 1.04(8) will not change reporting requirements for small business as defined in s. 227.114(1). Section ERB 1.04(8) will maintain existing reporting thresholds for gasoline and diesel fuel when located in underground storage tanks at retail gas stations. The proposed rule does not impose any fees on small business. Petroleum Marketing facilities are exempt from paying EPCRA inventory reporting fees for gasoline and diesel fuel. Additionally, facilities with fewer than 10 full-time equivalent employees are exempt from paying EPCRA inventory reporting fees in Wisconsin.

Fiscal Estimate

This rule change will not have a fiscal effect on the regulated community or small business.

Notice of Hearing

Employe Trust Funds

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule, which creates s. ETF 20.35, Wis. Adm. Code, relating to dividing WRS accounts and annuities per Qualified Domestic Relations Orders (QDROs) in accordance with the provisions of s. 227.16 (1), Stats. The public hearing will be held on **Thursday, March 11, 1999 at 1:00 PM in room 2A, 801 West Badger Road, Madison, Wisconsin.**

The public record on this proposed rule making will be held open until 4:30 p.m. on Friday, March 12 to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda

Owen, Department of Employee Trust Funds, P.O. Box 7931, Madison, Wisconsin 53707-7931.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Effective April 28, 1990, for marriages that are terminated on or after that date, up to 50% of a participant's WRS account or annuity could be awarded to an alternate payee (the former spouse). Upon receipt of a Qualified Domestic Relations Order (QDRO), the Department creates a separate account or annuity for the alternate. The account or annuity division is effective on the decree date (the first of the month in which the marriage is legally terminated).

Effective May 2, 1998, the law changed to allow the Department to divide a WRS account or annuity per a QDRO for marriages terminated between January 1, 1982 and April 27, 1990. These QDROs do not apply to payments made before the date the Department receives the QDRO, although the value of the account is still divided as of the decree date. The participant's account status may have changed between the decree date and the date the Department receives the QDRO; for example, the participant may have been actively employed under the WRS on the decree date, but may have been retired for several years by the time ETF receives the QDRO. When the participant status has changed since the decree date, the prospective division of the account or annuity is based on the current account status, but the value of the benefits awarded to the alternate payee is based on a percentage (specified in the QDRO) of the value of the account or annuity as of the decree date.

The purpose of this rule is to clarify how the Department will apply a QDRO to a participant's account or annuity, and how the participant's and alternate payee's benefits will be calculated to assure that to the extent possible, the total actuarial value of their benefits will be equal to the actuarial value of the participant's benefits had the account or annuity not been divided per a QDRO.

General Summary of Rule.

This proposed rule further clarifies how the Department will determine whether a QDRO meets the criteria in s. 40.02 (48m), Stats., and if it is necessary to reject a QDRO that does not meet the statutory requirements, the Department will delay processing any application to close the account with a lump sum benefit for 30 days after the QDRO is rejected to give the parties an opportunity to submit a corrected QDRO. It specifies the procedures that the Department will follow if the participant fails to submit the military service certification timely as required by statute, and that the participant may not receive credit for the portion of any active military service that the alternate payee would have received if the participant had submitted the certification timely. Except for certain specified exceptions, once the Department has divided a participant's account according to a QDRO, any subsequent corrections or adjustments to the participant's service, contributions or earnings will be applied only to the participant's account; the alternate payee's account will not be adjusted.

This rule would also specify how retirement, accelerated payment and disability annuities would be divided to assure that the benefit liabilities of the fund after the division are equal to the benefit liability that would have existed if the annuity were not being divided. For marriages terminated on or after April 28, 1990, all account and annuity divisions are retroactive to the decree date. However, for marriages terminated between January 1, 1982 and April 27, 1990, although the portion of the account or annuity being awarded to the alternate payee is based on the account value as of the decree date, the division applies to future payment only. This may result in a different percentage of a current annuity being awarded to the alternate payee than is specified in the QDRO. For example, the participant may have continued to work under the WRS after the decree date, but the alternate payee cannot receive a benefit from service or contributions accrued after the decree date. Consequently, the percentage of the participant's current benefit actually granted to the alternate payee may be a lower than the percentage of the account (as of the decree date) awarded to the alternate payee in the QDRO.

Authority for Rule: s. 227.10

Statutes Interpreted: ss. 40.02 (48m) and 40.08 (1m)

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this rule making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

Initial Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Copies of Rule and Contact Person

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule-making, please call Linda Owen, Rules Coordinator, at (608) 261-8164.

Notice of Hearing

Health & Family Services (Health, Chs. HFS 110-)

Notice is hereby given that, pursuant to s. 149.143(2)(a)2., 3., and 4. and (3), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of ss. HFS 119.07(6)(b)(intro.) and Medicare Plan tables and 119.15, Wis. Adm. Code, relating to operation of the Health Insurance Risk-Sharing Plan (HIRSP), and the emergency rules now in effect on the same subject.

Hearing Information

**March 11, 1999
Thursday
Beginning at 1:00 p.m.**

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

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

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. 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 policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending two sections of the HIRSP program administrative rules:

1. It is updating 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.

2. It 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.

The emergency rules were published to take effect on January 1, 1999.

Contact Person

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

Randy McElhose
Division of Health Care Financing
P.O. Box 309, Room 238
Madison, WI 53701-0309
(608) 267-7127 or,
if you are hearing impaired,
(608) 266-1511 (TTY)

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

Written comments on the proposed rules received at the above address no later than **March 18, 1999** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This order updates the Health Insurance Risk-Sharing Plan (HIRSP) premium rates effective January 1, 1999 for HIRSP policies that provide supplemental health insurance coverage for persons eligible for Medicare, and adjusts total HIRSP insurer assessments and provider payment rates for the 6-month period beginning January 1, 1999. This is being done to cover Plan costs.

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

Initial Regulatory Flexibility Analysis

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

Notice of Hearing

Natural Resources

Notice is hereby given that pursuant to ss. 227.26(2)(b), Stats., interpreting ss. 101.144, 292.11 and 292.31, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. RR-61-98(E) pertaining to the creation of ch. Comm 46. This emergency order was published by the Department on February 5, 1999. Pursuant to s. 101.144(3m), Stats., the Departments of Commerce and Natural Resources entered into a Memorandum of Understanding regarding the remediation of sites with petroleum contamination. The Department of Commerce has jurisdiction for low and medium priority sites, and the Department of Natural Resources has jurisdiction for high priority sites and those with other types of contamination.

The Joint Committee for the Review of Administrative Rules adopted a resolution directing the Departments of Commerce and Natural Resources to promulgate a joint emergency rule incorporating those portions of the Memorandum of Understanding related to the classification of contaminated sites. Prior to the

publication of an emergency rule, the Joint Committee for Review of Administrative Rules directed the departments to incorporate additional features into the rule. The emergency rule incorporating all the provisions required by the Joint Committee for Administrative Rules was published by the Department of Commerce as ch. Comm 46 effective January 1, 1999. At its January 27, 1999 meeting, the Natural Resources Board also adopted ch. Comm 46.

Hearing Information

March 11, 1999
Thursday
at 1:00 p.m.

Room 511, GEF #2
101 S. Webster St.
Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dale Ziege at (608) 267-7533 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the emergency rule may be submitted to Mr. Dale Ziege, Bureau of Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707 no later than **March 12, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [RR-61-98(E)] may be obtained from Mr. Ziege.

Fiscal Estimate

Background

1995 Act 27 divided the responsibility for overseeing the remediation of sites with petroleum contamination between the Department of Commerce (COM) and the Department of Natural Resources (DNR). This legislation gave jurisdiction for low and medium priority sites to COM and jurisdiction for high priority sites and those with other types of contamination to DNR. It also directed the agencies to enter into a Memorandum of Understanding (MOU) that establishes: 1) the respective functions of the two departments in administering the remediation of these sites; 2) procedures to ensure that remedial actions for these sites are consistent with actions taken under the Spill Law; and 3) the procedures, standards and schedules for determining whether sites are classified as high, medium or low priority.

On September 16, 1998 the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on a number of items, including implementation of the MOU between COM and DNR. At that hearing, JCRAR adopted a resolution directing COM and DNR to promulgate a Joint Emergency Rule, within 30 days, incorporating those portions of the MOU related to the classification of contaminated sites. Since this rule merely codifies existing procedures, no additional workload is created by its promulgation.

Fiscal Impact to State Government

The creation of ch. Comm 46 does not create additional regulatory workload. No state fiscal impact is anticipated as a result of the creation of ch. Comm 46.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.014, 29.192(3), 227.11(2)(a) and 227.24, Stats., interpreting s. 29.192(3), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-9-99(E) relating to special closure of the sturgeon spearing season. This emergency order took effect on February 5, 1999. The emergency

order will allow the Department to limit the sturgeon spearing harvest during the February 1999 season to no more than 400 adult female sturgeon, 400 juvenile female sturgeon OR 2150 male sturgeon. This emergency order establishes Department authority to close the sturgeon spearing season within 24 hours if actual harvest of sturgeon meets or exceeds 80% of the total allowable harvest.

Hearing Information

March 16, 1999
Tuesday
at 7:00 p.m.

Winnebago County
Coughlin Center
625E. Co. Trunk Hwy. Y
Oshkosh

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Simonson at (608) 266-5222 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the emergency rule may be submitted to Ron Bruch, Department of Natural Resources, P.O. Box 565, Oshkosh, WI 54903 no later than **March 18, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [FH-9-99(E)] may be obtained from Tim Simonson, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearings

Natural Resources

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

Notice is hereby given that pursuant to ss. 23.09(2), 29.014(1), 29.191, 29.192, 29.041 and 227.11(2), Stats., interpreting ss. 23.09(2), 29.014(1), 29.191 and 29.192, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20, 21 and 26, Wis. Adm. Code, relating to fishing regulations for inland, outlying and boundary waters and fish refuges. The proposed rules:

1. Remove the sunset for the early catch and release season for trout, remove the restriction that requires the use of barbless hooks and prohibit the use and possession of any baits other than artificial lures while fishing on trout streams during the early catch and release season.
2. Close most waters to shovelnose sturgeon fishing and reduce the daily bag limit for shovelnose sturgeon from 25 to 3 on those waters remaining open.
3. Establish a daily bag limit of 10 for panfish on Lake Galilee, Ashland county.
4. Establish an 18 inch minimum length limit and a daily bag limit of one for largemouth and smallmouth bass on Cable and Wiley lakes, Bayfield county.
5. Place Webb lake, Burnett county in the southern bass zone.
6. Establish a daily bag limit of 10 for panfish on Long, Herde and Dark lakes, Chippewa county.
7. Allow trolling on all waters of Dane, Grant, Iowa, Lafayette and Richland counties.
8. Remove the minimum length limit for walleye on Beaugard lake, Douglas county and establish a daily bag limit of 5, but only one may be longer than 14 inches.

9. Establish catch and release only for largemouth and smallmouth bass, muskellunge, northern pike and walleye, sauger and hybrids on Twin Valley lake, Iowa county.

10. Establish a daily bag limit of 10 panfish on Cox Hollow lake, Iowa county and eliminate the daily bag limit for panfish on Twin Valley lake, Iowa county.

11. Establish a daily bag limit of 10 for panfish on Bearskull, Island and Spider lakes, Iron county.

12. Establish a minimum length limit of 18 inches and a daily bag limit of one for largemouth and smallmouth bass; a minimum length limit of 26 inches and a daily bag limit of 2 for northern pike; and a daily bag limit of 10 for panfish on Murphy flowage, Rusk county.

13. Establish a minimum length limit of 40 inches for muskellunge on Sissabagama lake, Sawyer county.

14. Establish catch and release only for largemouth and smallmouth bass on Big lake, Vilas county.

15. Establish a minimum length limit of 28 inches and a daily bag limit of one for walleye, sauger and hybrids on Kentuck lake, Vilas county.

16. Establish a daily bag limit of 10 for panfish on Lulu lake, Walworth county and Eagle Spring lake, Waukesha county.

17. Eliminate the continuous open fishing season for largemouth and small mouth bass, northern pike and walleye, sauger and hybrids on Irogami (Fish), Pine and Big Twin lakes, Waushara county.

18. Remove the minimum length limit for largemouth and smallmouth bass on Round lake, Waushara county and establish a daily bag limit of 3, but no fish from 14 through 18 inches may be kept and only one may be longer than 18 inches.

19. Establish a 2-day sturgeon spearing season on Poygan, Winneconne and Butte des Morts lakes on February 12 and 13, 2000, with a 36-inch minimum length limit.

20. Establish a 70-inch minimum length limit for lake sturgeon in even numbered years on the Lower Wisconsin river downstream for the Wisconsin Dells dam.

21. Close the hook and line lake sturgeon fishing season on Lake Michigan, Green Bay and their tributaries.

22. Change the boundary for the northern bass zone from state highway 70 to state highway 77, Burnett, Sawyer and Washburn counties.

23. Establish a minimum length limit of 26 inches and a daily bag limit of 2 for northern pike on Lake Michigan waters south of U.S. Highway 10.

24. Establish a minimum length limit of 15 inches and a daily bag limit of 5 for walleye, sauger and hybrids on Lake Michigan waters south of U.S. Highway 10.

25. Designate additional reaches of tributaries of Lake Michigan as "outlying trout and salmon waters" for the purpose of establishing where the Great Lakes trout and salmon stamp is required.

26. Establish total allowable harvest levels for lake sturgeon and establish a procedure for closing the sturgeon spearing season on Lake Winnebago system waters when 80% of the total allowable harvest is reached.

27. Establish a 14-inch minimum length limit for largemouth and smallmouth bass on the St. Louis river and connected waters and on the St. Croix river upstream from the dam at St. Croix Falls and establish a catch and release only season from the Monday following Labor Day to March 1 on the St. Croix river upstream from the dam at St. Croix Falls.

28. Establish a 70-inch minimum length limit for lake sturgeon in even numbered years on all Wisconsin-Michigan boundary waters.

29. Establish a fish refuge for spawning panfish on a portion of Cox Hollow lake, Iowa county, from the third Monday in May for 19 consecutive days.

