

WISCONSIN ADMINISTRATIVE REGISTER

No. 480



Publication Date: December 31, 1995
Effective Date: January 1, 1996

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

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Executive Order 265:	Relating to Calling to Active Service Elements of the Wisconsin National Guard.

NOTICE SECTION

Notice of Hearing

Barbering & Cosmetology Examining Board

Notice is hereby given that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 440.03 (1) and (1m), Stats., and interpreting s. 454.15 (2) (i), Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. BC 2.03 (7), relating to standards of conduct.

Hearing Information

February 5, 1996 Monday 10:00 a.m.	Room 179A 1400 E. Washington Ave. Madison, WI
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Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **February 19, 1996** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 and 440.03 (1) and (1m)

Statute interpreted: s. 454.15 (2) (i)

In this proposed rule-making order, the Barbering and Cosmetology Examining Board creates s. BC 2.03 (7) to clarify that inappropriate sexual contact with a patron is a violation of the practice standards of the profession and is a basis for disciplinary action.

Text of Rule

SECTION 1. BC 2.03 (7) is created to read:

BC 2.03 (7) Licensees shall refrain from engaging in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patron. For the purposes of this section, a person is a patron from the time of entry into the establishment or other area where services are performed until the person leaves those premises. In addition, sexual assault of a prior or current patron or of a co-worker or employee shall constitute a violation of practice standards. Sexual harassment of co-workers or employees shall constitute a violation of practice standards.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Department of Regulation and Licensing
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearings

Gaming Commission

Notice is hereby given that pursuant to s. 561.02, Stats., and interpreting ss. 563.92 (1) and (1m), 563.93 and 563.935, Stats., the Wisconsin Gaming Commission will hold public hearings at the **Wisconsin Gaming Commission's Capitol Office situated at 150 East Gilman Street, in the city of Madison, Wisconsin, on Monday, the 8th day of January, 1996, at 10:00 a.m. and on Monday, the 5th day of February, 1996 at 10:00 a.m.**, to consider the creation of ss. WGC 45.01, 45.02, 45.03, 45.04 and 45.05; Wis. Adm. Code, relating to licensing requirements for the conduct of a raffle. Attendance at this meeting is not mandatory for raffle license holders.

Analysis Prepared by the Wisconsin Gaming Commission

WGC 45.01 is created to provide a purpose statement related to the granting of raffle licenses.

WGC 45.02 is created to provide distinction between a Class A raffle license and a Class B raffle license. The determining factor between the two licenses is that a Class A raffle ticket can be sold prior to drawing date and a Class B raffle ticket can only be sold on the same day of the raffle drawing.

WGC 45.03 is created to establish the requirements of a Class A raffle license. This rule sets forth the parameters of the raffle ticket, the conduct of the sale of tickets and the procedures for the raffle drawing.

WGC 45.04 is created to establish the requirements of a Class B raffle license. This rule sets forth the parameters of the raffle ticket, the conduct of the sale of tickets and the procedures for the raffle drawing.

WGC 45.05 is created to establish the license fees as provided under s. 563.92 (1), Stats.

Emergency Rules

The rules will be promulgated as emergency rules effective the date of publication in the official state newspaper. The projected date of publication is **November 17, 1995**.

Initial Regulatory Flexibility Analysis

There is no effect on small businesses.

Reference to Applicable Forms

Not applicable.

Fiscal Estimate

Sections WGC 45.01 – 45.05 Wis. Adm. Code, have no fiscal impact on the state. The identified license fees have been previously paid to the Commission as authorized under s. 563.92, Stats.

Agency Contact Person

Daniel J. Subach, Racing Analyst
 Division of Racing
 Wisconsin Gaming Commission
 150 E. Gilman Street
 P.O. Box 8979
 Madison, Wisconsin 53708-8979
 Tel. (608) 264-6652
 Fax: (608) 267-4879

Text of Rules

SECTION 1. WGC 45.01 is created to read:

WGC 45.01 Purpose. The purpose of this chapter is to establish procedures relative to the conduct of raffles.

SECTION 2. WGC 45.02 is created to read:

WGC 45.02 Licenses. The commission may issue a Class A license for the conduct of a raffle in which some or all of the tickets for that raffle are sold on days other than the same day as the raffle drawing. The commission may issue a Class B license for the conduct of a raffle in which all of the tickets for that raffle are sold on the same day as the raffle drawing.

SECTION 3. WGC 45.03 is created to read:

WGC 45.03 Class A License. All of the following shall apply to the conduct of a raffle under a Class A license:

(1) All raffle tickets and all calendars shall be identical in form and include:

- (a) The number of the license issued by the commission.
- (b) The name and address of the sponsoring organization.
- (c) The price of the ticket or calendar and the discounted price, if any, applicable to multiple raffle ticket or calendar purchases.
- (d) A place for the purchaser to enter his or her name and address.
- (e) The date, time and place of the drawing or drawings.
- (f) A list of each prize to be awarded which has a retail value of \$500 or more.

(2) Each raffle ticket and each calendar sold by an organization shall include a separate identification number, printed on both the purchaser's and organization's portion of the ticket or calendar, numbered consecutively in relation to the other tickets or calendars for the same drawing.

(3) No raffle ticket may exceed \$50 in cost.

(4) No calendar may exceed \$10 in cost for each month covered by the calendar.

(5) No person may sell a raffle ticket or calendar unless authorized by an organization licensed under this chapter.

(6) Tickets for a proposed raffle may not be offered for sale more than 180 days before the raffle drawing.

(7) All raffle drawings shall be held in public.

(8) All prizes shall be awarded. The purchaser of a ticket or calendar need not be present at the drawing to win a prize.

(9) If a raffle drawing is canceled, the organization shall refund the receipts to the ticket or calendar purchasers.

(10) The organization that holds a raffle drawing shall furnish a list of prize winners to each ticket or calendar holder who provides the organization with a self-addressed stamped envelope and requests the list.

SECTION 4. WGC 45.04 is created to read:

WGC 45.04 Class B License. All of the following shall apply to the conduct of a raffle under a Class B license:

- (1) All raffle tickets shall be identical in form.
- (2) The raffle tickets need not be numbered consecutively.
- (3) No raffle ticket may exceed \$10 in cost.
- (4) No person may sell a raffle ticket or calendar unless authorized by an organization with a Class B license.
- (5) All raffle drawings shall be held in public.
- (6) The purchaser of a ticket may claim the prize if the purchaser must leave prior to the drawing.

(a) The purchaser of a raffle ticket sold by an authorized organization with a Class B license pursuant to s. 563.935, Stats., may claim the prize if the purchaser must leave before the drawing. To be eligible to claim the prize, the purchaser shall give their ticket to an individual that will be in attendance at the time of the drawing to claim the prize on their behalf. If the purchaser chooses not to give their ticket to another individual prior to the drawing to act as their representative, the purchaser may present the ticket to a designated representative of the authorized organization for a refund. In the event the individual leaves prior to the drawing and does not give their ticket to another individual to claim the prize on their behalf or request a refund, the purchaser surrenders all rights to claim the prize or receive a refund. If a ticket is presented for refund, the seller shall immediately void the ticket. The individual designated to issue refunds on behalf of the organization shall be identified at the start of the event in which the raffle shall be conducted. The purchaser shall not hold the organization or the commission responsible for any disputes which may arise regarding ownership claim of any ticket.

(7) All prizes shall be awarded.

(8) The time of the drawing and prizes to be awarded, the prize amount or the methodology used to determine the prize amount shall be posted or announced before the drawing.

(9) If a raffle drawing is canceled, the organization shall refund the receipts to the ticket purchasers.

SECTION 5. WGC 45.05 is created to read:

WGC 45.05 License fees. The fee for each type of raffle license shall be \$25 and shall be remitted with the application. A raffle license shall be valid for 12 months and may be renewed as provided in s. 563.98 (1g), Stats. The commission shall issue the license within 30 days after the filing of an application if the applicant qualifies under s. 563.90, Stats., and has not exceeded the limits of s. 563.91, Stats.

Notice of Hearing

Health & Social Services

(Health, Chs. HSS 110--)

Notice is hereby given that pursuant to s. 150.03, Stats., the Department of Health and Social Services will hold a public hearing to consider the amendment of ss. HSS 122.06 and 122.07, Wis. Adm. Code, relating to criteria for prior review and approval of up to three pilot projects that propose to demonstrate the worth of new nursing home designs, and the emergency rules now in effect on the same subject.

Hearing Information

January 18, 1996
Thursday
10:00 a.m. to 12:00 p.m.

Room 572C
State Office Building
1 W. Wilson Street
Madison, WI

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

Analysis Prepared by the Department of Health and Social Services

A capital expenditure by or on behalf of a nursing home that exceeds \$1,000,000 is subject to prior review and approval by the Department under subch. II of ch. 150, Stats. An approved project has a maximum cost per bed limit computed under s. HSS 122.07 (1) (c).

The Legislature in s. 10 of 1993 Wis. Act 290 directed the Department to study the issue of the relationship between the design and construction of nursing homes and the formula for determining approvable proposed bed costs under s. HSS 122.07 within the context of health care cost containment.

The Department on January 31, 1995 submitted its report to the Legislature on nursing home design and construction in relation to the formula for determining maximum bed costs. While the study dealt primarily with traditional nursing home designs, the Department stated in the report that its Division of Health was developing rules to permit the study of new

nursing home designs which increase capital costs per bed but decrease operating costs. The rules would increase the maximum allowable cost per bed for projects that will permit study of the impact of nursing home design and management approaches on the health of nursing home residents and the cost of care. New nursing home designs may exceed the maximum costs per bed but reduce operating costs.

The Department on November 29, 1995 published the rules by emergency order because of the length of the permanent rulemaking process and also the length of the Department's project approval process which cannot begin until the rules are in effect. The Department sought to act quickly to improve care for nursing home residents and possibly lower the overall costs of care.

These are the permanent rules to replace the emergency rules. Like the emergency rules, they increase the cost per bed maximum for two or three pilot projects that will demonstrate new nursing home designs. They also establish conditions for the announcement and acceptance of applications, criteria for review of applications and a selection process when there are more applicants that meet the requirements for project approval than can be approved.

Contact Person

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

Connie Miller
Division of Health
P.O. Box 1808
Madison, Wisconsin 53701-1808
608/266-0999 or,
if you are hearing impaired,
608/266-1511

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

Written Comments

Written comments on the proposed rules received at the above address no later than **January 25, 1996**, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The rule changes will have no impact on state medical assistance reimbursement under the nursing home formula. For the approved pilot projects, reimbursement under the capital cost center would be higher than reimbursement to facilities subject to the RAP maximums. However, the increase in capital costs is projected to be offset by decreases in the operating costs of the new facilities. Operating costs are expected to decrease as a result of more energy efficient buildings and layouts that are designed to promote staffing efficiencies. In addition, because the number of demonstration projects are limited in number and represent a small percentage of industry-wide costs, this rule change is not anticipated to have a material impact on the remaining cost center medians.

Cities and counties operate 78 nursing homes statewide. These rules will not affect local governments, unless a local government chooses to apply for a demonstration project.

There will be no additional costs to the Department for administration of the review process for projects demonstrating new nursing home designs.

Initial Regulatory Flexibility Analysis

These rules will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. About 90 nursing homes are small businesses, but a project home must have 60 or more beds in which case it would not likely meet the small business criterion of having fewer than 25 full-time employees. In any case, a nursing home construction project is not required to comply with the new criteria set out in these rules unless the applicant proposes to demonstrate the worth of a new nursing home design in terms of lower operating costs and resident benefits and makes application for project approval in accordance with the criteria and procedures in these rules.

Notice of Hearing

Health & Social Services

(Health, Chs. HSS 110--)

Notice is hereby given that pursuant to s. 254.151 (intro.), Stats., as renumbered and amended by 1995 Wis. Act 27, and s. 227.11 (2) (a), Stats., the Department of Health & Social Services will hold a public hearing to consider the creation of ch. HSS 182, relating to criteria for awarding grants for lead poisoning prevention projects, and emergency rules now in effect on the same subject.

Hearing Information

The public hearing will be held:

January 16, 1996
Tuesday
From 1:00 p.m.
to 3:00 p.m.

Room 291
Washington Sqr. Office Bldg.
1414 E. Washington Ave.
MADISON, WI

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Social Services

These rules implement the requirement in s. 254.151, Stats., as amended by 1995 Wis. Act 27, that the Department establish criteria by rule for the award of grants:

- 1) To fund educational programs, including programs for health care providers about the dangers of lead poisoning or exposure to lead;
- 2) To fund lead poisoning or lead exposure screening, care coordination and follow-up services, including lead inspections, for or on behalf of children under the age of 6 not covered by third-party payers;
- 3) To fund administration and enforcement activities of local health departments that, under s. 254.152, Stats., are designated by the Department to be its agents for administration and enforcement of ss. 254.11 to 254.178, Stats.

The grant program was established in mid-1994. The requirement that the Department's criteria for awarding grants be set out in rules was added by Act 27 in mid-1995. The amount available in the appropriation for grant awards is \$879,000 for each year of the 1995-97 biennium.

Similar emergency rules were published on December 5, 1995. These are the replacement permanent rules.

The rules identify who may apply for a grant, describe the application process, provide for preliminary review of applications by the Department for compliance with format and content requirements set out in the relevant request for proposals (RFP), provide for evaluation of applications by one or more review committees appointed by the Department and specify 14 criteria for use in that final review, note that the Department will award grants based on the recommendations of the review committee or committees and taking into consideration other specified factors and describe the awards process and conditions imposed when awarding grants.

Contact Person

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

Bill Otto, (608) 266-9337 or,
if you are hearing-impaired, (608) 266-1511 (TDD)
Lead Poisoning Prevention Program
Bureau of Public Health
1414 East Washington Ave., Room 96
Madison, WI 53703

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

Written Comments

Written comments on the proposed rules received by the person at the above address no later than **January 23, 1996**, will receive the same consideration as testimony presented at a hearing.

Fiscal Estimate

These rules establish criteria for awarding lead poisoning or lead exposure prevention grants under s. 254.151, Stats., as renumbered and amended by 1995 Wis. Act 27. Rules are required under s. 254.151 (intro.), Stats., as renumbered and amended by Act 27.

The rules will not affect the expenditures or revenues of state government or local governments. The grant program was established in 1994. The requirement that the criteria for awarding grants be set out in rules was added in 1995. The rules do not affect the monies made available for distribution or the costs to the Department for administration of this grant program. County public health agencies and private nonprofit agencies working in collaboration with them may apply for grants but there is no requirement that a county agency apply for a grant.

Initial Regulatory Flexibility Analysis

These rules apply to the Department and to local health departments and collaborative nonprofit agencies that apply for a grant or receive a grant under these rules. The rules will not directly affect small businesses, as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Public Hearing

Industry, Labor & Human Relations (Credentials, Ch. ILHR 5)

Notice is given that pursuant to ss. 101.02 (1), 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.63 (2) and (2m), 101.73 (5), 101.82 (2), 101.87 (1), 145.02 (4), 145.045 (1), 145.165 (1), 145.17 (2), 145.175 and 167.10 (6m) (e), Stats., the Department of Industry, Labor & Human Relations proposes to hold a public hearing to consider the adoption of ch. ILHR 5, Wis. Adm. Code, relating to credentials administered and enforced by the Division of Safety and Buildings.

Hearing Information

January 18, 1996
Thursday
10:00 a.m.

Capital View
East Side Business Men's Assoc.
3735 Monona Drive
Madison

Copies of Rules

A copy of the rules to be considered may be obtained from the State Department of Industry, Labor & Human Relations, Division of Safety and Buildings, 201 East Washington Avenue, P.O. Box 7969, Madison, WI 53707, by calling (608) 266-9375 or at the appointed time and place the hearing is held.

Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **January 31, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to James Quast at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individuals responses.

The hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-9375 or Telecommunication Device for the Deaf (TDD) 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 on request by a person with a disability.

Analysis

Statutory Authority: ss. 101.02 (1), 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.63 (2) and (2m), 101.73 (5), 101.82 (2), 101.87 (1), 145.02 (4), 145.045 (1), 145.165 (1), 145.17 (2), 145.175, and 167.10 (6m) (e).

Statutes Interpreted: ss. 101.11 (1), 101.12 (3) (br) to (e) and (g), 101.14 (4) (a), 101.15 (2), (3), 101.177 (2) to (4), 101.178 (2) and (3)(a), 101.653 (2), 101.654, 101.66 (2), 101.75 (1), and 101.973 (10), 145.03, 145.07, 145.08, 145.14 and 145.16.

To enhance public health, safety and welfare, people and businesses are either mandated or permitted to obtain specific credentials – licenses, certifications or registrations, under chs. 101, 145 and 167, of the Wisconsin State Statutes. In most cases the credentials related to activities associated with the construction of buildings and structures, or specific components and elements that serve buildings and structures. The enclosed rules reflect those credentials that the Division of Safety and Buildings, Department of Industry, Labor and Human Relations has been delegated the responsibility of administering and enforcing.

The enclosed draft of chapter ILHR 5 is a consolidation into a single code of all of the credentials administered by the Division of Safety and Buildings. Currently, the requirements for the credentials are scattered throughout a dozen different codes. The draft reflects the division's "Best Practice" reengineering efforts to simplify and make more efficient the credentialing processes employed across all programs. The credentialing processes are reflected in subch. I of the code and include such processes as examinations, fees, suspensions and revocations. The credential fees contained in the draft in most cases simply reflect a restructuring in how the fees are to be assessed. The revised fees structure is not to increase the revenues collected by the division. In some cases, the fee for a credential may appear to be higher than that currently charged, but the changes in the amount reflect that the term of the credential has been extended for a longer period of time. For example, inspector certifications will be good for two years rather than one year.