Notice is hereby further given that pursuant to ss. 29.014, 29.192, 29.604, 29.621 and 227.11, Stats., interpreting ss. 29.192, 29.604

and 29.621, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 15 and 27, Wis. Adm. Code, relating to hunting and trapping regulations. The proposed rules:

1. Change the fall turkey season to begin the Saturday nearest October 10 and continue for 30 days.
2. Establish a 9-day either sex deer hunting season bag limit for Mississippi River block units.
3. Change the black bear season opening to the first Wednesday after Labor Day.
4. Extend hunting hours 15 minutes for gun deer season.
5. Allow the use of telescopic scopes on muzzleloaders during the 7-day muzzleloader season.
6. Create a population goal set at 13,000 for otter.
7. Establish an in-season harvest monitoring system for bobcat, otter and fisher trapping and establish a season closure authorization.
8. Change the subzones for early Canada goose hunts.
9. Include muzzleloader gun deer hunting in wildlife refuges and modify the title for the Peat Lake refuge to include Kenosha county.
10. Establish a no entry status for Waukesha County – Big Muskego Lake Nesting Island Wildlife Refuge.
11. Change the wolf listing from endangered to threatened.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearings will be held on Monday, April 12, 1999 at 7:00 p.m. in the following locations:

Adams	Community Room Columbia Electric Co-op 401 E. Lake St., Friendship
Ashland	Ashland High School Ashland
Barron	Auditorium Barron County Courthouse Barron
Bayfield	Gymnasium Drummond High School Drummond
Brown	Auditorium Southwest High School 1331 Packerland Drive Green Bay
Buffalo	Auditorium Alma Area School S1618 STH 35 Alma

Burnett	Burnett County Government Center Siren
Calumet	Room 025 Calumet County Courthouse 206 Court Street Chilton (Use westside entrance)
Chippewa	Auditorium “A” Chippewa Falls Middle School 750 Tropicana Blvd. Chippewa Falls
Clark	Greenwood Elementary School, 708 E. Division Greenwood
Columbia	Columbia Co. Administration Bldg., 400 DeWitt Street Portage
Crawford	Circuit Courtroom Crawford County Courthouse Prairie du Chien
Dane	Mendota Room 5-6, Exhibition Hall Dane County Expo Center, 1919 Expo Way Madison
Dodge	Horicon City Hall 404 E. Lake St., Horicon
Door	Room A-150 Door County Courthouse, 421 Nebraska St., Sturgeon Bay
Douglas	Cafeteria St. Croix High School, Solon Springs
Dunn	Dunn Co. Fish and Game Club, 1900 Pine Avenue Menomonie
Eau Claire	Auditorium South Middle School, 2115 Mitscher Ave., Eau Claire
Florence	Downstairs Meeting Room DNR Natural Resource Center Hwy. 2 and 101 Florence
Fond du Lac	Cafeteria Moraine Park Technical College Hwy. 23 East Fond du Lac
Forest	Auditorium Crandon High School, Crandon

Grant	Youth & Ag Building Grant Co. Fairgrounds 916 Elm Street Lancaster	Marathon	John Muir Middle School 1400 W. Stewart Avenue Wausau
Green	Auditorium Pleasant View Annex North 3150 Hwy. 81 Monroe	Marinette	Auditorium Wausaukee High School N11941 Hwy. 141 Wausaukee
Green Lake	Multi-purpose Room Green Lake High School 612 Mill Street Green Lake	Marquette	Marquette County Courthouse 77 W. Park Street Montello
Iowa	Cafeteria Dodgeville Elementary School 404 N. Johnson Dodgeville	Menominee	Meeting Room Menominee Co. Courthouse Keshena
Iron	Iron County Courthouse Hurley	Milwaukee	Auditorium Hamilton High School 6215 W. Warnimont Avenue Milwaukee
Jackson	Co. Board Room Jackson Co. Courthouse, 307 Main Black River Falls	Monroe	Auditorium Sparta High School Black River Street Sparta
Jefferson	Room 205 Jefferson Co. Courthouse, 320 South Main St. Jefferson	Oconto	Cafeteria Suring High School 411 E. Algoma Suring
Juneau	Courtroom Juneau Co. Courthouse 220 E. State Street Mauston	Oneida	Auditorium James Williams Junior High 915 Acacia Lane, Rhineland
Kenosha	Hearing Room Kenosha Co. Center 19600 75 th Street Bristol	Outagamie	Jefferson Elementary School, 1000 South Mason Street Appleton
Kewaunee	Circuit Courtroom 212 Kewaunee Co. Courthouse Kewaunee	Ozaukee	American Legion Hall, 435 N. Lake Street Port Washington
La Crosse	Fine Arts Center Auditorium Onalaska High School 700 Hilltopper Drive Onalaska	Pepin	Co. Board Room Pepin Co. Government Center 740 7 th Avenue West Durand
Lafayette	Cafeteria Darlington Community High School 11838 Center Hill Road Darlington	Pierce	Gymnasium Hillcrest Elementary School, 350 S. Grant Ellsworth
Langlade	Courthouse Antigo	Polk	Polk County Government Center Balsam Lake
Lincoln	Auditorium Elementary School, Tomahawk School Complex Tomahawk	Portage	Auditorium Ben Franklin Jr. High School 2000 Polk Street Stevens Point
Manitowoc	Lecture Hall, Room E-125 UW-Manitowoc 705 Viebahn St., Manitowoc	Price	Co. Board Room, Price Co. Courthouse Phillips

Racine	Cafeteria Union Grove High School, 3433 S. Colony Avenue Union Grove	Waukesha	North Hall Waukesha County Expo Center 4848 Northview Rd. Waukesha
Richland	Circuit Courtroom Richland Co. Courthouse Richland Center	Waupaca	Grand Seasons Hotel 110 Grand Seasons Drive Waupaca
Rock	Auditorium Rock County Health Care Center 3530 North County Highway F Janesville	Waushara	Waushara Co. Courthouse 209 South St. Marie Wautoma
Rusk	Auditorium Ladysmith High School Ladysmith	Winnebago	Auditorium Oshkosh North High School 1100 W. Smith Oshkosh
St. Croix	Cashman Auditorium WI Indianhead Tech. College 1019 S. Knowles Ave. New Richmond	Wood	Auditorium Pittsville High School 5407 1 st Avenue Pittsville
Sauk	UW-Baraboo Campus 1006 Connie Road Baraboo		
Sawyer	Auditorium Hayward High School Hayward		
Shawano	LGI Room Community Middle School, 1050 S. Union Street Shawano		
Sheboygan	Cafeteria Sheboygan Falls High School 220 Amherst Avenue Sheboygan Falls		
Taylor	Multi-Purpose Building Taylor County Fairgrounds Medford		
Trempealeau	Co. Board Room Trempealeau Co. Courthouse 36245 Main Street Whitehall		
Vernon	Large Lecture Rm. Viroqua Middle School Blackhawk Dr. Viroqua		
Vilas	Plum Lake Town Hall Lake Street Sayner		
Walworth	National Guard Armory 401 E. Fair Street Elkhorn		
Washburn	Agriculture Research Station Spooner		
Washington	Room 201 Big Lecture Hall UW-Washington Co. Campus 400 University Drive West Bend		

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Candy Knutson at (608) 267-3134 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rules may be submitted to Mr. Al Phelan, Conservation Congress Liaison, P.O. Box 7921, Madison, WI 53707 no later than **April 16, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. Written comments will NOT, however, be counted as spring hearing votes.

Fiscal Estimate

There is no fiscal effect.

Copies of Rules

A copy of the proposed rules [WM-1-99, FH-6-99] and fiscal estimates may be obtained from Ms. Candy Knutson, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267-3134.

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 1.11, 196.491 and 227.11, Stats., interpreting s. 1.11 and 196.491, Stats., the Department of Natural Resources will hold a public hearing on the repeal of s. NR 150.03(8)(a)1. and ch. NR 170, Wis. Adm. Code, relating to power plant siting. 1997 Wis. Act 204 changed the regulation of power plants by the Public Service Commission (PSC) and the Department. The threshold for PSC review has been raised from 20 to 100 megawatts, and shorter time frames for PSC and DNR review have been imposed. To be consistent with these changes, and changes in the power industry, it is necessary to revise the NR 150 type listing for power plants (currently any power plant larger than 20 MW requires an environmental impact statement). The wording and specificity of the statute removes the need for a procedural code; therefore, the Department proposes to delete ch. NR 170 which prescribed procedures for reviewing engineering plans filed in compliance with the power plant siting law.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

March 16, 1999 **Room 611A, GEF #2**
Tuesday **101 South Webster St.**
at 10:30 a.m. **Madison**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Steve Ugoretz at (608) 266-6673 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Steve Ugoretz, Bureau of Integrated Science Services, P.O. Box 7921, Madison, WI 53707 no later than **March 16, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [SS-10-99] and fiscal estimate may be obtained from Mr. Ugoretz.

Notice of Hearings

Natural Resources

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

Notice is hereby given that pursuant to ss. 227.11(2)(a), 292.65 and 292.66, Stats., interpreting ss. 292.65 and 292.66, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 169, Wis. Adm. Code, relating to the dry cleaner environmental response program. The 1997-99 biennial budget contained statutory language to create a program to reimburse dry cleaners for the costs to investigate and clean up contamination dry cleaning facilities. Proposed ch. NR 169 outlines the procedures for owners and operators of dry cleaner facilities to obtain reimbursement from cleanups conducted under the NR 700 rule series. This rule identifies eligible applicants and eligibility requirements for owners and operators taking immediate action, interim actions, and remedial actions. For eligible applicants taking immediate and/or interim actions, the applications for reimbursements will be processed in the order in which they are received. The Department does not anticipate a shortage of funding for these two categories of response action costs. In addition, the procedures for reimbursement are streamlined because of the limited actions that would qualify under these two response action phases.

For eligible applicants seeking reimbursement for remedial actions, including site investigations, the rule specifies the requirements for eligible actions (including bidding requirements) as well as procedures applicants must follow to obtain reimbursement. Because of a statutory requirement that cleanup costs incurred between January 1, 1991 and October 14, 1997 be

reimbursed before new costs are reimbursed, the Department anticipates a backlog of new sites awaiting reimbursement. The rule establishes the priorities for dispersing those reimbursements. For site investigations and remedial response actions, the rule specifies a classification system based on environmental significance and risk, and reimbursements are made within those categories based on the order in which applications are received. In addition, the rule reiterates the statutory requirements for maximum award limits and deductibles to be paid by the owner or operator of the facility.

Hearing Information

March 19, 1999 **Council Chambers**
Friday **Wausau City Hall**
at 10:00 a.m. **407 Grant St.**
 Wausau

March 22, 1999 **Room 158**
Monday **DNR West Central**
at 10:00 a.m. **Region Office**
 1300 W. Clairemont
 Eau Claire

March 24, 1999 **County Board Rm.**
Wednesday **County Administration Bldg.**
at 9:30 a.m. **410 S. Walnut St.**
 Appleton

March 25, 1999 **Room 140**
Thursday **DNR Southeast Region Hdqrs.**
at 9:00 a.m. **2300 N. Martin Luther King Dr.,**
 Milwaukee

March 25, 1999 **Room 511, GEF #2,**
Thursday **101 South Webster St.**
at 2:30 p.m. **Madison**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robin Schmidt at (608) 267-7569 with specific information on your request at least 10 days before the date of the scheduled hearing.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The Department anticipates that this rule will provide economic relief to small dry cleaning businesses because eligible costs that they now would incur cleaning up environmental contamination may be eligible for reimbursement from this fund when monies are available.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate

There is not fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Ms. Robin Schmidt, Bureau of Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707 postmarked no later than **April 9, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed

rule [RR-18-99] and fiscal estimate may be obtained from Ms. Schmidt.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 227.11(2)(a) and 285.11(1), Stats., interpreting s. 285.11(6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 409, 439 and 484, Wis. Adm. Code, relating to the acid rain permit program. Following finalization of the federal acid rain rules with respect to nitrogen oxides (NO_x) emission limitations and related requirements, the U.S. Environmental Protection Agency required states to adopt these new federal regulations as state regulations. The proposed revisions to the state acid rain permitting program incorporate the NO_x provisions as well as additional revisions to the sulfur dioxide (SO₂) provisions into the administrative code.

The most significant change to the existing state acid rain rules is the creation of s. NR 409.065 on nitrogen oxides requirements to incorporate the new NO_x provisions of the federal acid rain program into ch. NR 409. The proposed s. NR 409.065 includes all of the elements of and is identical to U.S. EPA's model state rule in 40 CFR part 76, except that test methods and procedures are proposed to be included in a created s. NR 439.098.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

March 25, 1999
Thursday
at 10:00 a.m.

Room 611A, GEF #2,
101 S. Webster St.
Madison, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266-1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Al Hubbard, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than **March 31, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing.

A copy of proposed AM-58-98 and its fiscal estimate may be obtained from:

Proposed Rules
Bureau of Air Management
P.O. Box 7921
Madison, WI 53707
Phone: (608) 266-7718
FAX: (608) 267-0560

Notice of Hearing

Public Defender

Notice is hereby given that pursuant to s. 977.02 (4m), Stats., and interpreting s. 977.075, Stats., the Office of the State Public Defender will hold a public hearing at the time and place indicated below to consider the creation of s. PD 6.04 (5), relating to multiple appointments on the same case.

Hearing Information

March 26, 1999
Friday
10:00 a.m. to
12:00 p.m. (noon)

2nd Flr., Office of the
State Public Defender
315 North Henry St.
Madison, WI

Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis by Agency

Statutory authority: s. 977.02 (4m)

Statute interpreted: s. 977.075

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 public defender appointment results in a separate fee to be paid by the client. Under limited circumstances, however, a client may be required to pay only one fee even though the client's case results in more than one public defender appointment. For example, if a client's case is appointed to a second attorney because the client's first attorney had to withdraw based on a conflict of interest, the client is charged one fee rather than two separate fees.

The proposed rule would create an additional circumstance under which a public defender 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.

Initial Regulatory Flexibility Analysis

This rule would not have a regulatory effect on small businesses.

Fiscal Estimate

Because the SPD estimates that the situation described in the proposed rule occurs, at most, two to three times per year, the proposed rule would have an insignificant impact on the total amount of fees collected per year by the SPD from its clients.