Besides the changes relative to processes, the proposed draft of ch. ILHR 5 contains several substantive policy revisions of current requirements. Specific changes include:

* **ILHR 5.06** Unless limited by the statutes, credential terms have been extended to at least 2 years. In most cases, those credentials that currently have terms greater than 2 years have remained at the same length.

* **ILHR 5.08** For those credential categories that require continuing education for credential renewal, the division will no longer act as the sole source for providing the continuing education. The rules establish a process by which other parties may obtain department approval for continuing education courses or programs that the parties wish to sponsor or provide.

* **ILHR 5.20** The number of classes for blaster licenses has been increased from 5 to 7 types. Also, blasters will no longer be slotted into specific subcategories of the classes, but will be permitted to undertake all the activities specified under the class.

* **ILHR 5.30** The codification of the process by which the department will recognize an organization to repair boilers and pressure vessels.

* **ILHR 5.35** The codification of the process by which the department will recognize individuals who conduct welding tests for the purpose of qualifying structural welders.

* **Subchapter IV** The continuing education obligations for electrical credentials are clarified, including which credential categories need continuing education, and specifically how much – 18 hours for master electricians and journeyman electricians. Also the qualifications to take the master electrician and journeyman electrician examinations are revised to require practical experience of 1,000 hours per year for 7 years and 5 years, respectively, in order to be consistent with changes in the electrical apprenticeship program.

* **ILHR 5.51 & 5.54** The credentials for automatic fire sprinkler contractor and automatic fire sprinkler contractor-maintenance are to be issued to the individual who takes and passes the credential test, rather than to the business for which the person works.

* **ILHR 5.56** Revisions clarify which inspections and tests for maintaining automatic fire sprinkler systems must be conducted by credentialed individuals. The revisions include the establishment of a new credential category for an automatic fire sprinkler system tester.

* **Subchapter VI** The revised code no longer references certified independent inspection agencies for one- and 2-family dwellings and manufactured buildings, in light of the fact that all inspections are statutorily mandated to be performed by certified individuals.

* **ILHR 5.60** The qualifications to become a boiler-pressure vessel inspector will remain the same (passing the national board examination), but who may become a certified inspector is no longer limited to department or municipal employees, insurance company employees, or boiler owners and operators.

* **ILHR 5.63** The credential category of "restricted" electrical inspector will be eliminated and current individuals who hold that credential will eventually be issued a "full" electrical inspector credential.

* **ILHR 5.70** The present registrations of HVAC contractors, refrigerant sellers and refrigerant servicers are proposed to be consolidated into one credential type, HVAC contractor. This is to recognize the overlap in activities and eliminated the need for obtaining separate credentials.

* **ILHR 5.71** The HVAC contractor certification for a business has been eliminated. By rule an entity which utilizes an individual who holds an HVAC certification will be deemed to be certified business alleviating the need to obtain a local license or certification to engage in the business of installing or servicing HVAC equipment and systems. Under the statutes, local governments determine the need, responsibilities, and recognition of the HVAC certifications.

* **ILHR 5.72** – The qualifications to be a department certified refrigerant handling technician will now reflect the necessity to be recognized by the federal Environmental Protection Agency.

* **Subchapter VIII.** The renewal of credentials relating to petroleum tank systems—installers, cleaners, remover liners, inspectors—will now be contingent upon fulfilling continuing education requirements, rather than having to take and pass an examination.

* **ILHR 5.91 & 5.92** For master plumbers and master plumbers—restricted, the ability and responsibility to utilize the appropriate credentialed persons for doing plumbing installations has been clarified.

* **ILHR 5.95** The draft does not contain specific educational course work for plumbing apprentices. Rather, the educational obligations will be administered through the department's Bureau of Apprenticeship Standards.

* **ILHR 5.97** In order to obtain the credential, plumbing utility contractors will now be required to take and pass an exam instead of just using letters of recommendation.

Initial Regulatory Flexibility Analysis

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

The proposed rules of ch. ILHR 5 consolidating the existing credentializing processes administered by the Division of Safety and Buildings into a single code may impact businesses involved with blasting; manufacturing fireworks; soil testing; building dwellings; installing electrical work; installing and maintaining automatic fire sprinkler systems; inspecting boilers, pressure vessels, electrical work, buildings, dwellings, elevators, petroleum tank systems; private sewage systems and rental units; installing and servicing heating, ventilating, air conditioning and refrigeration systems and equipment; installing and remediating petroleum tank system; and installing plumbing.

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

People and business are either mandated or permitted to obtain specific credentials under chs. 101, 145 and 167, Stats., to engage in certain activities associated with construction. Chapter ILHR 5 delineates the activities permitted under each credential type as well as the responsibilities that must be fulfilled under the credential.

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

The rules of ch. ILHR 5 delineate the necessary qualifications, experience, and in some cases, the passage of an examination in order to obtain a credential.

Fiscal Estimate

The credential fees contained in the draft in most cases simply reflect a restructuring in how the current fees are to be assessed. The revised fee structure is not to increase the revenues collected by the division. In some cases, the fees for a credential reflect that the term of the credential has been extended for a longer period of time.

Two exceptions are:

The certification of a refrigerant handling technician will now have a term length of 3 years instead of the current "lifetime" status. The fee to renew the certification will be \$15.00. This should result in annual revenues of approximately \$70,000. This increase of revenues will be offset by the combining of two separate business credentials for HVAC work and refrigeration equipment servicing into a single credential recognizing both disciplines. This should result in a decrease of about \$75,000 in annual revenues.

The revisions also establish a credential for individuals to test automatic fire sprinkler systems. The department estimates that eventually 250 individuals may obtain this credential which will result in an annual revenue gain of \$11,250. The work load generated by this new credential will be absorbed within current resources.

Notice of Hearings Natural Resources (Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to s. 227.11 (2), Stats., interpreting s. 29.09 (9r), Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 19.02, Wis. Adm. Code, relating to handling fees for Department approvals.

Analysis

The budget contained statutory language authorizing the Department to charge a handling fee for licenses, stamps, permits and other approvals which are issued by the Department and ordered by mail, telephone or electronic means. Under the proposed rule, the handling fee only applies to an approval which can be purchased in person and by mail, telephone or electronic means but the customer prefers the convenience of ordering by mail, telephone or electronic means. Any approvals which are purchased in person or can only be purchased by mail, phone or electronic means do not have a handling fee.

The Department proposes to gradually phase-in use of a handling fee, beginning with telephone or mail orders from nonresidents for all applicable approvals and with a statewide renewal project for the deer gun, archery and hunters choice permits. The proposed rule specifies that the Department may establish a fee to cover its costs up to a maximum of \$3.00. The Department proposes a blended fee of \$2.40 for the first two years.

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.

Environmental Assessment

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 document 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:

January 11, 1996
Thursday
10:30 a.m.

Wausau Room
Marathon Co. Public Library
300 North First St.
WAUSAU, WI

January 12, 1996
Friday
10:30 a.m.

Room 611B, GEF #2
101 South Webster St.
MADISON, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified

individuals with disabilities upon request. Please call Marilyn Davis at (608) 267-7799 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments & Contact Information

Written comments on the proposed rule may be submitted to:

Ms. Marilyn Davis
DNR License Section
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **January 23, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FN-39-95] and fiscal estimate may be obtained from Ms. Davis.

Fiscal Estimate

The proposed administrative rule establishes and describes the handling fees which may be charged for processing approvals ordered by mail, phone or electronic means. This authority is created in s. 29.09 (9r) of the 1995-97 biennial budget.

The handling fee will only apply to approvals which are available through extended purchasing options, (i.e., can be purchased in person **and** by mail, telephone or electronic means. The fee only affects people who prefer the convenience of ordering by mail, phone or FAX. Although all approvals contained in chapter 29, Stats., are potential candidates for a handling fee, most approvals will not be immediately affected because they are not currently available through extended purchasing options.

This fiscal note is limited to those licenses and permits to be phased-in during the two year period following promulgation of the handling fee rule. During this time, the Department anticipates applying a handling fee on the following licenses and permits:

- 1) All licenses and permits sold to nonresidents by mail or phone by DNR central office staff; and
- 2) A special renewal project for the deer gun license, archery license and hunter's choice permits for residents and nonresidents.

Item cost and volume assumptions used in this fiscal note are based on actual experience from a pilot mailing in fall 1994 for deer gun licenses, archery licenses and hunter's choice permits. This pilot project mailed renewal notices to 30,000 hunters, offering them an opportunity to renew by mail with a check or credit card. In that pilot, 30% of all hunters who received the initial mailing responded by mail and ordered one or more approvals. FirStar Bank handled all orders, remittances and data capture work. DNR License and Registration Section administered the sale and call center activities.

The proposed rule allows for a handling fee of up to a maximum of \$3.00; however, the Department proposes a \$2.40 handling fee for the first two years of implementation. This handling fee is anticipated to cover the costs of ordering licenses and permits by mail or telephone, as described above.

Variable costs which the Department must cover in these extended purchasing options are:

- 1) Renewal notification;
- 2) Catalog or other mailer and postage;
- 3) Remittance and credit card;
- 4) Data conversion, data processing and related administration;
- 5) Printing, fulfillment and postage; and
- 6) Call center, (i.e., staff, telephones and services needed to process customer inquiries, orders and complaints).

Assumptions used to derive the annual cost of offering extended purchasing options in the 1995-97 biennium are itemized below for the deer gun, archery and hunter's choice project and for nonresident license and permit sales.

Deer Gun, Archery and Hunter's Choice Project

Based on anticipated sales volume for Fiscal Year (FY) 1995, the Department estimates that a total of 405,000 hunters will receive the initial mailing, and, as a result, 164,000 hunters will purchase their licenses and permits by mail using either a check or credit card.

400,000 residents with 40% response rate = 160,000

5,000 nonresidents with 80% response rate = 4,000
405,000 total 164,000

This fiscal note assumes the following:

1. Of the 164,000 respondents, 10% purchase all three approvals, 85% purchase a gun deer license and hunter's choice permit, and 5% purchase only one of the three approvals.

2. Of the 164,000 respondents, 60% use a credit card to pay for the approvals. Credit card transaction fees equal 2.62% of all revenues collected.

Cost of offering extended purchasing options to these 164,000 respondents is as follows:

<i>Outbound renewal notification (incl. envelopes, inserts, presort, printing, postage)</i>	\$137,700
<i>Inbound customer renewals (incl. lockbox charges, sorting, data entry & processing, tape service credit card transaction fees)</i>	\$182,780
<i>Mailing licenses and permits (incl. printing, fulfillment charges, postage)</i>	\$ 52,480
<i>Administrative handling, (incl. reconciliation design and procurement)</i>	\$ 15,913
TOTAL	\$388,873

Avg. cost per applicant (\$388,873/164,000) = \$2.37

Nonresident Orders from DNR Central Office

In FY 95, a total of 2,424 licenses and permits were ordered by mail or phone from the Information Desk in the GEF 2 building. Total revenue from these sales equaled \$259,840.

Cost of extended purchasing options:

<i>Staff time for phone call & mailing</i>	\$2,662
<i>Credit card fees (assume 90% pay with credit card)</i>	6,127
<i>Envelopes & postage</i>	800
TOTAL	\$9,588

Avg. cost per applicant (\$9,588/2,424) = \$3.96

Weighted Average of Gun, Archery & Hunter's Choice Project/Nonresident Sales

Total Costs	
<i>Deer gun, archery, hunter's choice</i>	\$388,873
<i>Nonresident sales</i>	\$ 9,588
TOTAL	\$398,462

Total Participants

<i>Deer gun, archery, hunter's choice</i>	164,000
<i>Nonresidents</i>	2,424
TOTAL	166,424

Weighted average cost per applicant = \$2.40

Therefore, the Department proposes a \$2.40 handling fee for licenses and permits offered for sale under extended purchasing options for the first two years of implementation.

Long-Range Fiscal Implications

The Department plans to expand the types of licenses and permits that can be purchased in person or ordered by mail, telephone or electronic means; however, at this time it is too early to know which approvals will be affected and in what volume.

Notice of Hearings

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

Notice is hereby given that pursuant to s. 227.11 (2) (c), Stats., interpreting ss. 29.225 (1), 23.33 (4z), 30.74 (1) and 350.108 (1), Stats., the

Department of Natural Resources will hold public hearings on the creation of s. NR 19.30, Wis. Adm. Code, relating to requiring criminal history checks on all volunteer all-terrain vehicle, boating, bowhunter, hunter education and snowmobile safety instructors.

Analysis

The Department for many years has utilized a computer system controlled by the Department of Justice for conducting criminal history checks. In a recent Department of Justice audit, it was determined that criminal history checks for safety program instructors can no longer be performed on the computer system unless a Wisconsin statute or administrative rule requires a criminal history checks for these positions. The proposed rule requires criminal history checks for all safety program volunteer instructors prior to certification to ensure no previous convictions of a significant nature exist.

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.

Environmental Assessment

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 document 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:

January 12, 1996
Friday
At 11:30 a.m.

Large Conference Room
Lake Michigan Dist. Hdqrs.
1125 North Military Ave.
GREEN BAY, WI

January 12, 1996
Friday
At 11:30 a.m.

Room 611A, GEF #2
101 South Webster St.
MADISON, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Gary Homuth at (608) 266-3244 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments & Contact Information

Written comments on the proposed rule may be submitted to:

Mr. Gary Homuth
Bureau of Law Enforcement
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **January 19, 1996**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE-36-95] and fiscal estimate may be obtained from Mr. Homuth.

Fiscal Estimate

The Department of Justice (DOJ) is presently conducting all criminal history checks for new outdoor safety education instructors at a cost of \$2.00 per applicant. The Bureau of Law Enforcement certifies approximately 650 new instructors per year. The new instructors teach All-Terrain Vehicle (ATV), Boating, Bow Hunter, Hunter Education and Snowmobile Safety courses.

This proposal will require a criminal history check of the new instructor. This rule would then allow the Department of Natural Resources, Bureau of

Law Enforcement, to conduct the check using the DOJ TIME system. DOJ will continue to charge a \$2.00 fee per check of a new instructor. The Department can carry out this requirement within its current appropriation.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.174, 29.155 (1h) and 227.11 (2) (a), Stats., interpreting ss. 29.085 and 29.174 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 20, 21, 22, 23 and 26, Wis. Adm. Code, relating to sport and commercial fishing and fish refuges.

Analysis

These proposals are minor corrections and housekeeping changes to the administrative code. The proposals are:

1. Change the wording for the opening day of the bass harvest fishing season in the northern zone from "Saturday nearest June 20" to "3rd Saturday in June" to make it consistent from year to year.
2. Delete Lowe Creek Pond from the trout table. This water no longer exists; the dam was removed.
3. Clarify the portions of the Pecatonica River that are open to fishing year around.
4. Allow the possession of certain exotic fishes, if dead, for transport to a Department office for verification.
5. Correct the "sorting" rule so that the wording is consistent in chs. NR 20, 21, 22 and 23.
6. Repeal a prohibition on release of rough fish to bring the rule into compliance with statutory changes.
7. Revise the period of closure for the refuge at the dam at Rest Lake, Manitowish River, Vilas County. This change converts the refuge from year around to an April 1 to May 31 closure.
8. Correct the description of the fish refuge, Tomahawk River, Oneida County; change "dam" to "bridge".
9. Correct the description of a fish refuge on Beaver Dam Creek, Dodge County.

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.

Environmental Assessment

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 document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearing will be held on:

January 11, 1996
Thursday
At 1:00 p.m.

Room 717, GEF #2
101 South Webster St.
MADISON, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call 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 & Contact Information

Written comments on the proposed rule may be submitted to:

Mr. Tim Simonson
Bureau of Fisheries Management
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **January 11, 1996**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FM-3-96] and fiscal estimate may be obtained from Mr. Simonson.

Fiscal Estimate

The fishing rules promulgated are primarily housekeeping in nature and do not change the substance of existing rules and will have no adverse impact on the fisheries of the state. This proposal will contain fishing rule changes approved by the Natural Resources Board through the 30-day notice rulemaking procedures and the rules themselves will have no fiscal impact on either state or local units of government.

Long-Range Fiscal Implications

None.

Notice of Hearings

Natural Resources

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

Notice is hereby given that pursuant to s. 29.547, Stats., interpreting s. 29.547, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 28.03 and 28.04, Wis. Adm. Code, relating to wild ginseng.

Analysis

The proposed changes are as follows:

Certification procedures for export – The federal government is now requiring that all ginseng leaving the state be inspected and certified by state personnel in the state of origin. In order to meet this requirement, the Department will be establishing one or more certification locations in the state where the ginseng for export will be inspected and certified. The proposed language will require licensed dealers to certify all ginseng for export prior to it leaving the state. Uncertified wild ginseng may be sold by harvesters to non-resident licensed Wisconsin dealers as long as the ginseng is returned to Wisconsin and certified within 30 days of the sale. Licensed harvesters must have their ginseng inspected and certified by an agent of the state if they are to ship it out of the state to anyone other than a licensed Wisconsin wild ginseng dealer.

Sales and certification for domestic use – The federal government requires that all ginseng leaving the state be certified by the state, including wild ginseng sold for domestic consumption (within the U.S.). Until recently our state statutes provided an exemption for domestic sales, and the exemption still exists in the administrative code. It is necessary for Wisconsin to remove this exemption in order to comply with federal restrictions. To implement this certification with minimal delay and paperwork, the Department is proposing to provide to the licensed dealers combined sales receipts/certificates of origin that will be attached to any domestic sales.

Revising terminology – The federal government requires “certificates of origin” to be attached to any ginseng being exported from the state. Chapter NR 28 currently uses the term “shipping certificate” to refer to the same document. The proposal revises the terminology to be consistent with federal requirements.

Purchasing wild ginseng from out-of-state – The proposed rule will allow Wisconsin licensed dealers to purchase uncertified wild ginseng from out of state, as long as the ginseng is returned to the state of origin and certified by them within 30 days of the purchase. This language clarifies existing policy and is an attempt to be consistent with the policies of adjacent states.

Retention of records – In keeping with other record retention requirements, this language clarifies that all dealer transaction records must be kept and available for department inspection for at least 3 years.

Possession of ginseng harvester licenses – The proposed rule clarifies that licensed harvesters must have their license with them at the time of harvest and at the time of sale.

Harvest restrictions – The proposed rule allows for the stalk to be broken off, but to be kept with the roots to allow for enforcement. New language allows for seed to be taken from the site for planting elsewhere if written permission is obtained from the Department. The proposed rule also allows for the harvest of plants that produce flowers, but may not have mature fruit at the time of harvest. This allows for harvest of plants where the fruits have already been dispersed, or where the fruits did not mature.

Harvest on lands not owned by the state – This proposed language clarifies that any harvest on private lands or on public lands not owned by the state may only be done with the permission of the appropriate landowner or public land manager.

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.

Environmental Analysis

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 document 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:

January 11, 1996
Thursday
At 1:30 p.m.

Wausau Room
Marathon Co. Public Library
300 North First Street
WAUSAU, WI

January 12, 1996
Friday
At 1:30 p.m.

Room 611B, GEF #2
101 South Webster St.
MADISON, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kelly Kearns at (608) 267-5066 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments & Contact Information

Written comments on the proposed rule may be submitted to:

Ms. Kelly Kearns
Bureau of Endangered Resources
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **January 22, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [ER-48-95] and fiscal estimate may be obtained from Ms. Kearns.

Fiscal Estimate

The proposed rule will require inspection and certification of all wild Wisconsin ginseng being shipped for export. The DNR anticipate contracting with USDA Plant Protection & Quarantine office to have their inspectors at Mitchell Field Airport conduct the inspections. The cost of this contract (approximately \$2000 or less) will be offset by increased ginseng license fees approved in the revision of the wild ginseng statutes (s. 29.547) in August, 1995. The increased revenues from increased license fees are anticipated to be approximately \$20,000 (\$17,000 from harvester's licenses and \$3000 from dealer's licenses).

Increased license fees will also go to support a small number of inspections and certifications by DNR Field Wardens and Central Office staff (approximately \$1,000 or less). Additional revenues will offset administration costs of the wild ginseng program, pay for the printing of ginseng forms, support research efforts and field enforcement.

Long-Range Fiscal Implications

The USDA-PPQ contract will be an annual expense, approximately \$2,000.

Notice of Hearings

Natural Resources

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

Notice is hereby given that pursuant to s. 25.296, 27.016 and 227.11, Stats., interpreting s. 23.098, 25.295 and 27.016, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 51, subch. VII, Wis. Adm. Code, relating to administration of the Heritage State Park and Forest Trust grants.

Analysis

The Heritage State Park and Forest Trust Fund program consists of revenues from gifts to the trust fund and from the sale of utility easements on state park property. The actual amount of money available is difficult to determine at this time because the Department does not know the extent of the Department's trust fund or interest on endowment funds of the Friends Organizations. All funds will be used in the maintenance or operation of state parks, southern state forests and state recreation areas.

The proposed rules assure equal evaluations of qualifying groups under the definition of friends groups in s. 23.098(1), Stats., and s. NR 1.71. The rules emphasize the purpose, who can apply, which projects are eligible, the priorities and the application and grant awarding procedures.

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.

Environmental Assessment

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 document 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:

January 12, 1996 Friday 10:30 a.m.	Large Conference Room Lake Michigan Dist. Hdqrs. 1125 N. Military Ave. GREEN BAY, WI
January 12, 1996 Friday 10:30 a.m.	Room 611A, GEF #2 101 South Webster St. MADISON, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Norm Pazderski at (608) 266-2152 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments & Contact Information

Written comments on the proposed rule may be submitted to:

Mr. Norm Pazderski
Bureau of Parks & Recreation
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **January 19, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [PR-10-96] and fiscal estimate may be obtained from Mr. Pazderski.

Fiscal Estimate

These rules implement statutory provisions of 1995 Wis. Act 27, related to this program. The budget bill established an appropriation structure and authorization to spend funds; however, no funds were provided in the appropriation pending deposit of funds into the Heritage Trust Fund. Thus, it is not possible to determine any fiscal impact to the Department at this time.

Long-Range Fiscal Implications

None.

Notice of Hearing

State Public Defender

Notice is hereby given that pursuant to s. 977.02 (4m) and (4r), Stats., and interpreting ss. 977.06 (1) (d) and (3) (a), 977.07 (2m), 977.075, and 977.076, Stats., the State Public Defender will hold a public hearing at **1 West Wilson Street, Room 851R, in the city of Madison, Wisconsin on Thursday, 11th day of January, 1996, from 11:00 a.m. to 1:00 p.m.** to consider the creation of rules related to determining clients' ability to pay for the cost of legal representation, referring uncollected accounts to the department of administration for collections and requiring the agency to provide written notice to clients of their repayment obligation. Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis by Agency

Statutory Authority: s. 977.02 (4m) & (4r)

Statutes Interpreted: ss. 977.06 (1) (d), (3) (a), 977.07 (2m), 977.075 and 977.076

The proposed rules comply with ss. 977.02 (4m) and (4r), 977.06 (1) (d) and (3) (a), 977.07 (2m), 977.075, and 977.076, Stats., created by 1995 Wis. Act 27. Act 27 requires the agency to collect for the cost of representation from persons who are partially indigent or who have otherwise been determined to be able to reimburse the agency for the cost of representation. In addition, the budget bill authorized the department of administration to collect unpaid reimbursement payments owed to the state public defender.

The proposed rules also implement recommendations made by the Legislative Audit Bureau (LAB) in its 1994 audit of the agency. Specifically, the rules implement LAB's recommendations, found on page 30 of the report, that the agency undertake aggressive collections efforts and, as part of that efforts, determine whether clients have the ability to pay for the cost of legal representation.

The proposed rules establish the procedures for: 1) determining clients' ability to pay; 2) referring uncollected accounts to the department of administration for collection; and, 3) providing written notice to clients of the repayment obligation for the cost of legal representation.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

These rules establish procedures whereby the SPD will determine clients' ability to pay attorney fees, set up monthly payment schedules, and refer uncollected accounts to DOA for collection. It is estimated that savings will result from implementation of these rules. It is estimated that in FY 96 \$369,000 and in FY 97 \$761,700 will be generated as a result of the collection efforts undertaken by both the SPD and DOA.

Contact Person

A copy of the proposed rules can be obtained from Sally Mayne Pederson, Legal Counsel, 315 North Henry Street, Madison, WI 53703; (608) 264-8560 or Gina Pruski, Deputy Legal Counsel (608) 266-0087.

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 state above, and must be received by **January 11, 1996**.

Notice of Hearing Public Defender

Notice is hereby given that pursuant to s. 977.02 (2m) and (3), Stats., and interpreting s. 977.06 (1) (b), Stats., the State Public Defender will hold a public hearing at the time and place indicated below to consider the creation of rules relating to the cost of counsel table and partial indigency.

Hearing Information

January 12, 1996
Friday
12:30 p.m. to
2:30 p.m.

Room 851R, 8th Floor
One West Wilson St.
Madison, WI

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

Analysis by Agency

Statutory authority: s. 977.02 (2m), (3) and (4)

Statute interpreted: ss. 977.06 (1) (d) and 977.07 (1) & (2)

The proposed rules are necessary for collections procedures from partially indigent clients and for consistency among PD administrative rules. The proposed rules will aid in implementation of the statutory mandates related to collections and indigency verification contained in the biennial budget act.

Specifically, proposed s. PD 3.02 (1) amends the cost of a first degree intentional homicide in the cost of counsel table, consistent with the collections schedule in s. PD 6.01. The proposed amendment to s. PD 3.04 (1) will simplify the calculations of amounts owed for repayment of legal costs from partially indigent parents of juveniles.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The proposed rule amending the cost of counsel table will not have a fiscal impact on the agency because very few, if any, potential clients will be excluded from eligibility for services as a result of raising the anticipated cost of counsel for a first degree intentional homicide. The proposed amendment to s. PD 3.04 (1) is also not expected to have a fiscal impact because the rule relates to collections from partially indigent parents of juveniles, and only 1/4 of the agency's clients are juveniles and only about 2% of agency clients are partially indigent. The rule will impact only a marginal percentage of the agency's overall collections efforts, so any savings that might result from implementation of the rule are expected to be minimal.

Copies of Rule and Contact Person

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

Sally Mayne Pederson, Legal Counsel
Telephone (608) 264-8560
Second Floor
315 North Henry Street
Madison, WI 53707-7923

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 **January 12, 1996**.

Notice of Hearing Public Defender

Notice is hereby given that pursuant to s. 977.02 (2m) and (3), Stats., and interpreting s. 977.06 (1) (b), Stats., the State Public Defender will hold a public hearing at the time and place indicated below to consider the creation of rules relating to the certification of private attorneys for appellate cases and the certification equivalent for staff attorneys.

Hearing Information

January 12, 1996
Friday
10:00 a.m. to
12:00 p.m. (noon)

Room 851R, 8th Floor
One West Wilson St.
Madison, WI

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

Analysis by Agency

Statutory authority: s. 977.02 (5)

Statute interpreted: s. 977.08

The proposed rule implements the recommendation of the Legislative Audit Bureau that the State Public Defender modify appellate certification requirements. The proposed rule establishes three levels of certification and specialty certification and includes provisional certification and review of private attorneys' case briefs. The different levels will allow the director of the appellate division to review the work of a private attorney before approving certification to the next highest level. The State Public Defender will ensure that the legal education required for certification is offered to private attorneys by the agency.

The extensive mentoring and training programs that exist within the agency for staff attorneys obviates the need for the requirement that staff attorneys meet criteria equivalent to certification. Daily supervision, mentoring and internal training meet and generally exceed certification requirements.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The proposed rule will have no fiscal impact on the agency because it is not expected to increase or decrease the number of appellate cases assigned to private bar attorneys. The proposed rule amends existing appellate certification standards. Repeal of the rule relating to equivalent certification criteria for staff attorneys will not have a fiscal impact because existing mentoring and training of staff attorneys will continue.

Copies of Rule and Contact Person

For a complete copy of the proposed rule, or if you have questions, please contact:

Sally Mayne Pederson, Legal Counsel
Telephone (608) 264-8560
Second Floor
315 North Henry Street
Madison, WI 53707-7923

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 **January 12, 1996**.

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.03 (1), Stats., and interpreting ss. 440.035 (1), 440.07, 440.64 (3), 440.93, 442.05, 444.02, 446.03, 447.07, 448.06 (2), 449.07, 450.10, 451.14 (2), 453.07 (2), 454.15 (2), 455.09, 457.26 (2), 458.26 (3), 459.10, 459.34 (2) and 480.24 (2), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal ss. RL 1.02, 1.03 (2) and 1.05; to renumber s. RL 1.03 (3); to renumber and amend ss. RL 1.03 (4), 1.04, 1.06 and 1.07; to amend ch. RL 1 (title) and ss. RL 1.01 (title), 1.01 and 1.03 (1); and to create ss. RL 1.03 (2), (3) and (6), 1.04, 1.05, 1.07, 1.08, 1.09, 1.12 and 1.13, relating to procedures on denial of credentials.

Hearing Information

January 29, 1996
Monday
10:00 a.m.

Room 133
1400 E. Washington Ave.
Madison, WI

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **February 9, 1996** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 227.11 (2) and 440.03 (1)

Statutes interpreted: ss. 440.035 (1), 440.07, 440.75, 440.64 (3), 440.93, 442.05, 444.02, 446.03, 447.07, 448.06 (2), 449.07, 450.10, 451.14 (2), 453.07 (2), 454.15 (2), 455.09, 457.26 (2), 458.26 (3), 459.10, 459.34 (2) and 480.24 (2)

In this proposed rule-making order, the Department of Regulation and Licensing makes changes to chapter RL 1, relating to procedures for contesting a denial of an occupational credential issued by the Department or a credentialing authority attached to the Department. The rules clarify existing procedures for an applicant who wishes to contest denial of an application at a hearing.

Under these proposed rules, an applicant does not have a right to a hearing to challenge a failing score on an examination if the applicant is eligible to retake the examination within 6 months after the applicant's latest credential examination.

The rules permit credentialing authorities to issue a notice of intent to deny for the purpose of affording the applicant a final opportunity to submit information which shows that the applicant meets requirements for a credential. The rules require that when an application is denied the applicant shall receive a notice in a specific format.

The procedural rules that apply to a request for hearing are included in the chapter, including rules describing what must be in a request for hearing, the standards used to review a request for hearing, and how the request is reviewed.

The chapter includes the procedural rules which regulate a hearing and rules on assigning the hearing officer, service of documents, default, withdrawal of a request for hearing, and transcription fees.

Text of Rule

SECTION 1. Chapter RL 1 (title) is amended to read:

Chapter RL 1

PROCEDURES ON DENIAL OF LICENSE CREDENTIAL

SECTION 2. RL 1.01 (title) and 1.01 are amended to read:

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing a ~~denial proceeding issuance of a denial and governing a denial hearing.~~ Rules in this chapter do not apply to denial of an application for renewal of a credential.

SECTION 3. RL 1.02 is repealed.

SECTION 4. RL 1.03 (1) is amended to read:

RL 1.03 (1) "Applicant" means any person who applies for a ~~license credential from the department or any board applicable credentialing authority.~~ license credential from the department or any board applicable credentialing authority. "Person" in this chapter includes a business entity.

SECTION 5. RL 1.03 (2) is repealed.

SECTION 6. RL 1.03 (3) is renumbered RL 1.03 (5).

SECTION 7. RL 1.03 (4) is amended to read:

RL 1.03 (4) "Denial proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which ~~the department or a board may determine a credentialing authority reviews a decision to deny an~~ a credentialing authority reviews a decision to deny an a completed application for a ~~license credential.~~ license credential.

SECTION 8. RL 1.03 (2), (3), and (6) are created to read:

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(6) "Division" means the division of enforcement in the department.

SECTION 9. RL 1.04 is renumbered RL 1.06 and amended to read:

RL 1.06 Parties to a denial proceeding. Parties to a denial proceeding are ~~an~~ the applicant, and the ~~department or board having authority to issue the license credentialing authority and any person admitted to appear under s. 227.44 (2m).~~ department or board having authority to issue the license credentialing authority and any person admitted to appear under s. 227.44 (2m). Stats.

SECTION 10. RL 1.05 is repealed.

SECTION 11. RL 1.06 and 1.07 are renumbered RL 1.10 and 1.11 and amended to read:

RL 1.10 Service. Service of a ~~notice of denial any document on an applicant~~ notice of denial any document on an applicant may be made by mail addressed to ~~an~~ the applicant at the last address filed in writing by the applicant with the ~~department or board credentialing authority.~~ department or board credentialing authority. Service by mail is complete on the ~~date of mailing.~~ date of mailing.

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the ~~department or board credentialing authority~~ department or board credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the ~~department or board credentialing authority~~ department or board credentialing authority which denied the credential.

SECTION 12. RL 1.04, 1.05, 1.07, 1.08, 1.09, 1.12 and 1.13 are created to read:

RL 1.04 Examination failure: retake and hearing. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

RL 1.05 Notice of intent to deny and notice of denial. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 20 days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 20 day period, the notice of intent to deny shall operate as a notice of denial and the 30 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 20 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

RL 1.07 Request for hearing. An applicant may request a hearing within 30 days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

- (1) The applicant's name and address.
- (2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

RL 1.08 Procedure. The procedures for a denial proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 30 days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

RL 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding official may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Department of Regulation and Licensing
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearing Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.03 (1), Stats., and ss. 440.03 (12) and 440.08 (2) (g), Stats., as created by 1995 Wis. Act 27, and interpreting ss. 440.08 (2r) and 440.08 (4) (b), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to amend s. RL 2.02; and to create ch. RL 9, relating to establishing a procedure for determining whether an applicant for credential renewal is liable for any delinquent taxes and conducting hearings to review applications that are denied because the applicant is liable for delinquent state taxes.

Hearing Information

January 29, 1996 Monday 10:30 a.m.	Room 133 1400 E. Washington Ave. Madison, WI
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Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **February 9, 1996** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 227.11 (2), 440.03 (1) & (12) and 440.08 (2) (g), Stats., as created by 1995 Wis. Act 27

Statutes interpreted: ss. 440.08 (2r) and 440.08 (4) (b)

In this proposed rule-making order, the Department of Regulation and Licensing creates ch. RL 9 to establish a procedure for making the determination whether an applicant for credential renewals is liable for any delinquent taxes owed to this state and to describe the procedures available to a credential holder whose application for renewal is denied because the applicant is liable for delinquent states taxes.

Under new statutes created by 1995 Wis. Act 27, the Department of Regulation and Licensing must deny applications for license renewal filed by applicants who are liable for delinquent state taxes. These provisions first apply to applications submitted to the Department of Regulation and Licensing or to an examining board or affiliated credentialing board attached to the Department to renew credentials that expire on or after January 1, 1996.

Section 440.03 (12), Stats., as created by 1995 Wis. Act 27, requires the Department to establish a procedure for making a determination concerning the liability of credential holders for delinquent taxes owed to this state. Newly-created s. 440.08 (2r), Stats., provides that before granting an application to renew a credential issued under chs. 440 to 480, Stats., the Department shall determine in accordance with the procedure established under s. 440.03 (12), Stats., whether the applicant for a credential renewal is liable for any delinquent taxes owed to this state. If the Department determines that an applicant is liable for any delinquent taxes owed to this state, the Department is required to deny the application, subject to the right of the applicant to have the denial reviewed at a hearing before the Department.

The proposed rules define terms including "liable for any delinquent taxes owed to this state," the term used in ss. 440.03 (12) and 440.08, Stats., as created by 1995 Wis. Act 27. The rules describe the method to be used for determining whether an applicant for renewal is liable for delinquent taxes.