Contact Information

For copies of the proposed rule, or if you have questions, please contact:

Gina Pruski, Deputy Legal Counsel
315 North Henry St.
Madison, WI 53703-3018

Telephone (608) 266-6782

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such

comments should be addressed to the contact person at the address stated above, and must be received by **March 26, 1999**.

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to ss. 115.28 (7), (7m), (15) and (17), 118.19 (11), 121.02 (1) (a), and 227.11 (2) (a), Stats., and interpreting ss. 115.28 (7), 118.19, and 118.192, Stats., the Department of Public Instruction will hold public hearings as follows to consider the repeal and recreation of ch. PI 3 and the repeal of ch. PI 4, relating to teacher education program approval and licenses.

Hearing Information

The hearings will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
March 8, 1999 Monday 6:00 p.m. – 8:00 p.m.	Phoenix Room B University Union Bldg. Nicolet Drive UW – Green Bay, WI
March 8, 1999 Monday 6:00 p.m. – 8:00 p.m.	Room Valhalla B Cartwright Center 1725 State St. UW – LaCrosse, WI
March 8, 1999 Monday 6:00 p.m. – 8:00 p.m.	Wisconsin East Room University Union 2200 E. Kenwood Blvd. UW – Milwaukee, WI
March 9, 1999 Tuesday 6:00 p.m. – 8:00 p.m.	Ballroom Rothwell Student Ctr. Corner of 16th and Catlin Ave. UW – Superior, WI
March 10, 1999 Wednesday 6:00 p.m. – 8:00 p.m.	Room 041 GEF #3 Bldg. 125 South Webster St. Madison, WI
March 16, 1999 Tuesday 6:00 p.m. – 8:00 p.m.	Room 101 Clow Bldg. Algoma Blvd. UW – Oshkosh, WI
March 17, 1999 Wednesday 6:00 p.m. – 8:00 p.m.	Theater Fine Arts Bldg. 1800 College Dr. UW–Barron County Rice Lake, WI
March 18, 1999 Thursday 6:00 p.m. – 8:00 p.m.	Ballroom A Memorial Student Ctr. 302 10th Ave. UW–Stout Menomonie, WI
March 23, 1999 Tuesday 6:00 p.m. – 8:00 p.m.	Room 116 College of Professional Studies Bldg. 1901 4th Ave. UW –Stevens Point, WI

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Peter Burke, Director, Teacher Education, Licensing and Placement, at (608) 266-1879 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule & Contact Information

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

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

Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **March 26, 1999** will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Dept. of Public Instruction

The national movement to develop standards for both PK-12 schools and higher education and the demand for greater accountability of teachers and students to demonstrate what they know and are able to do are primary forces behind the creation of the new ch. PI 3, Wis. Adm. Code.

In 1993, a study of how Wisconsin teachers are licensed was conducted. Many concerns were identified about the great number of rules and regulations that individuals and colleges had to comply with in the licensing process. In order to study the issue further, a task force was appointed in 1994 to study and debate what the licensing system for Wisconsin should be for the next century.

This task force issued a report in 1995 that called for sweeping changes in how teachers were licensed. The central focus of the recommended changes was a shift to a performance-based approach to licensing. Rather than counting on the fact that students in college completed the requisite coursework, it was suggested that there be a measure of performance to substantiate that the candidates for a license had the knowledge and skills needed to succeed.

The task force report made three major recommendations:

1. Develop performance-based professional education programs and continuous professional development based upon a set of standards.

2. Change the structure of licensing to have three stages or tiers – beginning, professional, and master.

3. Change the categories of licensing to better match what was happening in the curriculum and instructional patterns in schools.

These recommendations were taken to the field in 1995-96 through a series of discussion meetings across the state. There was a very positive response to the broad recommendations, and while few people attended the meetings, those who did were excited about the plan to upgrade the licensing structure.

With this positive response as a foundation, three work groups were appointed in 1996-97 and charged with the task of moving the recommendations forward. The work groups issued the *Final Report of the Work Groups on Teacher Assessment, License Stages and License Categories*. As a result of the report, the rules propose the following for all professional education licenses issued by the Department:

Standards and Assessments:

The proposed rules require student competency in the basic skills of reading, writing, speaking, listening, mathematics, and media and

technology as a standard for admission into an education program. The rules also specify standards in which teachers, pupil services, and administrators must demonstrate knowledge and skills before a license may be received or renewed. Standardized tests approved by the state superintendent will be used to assess content knowledge.

License and Career Stages:

The rules specify three license stages in which an individual may be certified:

- **Initial educator license.** At this level a candidate must have completed a performance-based system of preparation following the standards. During the first 3–5 years of holding this license, a beginning educator will design and complete a personal professional development plan relating to the educator standards. The plan will be evaluated by a three-person team. This team will include a professional colleague, an administrator, and a representative from higher education.

The key component of the initial educator license stage will be the assignment of a mentor who will volunteer for the assignment and receive training for the role. The mentor will be given release time for mentoring activities. The mentor will be a professional colleague who is not in the evaluative role. Mentors will be a resource for the beginning educator to observe, confer, provide advice and assistance in the design and implementation of the professional development plan, and act as a liaison between the beginning educator and the community.

- **Professional educator license.** After successfully moving through the initial educator stage and meeting goals in their professional development plan, educators would be able to renew their license as a professional educator. This license will be a five-year, renewable license. To renew a license, the professional educator must design a professional development plan relating to the educator standards. The plan will be evaluated by a three-person team of colleagues consisting of three teachers, three pupil service professionals or three administrators, as appropriate. Upon meeting the goals in the plan, the license shall be renewed.

- **Master educator license.** The master educator license is a voluntary license that will be accessible to individuals who hold a professional educator license and who submit a portfolio of authentic work for review by a three-person team consisting of educators who have the same or similar job responsibilities, have been trained by the department, and have been nominated by professional organizations. The master license would be effective for 10 years and may be renewed by submitting an updated portfolio.

License Levels:

The rules change the “levels” in which licenses are issued. Currently, licenses are awarded by grade levels such as 1 – 6 or 9 – 12. The rules move from a grade level to a student developmental-level license, such as early childhood, middle childhood through early adolescence, early adolescence through adolescence, and early childhood through adolescence. The estimated ages for these levels would be birth – 8 for early childhood, 6 – 13 for middle childhood through early adolescence, 10 – 21 for early adolescence through adolescence, and a wide range of ages for early childhood through adolescence.

Categories:

The rules also create broad-based categories of licenses at the secondary level and in special education. Comprehensive licenses would be available in categories such as language arts, science, and social studies. A comprehensive special education license will be issued to beginning teachers rather than a disability-specific (LD, ED, CD) license. This means that a specialty such as LD or ED could be attained during the initial license stage. The specialty area would depend on the placement of the teacher.

Other License Areas:

The rules also specify requirements for licenses issued in pupil services categories, which remain mostly the same as current rule requirements; administration categories, which remain mostly the same as current rule requirements; supplementary categories, which are licenses that may be issued to an applicant who already holds

another DPI license (these categories will also be available at the three new stages of licensing); and additional licenses, which may be issued to applicants who are employed in school districts in positions in which completion of an approved program with an institutional endorsement from a college or university is not required.

License Revocation:

The rules specify procedures relating to license revocation.

Applicability:

Currently licensed teachers may continue to renew their licenses by completing 6 semester credits of professional development or by completing a professional development plan under this rule’s proposal.

The initial educator and professional educator license stages in subchapter V and new license levels and categories in subchapter VII will be available July 1, 2004.

The master educator license in subchapter V will be available July 1, 2004, except for those individuals who have successfully completed the national board of teaching standards examination. These individuals may receive a master educator license effective July 1, 2000.

Institutions are required to have performance-based programs in place for students completing programs after August 31, 2004.

Fiscal Estimate

Assumptions Used In Arriving at Fiscal Estimate:

Chapter PI 3 contains the requirements that an individual must meet to be licensed in Wisconsin. Chapter PI 4 contains the procedures and standards for approval of professional education programs leading to licensure. These two chapters will be combined into a new ch. PI 3, relating to teacher education program approval and licenses. Several of the provisions currently under chs. PI 3 and 4 will be incorporated into the new ch. PI 3. The proposed rules will provide for a new way of preparing and licensing teachers.

The modifications included in the proposed permanent rules most likely to result in a cost are listed in the following paragraphs:

School District Costs:

Initial educator license.

1. The initial educator license is effective for up to 5 years and is issued to a first-time teacher. The license is not renewable. An individual holding an initial educator license must receive ongoing orientation from the employing school district. The orientation is developed and delivered by administrators, teachers, support staff and parents. The initial educator must also be provided with support seminars and a qualified mentor by the employing school district.

Costs associated with the school district providing ongoing orientation in cooperation with administrators, teachers, support staff and parents will vary from district to district. These costs are indeterminable.

Costs associated with the school district providing a qualified mentor would be approximately \$3,000,000 assuming the following:

- There will be approximately 3,000 initial educators each year.
- There will be one mentor per initial educator.
- The initial educators will receive 10 days of mentoring services.
- There will be a substitute teacher needed at \$100 per day to provide release time for the mentor to provide such services.

3,000 mentors X \$100 for substitutes X 10 days per year of mentoring services = \$3,000,000

NOTE: The Department intends to request funds in future budget proposals to reimburse school districts for costs incurred while implementing these new mentoring procedures.

2. The initial educator must create professional development goals that demonstrate competence in the teacher, pupil services or administrator standards prescribed in the rule. The goals must be approved by a 3 person team consisting of:

- For classroom teachers, the team shall include a teacher of the same subject or at the same level who is not the mentor, an administrator and an institution representative.

- For pupil services educators, the team shall include a pupil services professional in the same license category who is not the mentor, an administrator and an institution representative.

- For administrators, the team shall include an administrator in the same license category who is not the mentor, the district administrator and an institution representative.

Costs associated with approving professional development goals by a 3 person team would be approximately \$40,000 assuming the following:

There will be 3,000 initial educator plans to be reviewed.

There will be 2 team members (A colleague and an administrator. Local districts will not be responsible for providing the institutional representative) to evaluate at least 15 plans per day.

There will be 2 substitute teachers at \$200 a day needed to provide release time for the team members.

3,000 plans ÷ 15 plans reviewed per day X \$200 for substitutes = \$40,000

3. The initial educator must document completion of the goals included in the professional development plan. Such documentation may include a portfolio of evidence. Again, the 3-person team shall validate the completion of the professional development plan. If the plan is completed, the initial educator shall receive a professional educator license.

Costs associated with validating the completion of the professional development plan by a 3 person team would be the same as the costs described above for approving the professional development goals.

3,000 plans ÷ 15 plans reviewed per day X \$200 for substitutes = \$40,000

4. Appeals of the decisions made by the 3-person team regarding the initial educator's completion of the plan may be made to the professional standards council.

Costs associated with appeals are indeterminable. Because this is a new certification process, the number of appeals that will be made at this stage is unknown.

Professional educator license.

1. The professional educator license is a renewable license and is issued for 5 years. To renew a license, an individual must successfully complete a professional development plan that demonstrates competence in one or more teacher, pupil services or administrator standards prescribed in the rule. Successful completion of the plan must be documented by professional development activities such as college credits, workshops, seminars, etc. Successful completion of the plan shall be verified by a professional development team in the employing school district. Current license holders may use 6 credits in lieu of the plan to renew licenses. The team consists of:

- ☛ For classroom teachers, at least 3 classroom teachers selected by their peers.

- ☛ For pupil services professionals, at least 3 pupil services professionals selected by their peers.

- ☛ For administrators, at least 3 administrators selected by their peers.

Costs associated with professional educator license development approval and renewal by a 3 person team would be approximately \$370,000 assuming the following:

- There are approximately 21,500 license applications each year.

- Subtract 3,000 initial educators.

- There will be 3 team members evaluating at least 15 plans per day of the 18,500 total professional educator plans. The 18,500 is the maximum number of plans, assuming that all currently licensed teachers develop a professional development plan rather than take credits.

- There will be 3 substitute teachers at \$300 a day needed to provide release time for the team members.

18,500 plans for renewal ÷ 15 plans reviewed per day X \$300 for substitutes = \$370,000

2. Appeals of the decisions made by the professional development team may be made to the professional standards council.

Costs associated with appeals are indeterminable. Because this is a new certification process, the number of appeals that will be made at this stage is unknown.

Master educator license.

1. A master educator license is not required. An applicant for such a license must either:

1) Receive certification by the national board for professional teaching standards or

2) Demonstrate competence in all of the teacher, pupil services or administrator standards prescribed in the rule.

Competence in these standards shall be assessed by a team of 3 educators who have the same or similar job responsibilities and who have been trained by the Department.

Any costs to school districts relating to an individual applying for a master educator license will be recovered from the applicant. Costs associated with receiving such a license include:

Option 1 – Receiving certification by the national board for professional teaching standards:

⇒ Pay a \$2,000 fee to the national board for professional teaching standards to take the national certification exam.

⇒ Pay a license processing fee to the state.

Option 2 – Demonstrating competence in all the state standards:

▶ Pay a \$120 – \$200 fee to the state which will be reimbursed to the district for the review of master educator application information by a 3 person team.

▶ Pay a license processing fee to the state.

2. To renew a master educator license, a person must either:

1) Demonstrate competence as prescribed by the national board for professional teaching standards or

2) Demonstrate competence by completion of a modified assessment to be evaluated by a team of 3 educators who have the same or similar job responsibilities and who have been trained by the Department.

Again, any costs to school districts relating to an individual applying for a master educator license will be recovered from the applicant. Costs associated with a master educator license renewal include:

Option 1 – Receiving certification by the national board for professional teaching standards:

☞ Pay a state license processing fee.

☞ Other costs are indeterminable since renewal requirements will be prescribed by the national board.

Option 2 – Demonstrating competence in all the state standards:

✓ Pay a \$120 – \$200 fee to the state which will be reimbursed to the district for the review of master educator application information by a 3 person team.

✓ Pay a license processing fee to the state.

3. Appeals of the decisions made by the professional development team may be made to the professional standards council.

Costs associated with appeals are indeterminable. Because this is a new certification process, the number of appeals that will be made at this stage is unknown.