Under the procedures, the name and social security number or federal employer identification number of an applicant is compared with information at the Wisconsin Department of Revenue to identify individuals and organizations liable for delinquent taxes. If an applicant is identified as owing taxes, a notice is mailed to the applicant stating that the application shall be denied unless delinquent taxes are paid within 10 days. If delinquent taxes are not paid following a notice of intent to deny or if an applicant fails to complete an application form, the Department shall deny the renewal application.

The rules provide for an applicant who has been denied renewal because of liability for delinquent taxes to request a hearing. Procedural rules include rules governing a notice of hearing, service of documents and the conduct of the hearing.

Text of Rule

SECTION 1. RL 2.02 is amended to read:

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that:

(1) s. Section RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats., and procedures under ch. RL 9.

(2) Chapter RL 9 governs procedures for determining whether an applicant for renewal is liable for delinquent taxes owed to this state and the procedures for a hearing under s. 440.08 (4) (b), Stats., as created by 1995 Wisconsin Act 27.

SECTION 2. Chapter RL 9 is created to read:

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in s. 440.03, Stats.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for determining whether an applicant for renewal is liable for delinquent taxes owed to this state and the procedures for a hearing under s. 440.08 (4) (b), Stats., as created by 1995 Wisconsin Act 27, to review denial of an application for renewal because the applicant is liable for delinquent taxes. Proceedings under this chapter are class 1 proceedings as defined in s. 227.01 (3) (a), Stats.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this chapter includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" means having been finally adjudged to be delinquent in the payment of taxes, including penalties, interest, fees and costs, under chs. 71, 72, 76, 77, 78, 125 and 139, Stats., and remaining delinquent in the payment of those taxes at the time the department receives an application for renewal of a credential.

RL 9.04 Procedures for determining whether an applicant for renewal is liable for delinquent taxes. (1) **RENEWAL APPLICATION FORM.** If the department receives an application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

(2) **SCREENING FOR LIABILITY FOR DELINQUENT TAXES.** The name and social security number or federal employer identification number of an applicant for renewal shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) **NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY.** If an applicant for renewal is identified as being liable for delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days

from the date of the mailing of the notice, the department received a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) **OTHER REASONS FOR DENIAL.** If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes as described in s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the department.

RL 9.06 Request for hearing. (1) **FILING.** A request for hearing to review a denial of an application for renewal because the applicant is liable for any delinquent taxes owed to this state shall be filed within 30 days after the date on which the notice of denial is mailed.

(2) **FORM OF REQUEST.** A request for hearing shall contain:

(a) The name and address of the applicant.

(b) A copy of the notice of denial identified in s. RL 9.05 received by the applicant.

(c) A short statement in plain language identifying the errors in fact or law made in the notice of denial.

(d) The signature of the applicant.

RL 9.07 Notice of hearing. A notice of hearing shall be sent to the parties at least 10 days prior to the hearing, unless for good cause the notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

RL 9.08 Parties to tax delinquency denial review. Parties to a tax delinquency denial review are the applicant and the Wisconsin department of revenue and any person admitted to appear under s. 227.44 (2m), Stats.

RL 9.09 Pleadings to be captioned. All pleadings and other papers filed in a tax delinquency denial review shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF THE TAX DELINQUENCY DENIAL REVIEW OF _____, APPLICANT."

RL 9.10 Service and filing of notice of denial, request for hearing, notice of hearing and other papers. (1) Any paper required to be served on the applicant may be served by mailing the paper to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. Service by mail is complete by mailing.

(2) Any paper required to be served on the Wisconsin department of revenue may be served by mailing the paper to the Wisconsin Department of Revenue, Compliance Bureau, 4638 University Avenue, P.O. Box 8902, Madison, WI 53708-8902.

(3) Any paper required to be filed with the department may be mailed to the department at Room 173, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935 or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge, and shall be deemed filed on receipt at department office or by the administrative law judge. Any paper may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department.

RL 9.11 Administrative law judge. (1) **DESIGNATION.** A tax delinquency denial review hearing shall be presided over by an administrative law judge designated by the department's general counsel.

(2) **AUTHORITY.** An administrative law judge designated under this section to preside over any tax delinquency denial review hearing has the authority described in s. 227.46 (1), Stats. The decision of the administrative law judge presiding over a tax delinquency denial review hearing shall be the

final decision of the agency unless the department directs otherwise under s. 227.46 (3), Stats.

RL 9.12 Conduct of hearing. (1) **DISCOVERY.** Unless otherwise agreed by the parties, no discovery is permitted, except for the taking and preservation of evidence, as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(2) **BURDEN OF PROOF.** The applicant has the burden to show by evidence satisfactory to the department that the applicant meets the eligibility requirements set by law for a credential.

(3) **LOCATION OF HEARING.** All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

RL 9.13 Default. If either party fails to appear at the hearing at the time fixed, the administrative law judge may make findings and enter an order on the basis of the notice of denial and other evidence. The administrative law judge may, for good cause, relieve a party from the effect of such findings at any time before the disciplinary authority renders a final decision or within a reasonable time thereafter.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Department of Regulation and Licensing
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 71.80 (1) (c), Stats., and interpreting ss. 71.03 (6) (a), 71.20 (1), 71.24 (1), 71.30 (4), 71.44 (1) (a), 71.74, 71.75, 71.76, 71.77, 71.80 (18) and 77.96 (4), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **January 1, 1996**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

Analysis by the Dept. of Revenue

Statutory authority: s. 71.80 (1) (c)

Statutes interpreted: ss. 71.03 (6) (a), 71.20 (1), 71.24 (1), 71.30 (4), 71.44 (1) (a), 71.74, 71.75, 71.76, 71.77, 71.80 (18) and 77.96 (4)

SECTION 1. Tax 2.09 is repealed and recreated to:

A) Reflect correct statutory references and add "franchise" tax in the title;

B) Reflect the Department's current policy and specifications regarding the reproduction of tax forms;

C) Make the rule clearer by adding titles to the subsections, renumbering the introductory language to be sub. (1), renumbering subs. (1) to (5) to be part of sub. (2), and renumbering sub. (6) to be sub. (3); and

D) Conform language and style to Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 2.105 is repealed and recreated. References to the temporary recycling surcharge are added wherever appropriate. The definition of "taxpayer" in sub. (2) is expanded to include partnerships and limited liability companies. Sub. (4) (a) and (b) are changed to reflect statutory changes to s. 71.76, Stats., by 1991 Wis. Act 39, regarding when a taxpayer must notify the Department of federal changes. Sub. (4) (c) is changed to clarify a taxpayer's reporting requirements regarding federal adjustments or amended returns. Subs. (5) and (6) are reversed and sub. (7) is made a part of new sub. (5) as par. (c) 4, for clarity. Old sub. (5) (b) 2 and an example, relating to pre-7/2/83 adjustments, are deleted because they are obsolete. References to other subs. in sub. (3) (b) and new sub. (6) (a) and (b) are changed to reflect proper cross-references. Throughout the rule, changes are made to conform language, style and format to Legislative Council Rules Clearinghouse standards.

SECTIONS 3 and 4. Section Tax 2.12 is repealed and recreated, and s. Tax 3.94 is repealed and its provisions are made a part of s. Tax 2.12.

With respect to s. Tax 2.12, sub. (1) (a) is recreated as subs. (3) (a), (3) (c) and (4) (b) 6. Sub. (1) (b) is recreated as sub. (3) (e). Sub. (1) (c) is recreated as sub. (4) (a), (4) (b) 3 and (4) (b) 7. Sub. (2) is repealed and subs. (5) (a) and (6) (b) are created to replace it, stating that amended forms must be on the proper form and in the proper manner, listing the proper forms, and stating how to mark an amended form. Note 1) at the end of s. Tax 2.12 is incorporated as part of sub. (3) (a), and Note 2) is deleted.

With respect to s. Tax 3.94, incorporating the rule in s. Tax 2.12 reflects a statutory change to s. 71.75 (6), Stats., by 1993 Wis. Act 205, which provides that claims for refund must be filed on a form and in the manner prescribed by the Department (which is an amended form). Sub. (1) is made a part of the definition of "timely filed" in s. Tax 2.12 (2). Sub. (2) is recreated as s. Tax 2.12 (6) (a), and the language regarding the permissive use of amended forms is removed. Sub. (3) is deleted.

In addition, s. Tax 2.12 is expanded to include many new provisions. Throughout the rule where appropriate, references to "credit claims" are added to reflect amended farmland preservation credit and homestead credit claims, and references to temporary recycling surcharge and partnership returns are added. Sub. (1) states the scope of the rule. Sub. (3) (b) states that refunds may be claimed only by filing an amended form. Sub. (3) (c) reflects statutory changes to s. 71.76, Stats., by 1991 Wis. Act 39, regarding when a taxpayer must file an amended Wisconsin return to reflect federal or other states' amendeds. Sub. (3) (d) specifies how and under what circumstances a taxpayer must report federal audit changes to the Department. Sub. (4) (b) 1, 2, 4, 5, 6 and 8 provide exceptions to the 4-year filing limitation, including refunds for field audited years and office audited items, capital loss carrybacks for corporations, extension agreements, federal amendeds and defense contract renegotiations or redeterminations. Sub. (5) (b) provides that the Department may prescribe special forms for specific tax issues. Sub. (6) (c) and (d) provide that amendeds must be mailed to a specific address and may not be attached to original returns. Notes are added to give treatment of various provisions before and after various law changes.

Text of Rule

SECTION 1. Section Tax 2.09 is repealed and recreated to read:

Tax 2.09 Reproduction of franchise or income tax forms. (ss. 71.03 (6) (a), 71.20 (1), 71.24 (1) and 71.44 (1) (a), Stats.) (1) GENERAL. Subject to the provisions of this section, the official Wisconsin franchise or income tax forms required to be filed with the department may be reproduced and the reproductions may be filed in lieu of the corresponding official forms. Any reproduction which varies from the official version in any particular, except as authorized in this section, shall be submitted to the department for approval before it is used. The department may reject any reproduction which is in whole or in part illegible or which is of a format that has not been approved by the department.

(2) SPECIFICATIONS. The following specifications shall apply:

(a) Printing of reproductions shall be by conventional printing processes, photocopying, computer graphics or similar reproduction processes and shall duplicate the font sizes, graphics and format of the official form. Reproductions may be printed on one side or both sides of the paper.

(b) Reproductions of optical character reader-scannable, or OCR-scannable, documents shall bear an OCR-scannable line as prescribed for the specific document type. Photocopies of OCR-scannable forms may not be filed.

(c) The reproductions shall be on paper of substantially the same weight and texture, and of quality at least as good as that used in the official forms.

(d) In the reproduction of tax forms, official forms printed on colored paper may be reproduced on white paper, and black ink may be substituted for colored ink.

(e) The size of the reproduction, both as to dimensions of the paper and image reproduced on it, shall be the same as that of the official form, except that full-page official forms which are other than 8 1/2 inches by 11 inches in size may be reproduced on 8 1/2 inch by 11 inch paper.

(f) Except for returns executed by fiduciaries as provided in sub. (3) or returns filed electronically, all signatures required on returns which are filed with the department shall be original, affixed subsequent to the reproduction process.

(3) FIDUCIARIES. A fiduciary or the fiduciary's agent may use a facsimile signature in filing a tax return on form 2, subject to the following conditions:

(a) Each group of returns forwarded to the department shall be accompanied by a letter signed by the person authorized to sign the returns declaring, under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by the person to sign the returns filed and that the signature was affixed to the returns by the person or at the person's direction. The letter shall also list each return by name and identifying number.

(b) A signed copy of the letter shall be retained by the person filing the returns and shall be available for inspection by the department.

(c) If returns are reproduced by photocopying or similar reproductive methods, the facsimile signature shall be affixed subsequent to the reproduction process.

Note: Written requests for approval of substitute forms should be mailed to Wisconsin Department of Revenue, Processing Forms Approval, P.O. Box 8903, Madison, WI 53708-8903.

SECTION 2. Section Tax 2.105 is repealed and recreated to read:

Tax 2.105 Notice by taxpayer of federal audit adjustments and amended returns. (ss. 71.75 (2), 71.76, 71.77 (2) and (7) and 77.96 (4), Stats.) (1) PURPOSE. This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin franchise or income tax and temporary recycling surcharge purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(2) DEFINITION. In this section, "taxpayer" includes individuals, estates, trusts, partnerships, limited liability companies and corporations.

(3) GENERAL. (a) Under ss. 71.76 and 77.96 (4), Stats., a taxpayer meeting the conditions described in sub. (4) shall report to the department changes or corrections made to a tax return by the internal revenue service, or file with the department amended Wisconsin franchise or income tax returns or amended temporary recycling surcharge returns reporting any information contained in amended returns filed with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state.

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within 90 days of the date the department receives the taxpayer's report of federal adjustments or amended return described in par. (a). The 90-day limitation does not apply to instances where the taxpayer files an incorrect franchise or income tax return or temporary recycling surcharge return with intent to defeat or evade the franchise or income tax or temporary recycling surcharge assessment.

(4) TAXPAYER REQUIRED TO REPORT. (a) *Federal adjustments.* If the federal net income tax payable, a credit claimed or carried forward, a net operating loss carried forward or a capital loss carried forward on a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall report the adjustments to the department within 90 days after they become final. The following shall also apply with respect to federal adjustments:

1. 'Finality of federal adjustments.' For the purpose of determining when the federal adjustments become final, the following shall be deemed a final determination:

a. Payment of any additional tax, not the subject of any other final determination described in subd. 1. b., c., d. or e.

b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment. Federal form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," or 870-AD, "Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment," are the forms prescribed for this purpose.

c. Expiration of the 90-day time period, or the 150-day period in the case of a notice addressed to a person outside the United States, within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within that time.

d. A closing agreement entered into with the internal revenue service under s. 7121 of the internal revenue code.

e. A decision by the United States tax court or a judgment, decree or other order by a court of competent jurisdiction which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. A court of competent jurisdiction includes a United States district court, a court of appeals, a court of claims or the United States supreme court.

Note: Decisions of the U.S. tax court and other courts ordinarily become final as follows:

a) If no appeal is made of a U.S. tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable cases involving deficiencies of \$10,000 or less heard by the U.S. tax court under s. 7463 of the internal revenue code become final 90 days after they are entered.

b) Appealed decisions of the U.S. tax court become final as set forth in s. 7481 of the internal revenue code.

c) A decision of a U.S. district court normally becomes final if not appealed to the U.S. court of appeals within 60 days of the judgment, decree or order.

d) A decision of the U.S. court of claims or the U.S. court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the U.S. supreme court within 90 days of the judgment or decree.

e) A decision of the U.S. supreme court is normally final upon the expiration of a period of 25 days from the date the decision is rendered, if a motion for reconsideration or rehearing is not filed within that time.

2. 'Information to report to department.' The taxpayer shall submit to the department a copy of the final federal audit report issued by the internal revenue service together with any other documents or schedules necessary to inform the department of the adjustments as finally determined. The report shall be included with an amended Wisconsin return if a Wisconsin refund is being claimed and may be, but is not required to be, included with an amended return if additional Wisconsin tax or temporary recycling surcharge is due or if there is no change in tax or temporary recycling surcharge.

3. 'Agreement with adjustments.' A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin franchise or income tax or temporary recycling surcharge purposes unless a statement is included with the report to the department stating why the taxpayer believes the adjustments are incorrect.

(b) *Amended returns.* If a taxpayer files an amended federal tax return and the changes on the amended federal tax return affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall file with the department an amended Wisconsin return reflecting the same changes. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

(c) *Where and how to submit report or amended return.* An amended Wisconsin return or a taxpayer's report of federal adjustments submitted with

an amended Wisconsin return shall be filed in accordance with the provisions of s. Tax 2.12 (5) and (6). A taxpayer's report of federal adjustments submitted to the department without an amended return shall be identified as reflecting federal adjustments made by the internal revenue service and shall be mailed to Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708-8906. The report submitted without an amended return may not be made a part of or attached to any Wisconsin tax return.

(5) **ASSESSMENTS AND REFUNDS BY DEPARTMENT.** If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after the adjustments become final or after an amended return is filed with the internal revenue service or another state, the department may make an assessment or issue a refund relating to the report or amended return as follows:

(a) *Assessments.* Under s. 71.77 (2), Stats., the department may make an assessment within 4 years from the date the original Wisconsin franchise or income tax return was filed. However, under s. 71.77 (7) (a), Stats., if the taxpayer reported less than 75% of the correct net income and the additional tax for the year exceeds \$200 for a joint return, or \$100 for a return other than a joint return, an assessment may be made within 6 years after the return was filed.

(b) *Refunds.* Under s. 71.75 (2), Stats., the department may issue a refund if an amended return is filed within 4 years of the unextended date the original Wisconsin franchise or income tax return was due.

(c) *Exceptions.* 1. An assessment may be made later than the 4- and 6-year periods provided in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report of federal adjustments or an amended Wisconsin return. However, the assessment made after the expiration of the 4- and 6-year periods shall only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department after the expiration of the 4-year period for filing an amended Wisconsin return as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax or temporary recycling surcharge liability, may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustments.

3. The 90-day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of the 90 days.

4. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund shall only relate to those federal adjustments or the changes on the amended return. Notice of the assessment or refund shall be given to the taxpayer within 90 days of the date the department received the report of federal adjustments or an amended Wisconsin return from the taxpayer.

Examples: 1) Federal adjustments were made to an individual's 1989 calendar-year basis federal income tax return; the adjustments became final on June 1, 1994. On August 15, 1994, within 90 days after the adjustments became final, the department received the taxpayer's report of the adjustments. Although the 4-year period provided by s. 71.77 (2), Stats., for making adjustments to the 1989 Wisconsin return expired on April 15, 1994, the department had until November 13, 1994, 90 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) An individual filed an amended 1993 calendar-year basis New York return on June 1, 1994. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 12, 1994. Under the 4-year assessment period in s. 71.77 (2), Stats., the department has 4 years from April 15, 1994, the due date of the 1993 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(6) **TAXPAYER'S FAILURE TO REPORT FEDERAL ADJUSTMENTS OR FILE AMENDED WISCONSIN RETURNS.** (a) *Adjustments and amended returns relating to taxable year 1987 and thereafter.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return, relating to the taxable year 1987 and thereafter, within the 90-day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax or temporary recycling

surcharge relating to the adjustments or amended return within 4 years after discovery by the department.

Example: An individual taxpayer filed a 1993 calendar-year basis Wisconsin income tax return on April 15, 1994. The internal revenue service made adjustments to the 1993 federal income tax return which the taxpayer did not report to the department within 90 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on May 1, 1996. The department may issue an assessment for the adjustments any time on or before May 1, 2000.

(b) *Adjustments and amended returns relating to 1986 and prior taxable years.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return which related to 1986 or prior taxable years within the 90-day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed or within 2 years after the date when the federal determination of tax becomes final, whichever is later. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar-year basis, is considered as filed on the last date prescribed by law under s. 71.77 (8), Stats.

Example: An individual taxpayer filed a 1986 income tax return on April 15, 1987. The taxpayer filed an amended return with Ohio on January 1, 1988. The result of the amended return was a reduction in the net tax paid to Ohio on income also reported to Wisconsin. The taxpayer did not notify the department within 90 days of filing the amended Ohio return. The department has until April 15, 1997, to issue an assessment for the Ohio amended return's effect on the Wisconsin credit for taxes paid to other states.

Note: Section 71.76, 1989 Stats., was amended by 1991 Wis. Act 39, effective for federal changes or corrections to a federal income tax return that became final on or after August 15, 1991, and for amended federal and other state returns filed on or after August 15, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, a taxpayer was required to report internal revenue service adjustments to taxable income that affected the income reportable or tax payable to Wisconsin, and to file an amended Wisconsin return if information contained on an amended federal or other state tax return affected income reportable or tax payable to Wisconsin.

SECTION 3. Section Tax 2.12 is repealed and recreated to read:

Tax 2.12 Amended returns. (ss. 71.30 (4), 71.74, 71.75, 71.76, 71.77, 71.80 (18) and 77.96 (4), Stats.) (1) SCOPE. This section applies to amended Wisconsin franchise or income tax returns, amended partnership returns, amended temporary recycling surcharge returns and amended farmland preservation credit and homestead credit claims.

(2) DEFINITION. In this section, "timely filed," in the case of an amended return or credit claim, means the amended return or credit claim is actually in the possession of the department prior to the expiration of the statutory limitation period or extended limitation period, or it is mailed in a properly addressed envelope with postage prepaid and is received by the department within 5 working days after the last day of the statutory limitation period or extended limitation period.

(3) GENERAL. (a) The department shall accept amended returns and credit claims to correct previously filed original, other amended or adjusted Wisconsin franchise or income tax returns, partnership returns, temporary recycling surcharge returns or farmland preservation credit or homestead credit claims.

(b) Under s. 71.75 (6), Stats., and as provided in this section, a refund of taxes or credits under ch. 71, Stats., or temporary recycling surcharge under s. 77.96 (4), Stats., may be claimed only by filing an amended return or credit claim.

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward.

(d) An amended Wisconsin return filed to report internal revenue service adjustments as provided in s. Tax 2.105 (4) (a) shall include a copy of the final federal audit report.

(e) An amended return or credit claim does not begin or extend the statute of limitation periods for assessing additional tax or temporary recycling surcharge or claiming a refund.

(4) TIMELY FILING. (a) Except as provided in par. (b), if an amended return or credit claim shows a refund, it shall be filed within 4 years of the unextended due date of the original return.

(b) The 4-year filing limitation in par. (a) does not apply in the following situations:

1. Except as provided in subds. 3 and 4, an amended Wisconsin return or credit claim requesting a refund may not be filed for any year covered by a field audit which resulted in a refund or no change in the tax owed, or in an assessment that has become final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015, Stats., provided the department advises the taxpayer that the field audit is final unless the taxpayer appeals the result.

2. Except as provided in subds. 3 and 4, an amended Wisconsin return or credit claim requesting a refund may not be filed for any item of income or deduction assessed as a result of an office audit, provided the assessment has become final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015, Stats.

3. An amended Wisconsin return or credit claim requesting a refund of the tax or temporary recycling surcharge paid as a result of an office audit or field audit assessment may be filed within 2 years of the date the tax or temporary recycling surcharge was assessed if no petition for redetermination was filed.

4. An amended Wisconsin return requesting a refund of an overpayment attributable to a capital loss carryback may be filed by a corporation within 4 years after the due date, or extended due date, for filing the return for the taxable year of the capital loss that is carried back.

5. If the limitation period for making an assessment or refund has been extended by written agreement between a taxpayer and the department, an amended Wisconsin return or credit claim requesting a refund relating to the year or years covered by the extension agreement may be filed during the extension period.

6. An amended Wisconsin return filed under the provisions of sub. (3) (c) shall be filed with the department within 90 days after the date the amended federal or other state return is filed.

7. An amended Wisconsin return filed under the provisions of sub. (3) (d) shall be filed with the department within 90 days of the date on which the federal audit adjustments become final.

8. An amended Wisconsin return filed under the provisions of s. 71.30 (4), Stats., to claim a reduction of income resulting from a renegotiation or price redetermination of a defense contract or subcontract shall be filed within one year of the final determination.

Note: Refer to s. Tax 2.105 for additional information regarding amended Wisconsin returns required as a result of filing amended federal or other state returns, or reports required as a result of federal audit adjustments made by the internal revenue service.

(5) FORMS. (a) Except as provided in par. (b), an amended Wisconsin return or credit claim requesting a refund shall be filed on the proper form as shown in the following table, in the manner prescribed in sub. (6). An amended return filed for a purpose other than to request a refund is not required to be filed on the forms indicated below.

<u>ORIGINAL FORM</u>	<u>AMENDED FORM</u>
1, 1A, WI-Z	1X
1NPR	1NPR
1 or 1A with Schedule H	1X + corrected H (if H is changed)
1 with Schedule FC	1X + corrected FC (if FC is changed)
1NPR with Schedule H or FC	1NPR + corrected H or FC (if H or FC is changed)
Schedule H alone	Schedule H
2	2
3	3
3S	3S
4	4X
4I	4I
4T	4T
5	4X

5S

5S

1CNP

1CNP

1CNS

1CNS

(b) The department may prescribe a special form for taxpayers to use in claiming a refund, to address a specific tax issue. In this situation, the special form may be used in lieu of the amended form prescribed in par. (a).

Example: Wisconsin form 1X-R was developed in 1993 to address the issue of the flow-through of interest exempt from Wisconsin taxes received from a qualified retirement plan.

(6) MANNER. (a) An amended return or credit claim shall be in writing, indicate the reporting period for which the change was made and contain a statement setting forth the specific grounds upon which the amended form is based.

(b) An amended return or credit claim other than form 1X or 4X shall be identified as an amended form by checking the "amended return" box if one is provided on the form or by marking "AMENDED" across the top of the first page of the amended form.

(c) An amended return or credit claim requesting a refund may not be made a part of or attached to any original Wisconsin return or credit claim.

(d) An amended return or credit claim shall be mailed to the department at the address specified on the form or in its instructions or at the address provided for mailing amended Wisconsin returns or credit claims.

Note: 1) The address for mailing amended Wisconsin returns or credit claims is Wisconsin Department of Revenue, P.O. Box 8991, Madison, WI 53708-8991.

2) Sections 71.75 (2) and 71.77 (5), 1989 Stats., were amended by 1991 Wis. Act 39, effective August 15, 1991. Under the statutes in effect immediately prior to the enactment of 1991 Wis. Act 39, sub. (4) (b) 4 did not apply.

3) Section 71.76, 1989 Stats., was amended by 1991 Wis. Act 39, effective for federal changes or corrections to a federal income tax return that became final on or after August 15, 1991, and for amended federal and other state returns filed on or after August 15, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, a taxpayer was required to report internal revenue service adjustments to taxable income that affected the income reportable or tax payable to Wisconsin, and to file an amended Wisconsin return if information contained on an amended federal or other state tax return affected income reportable or tax payable to Wisconsin.

4) Section 71.75 (4), 1989 Stats., was amended by 1991 Wis. Act 39, effective for field audit notices issued on or after October 1, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, the limitation in sub. (4) (b) 1 applied only to field audits which resulted in an assessment of additional tax.

SECTION 4. Section Tax 3.94 is repealed.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

This rule would repeal s. Tax 3.94, Wis. Adm. Code, and repeal and recreate s. Tax 2.09, 2.105 and 2.12, relating to:

- 1) Claims for refund;
- 2) The reproduction of franchise or income tax forms;
- 3) Notices of federal audit adjustments and federal or other states' amended returns; and
- 4) Amended Wisconsin returns.

The provisions of repealed s. Tax 3.94 would be included in s. Tax 2.12; other changes are being made to reflect legislative changes, to conform the rules with current Department of Revenue policy, to delete obsolete language, and to conform language and style to Legislative Council Rules Clearinghouse standards.

The rule changes have no fiscal effect.

Notice of Proposed Rule Revenue

Notice is hereby given that pursuant to s. 71.80 (1) (c), Stats., and interpreting ss. 71.02 and 71.04 (1) (a) and (11), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **January 1, 1996**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

Analysis by the Dept. of Revenue

Statutory authority: s. 71.80 (1) (c)

Statutes interpreted: ss. 71.02 and 71.04 (1) (a) and (11)

SECTION 1. Tax 2.31 is created to provide a fair and equitable method of allocating and apportioning to Wisconsin compensation received by nonresident members of professional athletic teams. The rule is based on the uniform regulations developed by the Federation of Tax Administrators (FTA) Task Force on Nonresident Income Tax Issues, and adopted by the FTA Membership in June 1994.

Text of Rule

SECTION 1. Section Tax 2.31 is created to read:

Tax 2.31 Compensation received by nonresident members of professional athletic teams. (ss. 71.02 and 71.04 (1) (a) and (11), Stats.) (1) SCOPE. This section apportions and allocates to Wisconsin, in a fair and equitable manner, a nonresident employee's total compensation for services rendered in Wisconsin as a member of a professional athletic team. The section does not apply to employees domiciled in a state with which Wisconsin has a reciprocity agreement.

Note: Wisconsin has reciprocity agreements with Illinois, Indiana, Kentucky, Michigan and Minnesota.

(2) DEFINITIONS. In this section:

(a) Except as provided in subs. 1 and 2, "duty days" means all days during the taxable year from the beginning of a professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete and days on which a member of a professional athletic team renders a service for a team on a date outside this time period. Rendering a service includes conducting training and rehabilitation activities at the facilities of the team. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, days spent participating in instructional leagues, days spent at special games such as the "Pro Bowl" or an "all-star" game and days served with the team through all post-season games in which the team competes or is scheduled to compete. The following exceptions to this definition apply:

1. Duty days for any person who joins a professional athletic team after the beginning of the team's official pre-season training period shall begin on the day the person joins the team. Conversely, duty days for any person who leaves a professional athletic team before the last scheduled game shall end on the day the person leaves the team. Where a person switches professional athletic teams during a taxable year, separate duty day calculations shall be made for the periods the person was with each team.

2. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member has been suspended without pay and prohibited from performing any services for the team, may not be treated as duty days.

(b) "Member of a professional athletic team" includes employees who are active players, players on the disabled list or any other persons such as coaches, managers and trainers, and who are required to and do travel with and perform services on behalf of a professional athletic team on a regular basis.

(c) "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, hockey or soccer team.

(d) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year by the member for services rendered from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year, and during the taxable year on a date outside this time period. The compensation includes, but is not limited to, salaries, wages, bonuses as described in sub. (3) (c) and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. The compensation may not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments or any other payments not related to services rendered for the team.

Examples. Services rendered on a date that does not fall within the regular season include participation in:

- 1) Instructional leagues.
- 2) The "Pro Bowl."
- 3) Promotional caravans.

(3) **METHOD OF ALLOCATION.** (a) *General.* The allocation to Wisconsin of income earned by a nonresident employe as total compensation for services rendered as a member of a professional athletic team shall be made on the basis of a fraction, the numerator of which is the number of duty days spent within Wisconsin rendering services for the team in any manner during the taxable year and the denominator of which is the total number of duty days spent both within and outside Wisconsin during the taxable year.

(b) *Duty days during the taxable year.* Duty days shall be included in the fraction described in par. (a) for the taxable year in which they occur, including where a team's official pre-season training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one taxable year. The following additional provisions apply:

1. Days during which a member of a professional athletic team is on the disabled list, does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Wisconsin, may not be considered duty days spent in Wisconsin. However, all days on the disabled list shall be included in the total duty days spent both within and outside Wisconsin.

2. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event may not be considered duty days spent in Wisconsin but shall be considered in the total duty days spent both within and outside Wisconsin.

(c) *Bonuses.* Bonuses which shall be included for purposes of the allocation described in par. (a) are:

1. Performance bonuses earned as a result of play during the season, including bonuses paid for championship, playoff or "bowl" games played by a team or for selection to all-star league or other honorary positions.

2. Bonuses paid for signing a contract, unless all of the following conditions are met:

a. The payment of the signing bonus is not conditional upon the signee playing any games for the team or performing any subsequent services for the team, or even making the team.

b. The signing bonus is payable separately from the salary and any other compensation.

c. The signing bonus is nonrefundable.

Examples. The following examples illustrate the provisions of this subsection:

1) Player A, a member of a professional athletic team, is a nonresident of Wisconsin. Player A's contract for the team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a two-year contract which covers seasons that occur during taxable year 1/taxable year 2, and taxable year 2/taxable year 3. Player A's contract provides that A receive \$500,000 for the season which occurs during taxable year 1/taxable year 2, and \$600,000 for the season which occurs during taxable year 2/taxable year 3. Player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season). The portion of the compensation received by Player A for taxable year 2 which is allocable to Wisconsin is determined by multiplying the compensation Player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days Player A

spends rendering services for the team in Wisconsin during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of Player A's duty days spent both within and outside Wisconsin for the entire taxable year 2.

2) Player B, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team but is located in Wisconsin, B's team travels to Wisconsin for a game. The days B's team spends in Wisconsin for practice, games, meetings, etc., while B is present at the clinic, are not considered duty days spent in Wisconsin for Player B for that taxable year, but those days are included within total duty days spent both within and outside Wisconsin.

3) Player C, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Wisconsin as well as at personal facilities in Wisconsin. The days C performs rehabilitation exercises in the facilities of C's team are considered duty days spent in Wisconsin for Player C for that taxable year. However, days Player C spends at personal facilities in Wisconsin are not considered duty days spent in Wisconsin for Player C for that taxable year, but those days are included within total duty days spent both within and outside Wisconsin.

4) Player D, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, D travels to Wisconsin to participate in the annual all-star game as a representative of D's team. The days D spends in Wisconsin for practice, the game, meetings, etc., are considered to be duty days spent in Wisconsin for Player D for that taxable year, as well as included within total duty days spent both within and outside Wisconsin.

5) Assume the same facts as in example 4, except that Player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending the game solely as a spectator. The days Player D spends in Wisconsin for the game are not considered to be duty days spent in Wisconsin. However, those days are included within total duty days spent both within and outside Wisconsin.

6) Player E, a member of a professional athletic team, is a nonresident of Wisconsin. During the pre-season, E travels to Wisconsin to participate in a training camp which E's team conducts in Wisconsin. E performs no further services in Wisconsin. E's team does not play any regular season or playoff games in Wisconsin. The days E spends in Wisconsin at the team's training camp are considered to be duty days spent in Wisconsin for Player E for that taxable year.

(4) **ALTERNATIVE METHODS OF ALLOCATION.** It is presumed that application of the provisions of this section will result in a fair and equitable apportionment of compensation received by nonresident members of professional athletic teams. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion the compensation, the department may require the member of a professional athletic team to apportion and allocate the compensation under a method which the department prescribes, provided the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion compensation where the member demonstrates that the method provided under this section does not fairly and equitably apportion the compensation. The proposed method shall be fully explained on the member's Wisconsin income tax return.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Section Tax 2.31 is created to provide a method to allocate and apportion the income of nonresident professional athletes to Wisconsin for tax purposes. The nonresident athlete's income is to be allocated to Wisconsin based on the number of days spent in Wisconsin performing as a member of a team relative to all days spent as a team member within and outside Wisconsin during a season.

The new rule represents the current practice of the Department of Revenue for allocating and apportioning the income of nonresident athletes to Wisconsin; thus, there is no fiscal effect resulting from the new rule.

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 Milwaukee Sentinel. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

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

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

EMERGENCY RULES NOW IN EFFECT

Department of Development

Rules were adopted revising **ch. DOD 15**, relating to the Community Based Economic Development Program.

FINDING OF EMERGENCY

The Department of Development 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:

1995 Wis. Act 27 created a new program within the Community Based Economic Development Program that provides funding for regional economic development activity. (See s. 560.14 (4), Stats., which was created by the Act.) Section 560.14 (5) (b), Stats., requires that the Department adopt rules containing criteria for evaluating applications for funding under this program before it may award a grant.

The Department already has several proposed projects before it that will create substantial new employment and investment. To avoid the loss of these economic development opportunities this order creates a rule so that the Department has the authority to make up to \$100,000 available to support regional economic development. The emergency order will preserve the welfare of Wisconsin citizens by insuring that the jobs are created and the investments are made.