State Costs:

Costs associated with the design, development, selection, and validation of tests to measure basic skills and content tests for preservice educators will be approximately \$250,000.

Costs associated with training teacher mentors and master educator license team members will be approximately \$612,000, assuming the following:

- ◆ There will be two days of training at each of the 12 CESAs.

- ◆ There will be 2 trainers receiving \$500 each.
12 sites X \$1,000 for two trainers = \$12,000.
- ◆ There will be, at a minimum, 3,000 mentors (who may also be members of the master educator license team) in the training program.
- ◆ There will be a \$100 stipend and \$100 for travel expenses for mentors.
3,000 mentors/trainers X \$200 = \$600,000

The professional standards council is created under s. 15.377, Stats., to advise the state superintendent on various issues relating to teacher licensing and teacher education programs. This newly-created council will replace the State Superintendent's Advisory Council for Teacher Education and Licensure. As a result, the new committee is not expected to increase costs associated with operating the council unless it receives a large number of appeals relating to initial, professional or master educator license renewals.

Institution of Higher Education Costs:

These rules will have a fiscal effect on the University of Wisconsin System. A copy of the proposed rules has been submitted to the University of Wisconsin System with a request for a fiscal note.

The proposed rules may have a fiscal effect on private institutions of higher education offering teacher education programs.

Funds Available for Program Implementation:

Funds available to school districts to implement provisions under this rule and to individuals taking the national teacher test include:

* The peer review and mentoring grant. Under s. 115.405 (2), Stats., \$500,000 is available to CESA's or school districts to provide assistance and training for initial and professional educators.

* The national teacher certification grant. Under s. 115.42, Stats., \$2,000 is available to any person who is licensed and employed as a teacher, is a resident of this state, and is certified by the national board for professional teaching standards before July 1, 2000.

Initial Regulatory Flexibility Analysis

The proposed rules may have a fiscal effect on private institutions of higher education offering teacher education programs.

Notice of Hearing

Public Service Commission

Notice is hereby given that the Commission will hold a public hearing on a revision to ch. PSC 160 in the **Amnicon Falls Hearing Room (1st Floor) at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on April 6, 1999 at 1:30 P.M.** The examiner may continue the hearing at such times and places as necessary to complete the hearing.

The building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (Lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building and the building has some wheelchair accessible rest rooms.

Written Comments

Any person may submit written comments on the proposed rules. The hearing record will be open for written comments from the public effective immediately, until **April 20, 1999, at noon (or April 19, 1999 at noon, if filed by fax).**

All written comments on the rules must include a reference on the filing to docket 1-AC-166. **File by one mode only.**

If filing by mail: Courier or hand delivery: Address comments to Lynda L. Dorr, Secretary to the Commission, Public Service Commission, P.O. Box 7854, Madison, WI 53707-7854. Interested parties should submit an original and 15 copies. Members of the general public need only file an original.

If filing by fax: Send fax comments to (608) 266-3957. Address comments to Lynda L. Dorr, Secretary to the Commission, Public

Service Commission. Fax filing cover sheets MUST state "**Official Filing,**" the docket number (1-AC-166), and the number of pages (limited to 20 pages for fax comments).

Contact Person

Questions regarding this matter should be directed to Gary Evenson, Assistant Administrator, Telecommunications Division, at (608) 266-6744 or evensg@psc.state.wi.us. Hearing- or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

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 Gary Evenson, as indicated in the previous paragraph, as soon as possible.

Rules now in ch. PSC 160 were effective May 1, 1996. The Commission has opened this rulemaking to consider necessary changes to the rules as required by s. 196.218, Stats.

As required by statutes, the Commission has appointed a Universal Service Fund Council (USFC) to advise the Commission on administration of s. 196.218, Stats., and on the universal service fund rules. The USFC has recommended various changes to the rules in ch. PSC 160; most of those recommendations are reflected in the proposed rules. In those instances where the Commission has suggested changes that are not part of the recommendations of the USFC, it is noted in the plain language analysis that is part of this notice.

A statement of scope relative to this rulemaking was issued by the Commission in March 1997, as required by ch. 227, Stats.

Input Expressly Invited

The Commission invites all parties potentially affected by these proposed universal service fund rules to comment on them. The purpose of the proposed rules is to solicit comments so that the Commission can make a full and informed decision on additions to, deletions from, or modifications of the current universal service fund rules in ch. PSC 160.

The Commission is not modifying the data transmission speed rule in s. PSC 160.031. The Commission will be examining this issue and other internet related matters in another forum, so comments on data speed matters should not be filed in this rulemaking proceeding.

Analysis Prepared by the Public Service Commission of Wisconsin

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

Statute Interpreted: s. 196.218

Effective May 1, 1996, the Commission created a set of universal service programs to: provide access to telecommunications service to all Wisconsin customers regardless of geographic location, income or disability; promote the use of advanced services by schools, libraries and health care institutions; and assist in the deployment of advanced services in all areas of the state. These programs are detailed in ch. PSC 160. In that same chapter, the Commission also detailed the mechanisms for funding those programs, and for administering the resulting fund.

In 1996, the federal legislature passed a sweeping telecommunications deregulation bill. The Telecommunications Act of 1996, and resulting actions by the Federal Communications Commission (FCC), significantly changed the federal landscape with respect to universal service.

The Commission is proposing the following revisions to its universal service rules to reflect experience with the programs created in 1996, the evolution of the telecommunications market and telecommunications technology in Wisconsin, and to ensure that the state universal service programs do not conflict with the new federal programs.

In preparation of these proposed rules, the Commission staff has worked closely with the USFC. The USFC has given extensive

advice and input on these proposed rules, and many of the changes result directly from that input. In some cases, the USFC has taken no position on changes that were suggested by staff. The USFC submitted its recommendations on rule changes to the Commission in September 1998. The proposed rules reflect most of the USFC recommendations. Where there are substantive differences from the USFC recommendations, those differences are noted below.

A section by section analysis of the proposed changes follows.

Section PSC 160.01 deals with the scope and purpose of the rules. This section remains basically unchanged. The modifications clarify legal points.

Section PSC 160.02 contains definitions of the terms used in the chapter. The modifications are primarily updates and additions. There are only two substantive changes. One change is to the definition of schools eligible for the institutional program, which now includes cooperative education service agencies and clarifies that school administration buildings are included. The other change is to the definition of local exchange service provider, which now includes those wireless providers who choose to become eligible telecommunications carriers.

Section PSC 160.03, on essential telecommunications services, defines the parts of basic telephone service. The language on telephone relay service and local calling area has been clarified and the connectivity provision now includes the ability to connect with an internet service provider. The latter change was not a part of the rule draft seen by the USFC. The section also changes the definition of public interest payphone to be consistent with recent Federal Communications Commission (FCC) rulings.

Section PSC 160.031, on essential data transmission capability, defines data transmission capability, as required under s. 196.218(4), Stats. It is currently defined as at least 9600 bits per second. The USFC recommended that this rule not be changed, but supported the Commission's additional study of internet access issues. The Commission is not changing the data transmission speed rule and will continue to examine the issue of data transmission capability to determine whether an update to this section should be proposed in the future. It will also consider other universal service issues relative to internet service.

Section PSC 160.035, on the advanced service program, allows customers to request advanced services that are not being offered in an area, or are not offered at an affordable price. The proposed changes clarify the definition of interactive video, and incorporate the concept of reasonably comparable urban and rural pricing.

Section PSC 160.04, on toll blocking, requires telephone providers to offer customers the opportunity to block long distance usage. The only changes are to remove outdated language.

Section PSC 160.05 lists the programs which can receive universal service fund monies. The first change allows fund money to be used for publicizing universal service programs. The remainder incorporate the other programs created by these proposed rules.

Section PSC 160.06 defines the criteria customers must meet to qualify for telecommunications-related low-income universal service fund support programs. The changes to this section update obsolete language, clarify eligibility criteria, and require telecommunications providers to inquire regarding eligibility when contacting customers subject to disconnection or needing payment arrangements.

Section PSC 160.061, on the Link-Up America program, allows telecommunications providers to waive connection charges for low-income customers and to receive reimbursement for those waived fees. The changes include applying the waiver to all connection charges, as required by the FCC, and increasing the amount of reimbursement to cover half the waived fees. The other half will, generally, be covered by the FCC.

Section PSC 160.062, on the lifeline assistance program, provides discounted monthly service fees for low-income customers. Like the Link-Up program, the Lifeline program is provided jointly by the states and the FCC. The FCC has

significantly modified its program. The proposed changes bring the state program into line with the revised federal program, and allow for the maximum amount of federal support.

Section PSC 160.063, on the voice-mail for the homeless program, is intended to allow a social service agency, job service agency or homeless shelter to provide temporary voice-mail boxes to homeless people. This will assist the homeless in finding jobs, as well as aiding social service agencies and others in contacting these people, as needed. The program has not been used, however, because the administrative costs of providing voice-mail service have been beyond the capabilities of homeless shelters. This section has been renumbered and changed to allow the program to pay a part of the administrative costs, and to better align the program with the needs of the homeless and homeless shelters.

A new section PSC 160.063 has been created to provide a limited amount of support to fund collaborative partnerships between community organizations and telecommunications providers to increase participation in the low-income universal service support programs.

Sections PSC 160.07 and 160.071 allow customers with special telecommunications needs to afford the required services and equipment. An example of such equipment is a teletypewriter to allow deaf people to use the telephone network. The program provides discounts to allow all such customers to afford appropriate equipment. The changes update the discounts to reflect changes in the average price and type of equipment used. A change clarifies that the Commission can limit the amount of equipment a single customer can purchase under this program. The changes also call for the fund administrator to maintain a list, in consultation with the commission staff, vendors and interested parties, of equipment which is eligible for discounts. Finally, a provision is added stating that when a second line is necessary for hearing impaired customers to receive service comparable to that provided to other customers (for example, due to equipment needs) there will be no charge for that second line.

A new section PSC 160.073 has been created to be consistent with FCC rulings concerning the provision of pay telephones in the public interest when those payphones might not otherwise be available.

Section PSC 160.075, on payphone usability, reiterates that all pay telephone providers are responsible for ensuring that their payphones comply with state and federal standards, and that customers can complain about non-compliance to the Commission. The changes merely clarify these rules and require providers to post information on how to file a complaint.

Section PSC 160.08, on the Telecommunications Customer Assistance Program (TelCAP), remains primarily a placeholder for rules and pilot programs being developed in other proceedings. The one change allows providers to offer toll limitation, as well as toll blocking, to customers under TelCAP programs.

Section PSC 160.09, on the high-rate assistance program, provides rate reductions in situations where telephone rates would otherwise become unaffordable. The broad outlines of this program remain unchanged. The specifics have been revised, however, to match with the Telecommunications Act of 1996 and the FCC's new universal service support plan. The previous version of this plan subsidized only the cost of the local loop. The revised plan covers the entire cost of basic telephone service. The amount of support depends both on the cost of telephone service, including a reasonable amount of calling, and on the median income in the area in which the rates apply. The formulas for assistance have been revised to reflect the services now being covered.

Section PSC 160.091, on qualifications of providers receiving high rate assistance credits, has been modified to reflect the requirement that the company is designated as an eligible telecommunications carrier (as described below.) In addition, the proposed changes require that any company seeking state reimbursement for high-rate assistance credits show that it has first used any available federal high cost assistance to reduce the affected rates. This provision is intended to prevent a company from diverting federal support away from high cost areas and then seeking to support those high cost areas solely through state funding.

Section PSC 160.10, on the rate shock program, remains unchanged except for the removal of obsolete language.

Section PSC 160.11, on the assistance to institutions program which provides discounts to schools, libraries and hospitals, is being modified. The program used to have a declining level of discounts. This proved difficult for schools to budget, so it is being replaced with a fixed discount. The proposed rule also includes a provision that a school cannot be reimbursed by both the state and federal institutional programs for the same services.

A new section PSC 160.125, entitled Funding to Promote Access to Telecommunications Services, is where the voice-mail for the homeless section has been moved. A new section is created as well and is intended to provide the Commission with an avenue to address groups or situations not foreseen in the current rules, but which require action before a new rulemaking could be completed. These rules allow the Commission to approve partial funding for projects, provided those projects meet the overall goals of the universal service fund. The program is limited to non-profit groups, since the fund cannot afford, nor should it be used, to fund commercial ventures on the part of for-profit companies. The USFC recommendation was that this program be applicable for projects meeting the needs of unserved or underserved low-income persons or persons with disabilities. The proposed rule would allow projects that serve any of the purposes listed in s. 196.218(5)(a)1. to 3., Stats.

Section PSC 160.13, which formerly dealt with local exchange service providers of last resort, now deals with the newly created FCC term Eligible Telecommunications Carrier (ETC). This term means a telecommunications provider that the Commission has found to be eligible for federal (and state) universal service funding. This section lays out the criteria for such a designation, consistent with the federal rules, as well as laying out the rules for becoming an ETC, and for relinquishing that status. In summary, to become an ETC, a provider must offer basic service to all customers in the area, must advertise that fact, and must not charge different customers unreasonably different prices.

Section PSC 160.14 provides rules for the intraLATA toll provider of last resort. Currently, Ameritech and GTE are the toll providers of last resort for most areas. However, with the advent of intraLATA presubscription, this designation is becoming somewhat meaningless. In the interLATA market, for example, the Commission does not need to designate a provider of last resort as the market ensures that all customers are served. The proposed change to the rules also allows the Commission to eliminate the intraLATA toll provider of last resort requirement in exchanges where competition is firmly established, and the requirement is no longer needed. The rules also codify previous Commission findings that a provider of last resort cannot sell or abandon customers, except at the customer's own request.

Section PSC 160.15, covering identification of the universal charges on customer bills, is being modified. The current rules do not allow the charges to be separately identified on customer bills. The revised rules allow identification of these charges. The rule draft suggested by the USFC stated that the universal service charges related to the TEACH WI initiative could be added as a surcharge to customers' bills. Upon further examination it was learned that the belief that the TEACH statutes allowed such a surcharge was erroneous, so the reference was removed from this proposed rule.