Publication Date: November 27, 1995
Effective Date: November 27, 1995
Expiration Date: April 26, 1996
Hearing Date: January 9, 1996

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

Rules adopted creating **ch. ERB 5**, relating to a grant for local emergency planning committees.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislative in section 10(m) of 1995 Wis. Act 13 directed the Board to promulgate rules under s. 166.20 (2) (bg), Stats., as created by this Act, to establish an amount that may be an eligible cost for computers in an emergency planning grant under s. 166.21 (2) (bm), Stats., but without having to make a finding of emergency. The rule will remain in effect until replaced by permanent rules, but not to exceed the time authorized under s. 227.24 (1) (c) and (2), Stats.

ANALYSIS

Statutory Authority: ss. 166.20 (2) (b), (bg), 166.21 (2), 227.11 (2) (a)

Statutes Interpreted: ss. 166.20 (2) (bg), (br), 166.21 (1), (2), (3)

Plain Language Summary

The computer grant rule establishes guidelines for the computer grant to county Local Emergency Planning Committees. The rule requires the State Emergency Response Board to establish grant procedures to implement this rule. The rule allows Local Emergency Planning Committees to purchase computer equipment under this grant for specific use within the county emergency management program to comply with state and federal planning requirements.

The rule requires that matching costs for computer equipment are to be based on a 4 year grant cycle. For one year of the 4 year grant cycle, up to a maximum of \$6,000 of the cost of computer equipment shall be eligible for reimbursement. For each of the remaining 3 years of the 4 year grant cycle, up to a maximum of \$2,000 of the cost of the computer equipment shall be eligible for reimbursement.

Publication Date: December 5, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Wisconsin Gaming Commission

- Rules were adopted revising **chs. WGC 9 and 24**, relating to twin trifecta, superfecta and tri-superfecta pools, deduction approvals, animal drug testing, and intertrack and simulcast wagering.

FINDING OF EMERGENCY

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

For FY 1995-96, projected program revenues (breakage, outs, licensee fees, general program operations deductions and forfeitures) other than the pari-mutuel tax will barely exceed the Racing Division's budgeted operating expenses. (NOTE: FY 1994-95 pari-mutuel tax revenues are projected at \$5,200,000; however, this money is deposited directly into the general fund.)

As a result of the increased competition for the gambling dollar, pari-mutuel revenues attributed to greyhound racing in Wisconsin, both to

the associations and the state, have been adversely affected. Since the 1990–91 inaugural season and projecting through the end of the 1995 season for each of the four racetracks, the average daily handle has decreased as follows: Wisconsin Dells Greyhound Park – down 58%; Geneva Lakes Kennel Club – down 59%; St. Croix Meadows – down 60%; and Dairyland Greyhound Park – down 44%. (NOTE: Fox Valley Greyhound Park filed bankruptcy and ceased operations on August 12, 1993.)

In conjunction with the decrease in handle, the revenue generated for the state per race performance has also decreased at each of the previously cited facilities.

In an attempt to fund operating expenditures and reduce the revenue shortfall, the Racing Division proposed to implement a variety of measures to increase revenues and decrease expenditures in FY 1995–96.

The pari-mutuel rules being submitted for emergency rule promulgation adopt rules relating to twin trifecta, superfecta, and tri-superfecta pools, deduction approvals, animal drug testing, and intertrack and simulcast wagering.

The current rules for the twin trifecta and the tri-superfecta do not allow the racetracks to cap the jackpot level and form a secondary jackpot for a subsequent payout. The cap and seed feature may generate an additional \$25,000 in handle which will result in approximately \$670.00 in general fund money and \$185.00 in program revenues.

The new superfecta rules are created to establish the progression of payouts regarding the order of finish in superfecta pools. The three proposed rules were inadvertently omitted from orders of finish provided for under current WGC 9.12 (4), Wis. Adm. Code. There will be no increase in revenues as a result of this rule.

WGC 9.17 is created to form a regulatory framework that would require the racetracks to seek approval from the Commission prior to implementing any deduction rate changes in accordance with Wisconsin Statutes.

WGC 14.11 currently requires that the winning greyhound plus a random greyhound be subject to drug testing after each race. The amended rule will require that one greyhound (as determined by the Commission) shall be subject to drug testing.

Current Wis. Adm. Code ch. WGC 24 pertains mainly to intertrack wagering. With the passage of 1995 Assembly Bill 150, unlimited simulcasting is available to Wisconsin greyhound racetracks. Wisconsin greyhound racetracks will now be allowed to accept greyhound and horse races from out-of-state racetracks and offer wagering on these races to Wisconsin patrons. Chapter WGC 24, Wis. Adm. Code, created and amends the duties and responsibilities for Wisconsin racetracks when functioning as either the host or guest track during simulcasting and the commingling of wagering pools.

Publication Date: August 25, 1995
Effective Date: August 25, 1995
Expiration Date: January 22, 1996
Hearing Date: September 11, 1995

- Rules were adopted creating **ch. WGC 45**, relating to licensing requirements for the conduct of a raffle.

FINDING OF EMERGENCY

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

As a result of the passage of 1995 Wis. Act 27, s. 563.935, Stats., was created, and the amending of existing s. 563.93, Stats. These two statutes provide distinction between a Class A and a Class B raffle license authorized by the Wisconsin Gaming Commission's Office of Charitable Gaming. It has been determined that administrative rules must be promulgated to address the statutory changes.

The new rules are created to establish licensing criteria relating to the conduct of raffles authorized under a Class A or Class B raffle license. Without the promulgation of these rules, authorized raffles would be subject

to inconsistencies, incorrect interpretations and mistakes contrary to the intent of the statute.

Publication Date: November 17, 1995
Effective Date: November 17, 1995
Expiration Date: April 16, 1996
Hearing Dates: January 8, February 5, 1996
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Health and Social Services

(Community Services, Chs. HSS 30--)

- Rules were adopted creating **ch. HSS 38**, relating to treatment foster care for children.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 182 (1) of 1993 Wis. Act 446 directed the Department to promulgate rules under s. 48.67 (1), Stats., as amended by Act 446, for licensing treatment foster homes, to take effect on September 1, 1994, by using the emergency rule making procedures under s. 227.24, Stats., but without having to make a finding of emergency. They will remain in effect until replaced by permanent rules.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

This rule making order implements s. 48.67 (1), Stats., as amended by 1993 Wis. Act 446, which directs the Department to promulgate rules establishing minimum requirements for issuing licenses to treatment foster homes, including standards for operation of those homes.

Treatment foster care is a family-based and community-based approach to substitute care and treatment for children who are medically needy or emotionally disturbed and for some developmentally disabled children, and could be an alternative to institutionalization for some children. Treatment foster care is provided in a foster home by foster parents who meet education and training requirements which exceed the requirements for regular foster care, and by social service, mental health and other professional staff.

A number of public and private agencies have recently begun providing "treatment foster care," but since there are no standards currently for this type of care, those programs vary considerably in the type and quality of services they provide. These rules establish minimum standards that agencies, professional staff and foster parents would have to meet in order to claim that they are providing treatment foster care.

The rules require treatment foster homes to comply with ch. HSS 56 for regular foster homes except when there is a conflict between a provision of these rules and ch. HSS 56, in which case these rules take precedence.

The rules cover making application to a licensing agency for a treatment foster home licensee, licensee qualifications, licensee responsibilities, respite care for foster parents, responsibilities of the providing agency, the physical environment of a treatment foster home, care of the children and training for treatment foster parents.

Publication Date: September 1, 1994
Effective Date: September 1, 1994
Expiration Date: 1993 Wis. Act 446, s. 182
Hearing Dates: January 24, 25 & 26, 1995

- Rules adopted amending **ch. HSS 82** and creating **ch. HSS 88**, relating to licensed adult family homes.

FINDING OF EMERGENCY

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

A recent session law, 1993 Wis. Act 327, created ss. 50.01 (1) (b) and 50.033, Stats., which establish a new type of adult family home as a regulated residential placement. Until now the only type of adult family home for 3 or 4 adults was one that was originally licensed under s. 48.62, Stats., as a foster home for 3 or 4 developmentally disabled children prior to the children becoming adults and is now certified under s. 50.032, Stats., and ch. HSS 82. An adult family home covered by s. 50.033, Stats., as created by Act 327, is to be a licensed home providing care, treatment or services above the level of room and board but not including nursing care to 3 or 4 residents.

Licensed adult family homes before November 1, 1994, were regulated as 3- and 4-bed community-based residential facilities (CBRFs). Act 327, effective November 1, 1994; renamed them adult family homes, so that they no longer came under Department rules for CBRFs, ch. HSS 3. For the period November 1, 1994, through May 31, 1995, Act 327 provided that licensed adult family homes were to be regulated under ch. HSS 82, rules for certified adult family homes, and directed the Department to promulgate rules specifically for licensed adult family homes and to have these take effect on June 1, 1995.

These are the rules required under s. 50.02 (2) (am) 2., Stats., for licensed adult family homes. They are being published as emergency rules to protect the health and safety of residents. The rules must be in effect by June 1, 1995. No one may operate this type of adult family home unless licensed under Department rules. Department use of ch. HSS 82 rules may not continue after May 31, 1995. Nearly identical permanent rules were submitted to the Legislative Council on April 21, 1995, but the permanent rule-making process will not be completed until late 1995.

An adult family home under s. 50.033, Stats., must be licensed under the Department rules by an agency of the county in which the home is located or by the Department if no agency in that county has been designated by the county board to license adult family homes. An adult family home will be licensed if it is found to comply with the statute and these rules. The rules establish procedures for applying for licensure, reviewing and approving an application, licensing a home and delicensing a home; list requirements for licensees; include standards and requirements for the home, the agreement for services, the individualized service plan, resident care and termination of placement; and establish resident rights, provide for a grievance procedure for residents and provide for reporting of known or suspected resident abuse or neglect and for investigation of those reports.

This rule-making order also amends ch. HSS 82, the Department's rules for certified adult family homes under s. 50.032, Stats., to clearly distinguish the standards for certified adult family homes from the standards for licensed adult family homes.

Publication Date: June 1, 1995
Effective Date: June 1, 1995
Expiration Date: October 29, 1995
Hearing Dates: June 13 & 15, 1995
Extension Through: January 31, 1996

EMERGENCY RULES NOW IN EFFECT (4)

Health and Social Services

(Health, Chs. HSS 110--)

1. Rules adopted creating s. HSS 110.045, relating to qualifications of ambulance service medical directors.

FINDING OF EMERGENCY

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

Ambulance service providers are required under rules of the Department to have medical directors if they use emergency medical technicians (EMT's)—intermediate or EMT's—paramedic for the delivery of emergency care or if they use EMT's—basic qualified under s. HSS 110.10 to administer defibrillation or under s. HSS 110.11 to use advanced airways.

There are about 450 ambulance service providers in Wisconsin. About 400 of them have medical directors.

Section 146.50 (8m), Stats., provides that, beginning July 1, 1995, no ambulance service provider offering services beyond basic life support may employ, contract with or use the services of a physician to act as medical director unless the physician is qualified under the rules promulgated by the Department.

This new section of ch. HSS 110 is being published by emergency order to protect public health and safety. The Department's rules for emergency medical technicians require that an ambulance service offering services beyond basic life support have a medical director, and s. 146.50 (8m), Stats., provides that, beginning July 1, 1995, no one may serve as a medical director unless qualified under rules promulgated by the Department. The rules must be in effect by July 1, 1995, so that ambulance service providers will not be forced to stop providing services beyond basic life support pending promulgation of permanent rules. The permanent rules will not likely take effect before March 1, 1996.

These rules require that a person serving as medical director be licensed under ch. 448, Stats., as a physician to practice medicine and surgery.

This qualification for ambulance service medical directors is intentionally minimal. In some areas of the state there are few physicians, which has meant that some ambulance service providers have appointed a general practitioner or a family practitioner to be medical director. If the Department in this order established additional qualifications for medical directors at this time, some local ambulance service providers would not be able to find a physician to serve as medical director and could be forced out of business, leaving those areas of the state without emergency medical services beyond basic life support services. This is what the Department has been told by several physicians, with confirmation by the Emergency Medical Services (EMS) program's Physician Advisory Committee and the new Emergency Medical Services Board (the EMS Advisory Board) under s. 146.58, Stats.

In the permanent rules that will replace these emergency rules in March 1996, the Department will add a qualification that a medical director have completed a course of instruction developed by the Department on the role and responsibilities of the medical director. By then, the Department will have issued a manual on the role and responsibilities of ambulance service medical directors. The course of instruction will be based on the manual.

Publication Date: July 1, 1995
Effective Date: July 1, 1995
Expiration Date: November 28, 1995
Hearing Dates: October 16 & 18, 1995
Extension Through: January 26, 1996

2. Rules adopted revising chs. HSS 152, 153 and 154, relating to estate recovery under certain aid programs.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 9126 (32g) (b) of 1995 Wis. Act 27 directed the Department to promulgate rules for implementation of s. 49.482 (5), Stats., as created by Act 27, 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.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1995 Wis. Act 27 created s. 49.482, Stats., to require the Department to file a claim against the estate of a person who received assistance under s. 49.48, Stats., and ch. HSS 152 in paying for treatment of chronic renal disease, under s. 49.483, Stats., and ch. HSS 154 in paying the medical costs of adult cystic fibrosis, or under s. 49.485, Stats., and ch. HSS 153 in paying for blood products and supplies used in the home treatment of hemophilia, or against the estate of the surviving spouse of a person who received the assistance.

Section 49.482 (5), Stats., as created by Act 27, requires the Department to promulgate rules that establish standards for determining whether the recovery of the assistance would work an undue hardship in individual cases. If an undue hardship is found to exist, the Department is directed to waive application of the recovery requirement in that case.

This rulemaking order contains standards on the basis of which the Department will decide if recovery of assistance from the estate of a recipient or the estate of the recipient's surviving spouse would constitute an undue hardship in individual cases. If an undue hardship is found to exist, the Department is directed to waive application of the recovery requirement in that case.

This rulemaking order contains standards on the basis of which the Department will decide if recovery of assistance from the estate of a recipient or the estate of the recipient's surviving spouse would constitute an undue hardship to an heir or beneficiary of the estate. The order also establishes the application and review processes for an undue hardship waiver and the applicant's appeal rights. The provisions are identical to those currently used for undue hardship waivers from estate claims made to recover Medical Assistance benefits.

Publication Date: October 31, 1995
Effective Date: November 1, 1995
Expiration Date: March 30, 1996

3. Rules were adopted revising **ss. HSS 122.06 and 122.07**, relating to review of projects concerning new nursing home designs.

FINDING OF EMERGENCY

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

A capital expenditure by or on behalf of a nursing home that exceeds \$1,000,000 is subject to prior review and approval by the Department under subch. II of ch. 150, Stats. An approved project has a maximum cost per bed limit computed under s. HSS 122.07 (1) (c).

The Legislature in s. 10 of 1993 Wis. Act 290 directed the Department to study the issue of the relationship between the design and construction of nursing homes and the formula for determining approvable proposed bed costs under s. HSS 122.07 within the context of health care cost containment.

The Department on January 31, 1995 submitted its report to the Legislature on nursing home design and construction in relation to the formula for determining maximum bed costs. While the study dealt primarily with traditional nursing home designs, the Department stated in the report that its Division of Health was developing rules to permit the study of new nursing home designs which increase capital costs per bed but decrease operating costs. The rules would increase the maximum cost per bed for projects that will permit study of the impact of nursing home design and management approaches on the health of nursing home residents and the cost of care. New nursing home designs may exceed the maximum costs per bed but reduce operating costs.

The Department is publishing the necessary rules by emergency order because of the length of the permanent rulemaking process and also the length of the Department's project approval process which cannot begin until the rules are in effect. An emergency order will give the Department the opportunity to act now to improve care for nursing home residents and possibly lower the overall costs of care.

This order creates rules which will increase the cost per bed maximum for two or three pilot projects that will demonstrate new nursing home designs.

The rules establish conditions for the announcement and acceptance of applications, criteria for review of applications and a selection process when there are more applicants that meet the requirements for project approval than can be approved.

Publication Date: November 29, 1995
Effective Date: November 29, 1995
Expiration Date: April 28, 1996
Hearing Date: January 18, 1996

[See Notice this Register]

4. Rules were adopted creating **ch. HSS 182**, relating to lead poisoning prevention grants.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 9126 (27x) (b) of 1995 Wis. Act 27 directed the Department to promulgate rules required under s. 254.151, Stats., as created by Act 27, 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. They will take effect on publication in the Milwaukee Journal Sentinel.

ANALYSIS

These rules implement the requirement in s. 254.151, Stats., as amended by 1995 Wis. Act 27, that the Department establish criteria by rule for the award of grants to fund educational programs, including programs for health care providers, about the dangers of lead poisoning or exposure to lead; to fund lead poisoning or lead exposure screening, care coordination and follow-up services, including lead inspections, for or on behalf of children under the age of 6, not covered by third-party payers; to fund administration and enforcement activities of local health departments that, under s. 254.152, Stats., are designated by the Department to be its agents for administration and enforcement of ss. 254.11 to 254.178, Stats.

The grant program was established in mid-1994. The requirement that the Department's criteria for awarding grants be set out in rules was added by Act 27 in mid-1995. The amount available in the appropriation for grant awards is \$879,000 for each year of the 1995-97 biennium.

The rules identify who may apply for a grant, describe the application process, provide for preliminary review of applications by the Department for compliance with format and content requirements set out in the relevant request for proposals (RFP), provide for evaluation of applications by one or more review committees appointed by the Department and specify 14 criteria for use in that final review, note that the Department will award grants based on the recommendations of the review committee or committees and taking into consideration other specified factors and describe the awards process and conditions that are imposed when grants are awarded.

Publication Date: December 5, 1995
Effective Date: December 5, 1995
Expiration Date: May 4, 1996
Hearing Date: January 16, 1996
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Youth Services, Chs. HSS 300--)

Rules were adopted revising **ch. HSS 343**, relating to youth aftercare conduct and revocation.

FINDING OF EMERGENCY

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

Youths released from juvenile correctional institutions are ordinarily released to a status called "aftercare," which means that for a period of time after release they are supervised in the community by agents of the Department or of a county department of social services or human services. About 1,030 youth are on aftercare supervision in Wisconsin at any one time.

Administrative rules relating to the expected conduct of youth on aftercare supervision and to actions that an agent may take in response to a youth's alleged violation of a rule or special condition of aftercare, including initiation of proceedings to revoke the aftercare status of a youth on state after care or to file a petition for change in placement for a youth on county aftercare, and return the youth to the correctional institution, are found in ch. HSS 343, Wis. Adm. Code.

This rulemaking order repeals and recreates ch. HSS 343 to implement changes made effective July 1, 1995 by 1993 Wis. Act 385 in provisions of ch. 48, Stats., relating to the administration of aftercare.

The principal change made by Act 385 in the administration of aftercare is to permit a county department providing aftercare supervision for a youth to revoke the youth's aftercare using the administrative revocation procedure currently used by the Department and set out in ch. HSS 343.

Act 385 also directs the Department to promulgate rules setting standards to be used by a hearing examiner to determine whether to revoke a youth's aftercare. There are already standards in ch. HSS 343. These are updated by this order and made to apply also to county revocation cases.

Rule changes are necessary so that the rules of conduct for youth on either state or county aftercare supervision are the same and so that standards and procedures for dealing with violations of the expected conduct, including procedures to revoke a youth's aftercare status, are also the same.

The rule changes are being made by emergency order on public safety and welfare grounds because beginning July 1, 1995, when the Act 385 changes in ch. 48, Stats., are effective, a county responsible for the aftercare supervision of a youth may no longer petition the court for a change in placement to return the youth to a correctional institution for a violation of a condition of aftercare, but will be expected to seek revocation through the same administrative process that the Department uses. To enable counties to use that administrative process, the Department's administrative rules that establish procedures and criteria for revocation of aftercare must be modified immediately to add county aftercare.

A revocation hearing must be conducted within 30 days after a youth is taken into custody for an alleged violation. However, the time limit may be waived on the agreement of the aftercare provider, that is, the Department or county, the youth and the youth's attorney, if any. The party seeking revocation must prove to a hearing examiner, by a preponderance of the evidence, that the youth violated a condition of his or her aftercare. The hearing examiner determines whether to revoke a youth's aftercare and whether a youth found to have violated a condition of his or her aftercare needs to be confined in order to protect the public or to provide for the youth's rehabilitation.

Publication Date: June 21, 1995
Effective Date: July 1, 1995
Expiration Date: November 28, 1995
Hearing Date: July 27, 1995
Extension Through: January 26, 1996

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Petroleum Products, Ch. ILHR 48)

Rules were adopted revising **ch. ILHR 48**, relating to labeling of oxygenated fuels.

FINDING OF EMERGENCY

The Department of Industry, Labor and Human Relations 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:

1995 Wis. Act 51 requires reformulated fuels to be labeled with the oxygenate that they contain. The labels are to be constructed and displayed in a manner specified by the department by rule. The act takes effect on the 14th day after the day of publication.

In order to permit compliance with the law, the department must adopt rules using the emergency rule procedure.

Publication Date: September 13, 1995
Effective Date: September 13, 1995
Expiration Date: February 10, 1996
Hearing Date: November 15, 1995

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Building & Heating, etc., Chs. ILHR 50-64)
(Multi-Family Dwellings, Ch. ILHR 66)

Rules were adopted revising **chs. ILHR 57 & 66**, relating to multifamily dwellings.

FINDING OF EMERGENCY

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

The facts constituting the emergency are as follows. As required by ss. 101.14 (4m) and 101.971 to 101.978, Stats., the Department adopted rules earlier this year establishing uniform construction standards for multifamily dwellings. The rules include some minor technical provisions which have been difficult to apply and which are needlessly disrupting new construction.

The proposed rules essentially reinstate the existing requirements that applied to smaller apartments prior to adoption of the current rules, and clarify and simplify other problematic minor technical provisions.

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

Publication Date: August 14, 1995
Effective Date: August 14, 1995
Expiration Date: January 11, 1996
Hearing Date: December 11, 1995

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Barrier-Free Design, Ch. ILHR 69)

Note: On August 17, 1995 the Joint Committee for Review of Administrative Rules suspended this emergency rule.

A rule was adopted amending **s. ILHR 69.18 (4)**, relating to barrier-free design unisex toilet rooms.

FINDING OF EMERGENCY

The Department of Industry, Labor and Human Relations finds that an emergency exists within the state of Wisconsin that will affect the peace and welfare of its citizens. A statement of the facts constituting the emergency is:

1. In accordance with s. 101.13, Stats., the Department of Industry, Labor and Human Relations has the responsibility for developing rules ensuring access to and use of public buildings and places of employment by people with disabilities.

2. On December 1, 1994, ch. ILHR 69, Barrier-Free Design, became effective. Section ILHR 69.18 (4) (b) requires that new and remodeled buildings be provided with at least one unisex toilet room in addition to the required number of toilet fixtures in the following occupancies;

- a. All shopping malls or shopping centers;
- b. Rest-area building located off of major highways;
- c. Schools;
- d. Restaurants with a capacity of 100 or more people; or
- e. Large assembly areas such as, but not limited to, stadiums and outdoor or indoor theaters, with a capacity of more than 100 persons.

3. The purpose of the unisex toilet room requirement is to provide a toilet room to accommodate people with disabilities having attendants of the opposite sex and to accommodate families with children.

4. There has been public concern that minimum capacity for requiring a unisex toilet room in restaurants and assembly halls should be increased. There are many chain-type restaurants where the basic design used

throughout the nation could not accommodate the installation of a unisex toilet room in addition to the standard toilet rooms. Modifications to include a unisex toilet room would eliminate usable floor areas from either the employment area or the business area.

5. This emergency rule is being created to exempt certain sized restaurants and theaters and assembly halls from making major building design changes to accommodate a unisex toilet room.

Publication Date: July 17, 1995
Effective Date: July 17, 1995
Expiration Date: December 14, 1995

EMERGENCY RULES NOW IN EFFECT

Insurance

Rules adopted amending ss. **Ins 6.57 (4), 6.58 (5) (a) and 6.59 (4) (a)**, relating to the fees for listing insurance agents and renewal of corporation licenses and other licensing procedures.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: In the biennial budget passed by the legislature, the permissible fees collected by OCI were raised for certain activities. The implementation of the increased fees require a rule change. These increased fees were utilized in preparing OCI's budget. Without the increased fees, OCI may not have the revenue needed to balance its budget. The normal rulemaking procedure has been started but, even without unforeseen delays, the changes will not take effect until near the end of the current fiscal year. Therefore, it is necessary to change the rules with an emergency rule in order to provide adequate and necessary revenues.

Publication Date: October 9, 1995
Effective Date: October 9, 1995
Expiration Date: March 8, 1996
Hearing Date: October 30, 1995

EMERGENCY RULES NOW IN EFFECT

Natural Resources

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

Rules adopted revising **ch. NR 10**, relating to the 1995 migratory game bird season.

FINDING OF EMERGENCY

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

The foregoing rules are approved and adopted by the Natural Resources Board on August 18, 1995.

Publication Date: September 1, 1995
Effective Date: September 1, 1995
Expiration Date: January 29, 1996
Hearing Date: October 16, 1995

EMERGENCY RULES NOW IN EFFECT (3)

State Public Defender

1. Rules adopted creating **s. PD 3.039**, relating to redetermination of indigency.

FINDING OF EMERGENCY

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

It is essential that the Office of the State Public Defender that only eligible persons receive agency services and that persons determined to be eligible remain eligible during the pendency of representation. The proposed rule is needed to establish authority for the agency to redetermine indigency when a person has a change in financial circumstances during the course of representation and to withdraw from representation if a person is determined non-indigent and ineligible for services during the course of representation. Without the proposed rule, persons who become non-indigent during representation could continue to receive agency representation, which would not serve the public interest.

Publication Date: August 29, 1995
Effective Date: August 29, 1995
Expiration Date: January 26, 1996
Hearing Date: September 26, 1995

2. Rules adopted revising **ch. PD 6**, relating to repayment of cost of legal representation.

FINDING OF EMERGENCY

The State Public Defender Board finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The statement of facts constituting the emergency is as follows:

It is essential that the Office of the State Public Defender collect for the cost of representation from persons who have the present or future ability to reimburse the agency for the cost of providing counsel. The proposed rules are needed for the agency to establish fixed amounts as flat payments for the cost of representation that a person may elect to pay. The rules are also needed to establish authority for the agency to collect for the cost of representation from parents of juveniles who received services, unless the parents have been determined to be indigent. The 1995-97 biennial budget calls upon the agency to collect approximately \$2.9 million from clients in the first year of the biennium and approximately \$3.3 million in the second year of the biennium. Thus, it serves the public interest that the proposed emergency rules be created.

Publication Date: August 31, 1995
Effective Date: August 31, 1995
Expiration Date: January 28, 1996
Hearing Date: September 26, 1995

3. Rules were adopted revising **ch. PD 6**, relating to payment of attorney fees.

FINDING OF EMERGENCY

The State Public Defender Board finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The statement of facts constituting the emergency is as follows:

It is essential that the Office of the State Public Defender collect for the cost of representation from persons who have the present or future ability to reimburse the agency for the cost of providing counsel. The proposed rules are needed to establish procedures for determining clients' ability to pay and for referring uncollected accounts to the department of administration for collection. The proposed rules also establish that the agency shall provide written notice to clients of the repayment obligation for the cost of legal representation. The 1995-97 biennial budget calls upon the agency to collect approximately \$2.9 million from clients in the first year of the biennium and approximately \$3.3 million in the second year of the biennium. Thus, it serves the public interest that the proposed emergency rules be created.

Publication Date: November 20, 1995
Effective Date: November 20, 1995
Expiration Date: April 19, 1996
Hearing Date: January 11, 1996
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **chs. PI 3 and 4**, relating to substitute teacher permits, special education program aide licenses, principal licenses and general education components.

FINDING OF EMERGENCY

Current rule requirements relating to substitute teacher permits and special education program aide licenses are prescriptive and, in some cases, have caused a shortage of qualified individuals to teach as substitutes or special education aides. The emergency rule provides flexibility in licensing and hiring qualified substitute teachers, special education aides, and principals.

Current rule requirements provide for two levels of school principal licensure, with different requirements for each level. The two levels of licensure are "elementary/middle level" and "middle/secondary level." 1995 Wisconsin Act 27 (the 1995-97 biennial budget bill) provides that a school principal license must authorize the individual to serve as a principal for any grade level. The emergency rule conforms principal licensure rules with statutory language requirements.

Current provisions relating to general education components/professional education program requirements are overly prescriptive for campuses. The UW-System has initiated a requirement that puts a ceiling on the number of credits in an undergraduate program (140) and the department is moving to a performance-based approach to licensing where the knowledge and skills of license candidates will be assessed rather than just counting the credits that they have taken in college. The emergency rule provides flexibility for university systems to offer quality educational programs without prescribing what must or must not be included in their general education component.

In order for teachers to apply for or renew a substitute teacher permit, special education aide license or principal license to be effective for the upcoming school year (licenses are issued July 1 through June 30) and for schools to hire qualified staff from a sufficient pool of applicants, rules must be in place as soon as possible. Also, in order to allow the UW-system more flexibility to offer education programs for the upcoming school year, rules need to be in place as soon as possible.

Therefore, the state superintendent finds that an emergency exists and that promulgation of emergency rules is necessary to preserve the public welfare.

Publication Date: August 21, 1995
Effective Date: August 21, 1995
Expiration Date: January 18, 1996
Hearing Date: November 1, 1995

2. Rules adopted creating **s. PI 11.13(4) and (5)**, relating to interim alternative educational settings for children with EEN who bring firearms to school.

FINDING OF EMERGENCY

In order to apply the new federal "stay-put" exception in Wisconsin, as described in the analysis and relating to children with EEN who bring a firearm to school, the administrative rule regarding placement of children during due process proceedings must be changed and in place before the next school year begins.

Therefore, the state superintendent finds that an emergency exists and that promulgation of emergency rules is necessary to preserve the public welfare.

Publication Date: August 21, 1995
Effective Date: August 21, 1995
Expiration Date: January 18, 1996
Hearing Dates: November 1 & 7, 1995

EMERGENCY RULES NOW IN EFFECT

Regulation and Licensing

- Rules adopted amending **s. RL 2.02**, and creating **ch. RL 9**, relating to establishing a procedure for determining whether an applicant for credential renewal is liable for any delinquent taxes.

FINDING OF EMERGENCY

Under statutes created by 1995 Wis. Act 27, the Department of Regulation and Licensing must deny applications for license renewal filed by applicants who are liable for delinquent state taxes. These provisions first apply to applications submitted to the Department of Regulation and Licensing or to an examining board or affiliated credentialing board attached to the department to renew credentials that expire on or after January 1, 1996.

Section 440.03 (12), Stats., as created by 1995 Wis Act 27, requires the department to establish a procedure for making a determination concerning the liability of credential holders for delinquent taxes owed to this state. Newly created s. 440.08 (2r), Stats., provides that before granting an application to renew a credential issued under chs. 440 to 480, Stats., the department shall determine in accordance with the procedure established under s. 440.03 (12), Stats., whether the applicant for a credential renewal is liable for any delinquent taxes owed to this state. If the department determines that an applicant is liable for any delinquent taxes owed to this state, the department is required to deny the application, subject to the right of the applicant to have the denial reviewed at a hearing before the department.

Because the treatment of these provisions first apply to renewals applications that expire on or after January 1, 1996, and the department has determined that there are at least 40,000 credential holders whose credential will expire on January 1, 1996, preservation of the public peace, health, safety or welfare necessitates putting these rules into effect prior to the time it would take effect if the department complied with the notice, hearing and publication requirements set forth in ch. 227, Stats.

In this order the Department of Regulation and Licensing creates ch. RL 9 to establish a procedure for making the determination whether an applicant for credential renewal is liable for any delinquent taxes owed to this state and to describe the procedures available to a credential holder whose application for renewal is denied because the applicant is liable for delinquent state taxes.

The proposed rules define terms including "liable for any delinquent taxes owed to this state," the term used in ss. 440.03 (12) and 440.08, Stats., as created by 1995 Wis. Act 27. The rules describe the method to be used for determining whether an applicant for renewal is liable for delinquent taxes. Under the procedures, the name and social security number or federal employer identification number of an applicant is compared with information at the Wisconsin Department of Revenue to identify individuals and organizations liable for delinquent taxes. If an applicant is identified as owing taxes, a notice is mailed to the applicant stating that the application shall be denied unless delinquent taxes are paid within 10 days. If delinquent taxes are not paid following a notice of intent to deny or if an applicant fails to

complete an application form, the department shall deny the renewal application.

The rules provide for an applicant who has been denied renewal because of liability for delinquent taxes to request a hearing. Procedural rules include rules governing a notice of hearing, service of documents and the conduct of the hearing.

Publication Date: November 14, 1995
Effective Date: November 14, 1995
Expiration Date: April 13, 1996

EMERGENCY RULES NOW IN EFFECT

Department of Revenue

Rules adopted revising **ch. Tax 18**, relating to the 1996 assessment of agricultural property.

FINDING OF EMERGENCY

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

1995 Wis. Act 27, published July 28, 1995, changes the way agricultural land is valued for property tax purposes. Under the law, the assessed value of each parcel of agricultural land in 1996 is the same as the assessed value of that parcel in 1995. Buildings and improvements to agricultural land continue to be assessed at their full market value.

Since 1995 Wis. Act 27 affects assessments as of January 1, 1996, an emergency rule is necessary for the efficient and timely assessment of agricultural land in 1996.

In particular, the rule addresses the following needs:

- repealing obsolete terms defined by rule
- defining the terms “land devoted primarily to agricultural use”, “other”, and “parcel of agricultural land”
- providing instructions for assessing “agricultural land” and “other” land classifications in 1996.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of the rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: December 6, 1995
Effective Date: December 6, 1995
Expiration Date: May 5, 1996

EMERGENCY RULES NOW IN EFFECT

State Fair Park

Rules were adopted revising **chs. SFP 1 to 7**, relating to the regulation of activities at the state fair park.

FINDING OF EMERGENCY AND RULE ANALYSIS

The Wisconsin State Fair Park Board finds that an emergency exists and that the adoption of rules is necessary for the immediate preservation of the public peace, health, safety and welfare of its citizens. The facts constituting this emergency are as follows:

During the annual State Fair, which is scheduled to begin on August 3, 1995, the Wisconsin State Fair Park is host to over 100,000 people per day

and millions of dollars in merchandise and property. Initially, chs. SFP 1–7 were designed primarily to protect the property of the State Fair Park.

However, crime patterns at the State Fair Park have changed dramatically since those rules adopted in 1967. With the increases in attendance and number of events in the intervening years, the number and severity of crimes against State Fair visitors, patrons, and property have necessarily increased. Also, a general rise in gang-related activity at Park events and during skating hours at the Pettit National Ice Center has occurred over the last several years. Consequently, there is a greater need for Park Police Department arrest authority on the Park grounds in order to ensure prosecutorial cooperation by Milwaukee County.

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court System are reluctant to process and charge offenders for relatively minor property-type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee County by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various weapons prohibitions. There is also included provisions to protect the police horses, which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family-oriented environment at this year's State Fair and other Park events.

Publication Date: August 2, 1995
Effective Date: August 2, 1995
Expiration Date: December 30, 1995

EMERGENCY RULES NOW IN EFFECT

Commissioner of Transportation

[Commissioner of Railroads]

Rules adopted revising **ch. OCT 5**, relating to intrastate railroad rate regulation.