A new section PSC 160.155 is created and attempts to incorporate the federal statutory requirement that providers charge reasonably comparable prices in both rural and urban areas. The proposed rules also attempt to preserve reasonably comparable toll service by using universal service money to buy down access rates to a uniform benchmark level. The USFC made no recommendation either supporting or opposing this change.

Sections PSC 160.16 and 160.17 on the fund administrator and fund budget have not been changed.

Section PSC 160.18, on those exempted from universal service fund assessment, has not been modified. The Universal Service Fund Council recommended that the exemption of cellular mobile

radio telecommunications utilities from assessments be repealed so that wireless providers would be subject to such assessments. The Commission is not proposing that change. The Commission is concerned about jurisdictional and policy issues related to assessing wireless providers and encourages input on this issue as this rulemaking proceeds.

Section PSC 160.181 provides that the recipients of universal service funds may be subject to audit by the Commission.

Section PSC 160.19 is being changed to remove outdated language from the section on collections and from the section on the Universal Service Fund Council.

Text of Rule

SECTION 1. PSC 160.01(2)(a) is amended to read:

(2) SCOPE AND EXCEPTION. (a) The requirements of ch. PSC 160 shall be observed by the telecommunications providers subject to the jurisdiction of the commission as indicated in this chapter, except insofar as any exemption may be made by the commission. Except as expressly provided by law, s. 196.218, Stats., and the requirements of this chapter shall be deemed imposed on telecommunications providers certified under s. 196.203, Stats.

SECTION 2. PSC 160.01(5) is amended to read:

(5) ORDERS. The commission may issue orders it deems necessary to assist in the implementation or interpretation of this chapter. Except for declaratory rulings under s. 227.41, Stats., and commission determinations not subject to judicial review under ss. 227.52 and 227.53, Stats., orders shall be issued only after notice and an opportunity for comment by interested parties including the universal service fund council.

SECTION 3. PSC 160.02(1) is renumbered 160.02(1m).

SECTION 4. PSC 160.02(1g) is created to read:

(1g) "Calculated charge" means the charge calculated by converting a per call charge into a per minute charge. The conversion to a per minute charge shall be accomplished by dividing the per call charge by the telecommunications provider's average residential call duration. If there are multiple per call charges within one local calling area, the weighted average shall be used as the per call charge.

SECTION 5. PSC 160.02(4)(a) and (b) are amended to read:

(a) Not-for-profit schools, which includes each school in a school district as defined by s. 115.001(3) 115.01(3), Stats., private schools as defined by s. 115.001(3)(r), Stats., charter schools as defined by s. 118.40, Stats., cooperative education service agencies as defined by ch. 116, Stats., colleges and universities as defined by s. 36.05(13), Stats., and vocational, technical and adult education technical college districts as defined by s. 38.01(5), Stats. School administration buildings are included within this definition.

(b) Public libraries, including public library systems.

SECTION 6. PSC 160.02(7) is amended to read:

(7) "Local exchange service provider" means a telecommunications utility, ~~or~~ any other provider of basic local exchange service or standard business lines and usage, or any commercial mobile radio service provider that has been designated as an eligible telecommunications carrier under s. PSC 160.13.

SECTION 7. PSC 160.02(8)(a) is amended to read:

(a) ~~Aid to families with dependent children under 42 USC 601 to 615.~~ Wisconsin works under ss. 49.141 to 49.161, Stats.

SECTION 8. PSC 160.02(8d), (8h), (8p) and (8t) are created to read:

(8d) "Non-rural local exchange carrier" means a telecommunications provider designated or about to be designated as an eligible telecommunications carrier in an area other than one served by a rural telephone company.

(8h) "Rural local exchange carrier" means a telecommunications provider designated or about to be designated as an eligible telecommunications carrier in an area served by a rural telephone company.

(8p) "Rural telephone company" has the meaning given in 47 USC 153(37).

(8t) "Two line voice carryover" means the technique of using 2 telephone lines, one for voice and one for TTY or similar equipment, to connect a caller who is deaf or hard of hearing but can speak, with another caller.

SECTION 9. PSC 160.03(2)(a)8., 9., 10., and 14. are amended as follows:

8. A reasonably adequate number of calls within a reasonably adequate local calling area as defined by the commission.

9. Connectivity with all public toll, local, wireline and wireless networks, and the ability to connect with the internet service provider of the customer's choice.

10. Telecommunications relay service for ~~voice to text and text to voice translation~~ telecommunications access between teletypewriter users and non-teletypewriter users.

14. Intercept and announcements for vacant, changed, suspended and disconnected numbers in oral and TTY-readable formats.

SECTION 10. PSC 160.03(2)(c) is amended to read:

(c) Public interest pay telephone service pursuant to s. PSC 160.073, as pay telephones specified by s. PSC 165.088, ~~semi-public pay telephone service and private pay telephone service and pay telephone interconnection service~~ subject to federal communications commission orders, commission orders and ch. PSC 169.

SECTION 11. PSC 160.031(3) shall be amended to read:

(3) Local exchange service providers unable to meet the data transmission capability requirement in sub. (1), shall notify the commission in writing by ~~May 1, 1996.~~ These local exchange service providers shall achieve compliance with this requirement under an implementation schedule to be set by the commission.

SECTION 12. PSC 160.035(1)(c) is amended to read:

(c) Two-way interactive video conferencing at a speed no less than 30 frames per second and two-way interactive imaging capabilities by January 1, 2003.

SECTION 13. PSC 160.035(3) is renumbered 160.035(3)(a) and amended to read:

(a) Upon its own motion, upon petition by a local exchange service provider for relief from an obligation in sub. (2) ~~above~~ or upon petition by a customer alleging that an advanced service is not available in a timely manner, is needed but not scheduled for deployment under this section, is not priced comparably to the same service when that service is provided in an urban area, or is not priced at an affordable level, the commission may investigate the offering of a given advanced service capability. ~~The investigation shall address, but is not limited to, the reasonableness of the required investment in equipment and facilities, the presence of alternative providers, level of demand, and other factors included in s. 196.03(6), Stats. Following investigation, including notice and opportunity for hearing, the commission may determine, based on the above criteria, a deployment schedule, a maximum reasonable rate, whether a contributory provider requires assistance from an appropriate intrastate universal service program to provide the service, and any other requirement necessary to meet customer demand for an advanced service capability.~~

SECTION 14. PSC 160.035(b) is created to read:

(b) The investigation shall address, but is not limited to, the reasonableness of the required investment in equipment and facilities, the presence of alternative providers, level of demand, and other factors included in s. 196.03(6), Stats. Following investigation, including notice and opportunity for hearing, the commission may determine, based on the above criteria, a deployment schedule, a maximum reasonable rate, whether a contributory provider requires assistance from an appropriate intrastate universal service program to provide the service, and any other requirement necessary to meet customer demand for an advanced service capability.

SECTION 15. PSC 160.04(1) is amended to read:

(1) **BLOCKING OBLIGATIONS.** Every local exchange service provider in the state shall offer the capability to block all long

distance calls and, separately, the capability to block 900 and 976 number calls and, ~~by January 1, 1997,~~ the capability to block extended community calling unless a timely waiver has been granted to the local exchange service provider by the commission.

SECTION 16. PSC 160.04(5) and 160.04(6) are repealed.

SECTION 17. PSC 160.05(intro) is amended to read:

PSC 160.05 Universal service fund programs. Universal service fund monies may be used for fund administration; for the purpose of informing the public regarding the universal service fund, its existence, purpose, intent and areas of use; and for the following purposes:

SECTION 18. PSC 160.05(1)(c) and (d) are amended to read:

(c) Voice mail service for the homeless, as specified in s. PSC ~~160.063-160.125(1).~~

(d) ~~Special needs equipment~~ Telecommunications equipment purchase program vouchers, as specified in s. PSC 160.071(1).

SECTION 19. PSC 160.05(1)(k) and (L) are created to read:

(k) Funding for programs or projects approved under s. PSC 160.125(2).

(L) Other programs, as they are approved by the commission on an emergency basis.

SECTION 20. PSC 160.06(1), (3) and (4) are amended to read:

(1) **LOW-INCOME ASSISTANCE ELIGIBILITY.** Local exchange service providers shall verify an applicant's eligibility for low-income assistance programs by finding the applicant to be an active client or a member of the client's household whose income qualifies the client in the records of the Wisconsin department of health and social services workforce development, or to be a recipient of the Wisconsin homestead tax credit ~~in the past year for the most recently completed tax year.~~ If the applicant's tax filing for the most recently completed tax year has not been posted to the records of the Wisconsin department of revenue and if application for low-income assistance is made on or before June 30th, then the tax year prior to the most recently completed tax year may be used to determine eligibility. Eligibility verifications shall be done through timely queries of the applicable databases of the Wisconsin department of health and social services workforce development or the Wisconsin department of revenue.

(3) **ELIGIBILITY INQUIRY.** Local exchange service providers shall inquire of the customer regarding eligibility of that customer for low-income programs on each order for initial or moved residential service and initial contacts with customers subject to disconnection or needing payment arrangements.

(4) **QUERY AUTHORIZATION.** Local exchange service providers shall comply with client authorization requirements of the Wisconsin department of health and social services workforce development or the Wisconsin department of revenue for database queries necessary for eligibility verification. Customers shall complete and remit any reasonably required query authorization forms or forfeit eligibility.

SECTION 21. PSC 160.06(5)(a) is renumbered PSC 160.06(5).

SECTION 22. PSC 160.06(5)(b) is repealed.

SECTION 23. PSC 160.061(1) and (6) are amended to read:

(1) ~~Low income residential customers shall receive a waiver of All local exchange service providers shall waive~~ all applicable regulated service nonrecurring charges when initiating or moving network access line service. ~~Where such charges are less than \$20, participation in the link-up program is optional on the part of the local exchange service provider essential network access service for low-income, single line customers.~~ All federal, state, county and local taxes applicable to the waived charges shall also be waived.

(6) Local exchange service providers may receive reimbursement from the universal service fund for ~~25~~ 50% of the waived nonrecurring charges.

SECTION 24. PSC 160.062(1) is amended to read:

(1) ~~Local exchange service providers whose monthly residential rate exceeds \$15 for single party residential service including touch-tone service; 9-1-1 charges billed on the telephone bill; the~~

~~federal subscriber line charge and 120 local calls, excluding extended community calling. All local exchange service providers shall offer lifeline rates to all qualified low-income customers.~~

SECTION 25. PSC 160.062(2)(a) is renumbered 160.062(2)(b) and amended to read:

(b) ~~Lifeline~~ The lifeline monthly rates, including touch-tone service; 9-1-1 charges billed on the telephone bill; the federal subscriber line charge and 120 local calls, excluding extended community calling, may not exceed \$15 rate shall be the total of the residential monthly rates for the items in par. (a) minus \$7 or, if the total of the monthly residential rates for the items in par. (a) is greater than \$22, the lifeline rate shall be \$15.

SECTION 26. PSC 160.062(2)(a) is created to read:

(a) The lifeline rate includes single-party residential service, touch-tone service, any 9-1-1 charges billed on the telephone bill, the federal subscriber line charge and 120 local calls, excluding extended community calling calls.

SECTION 27. PSC 160.062(2)(b) is repealed.

SECTION 28. PSC 160.062(2)(c) is created to read:

(c) Notwithstanding par. (b), in no case shall the lifeline monthly rate be less than \$3 or more than \$15.

SECTION 29. PSC 160.062(3) is repealed.

SECTION 30. PSC 160.062(4) is renumbered 160.062(3) and amended and read:

(3) Lifeline rates may appear as a credit against the full standard tariffed rate on customers' bills or as a special rate designation. Credits The lifeline rate shall begin to appear on an eligible customer's bill on the next bill date following the date of application for lifeline assistance. In cases where a customer's eligibility date as found in the records of the Wisconsin department of ~~health and social services~~ workforce development or the Wisconsin department of revenue precedes the last bill date prior to application, credit shall also be given for one month's prior bill.

SECTION 31. PSC 160.062(5) is renumbered 160.062(4).

SECTION 32. PSC 160.062(6) is renumbered 160.062(5) and amended to read:

(5) Local exchange service providers may receive reimbursement from the universal service fund for ~~25~~100% of that portion of the difference between the lifeline rate and the standard authorized rate for service which is in excess of the amount of the lifeline monthly rate which is eligible for reimbursement from federal lifeline program funds.

SECTION 33. PSC 160.062(6) and (7) are created to read:

(6) Customers eligible for lifeline or link-up America assistance may not be charged a deposit for service if they voluntarily accept toll blocking, may not be requested to pay in advance for more than one month's local service bill, and may not be disconnected for nonpayment of toll charges billed by the local exchange service provider. Customers that otherwise would be subject to disconnection may be counseled to accept toll blocking.

(7) A local exchange service provider acting under the limited conditions specified in its commission-approved telecommunications customer assistance program may impose toll blocking on lifeline customers.

SECTION 34. PSC 160.063(title) is renumbered PSC 160.125(1)(title).

SECTION 35. PSC 160.063(1) and (2) are renumbered 160.125(1)(a) and (b) and amended to read:

(a) ~~When a local exchange service provider or its affiliate offers voice mail service within an exchange and has available capacity on its voice mail system, Any voice mail provider may be compensated for providing, on request, to a social services agency, a job service agency or other homeless shelter authority shall receive, on request, voice-mail service without charge to be used by that agency or authority for the benefit of its homeless clients or residents. A qualifying agency or authority may be compensated for direct provision of voice-mail service to its homeless clients.~~

(b) ~~The local exchange service provider or its affiliate A voice-mail provider that is providing voice-mail boxes at no charge to the homeless agencies a qualifying agency or authority at no charge may request and receive reimbursement only for its incremental usage and administrative costs of providing this service. As an alternative, reimbursement may be requested and received from the fund at a standard rate set by the commission to cover expected incremental costs of providing this service using available capacity.~~

SECTION 36. PSC 160.063(3) and (4) are renumbered 160.125(1)(d) and (e).

SECTION 37. PSC 160.063 is created to read:

PSC 160.063 Outreach for low-income assistance programs. (1) Funding shall be available to fund collaborative partnerships between community-based organizations and telecommunications providers to increase participation of the eligible populations in the universal service fund low-income support programs.

(2) Funding from the universal service fund for these collaborative efforts shall not exceed \$250,000 in one year.

(3) The commission shall annually review and grant funding based on complete responses to a request for proposals. Funding shall be limited to 6 projects with at least one project focused statewide and one project focused on the Milwaukee area.

(4) The commission shall contract for an evaluation of the effectiveness of this program in promoting enrollment in low-income programs and subscribership to telephone service to be completed within two years of enactment of this subsection. The cost of this evaluation shall not exceed \$25,000.

SECTION 38. PSC 160.071(title) is created to read:

TELECOMMUNICATIONS EQUIPMENT PURCHASE PROGRAM.

SECTION 39. PSC 160.071(1)(a), (b), (c) and (f) are amended to read:

(a) ~~Vouchers shall be available to assist disabled customers with a disability who have special needs certification in the purchase of equipment needed in their homes to personally access and use essential services of the telecommunications network. Vouchers may not be used to purchase equipment which will be used exclusively for commercial purposes.~~

(b) Vouchers shall be limited to the following amounts by category of disability:

1. \$200 for hard of hearing.
2. \$500 for deaf and severely hard of hearing.
3. ~~\$1,500~~ \$ 1,600 for speech impaired.
4. ~~\$1,500~~ \$ 1,600 for mobility impaired.
5. ~~\$2,500~~ \$ 1,600 for deaf-low vision.
6. ~~\$6,700~~ \$ 7,200 for deaf-blind.

(c) ~~The A voucher recipient is under par. (b)1. is not required to make a co-payment. All other voucher recipients are required to make a co-payment of \$100 at the time the equipment is purchased. Pursuant to par. (f), for low income customers the co-payment may be supplied by funding through the telecommunications assistance program.~~

(f) Applicants for vouchers under this section shall be Wisconsin residents. Neither the applicant nor a member of the applicant's household may have received a voucher for equipment for the same disability within the last 3 years. ~~Low-income~~ Applications filed by ~~low-income~~ deaf and hard of hearing applicants ~~individuals~~ shall be referred to the Wisconsin department of health and family services for application for telecommunications assistance program funding ~~to provide any customer co-payment required under par. (c). If found eligible, an alternative voucher may be issued to include that program's funding.~~ If found ineligible, a voucher application shall be processed in priority according to its original date of receipt by the fund administrator.

SECTION 40. PSC 160.071(1)(k) to (n) are created to read:

(k) The commission may impose reasonable limits on the types and quantities of devices that may be purchased with one voucher.

(L) The administrator shall maintain lists of the types and quantities of equipment eligible for purchase with a single voucher under each category. Revisions to the list shall be done periodically by the administrator in consultation with the commission staff and representatives selected by the universal service fund council. Input regarding revisions may be solicited from vendors, representatives of interested groups serving the disabled and others, as appropriate.

(m) Equipment purchases involving individual exceptions to these eligible equipment lists may be granted by the administrator only following consultation with commission staff.

(n) Objections to items included on or excluded from the eligible equipment lists and determinations regarding individual exceptions will be handled as informal complaints.

SECTION 41. PSC 160.071(2)(title), (3)(title) shall be created to read:

(2) EQUIPMENT LEASE RATES.

(3) DISCOUNTED LONG DISTANCE SERVICE.

SECTION 42. PSC 160.071(3) is amended to read:

(3) Certified hearing impaired customers and certified speech impaired customers who need to use a teletypewriter for telephonic conversations shall receive discounted long distance service. For these customers, all telecommunications providers offering long distance services shall, at a minimum, apply their evening or off-peak discounts or rate schedules in the daytime or peak rate period and their night or weekend or off-peak discounts or rate schedules in all other rate periods. Providers are encouraged to provide these customers with rates that are even lower than the minimums established in this subsection.

SECTION 43. PSC 160.071(4)(title), (5)(title), and (6)(title) shall be created to read:

(4) DIRECTORY ASSISTANCE CHARGES.

(5) OPERATOR ASSISTANCE CHARGES.

(6) CUSTOM CALLING SERVICE CHARGES.

SECTION 44. PSC 160.071(6) shall be amended to read:

(6) Customers with certified disabilities who deem one or more custom calling services essential in order to receive service that is useful and comparable to the essential service provided to other customers shall receive those services without charge. In addition, hearing impaired customers who are able and choose to use 2 line voice carryover shall not be charged for the second line.

SECTION 45. PSC 160.073 is created to read:

PSC 160.073 Public interest pay telephones. (1) The commission shall assure provision of a pay telephone where it determines that the public health, safety, and welfare is jeopardized without the telephone yet insufficient demand, usage or other public or private funds are available to assure its installation and its continued operation. Pay telephones so designated are considered public interest pay telephones.

(2) A request for designation of a pay telephone as a public interest pay telephone may be made by a pay telephone service provider or any person. Such requests shall be handled on an informal basis.

(3) All of the items in pars. (a) and (b) shall be considered in determining whether to designate a pay telephone as a public interest pay telephone, but the determination does not depend on the presence or absence of any one or more items.

(a) Items favoring designation:

1. Designation fulfills a public policy objective in health, safety, or public welfare.

2. The actual or projected revenue from the pay telephone is a minimum of \$30 per month and a maximum of \$90 per month on an annual basis.

3. The pay telephone is outside or otherwise available to the public 24 hours per day.

4. The pay telephone is physically and geographically accessible to the general public during the operating hours of any facility in which it is located.

(b) Items disfavoring designation:

1. Designation is provided for a location provider with an existing contract for the provision of a pay telephone.

2. The applicant for the public interest pay telephone has a signed contract with a pay telephone provider.

3. The pay telephone would otherwise exist as a result of the operation of the competitive market.

4. There is another pay telephone located within 500 feet.

5. The pay telephone is a coinless type.

6. The location provider on whose property the phone is located will receive compensation from another source related to the placement of the pay telephone or revenues generated from the pay telephone.

(4) The charges for provision of basic service and equipment for a public interest pay telephone shall be eligible for recovery from the federal and state universal service funds. The state universal service fund shall only cover the costs not covered by the federal fund.

SECTION 46. PSC 160.075(3) is amended to read:

(3) ~~Pay All pay~~ telephone service providers ~~and local exchange service providers~~ are responsible for compliance with all federal and state standards regarding usability of their pay telephones for individuals with disabilities.

SECTION 47. PSC 160.075(5) is created to read:

(5) Information on how to report non-compliance or any other complaint under sub. (3) will be posted at or on each pay telephone unit or bank of units.

SECTION 48. PSC 160.08 is amended to read:

PSC 160.08 Telecommunications customer assistance program. The commission may authorize individual telecommunications providers to establish trial telecommunications customer assistance programs that meet authorized goals and objectives for increasing or stabilizing subscription levels for non-optional, essential telephone service within its service territory or to address avoidance of disconnection or limitation of service to low-income households with payment problems. The commission shall determine on a case-by-case basis whether or not a telecommunications customer assistance program may receive universal service fund monies.

SECTION 49. PSC 160.09(1) is amended to read:

(1) High rate assistance ~~credits~~ for a portion of the price of local service rate shall be issued provided to residential customers when the rate charged for service price exceeds levels set in this section. ~~Local~~ Except as provided in sub. (9), local exchange service providers issuing credits in accordance with this section shall be eligible for reimbursement from the universal service fund for the cost value of those credits, provided that they qualify under s. PSC 160.091.

SECTION 50. PSC 160.09(2)(a) and (b) are repealed.

SECTION 51. PSC 160.09(2)(c) is renumbered 160.09(2) and amended to read:

(2) If Credits shall be applied to the price of local service, as specified in sub. (3), except that if a local exchange service provider charges a single rate covering the ~~local access line~~ basic local exchange service and other telecommunications or related services, the commission may determine, by order, and after opportunity for hearing, the portion of such bundled rates to which rate assistance credits apply.

SECTION 52. PSC 160.09(3)(a) to (e) are renumbered 160.09(4)(a) to (e) and amended to read:

(4) Local exchange service providers shall issue high rate assistance credits according to the following criteria:

(a) For the portion of the ~~local access line charge~~ price of local service below ~~0.75-1.5%~~ 0.75-1.5% of median household income, per month, for the area in which the rate applies, ~~no rate~~ credits apply.

(b) For the portion of the ~~local access line charge~~ price of local service equal to or above ~~0.75-1.5%~~ 0.75-1.5% but below ~~1.0-2.0%~~ 1.0-2.0% of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to 75-50% of that amount.

(c) For the portion of the ~~local access line charge price of local service~~ equal to or above ~~1.0 2.0%~~ but below ~~1.25 2.5%~~ of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to ~~80 75%~~ of that amount.

(d) For the portion of the ~~local access line charge price of local service~~ equal to or above ~~1.25 2.5%~~ but below ~~1.50 3.0%~~ of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to 85% of that amount.

(e) For the portion of the ~~local access line charge price of local service~~ equal to or above ~~1.50 3%~~ but below ~~2.00%~~ of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to ~~90 95%~~ of that amount.

SECTION 53. PSC 160.09(3)(f) is repealed.

SECTION 54. PSC 160.09(3)(g) is renumbered 160.09(4)(f) and amended to read:

(f) When a rate applies in only one county, the median household income, as published by the Wisconsin department of ~~industry, labor~~

and human relations workforce development, used to calculate the credit shall be that of that county in which the rate applies. When a rate applies in more than one county, the median household income used to compute the credit shall be the average of the median household incomes in each county in which the rate applies, weighted by the number of customers paying that rate in each county.

SECTION 55. PSC 160.09(3)(h) is repealed.

SECTION 56. PSC 160.09(3)(i) is renumbered 160.09(4)(g).

SECTION 57. PSC 160.09(3) is created to read:

(3) The price of local service shall include the following:

(a) The fixed monthly charge for essential telecommunications service, as defined in s. PSC 160.03;

(b) The federal communications commission end user common line charge; and

(c) Usage charges, if any, based on the size of the local calling area, excluding extended community calling territory, as follows: [See Figure 160.09(3) following]

SECTION 58. Figure PSC 160.09(3)(c) is created to read:

Figure 160.09(3)(c):

Exchange's local calling area size, excluding extended community calling territory, as measured by number of customers	Exchange's combined local calling and extended community calling area size as measured by number of customers	Usage charges includable in the 160.09(3)(c) calculation of the cost of local service
At least 50,000	(Not applicable)	Per minute or calculated charges for 480 minutes of local calling by that type of customer.
Less than 50,000 but at least 5,000	At least 50,000	Per minute or calculated charges for 360 minutes of local calling by that type of customer, plus Price of 1 minute of extended community calling times 120 minutes.
Less than 50,000 but at least 5,000	Less than 50,000	Per minute or calculated charges for 360 minutes of local calling by that type of customer, plus Price of 1 minute of extended community calling times 90 minutes, plus The average price of 1 minute of toll service, as periodically calculated by the commission, times 30 minutes.

Less than 5,000	At least 50,000	Per minute or calculated charges for 240 minutes of local calling by that type of customer, plus Price of 1 minute of extended community calling times 240 minutes.
Less than 5,000	Less than 50,000	Per minute or calculated charges for 240 minutes of local calling by that type of customer, plus Price of 1 minute of extended community calling times 120 minutes, plus The average price of 1 minute of toll service, as periodically calculated by the commission, times 120 minutes.

Note: As of October 1998, the average price of toll service is \$.12 per minute.

SECTION 59. PSC 160.09(4) is renumbered 160.09(5) and amended to read:

(5) ~~Each~~ Except as provided in sub. (9), each local exchange service provider shall be reimbursed by the universal service fund for the value of the credits it issues, provided that it qualifies under s. PSC 160.091.

SECTION 60. PSC 160.09(5) is renumbered 160.09(6).

SECTION 61. PSC 160.09(6) is repealed.

SECTION 62. PSC 160.09(8) and (9) are amended to read:

(8) Telecommunications utilities with rate ceiling programs in place on May 1, 1996 may continue those programs until rates subject to those programs are changed, unless the ~~Commission~~ commission authorizes an extension of the rate ceiling program. ~~The universal service fund shall reimburse telecommunications utilities for these programs for services provided beginning on January 1, 1996.~~

(9) ~~Customers receiving high rate assistance credits may not be provided essential telecommunications service under contract. Local exchange service providers shall not be reimbursed by the universal service fund for the value of credits issued to customers receiving essential telecommunications service under a contract if the contract has a duration of greater than one year. The commission may grant waivers of this subsection by order. This subsection does not apply to rural line extension contracts entered into before January 1, 1996.~~

SECTION 63. PSC 160.091 is repealed and recreated to read:

PSC 160.091 Qualifications for providers receiving universal service funding for high rate assistance credits. A local exchange service provider receiving reimbursement for high rate assistance credits under s. PSC 160.09 shall:

(1) Provide service that meets the minimum requirements of s. PSC 160.03 and other quality of service rules established by the commission;

(2) Be designated by the commission as an eligible telecommunications carrier for the area in which it seeks reimbursement;

(3) Be a contributory provider unless exempted from payment under s. PSC 160.18(1)(a); and

(4) Show that it has applied the money it receives from the federal high cost support fund, to the extent permitted under federal communications commission regulations, to the rates for which it is issuing credits, and not to other services or to ineligible customers.

SECTION 64. PSC 160.10(5) is repealed.

SECTION 65. PSC 160.11(1)(a) and (3) are amended to read:

(1) Partial support funding through rate discounts is available for institutions ordering telecommunications services to be used to provide any of the following services:

(a) Two-way interactive video or audiographic services.

(3) Support funding is available only as partial payment for new services. ~~The amount of funding shall decrease year by year, as follows: Funding is available for up to 3 years at a monthly discount of 20% of the monthly charge or \$200 per month, whichever is less.~~

SECTION 66. PSC 160.11(3m) is created to read:

(3m) Notwithstanding sub. (3), if an institution received support funding under this section for a new service at a 30% or \$300 discount level in the first year, and at a 20% or \$200 discount level in the second year, it shall only receive support funding for that new service for the third year at a 10% or \$100 discount level.

SECTION 67. PSC 160.11(3)(a) to (d) are repealed.

SECTION 68. PSC 160.11(7) is created to read:

(7) A school, library or library system receiving discounts under the federal schools and libraries universal service program in a given month may not receive state discounts under this section for the same service for that month.