FINDING OF EMERGENCY

The office of the commissioner of railroads (OCR) finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

By state law, the OCR regulates intrastate rail rates. Every five years, the Interstate Commerce Commission (ICC) must certify that the OCR's rules conform to federal law. The OCR's current certification expires on September 23, 1995. These rules conform to the rules to changes in federal law. The rule changes need to be in effect so that the OCR can submit them to the ICC for its approval by the certification's expiration date. If the OCR follows the non-emergency procedures to adopt these rule changes, the rules would not be in effect in time for the ICC to recertify the OCRF before expiration.

The OCR did not commence these proceedings earlier because the governor's 1995–1997 budget proposed to eliminate the OCR and repeal the statutes authorizing intrastate rate regulation. While final action on the budget is not complete, the legislature's Joint Committee on Finance has adopted a motion to retain the OCR and its regulatory authority. The OCR intends to adopt these rules as permanent and is commencing that process concurrently with the adoption of these emergency rules.

Publication Date: July 6, 1995
Effective Date: July 14, 1995
Expiration Date: December 11, 1995
Hearing Date: October 6, 1995

EMERGENCY RULES NOW IN EFFECT (2)
Department of Transportation

1. A rule was adopted amending **s. Trans 4.06 (4)**, relating to the Urban Mass transit Operating Assistance Program.

FINDING OF EMERGENCY

Under the current administrative rule, ch. Trans 4, recipients of state transit aid must contribute a minimum local share of 20% towards such aid. Under current practice, private transportation providers who contract with the recipient have been permitted to contribute the local share. Public policy considerations require amendment of the rule to make certain that only the recipient is permitted to contribute the local share of transit aid.

The Wisconsin Department of Transportation finds that an emergency exists regarding the public welfare. Without the emergency rule, there would be insufficient lead time for recipients to respond to the rule's impact on their budgets. Also, additional lead time may be required for recipients to re-bid contracts with private transportation providers, if necessary.

Publication Date: September 28, 1995
Effective Date: September 28, 1995
Expiration Date: February 25, 1996
Hearing Date: November 3, 1995

2. Rules were adopted revising **ch. Trans 131**, relating to the Motor Vehicle Inspection and Maintenance Program.

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is that Southeastern Wisconsin is currently unable to meet federal air quality standards. Southeastern Wisconsin is one of nine regions in the United States designated as areas with "severe" air pollution problems. This air quality problem results in all area residents breathing air that is not healthy.

Since motor vehicles are the largest contributor to the area's air quality problem, the Wisconsin Department of Transportation finds that an emergency exists regarding the public health. The enhanced I/M program resulting from the proposed rule is a necessary part of the state's plan to achieve the volatile organic compound (VOC) emission reductions required by the Clean Air Act. The program will account for over one-third of the VOC reductions required by Wisconsin's 15% VOC Reduction Plan. By implementing the changes proposed in the rule, the air quality in Southeastern Wisconsin area can be improved. If such improvement does not occur, other more costly controls on small business and industry would be required. By taking action at this time, the major and most cost effective measure is utilized to meet Wisconsin's clean air goal.

Publication Date: December 4, 1995
Effective Date: December 4, 1995
Expiration Date: May 3, 1996
Hearing Date: January 11, 1996
[See Notice this Register]

*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.

Health & Social Services (CR 95-155):

S. HSS 110.045 – Relating to qualifications of medical directors of ambulance services that provide services beyond basic life support.

Health & Social Services (CR 95-174):

S. HSS 157.035 – Relating to fees for registration of ionizing radiation installations.

Natural Resources (CR 95-102):

S. NR 165.06 (2) (b), (6) and (7) (a) – Relating to the interest rate subsidy for the small loan program.

Natural Resources (CR 95-165):

S. NR 212.40 – Relating to water quality-based allocations of pollutant discharges to waters of the state.

Public Defender (CR 95-170):

SS. PD 6.01, 6.02, 6.03, 6.04 and 6.05 – Relating to the repayment of the cost of legal representation.

Public Defender (CR 95-171):

S. PD 3.039 – Relating to the redetermination of indigency during the course of representation.

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.

Administration (CR 95-18):

An order repealing ch. HSS 177 and creating ch. Adm 65, relating to mobile home parks.
Effective 02-01-96.

Dentistry Examining Board (CR 95-54):

An order amending s. DE 12.01 (3), relating to the ability of a dentist to delegate remediable portions of an oral prophylaxis to an unlicensed person.
Effective 02-01-96.

Gaming Commission (CR 95-144):

SS. WGC 9.11, 9.12, 9.14, 9.17 & 14.11 and ch. WGC 24, relating to: twin trifecta, superfecta and tri-superfecta pools, deduction approvals, animal drug testing, and intertrack and simulcast wagering.
Effective 02-01-96.

Natural Resources (CR 95-48):

An order affecting ch. NR 149 and ss. NR 219.04, 219.05, 219.06 & 700.13, relating to: laboratory certification and registration, sample preservation procedures, analytical methodology, and laboratory procedures.
Effective 03-01-96.

Public Defender (CR 95-116):

An order affecting ss. PD 3.02, 3.03, 3.038, 3.055 and 3.06, relating to indigency evaluation and verification.
Effective 02-01-96.

Public Service Commission (CR 94-160):

An order creating ch. PSC 132, relating to compensation and conditions for the placement of utility facilities within railroad right-of-way.
Effective 02-01-96.

Transportation, Dept. of (CR 95-137):

An order creating ch. Trans 278, relating to proposed legislation establishing vehicle weight limit exceptions.
Effective 02-01-96.

Transportation, Dept. of (CR 95-145):

An order amending ss. Trans 276.07 (5m) and 276.09 (3), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.
Effective 02-01-96.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection

(CR 95-057)

Ch. ATCP 92 – Weighing and measuring devices.

Summary of Final Regulatory Flexibility Analysis:

Certification of Weighing and Measuring Devices

Under this rule, all new commercial weighing and measuring devices sold and installed in Wisconsin after December 31, 1996 must be certified by the National Institute of Standards and Technology (NIST) for compliance with NIST Handbook 44. NIST certification is not required for every individual device, but merely for prototype or model devices. Certification covers individual devices which of the type or model certified, provided that the individual devices are not significantly altered.

This certification requirement will not have a significant impact on small businesses, but will help assure that commercial weighing and measuring devices are accurate. The national certification process will relieve manufacturers of weighing and measuring devices from having to obtain separate certification in each state. Certification will not significantly affect the cost of weighing and measuring devices.

Vehicle Scales; Rule Amendments

Current rules spell out construction standards for vehicle scales in order to ensure the adequacy and structural integrity of those scales. This rule amends some of the current construction standards. Among other things, this rule permits the use of durable materials other than concrete in the construction of approaches to vehicle scales. (The current rules require concrete approaches.)

This rule exempts temporary and portable scales from some of the construction and installation standards that currently apply to permanent vehicle scales. However, temporary or portable scales must still be licensed and inspected annually under ss. 98.16 and 98.25, Stats. They must also comply with applicable standards specified in this rule and NIST Handbook 44.

This rule will have no adverse impact on small business, but will make it easier for small business to comply with rules on vehicle scales. This rule imposes no new costs on small businesses, and may reduce costs in some cases. This rule creates no new reporting or record keeping requirements for small business.

Summary of Comments from Legislative Committees:

The rule was referred to the Senate Committee on Transportation, Agriculture, Local and Rural Affairs on August 10, 1995 and to the Assembly Committee on Consumer Affairs on August 9, 1995. The department received no comments or request for hearing from either committee.

2. Employment Relations—Merit Recruitment & Selection (CR 95-101)

Ch. ER-MRS 22 – Layoff procedures for employes in permanent classified civil service not covered by a collective bargaining agreement.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Summary of Comments:

No comments were reported.

3. Health & Social Services (CR 94-200)

Ch. HSS 51 – Department procedures for placing children with special needs for adoption.

Summary of Final Regulatory Flexibility Analysis:

These rules apply to the Department and to all persons inquiring about or applying to the Department for adoption of a special needs child. The rules will not directly affect small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

4. Industry, Labor & Human Relations (CR 94-116)

Chs. ILHR 50-64 & 72 – Energy Conservation & HVAC.

Summary of Final Regulatory Flexibility Analysis:

Chapter ILHR 63 sets minimum standards for energy efficiency in building design. Federal law, 1992 EPACK, specifies the minimum level of energy efficiency that our state code must require. Chapter ILHR 64 specifies minimum ventilation standards for occupant health. These standards cannot be reduced.

The proposal does not modify existing requirements for plans that are submitted to the department for review except that lighting plans will now be required to be submitted. The department has developed worksheet style forms to aid designers in developing calculations to show code compliance with lighting requirements and other code areas.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor & Employment and the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs. No comments were received.

5. Industry, Labor & Human Relations (CR 94-170)

Ch. ILHR 129 – Benefits claiming procedures.

Summary of Final Regulatory Flexibility Analysis:

The rule relates to notice and reporting requirements for employees only. The rule allows claimants to file initial claims by telephone. There is no disproportionate effect on small employers.

No additional bookkeeping, reporting, or special skills are necessary for compliance with these rules.

Summary of Comments of Legislative Standing Committees:

No comments were received.

6. Insurance (CR 95-105)

SS. Ins 17.01 & 17.28 – Patients Compensation Fund Fees, Mediation Fees, and Service Corporation.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

7. Insurance (CR 95-111)

S. Ins 3.39 – Requirements for medicare supplement insurance sold in Wisconsin.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

8. Insurance (CR 95-129)

Chs. Ins 41, 50 & 52 – Changes in the rules governing financial regulation of insurers and reinsurers and risk retention and purchasing groups.

Summary of Final Regulatory Flexibility Analysis:

The rule includes certain exceptions for smaller insurers which allows them under specified conditions to file a more limited actuarial opinion. No other exception for small insurers would be consistent with the statutory objective of financial solidity. Certain reporting requirements are included in the rule but will not require expertise or expenditure beyond the requirements in effect prior to the adoption of this rule.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

9. Natural Resources (CR 94-056)

NR 400 series – Clarifications and clean up changes.

Summary of Final Regulatory Flexibility Analysis:

Since these are corrective and clarifying changes, small businesses not already intended to be regulated are not adversely affected. Although some small businesses may be subject to the reporting and recordkeeping requirements to support permit exemptions, the need to maintain this information is not new.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Environment and Utilities and the Senate Committee on Environment and Energy. These were no comments.

10. Natural Resources (CR 95-035)

Ch. NR 445 – Federal new source performance standards.

Summary of Final Regulatory Flexibility Analysis:

Because these rules are already in effect at the federal level, the Department does not anticipate any impact on small businesses.

Summary of Comments by Legislative Review Committees:

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

11. Natural Resources (CR 94-182)

Chs. NR 110, 200, 202, 204 & 205 – Municipal wastewater sludge management regulations.

Summary of Final Regulatory Flexibility Analysis:

There should be no impact on any small businesses as a result of the proposed changes. Small businesses which may be affected by the proposed rule are already affected by the existing rule.

Summary of Comments by Legislative Review Committees:

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

12. Natural Resources (CR 95-073)

Chs. NR 484 & 485 – Emission limitations and tampering inspections for motor vehicles.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not have a significant economic impact on a substantial number of small businesses. Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the program in the same way that individual vehicle owners are affected.

Summary of Comments by Legislative Committees:

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

13. Revenue (CR 95-65)

Chs. Tax 2 & 3 – Extensions of time to file corporation franchise or income tax returns, the dividends received deduction for corporations and the requirements for making estimated tax payments for short taxable years.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

14. Savings & Loan (CR 94-169)

S. SB 16.03 – Authorizing savings banks to invest their funds in specified financial products.

Summary of Final Regulatory Flexibility Analysis:

This rule will equally apply to all savings banks, including those covered by the definition of “small business” under s. 227.114 (1) (a), Stats. This agency believes that none of the methods in s. 227.114 (2), Stats., for reducing the impact of the rule on any savings bank which may fall under the definition of “small business” would be feasible. Doing so would be contrary to the overriding and contrary statutory objectives of ch. 214, Stats., of assuring the stability, safety and soundness of all savings banks established and regulated under ch. 214, Stats.

Summary of Comments:

No comments were reported.

15. Securities (CR 95-158)

Chs. SEC 2, 4, 5, 7 & 9 – Securities registration exemptions, securities registration and disclosure standards and requirements, securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, fee-related provisions and securities licensing forms.

Summary of Final Regulatory Flexibility Analysis:

No final regulatory flexibility analysis is included on the basis that the Office of the Wisconsin Commissioner of Securities has determined, after complying with s. 227.106 (1) to (5), Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

16. Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 95-055)

S. SFC 3.11 – Temporary certificates issued to social workers.

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.

17. Transportation (Dept.) (CR 95-126)

S. Trans 325.01 (intro.) – Motor carrier safety regulations.

Summary of Final Regulatory Flexibility Analysis:

This rule will not have any significant adverse effect on small businesses.

Summary of Comments:

No comments were reported.

18. Transportation (Dept.) (CR 95-127)

S. Trans 326.01 (intro.) – Motor carrier safety requirements for transportation of hazardous materials.

Summary of Final Regulatory Flexibility Analysis:

This rule will not have any significant adverse effect on small businesses.

Summary of Comments:

No comments were reported.

19. Transportation (CR 95-128)

S. Trans 328.03 (title) and (intro.) – Motor carrier safety requirements for intrastate transportation of hazardous materials.

Summary of Final Regulatory Flexibility Analysis:

This rule will not have any significant adverse effect on small businesses.

Summary of Comments:

No comments were reported.

PUBLIC NOTICES

Public Notice

Health & Social Services

(Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 and 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Social Services, is known as Medical Assistance (MA) or Medicaid. Federal statutes require a state plan for inpatient services which provides the methods and standards for paying for hospital inpatient services.

A state plan is now in effect for the reimbursement of inpatient hospital services. The Department is proposing to make a change in this plan effective January 1, 1996. The change will modify the reimbursement methodology for a hospital operated by the state's Department of Veteran Affairs and allow reimbursement at the facility's skilled care nursing facility rate as required by the 1995-97 biennial budget for hospital patients awaiting placement to alternative care arrangements.

Implementation of this change to the inpatient state plan is expected to increase annual expenditures of the Wisconsin MA Program by \$150,000 (\$90,000 federal financial participation and \$60,000 from general purpose revenue) for the 1996 calendar year.

Copies of Proposed Change

Copies of the proposed change will be sent to every county social services or human services department main office where they will be available for public review. For more information and copies of the proposed change, interested people may write to:

Hospital Reimbursement Unit
FAX (608) 266-1096
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701-0309

Written Comments

Written comments on the proposed change are welcome, and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Bureau of Health Care Financing
Room 265, State Office Building
One West Wilson Street
Madison, WI

Public Notice

Health & Social Services

(Medical Assistance Reimbursement of Hospitals)

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State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make several changes in these plans effective January 1, 1996.

Proposed changes in the state plan for reimbursement for **outpatient hospital services** may include:

1. For hospitals which combine into one hospital operation either through merger or consolidation or for a hospital which absorbs the operation of another hospital through purchase or donation, establishment of a method for updating the base rate per outpatient visit for the combined operation in order to better reflect the current mix of outpatient services of the hospitals which combined.
2. Modification of the procedures for processing administrative adjustments to outpatient reimbursement rates and elimination of the administrative adjustments committee in order to promote administrative efficiency by eliminating procedural requirements which are not needed or are rarely utilized under the current rate-setting methodology.
3. To implement provision of the 1995-97 biennial budget, establishment of a methodology through which hospitals owned and operated by a county, another local government or the state may receive federal financial participation for deficits they incur when their costs for outpatient hospital services exceed the reimbursement they receive under the Medicaid payment system. Implementation of this change is expected to increase annual expenditures of the Wisconsin

Medical Assistance Program by \$180,000 federal financial participation with \$120,000 matching funding coming from the units of government which own and operate the hospitals.

Proposed changes in the state plan for reimbursement for **inpatient hospital services** may include:

1. Clarification that payment for all covered services provided during an inpatient stay, except separately billable professional services, are included in the inpatient DRG reimbursement and in the inpatient reimbursement of those hospitals and those services that are not covered by the DRG reimbursement method.
2. For administrative adjustments for major capitalized expenditures and changes in medical education, modification of the criteria specified in the state plan for the cost reporting period which is to be used for updating reimbursement in order that reimbursement will reflect the current period costs of the changes for which administrative adjustments are intended.
3. Modification of the procedures for processing administrative adjustments to inpatient reimbursement rates and elimination of the administrative adjustments committee for review of these adjustments in order to eliminate procedural requirements which are not necessary and not utilized under the current rate-setting methodologies.

Implementation of the above changes to the inpatient state plan is not expected to change annual expenditures of the Wisconsin Medical Assistance Program.

Copies of Proposed Changes

Copies of the proposed changes will be sent to every county social services or human services department main office where they will be available for public review. For more information and copies of the proposed changes, interested people may write to:

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Madison, WI

Public Notice

***Commissioner of Banking
Commissioner of Credit Unions
Commissioner of Savings & Loan***

***(Notice of Required Interest Rate on
Residential Mortgage Loan Escrow Accounts)***

Under s. 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow.

Section 138.052 (5) (am) 2, Stats., directs the Commissioner of Savings and Loan, with the cooperation of the Commissioners of Credit Unions and of Banking, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Commissioner of Savings and Loan has calculated the interest rate required to be paid on escrow accounts under s. 138.052 (5), Stats., to be 2.91% per year. This interest rate shall remain in effect until the first day of the first month following publication of a new interest rate in the ***Wisconsin Administrative Register***.

The interest rate of 2.91% per year applies to escrow accounts required for residential mortgage loans originated on or after **January 1, 1996** and to escrow accounts required for residential mortgage loans originated after January 31, 1983 and before January 1, 1996 which do not specify an interest rate in the loan agreement.

Contact Information

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Thomas M. Boykoff, General Counsel
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Suite 202
4785 Hayes Road
MADISON, WI 53704

EXECUTIVE ORDERS

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

Executive Order 264. Relating to Calling to Active Service Elements of the Wisconsin National Guard.

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