SECTION 69. PSC 160.125(title) is created to read:

PSC 160.125 Funding to promote access to telecommunications services.

SECTION 70. PSC 160.125(1)(c) is created to read:

(c) A qualifying agency or authority administering or providing voice-mail service to homeless clients may request reimbursement for its costs directly attributable to administering and providing the voice-mail boxes for the benefit of its homeless clients.

SECTION 71. PSC 160.125(2) is created to read:

(2) **ACCESS PROGRAMS OR PROJECTS BY NONPROFIT GROUPS.** (a) Partial funding may be available to nonprofit groups for the facilitation of affordable access to telecommunications and information services through programs or projects, or both, not supported elsewhere in this chapter, but that are consistent with the purposes identified in s. 196.218(5)(a)1. to 3., Stats.

Note: As of February 1999, s. 196.218(5)(a)1. to 3., Stats., reads:

(5) Uses of the fund. (a) The commission shall require that moneys in the universal service fund be used only for any of the following purposes:

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.

2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

3. To promote affordable access throughout this state to high-quality education, library and health care information services.

(b) Any non-profit organization may apply for universal service funding to fund any portion of a program or project or both. Funding will be provided on a state fiscal year basis. Applications for funding in the following fiscal year must be submitted by November 15th. The commission will issue a list of approved programs or projects, or both, by April 15th, with funding for those projects to

begin that July 1st. All applications will become public documents upon filing.

(c) Applications must include:

1. A description of a public need which is not being met at present;

2. A description of how the program or project is consistent with the purposes identified in s. 196.218(5)(a)1. to 3., Stats.

3. A description of the program or project proposed, including a description of how the public need described in subd. 1. may be met using telecommunications or information services;

4. A showing that the proposed project meets the described public need in a least cost manner. This requirement can be met by showing that the applicant carried out an appropriate request for proposals.

5. Identification of the providers of each portion of the telecommunications services or equipment and a specific description of the following components of the program or project:

a. The costs of telecommunications services and telecommunications equipment used by the project;

b. The cost of training for those who are served by the program or project so that they can utilize the services;

c. The administrative costs directly attributable to the program or project;

d. The cost of technical expertise required to complete the program or project; and

e. Revenue from services or training described in subd. 5.b.

(d) The commission will evaluate all applications submitted. In evaluating the applications the commission shall consider information including, but not limited to, the following:

1. The basis of the public need to be met;

2. The extent to which other programs or projects, either funded under this section or otherwise under this chapter, meet that need; and

3. The overall cost of the proposed program or project.

(e) The universal service fund will reimburse applicants for up to 50% of the cost of reimbursable portions of the program or project, or both. The reimbursable costs include those listed in par. (c)5.a. to d.

(f) The programs or projects, or both, to be funded and the amount of reimbursement for each program or project will be determined by the commission. The commission will seek comments on the programs or projects to be funded, but will not hold a hearing. A maximum of \$500,000 in funding will be dispersed under this subsection per calendar year.

SECTION 72. PSC 160.13 is repealed and recreated to read:

PSC 160.13 Designation of eligible telecommunication carriers.

(1) A company shall be deemed eligible to receive intrastate and interstate universal service funding under the federal high cost program and applicable state programs for an area if it meets the following requirements:

(a) Holds itself ready to offer service to all customers in the area, except that those customers with a demonstrated inability to pay for service may be denied service in accordance with ss. PSC 165.051 and 165.052; and

(b) Advertises its service in the area on a regular basis, with such advertisements:

1. Disseminated in the mass media expected to reach the majority of customers in the area, at least 3 times per year;

2. Describing the services offered; and

3. Describing the affordability of the services, including the availability of discounts for low income customers.

(c) Maintains prices for service in the area that do not unreasonably discriminate between customers, and that comply with s. PSC 160.155. An eligible telecommunications carrier may not charge nonrecurring or construction charges for rural customers

that are not reasonably comparable to what urban customers would pay.

(d) Offers, at a minimum, all portions of essential telecommunications service, as defined in s. PSC 160.03; and

(e) Offers lifeline and link-up service, as defined in ss. PSC 160.061 and 160.062.

(2) The area in which a provider shall be designated as an eligible telecommunications carrier shall be:

(a) For a non-rural local exchange carrier, the wire center, unless the commission designates a smaller area.

(b) For a rural local exchange carrier, the service territory, unless the commission designates, and the federal communications commission approves, a smaller area.

Note: Ameritech Wisconsin and GTE North, Incorporated are non-rural local exchange carriers. All other incumbent local exchange carriers are rural.

(3) For areas served by non-rural local exchange carriers, the commission may designate a number of eligible telecommunications carriers, without further proceeding.

(4) For areas served by rural local exchange carriers, the commission may only designate more than one eligible telecommunications carrier after finding that the public interest requires multiple eligible telecommunications carriers, pursuant to federal law and s. 196.50(2), Stats.

(5) The commission will maintain a list of the eligible telecommunications carriers for all areas of the state.

(6) An eligible telecommunications carrier may relinquish its designation as such for an area by notifying the commission and the administrators of both the state and federal universal service funds, in writing, of its intention.

(a) If at least one other eligible telecommunications carrier is designated for that area, the relinquishing carrier will be relieved of eligible telecommunications carrier status for that area 2 weeks after receipt by the commission of the letter, and without commission action.

(b) If no other eligible telecommunication carrier is designated for that area, the relinquishing carrier must remain as eligible telecommunications carrier for that area until the commission designates an alternative eligible telecommunications carrier. In such a case, the commission will notify the relinquishing carrier, and the administrators of the state and federal funds, that eligible telecommunications carrier status is still in effect. The commission may conduct a proceeding or auction similar to that described in s. PSC 160.14 to designate a new eligible telecommunications carrier for an area for which the only existing eligible telecommunications carrier is seeking to relinquish that status.

(c) A provider may continue to provide services in an area for which it has relinquished eligible telecommunications carrier status, but may not continue to receive high cost assistance funding. If a provider seeks to abandon facilities or discontinue any service, it must notify affected customers and follow the established abandonment procedures under ss. PSC 165.11 and 165.12.

SECTION 73. PSC 160.14(2)(b) is amended to read:

(b) The petition shall be filed in writing with the commission, and the ~~Except as provided in par. (d),~~ petitioner retains intralata toll service provider of last resort responsibilities until a new provider of last resort is designated, or for a period of 12 months, whichever is shorter.

SECTION 74. PSC 160.14(2)(d) is created to read:

(d) If intralata presubscription has been in effect in an exchange for at least one year, and if the designated intralata toll provider has less than 50% of all presubscribed residential access lines in that exchange, then the commission may lift the intralata toll provider of last resort requirement for that exchange. If future circumstances should so require, the commission may designate a new intralata toll provider of last resort pursuant to sub. (3).

SECTION 75. PSC 160.14(8) is created to read:

(8) An intralata toll provider of last resort may not sell or dispose of any intralata toll customer to another provider, except at the express request of the customer.

SECTION 76. PSC 160.15 is amended to read:

PSC 160.15 Identification of charges caused by universal service funding liability. Telecommunications providers may not establish a surcharge or separately identify on customer bills, any amounts for recovering, or contributing to, or recovering any portion of the providers' payment of universal service fund obligations.

SECTION 77. PSC 160.155 is created to read:

PSC 160.155 Reasonably comparable urban and rural rates (1) All telecommunications providers must maintain rates in rural area that are reasonably comparable to those charged by that provider in urban areas. The services offered for those rates must also be reasonably comparable.

(2) To be reasonably comparable, rates must not vary significantly, except to the extent that higher rates are for additional or higher quality service than is generally offered. Having a longer length circuit between the switch and customer premises is not considered additional or higher quality service.

(3) Non-recurring charges for rural customers must also be reasonably comparable to those charged to urban customers.

(4) Rates for incumbent local exchange carriers which vary between exchanges, and which have been set by commission order, are exempted until such time as the rates are revised or changed. A rate decrease which is applied uniformly across an entire rate classification does not constitute a change for the purposes of this paragraph.

(5) In order to maintain rural and urban toll rate parity, where a local exchange service provider's switched access rates exceed 150% of the benchmark access rates established by the commission, the provider will issue credits to the access customer reducing those access rates to 150 percent of the benchmark rates. The commission may revise the benchmark access rates by order, following comment and opportunity for hearing. Local exchange service providers will be reimbursed by the universal service fund for the value of the credits issued.

Note: The initial benchmarks were established by the commission in docket 05-TI-130.

SECTION 78. PSC 160.181 is created to read:

PSC 160.181 Use audit. Recipients of universal service fund monies may be audited by the commission to ensure that the funding was applied for and used appropriately.

SECTION 79. PSC 160.19(4)(a) and (5) are amended to read:

(a) ~~Terms of universal service fund council members initially appointed by the commission are effective through December 31, 1995. After December 31, 1995, universal~~ Universal service fund council members shall be appointed to staggered three-year terms.

~~Note: For terms beginning on January 1, 1996, the commission will appoint some universal service fund council members to a one year term, others to a 2 year term and the remaining members to a 3 year term.~~

~~(5) The commission shall appoint a chairperson for the universal service fund council who shall serve in that capacity through December 31, 1995. Thereafter, the~~ The universal service fund council shall elect a chairperson and a vice-chairperson from its membership, not including the commission staff liaison. The term of office for these positions shall be one year. Elections may be held at the first meeting of each calendar year ~~commencing after December 31, 1995,~~ or may be conducted by mail prior to the first meeting of each calendar year.

Initial Regulatory Flexibility Analysis

Existing universal service fund rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. These small telecommunications utilities, of which there are 78 in Wisconsin, like other telecommunications providers (both large and small), have obligations under the universal service fund, including an obligation for payments to the universal service fund. The rule changes proposed in this proceeding could have the effect of changing the amount of the assessments. Some of these changes may increase the amount of funding needed, while others may decrease the amount paid by any given provider. The net effect of these changes is uncertain.

Other provisions of these proposed rules should have no direct impact on small businesses. The Commission already has established, in s. PSC 160.18(1), an exemption from fund assessments to protect entry by and continued operation of small telecommunications providers as directed by statutory objectives. There are no new reporting or bookkeeping requirements created under these proposed rules for any business except for wireless carriers who choose to become eligible telecommunications carriers.

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

Fiscal Estimate

The annual appropriation for the Universal Services fund Programs covered under rules in ch. PSC 160 is \$8,000,000. There is no anticipation that spending for the specified programs identified in this rule making proceeding will exceed this spending level.

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

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

Agriculture, Trade and Consumer Protection**(CR 98-123):**

Chs. ATCP 10 and 11 – Relating to fish farms, fish diseases and imports of live fish and fish eggs.

Agriculture, Trade and Consumer Protection**(CR 98-152):**

Chs. ATCP 10 to 12 – Relating to:

- 1) Licensing fees charged to livestock markets, livestock dealers and livestock truckers;
- 2) Registration fees charged to the keepers of farm-raised deer;
- 3) Fees charged for a permit to operate an approved feed lot; and
- 4) The fee charged to an accredited veterinarian when the veterinarian obtains, from the Department of Agriculture, Trade and Consumer Protection, forms to be used in issuing interstate health certificates or certificates of veterinary inspection.

Health and Family Services (CR 98-127):

SS. HSS 98.01, 98.03, 98.04 and 98.28 to 98.32 – Relating to lie detector testing of sex offenders who are in community placements.

Health and Family Services (CR 98-155):

Ch. HFS 163 – Relating to certification for the identification, removal and reduction of lead-based paint hazards, accreditation of training courses that prepare individuals for certification, and approval of training course managers, principal instructors and guest instructors.

Insurance, Commissioner of (CR 98-186):

Ch. Ins 51 – Relating to risk-based capital for health insurers.

Natural Resources (CR 98-146):

Ch. NR 167 – Relating to the land recycling loan program.

Natural Resources (CR 98-148):

Ch. NR 20 and s. NR 21.02 (16) – Relating to sport fishing regulations.

Natural Resources (CR 98-151):

Subch. VIII of ch. NR 809 – Relating to water system capacity for community and nontransient noncommunity water systems.

Natural Resources (CR 98-162):

S. NR 410.03 – Relating to an increase in construction permit fees.

Natural Resources (CR 98-176):

Ch. NR 47 – Relating to forestry grant programs.

Regulation and Licensing (CR 98-135):

Chs. RL 120 to 126 – Relating to the registration and regulation of auctioneers and auction companies.

Revenue (CR 98-171):

S. Tax 11.68 – Relating to construction contractors.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Agriculture, Trade and Consumer Protection**(CR 98-118):**

An order affecting ch. ATCP 30 Appendix A, relating to pesticide product restrictions.

Effective 04-01-99.

Transportation (CR 98-167):

An order affecting ss. Trans 200.01 and 200.055, relating to the location for placement of utility work signs.

Effective 04-01-99.

Veterans Affairs (CR 98-165):

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

Effective 04-01-99.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **February 28, 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.

Commerce (CR 98-99):

An order affecting s. Comm 2.35 and ch. Comm 67, relating to rental unit energy efficiency standards.
Effective 03-01-99.

Commerce (CR 98-100):

An order repealing ch. ILHR 32 and creating ch. Comm 32, relating to public employe safety and health.
Effective 03-01-99.

Commerce (CR 98-103):

An order affecting ss. Comm 16.50, 54.07 and 64.45 and chs. Comm 51, 52, 56 and 58, relating to an update of adopted National Fire Protection Association (NFPA) standards in the Building Code.
Effective 03-01-99.

Health and Family Services (CR 97-47):

An order creating ch. HFS 127, relating to the operation of rural medical centers.
Effective 03-01-99.

Hearing & Speech Examining Board (CR 98-115):

An order affecting ss. HAS 1.01, 2.01, 3.02 and 7.05 and chs. HAS 6 and 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.
Effective 03-01-99.

Natural Resources (CR 98-73):

An order affecting chs. NR 191 and 192, relating to lake protection and classification grants and lake classification technical assistance grants.
Effective 03-01-99.

Natural Resources (CR 98-84):

An order affecting ch. NR 10, relating to wildlife damage abatement program and the wildlife damage claim program.
Effective 03-01-99.

Natural Resources (CR 98-85):

An order affecting ch. NR 10, relating to the 1998 migratory game bird season.
Effective 03-01-99.

Public Instruction (CR 98-112):

An order affecting ch. PI 35, relating to the Milwaukee parental school choice program.
Effective 03-01-99.

Public Instruction (CR 98-113):

An order creating ch. PI 38, relating to grants for peer review and mentoring.
Effective 03-01-99.

Railroads, Commissioner of (CR 97-83):

An order affecting ch. RR 1, relating to procedures and practices of the Office of the Commissioner of Railroads.
Effective 03-01-99.

Railroads, Commissioner of (CR 97-84):

An order repealing ch. RR 3, relating to railroad ratemaking.
Effective 03-01-99.

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.

Transportation (CR 98-131):

An order affecting ch. Trans 400, relating to the Wisconsin Environmental Policy Act (WEPA).
Effective 03-01-99.

Transportation (CR 98-140):

An order affecting ch. Trans 309, relating to ambulance inspection.
Effective 04-01-99.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in February, 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

Commerce:

(Fee Schedule, Ch. Comm 2)

Ch. Comm 2

S. Comm 2.35 (5) (a) and (b)

(Electrical, Volume 2, Ch. Comm 16)

Ch. Comm 16

S. Comm 16.50 (entire section)

(Public Employee Safety and Health Standards, Ch. Comm 32)

Ch. Comm 32 (entire chapter)

Ch. Comm 32 was repealed and recreated from ch. ILHR 32.

(Building and Heating, etc., Chs. Comm 50-64)

Ch. Comm 51

S. Comm 51.06 (6) (a)
S. Comm 51.24 (intro.) and (10)
S. Comm 51.245 (1), (2) (a) and (3) (intro.)
S. Comm 51.25 Table 51.25-17

Ch. Comm 52

S. Comm 52.01 (2) (d)

Ch. Comm 54

S. Comm 54.02 (2) (f)

Ch. Comm 56

S. Comm 56.03 (2) (b)
S. Comm 56.61 (1) (a)
S. Comm 56.63 (9) (b)
S. Comm 56.64 (3) (a)
S. Comm 56.65 (3) (a)

Ch. Comm 58

S. Comm 58.27 (3) (a)
S. Comm 58.65 (1)

Ch. Comm 64

S. Comm 64.45 (1)

(Rental Unit Energy Efficiency, Ch. Comm 67)

Ch. Comm 67

S. Comm 67.02 (entire section)
S. Comm 67.03 (1), (2) (intro.) to (f), (h) and (i)
S. Comm 67.04 (8t), (17g), (20), (28m), (32) (L),
(m) and (n), (32t) and (34)
S. Comm 67.05 (entire section)

S. Comm 67.055 (entire section)

S. Comm 67.06 (entire section)

S. Comm 67.07 (entire section)

S. Comm 67.08 (entire section)

S. Comm 67.09 (entire section)

S. Comm 67.13 (4)

Health and Family Services:

(Health, Chs. HFS 110--)

Ch. HFS 127 (entire chapter)

Hearing and Speech Examining Board:

Ch. HAS 1

S. HAS 1.01 (1), (2a) and (5n)

Ch. HAS 2

S. HAS 2.01 (4)

Ch. HAS 3

S. HAS 3.02 (5)

Ch. HAS 6

S. HAS 6.02 (intro.), (2), (3), (4o), (4t), (6a), (6b)
and (8a)

S. HAS 6.04 (8)

S. HAS 6.05 (entire section)

S. HAS 6.06 (1) (e) and (f) and (3)

S. HAS 6.08 (2) (b)

S. HAS 6.09 (1a) and (2) (h) and (i)

Ch. HAS 7

S. HAS 7.03 (1) (d) and (2) (c)

S. HAS 7.05 (1) (a) and (2) (a)

Ch. HAS 8 (entire chapter)

Natural Resources:

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

Ch. NR 10

S. NR 10.01 (1) (b), (g), (u) and (v)

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

Ch. NR 191

S. NR 191.01 (entire section)

S. NR 191.02 (entire section)

S. NR 191.03 (2) to (17)

S. NR 191.04 (entire section)

S. NR 191.05 (4)

S. NR 191.06 (1), (2) (b) and (3)

- S. NR 191.07 (2), (3), (4) and (5)
- S. NR 191.08 (5)
- S. NR 191.09 (entire section)
- S. NR 191.10 (entire section)
- S. NR 191.105 (entire section)

Ch. NR 192 (entire chapter)

Public Instruction:

Ch. PI 35

- S. PI 35.01 (entire section)
- S. PI 35.02 (entire section)
- S. PI 35.025 (entire section)
- S. PI 35.03 (1) (a) and (c), (2), (3) and (4)
- S. PI 35.04 (entire section)
- S. PI 35.045 (entire section)
- S. PI 35.046 (entire section)
- S. PI 35.05 (2), (3) (b), (6) and (7)

Ch. PI 38 (entire chapter)

Railroads, Commissioner of:

Ch. RR 1

- S. RR 1.001 (entire section)
- S. RR 1.01 (1) to (3)
- S. RR 1.02 (entire section)
- S. RR 1.025 (entire section)
- S. RR 1.03 (3)
- S. RR 1.04 (1) and (7) (intro.)
- S. RR 1.07 (3)
- S. RR 1.08 (1) and (3)
- S. RR 1.11 (1)
- S. RR 1.12 (3) and (4)
- S. RR 1.13 (2)
- S. RR 1.14 (entire section)
- S. RR 1.15 (entire section)

Ch. RR 3 (entire chapter)

Regulation and Licensing:

Chs. RL 90 to 94 (entire chapters)

Transportation:

Ch. Trans 309

- S. Trans 309.01 (2)
- S. Trans 309.02 (1), (1m) and (7) to (14)
- S. Trans 309.03 (1), (1m), (1r), (3) (b), (4), (5) to (7)
- S. Trans 309.04 (2) and (3)
- S. Trans 309.05 (entire section)
- S. Trans 309.07 (1), (2) (intro.), (a) to (e), (4), (5) and (6)
- S. Trans 309.08 (entire section)
- S. Trans 309.09 (1) (c)
- S. Trans 309.12 (1), (2) and (5)
- S. Trans 309.13 (entire section)
- S. Trans 309.15 (2) (b), (c), (e) and (f)
- S. Trans 309.16 (2)
- S. Trans 309.17 (entire section)
- S. Trans 309.18 (2)
- S. Trans 309.19 (1) and (2) (b)
- S. Trans 309.20 (entire section)
- S. Trans 309.21 (1)
- S. Trans 309.22 (entire section)
- S. Trans 309.23 (1) and (3)
- S. Trans 309.24 (1) (a), (am), (b), (bm), (br), (c), (d), (dm), (f), (h) to (k), (m), (o), (q), (s), (u), (v), (w), (wm), (wr), (x), (xm), (xr), (y), (z), (za), (zb), (zc), (zd), (2) (intro.), (b), (c), (d) and (e), (3) (a) and (d), (4) (b), (c), (d), (e) to (h)
- S. Trans 309.25 (1) (bm) and (2)

Ch. Trans 400

- S. Trans 400.03 (2)
- S. Trans 400.04 (7) and (12)
- S. Trans 400.05 (entire section)
- S. Trans 400.07 (1), (2) (intro.), (a), (b) and (c) (intro.)
- S. Trans 400.08 (1), (2) (intro.) and (a)
- S. Trans 400.09 (1) and (2) (intro.)
- S. Trans 400.10 (2) (intro.)

EDITORIAL CORRECTIONS

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

Commerce:

(Fee Schedule, Ch. Comm 2)

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

(Flammable and Combustible Liquids, Ch. Comm 10)

Ch. Comm 10 was renumbered from ch. ILHR 10 under s. 13.93 (2m) (b) 1., Stats., and had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

(Smoke Detectors, Ch. Comm 28)

Ch. Comm 28 was renumbered from ch. ILHR 28 under s. 13.93 (2m) (b) 1., Stats., and had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

(Fire Department Safety and Health Standards, Ch. Comm 30)

Ch. Comm 30 was renumbered from ch. ILHR 30 under s. 13.93 (2m) (b) 1., Stats., and had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

Health and Family Services:

(Community Services, Chs. HFS 30--)

Ch. HFS 45

S. HFS 45.05 (3) (e) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

Insurance, Commissioner of:**Ch. Ins 4**

S. Ins 4.10 (19) had a correction made under
s. 13.93 (2m) (b) 1., Stats.

Ch. Ins 5

S. Ins 5.17 (5) had a correction made under
s. 13.93 (2m) (b) 6., Stats.

Natural Resources:

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

**Ch. NR 10 had corrections made under
s. 13.93 (2m) (b) 7., Stats.**

S. NR 10.13 (1) (b) had a correction made under
s. 13.93 (2m) (b) 1., Stats.

ERRATA

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Commerce:

*(Petroleum Environmental Cleanup Fund,
Ch. Comm 47)*

Ch. Comm 47 reprinted to correct note.

Financial Institutions:

(Securities)

Ch. DFI-Sec 9 reprinted to correct note.

Health and Family Services:

(Community Services, Chs. HFS 30--)

Ch. HFS 46 reprinted to correct note.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Commerce (CR 98–99)

Ch. Comm 67 – Rental Unit Energy Efficiency Standards.

Summary of Final Regulatory Flexibility Analysis:

Overall, the rules make the code less stringent and offer additional options for compliance. During hearings, there were no issues raised specific to small businesses. There are no additional reporting costs or enforcement costs associated with these rules. The cost of preparation of reports under the new performance option is estimated to be less than the reports currently required by the code.

Summary of Comments of Legislative Standing Committees:

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

2. Commerce (CR 98–103)

Chs. Comm 50–64 – Update of adopted NFPA Standards in the Commercial Building Code.

Summary of Final Regulatory Flexibility Analysis:

Comments were received from 4 parties at the public hearing on these rules. All comments were strongly in favor of adopting these proposed rules as written. The NFPA standards proposed for adoption are established through a national consensus process, which takes full advantage of the latest design, inspection and maintenance technologies. The public hearing participants, as well as the members of the Fire Safety Code Council and the Commercial Building Code Council strongly believe that adoption of these updated standards will be a service for all citizens and businesses of the state.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Small Business and Economic Development and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

3. Commerce (CR 98–100)

Ch. Comm 32 – Public Employee Safety and Health.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule will not affect any small businesses as defined in s. 227.114 (1)(a), Stats. The proposed rules apply to public sector employers and employees.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

4. Health & Family Services (CR 97–47)

Ch. HFS 127 – Rural medical centers.

Summary of Final Regulatory Flexibility Analysis:

The rules apply to health care facilities and programs in rural areas that operate under a single governing body to provide at least two types of health care services usually licensed, certified or approved separately by the Department, and that choose to be licensed and regulated as rural medical centers. A rural medical center could be a small business, as defined in s. 227.114 (1) (a), Stats., but that is unlikely because of the numbers of employees a rural medical center would have. The rules will not add to the current facility or program reporting or record-keeping requirements, nor will compliance with them require professional skills that facilities and programs currently lack.

Summary of Comments:

No comments were reported.

5. Hearing and Speech Examining Board (CR 98–115)

Chs. HAS 1–3 & 6–8 – Continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

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.

6. Natural Resources (CR 98–73)

NR 191 and 192 -Lake protection and lake classification technical assistance grants

Summary of Final Regulatory Flexibility Analysis:

Small business is not affected by this rule because grants are issued only to governmental units or nonprofit organizations.

Summary of Comments by Legislative Review Committees:

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

7. Natural Resources (CR 98–84)

NR 10 -Wildlife damage abatement program and the wildlife damage claim program

Summary of Final Regulatory Flexibility Analysis:

The proposed revisions to chs. NR 12 and 19 are unlikely to have a significant new economic impact on a substantial number of small businesses. Though Department and participating counties have serviced 2,419 growers in 1997, and these rules involve restrictions and accountability, they also involve implementation of statute which includes extensive increases of benefits to growers. These rules seek to make this program efficient, more accountable and clearer to understand and implement.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On November 5, 1998, the Assembly Committee on Natural Resources held a public hearing. The Committee did not request any changes to the proposed rule, but did request the Department to make minor modifications to the Wildlife Damage Abatement and Claims Program technical manual used by the Department.

8. Natural Resources (CR 98-85)

Ch. NR 10- 1998 migratory game bird season

Summary of Final Regulatory Flexibility Analysis:

The rules are applicable to individual sport persons and impose no compliance or reporting requirements for small businesses. Therefore, a final regulatory flexibility analysis is not required.

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.

9. Public Instruction (CR 98-112)

Ch. PI 35 – Milwaukee parental school choice program .

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.

10. Public Instruction (CR 98-113)

Ch. PI 38 – Grants for peer review and mentoring.

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.

11. Railroad Commissioner (CR 97-83)

Ch. RR 1 – Hearing procedure and practice.

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 reported.

12. Railroad Commissioner (CR 97-84)

Ch. RR 3 – Railroad rate making.

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.

13. Regulation & Licensing (CR 98-116)

Chs. RL 90-94 – The practice of massage therapy and bodywork.

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.

14. Transportation (CR 98-131)

Ch. Trans 400 – Wisconsin Environmental Policy Act.

Summary of Final Regulatory Flexibility Analysis:

This rule will have no adverse effect on small businesses.

Summary of Comments:

No comments were reported.

15. Transportation (CR 98-140)

Ch. Trans 309 – Ambulance inspection.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have an adverse effect on a limited number of small businesses providing ambulance service. For those services that keep their ambulances stocked with the bare minimum of medical and surgical equipment, the Department estimates that their cost per ambulance would be less than \$1,000. Most service providers will have very little monetary hardship because they already carry most of the equipment that this rule would require. The Department estimates that there would be a \$200 cost per ambulance.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

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

Executive Order 360. Relating to the Continued Existence of Certain Nonstatutory Committees.

Executive Order 361. Relating to the Creation of the Governor's Task Force on Building Tomorrow's Workforce.

Executive Order 362. Relating to a Special Election for the Thirty-Fifth Assembly District.

Executive Order 363. Relating to the Creation of a State Rehabilitation Council.

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