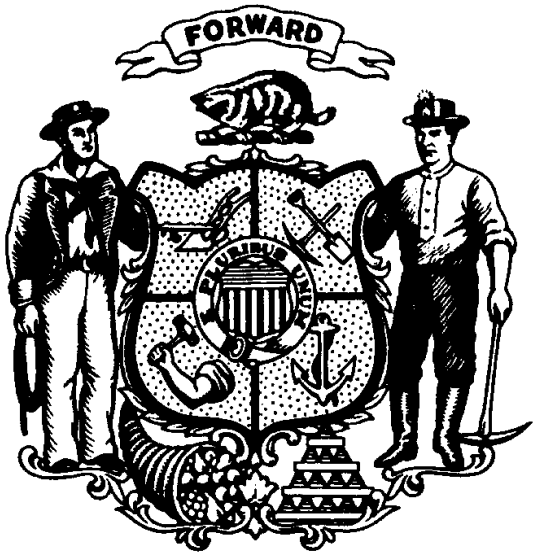
WISCONSIN ADMINISTRATIVE REGISTER

No. 481



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

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NOTICE SECTION

Notice of Hearing
Agriculture, Trade & Consumer Protection

Notice is hereby given that the state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule relating to price discrimination in milk procurement.

The emergency rule, which took effect on **January 1, 1996**, interprets s. 100.22, Stats., and amends ch. ATCP 100, Wis. Adm. Code.

Written Comments

The public is invited to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until **February 14, 1996** for additional written comments, which may be sent to the address given below.

Copies of Rule

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

Division of Trade & Consumer Protection
Telephone (608) 224–4936
Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
P.O. Box 8911
MADISON, WI 53708

Copies will also be available at the public hearing.

Hearing Information

The hearing is scheduled as follows:

February 1, 1996	**Room 106**
Thursday	**State Agriculture Bldg.**
Commencing at 10:00 a.m.	**2811 Agriculture Dr.**
Handicapped accessible	**Madison, WI**

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by contacting Judy Jung (608) 224–4972 or by contacting the TDD at the Department at (608) 224–5058.

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

Statutory authority: ss. 93.07 (1), 93.15 and 97.20 (4)

Statutes interpreted: ss. 93.15, 97.20 and 100.22

This emergency rule prohibits a dairy plant operator from discriminating between milk producers in the amount paid for milk unless the discrimination is based on a difference in milk quality, is justified by a difference in procurement costs, or is justified in order to meet a competitor's price. This emergency rule establishes standards which a dairy plant operator must meet in order to establish a defense based on milk quality, cost–justification or meeting competition.

This emergency rule also spells out enforcement standards and procedures. The Department may require a dairy plant operator to file documentation justifying discriminatory prices, and may take enforcement action against an operator who fails to provide adequate justification. The Department may ask the Attorney General or a district attorney to prosecute a violator in court, and may take action against a violator's dairy plant license.

Each year, Wisconsin's 27,000 dairy farmers sell nearly $3 billion worth of milk to dairy plant operators. Milk sales represent the primary or exclusive source of income for thousands of Wisconsin farm families. Currently, many dairy plant operators appear to be discriminating between milk producers in the amount paid for milk. Many operators appear to be paying higher prices to large producers which cannot be fully justified on the basis of milk quality or differences in procurement cost. Discrimination in milk prices may injure small milk producers and competing dairy plant operators, and may contribute to unwarranted concentration in the dairy industry.

Section 100.22, Stats., currently prohibits a dairy plant operator from discriminating between milk producers in the amount paid for milk if the discrimination injures producers or competition. However, the law affords the following defenses:

* An operator may justify discriminatory prices based on measurable differences in milk quality. Milk quality premiums, if any, must be based on a pre–announced premium schedule which the operator makes available on equal terms to all producers. The operator must also comply with minimum testing requirements under s. ATCP 80.26.

* An operator may pay discriminatory prices if the operator can justify the price differences based on differences in procurement costs.

* An operator may pay discriminatory prices in order to "meet competition."

The Department may investigate violations of s. 100.22, Stats., and may request the Attorney General or a county district attorney to prosecute violations in court; however, investigation and prosecution are currently hampered by a lack of clear standards in the law. For example, there are no standards for what constitutes "cost–justification" or "meeting competition." Prior to the emergency rule, there were no rules interpreting s. 100.22, Stats.

Price Discrimination Prohibited

This emergency rule prohibits a dairy plant operator from doing either of the following if the operator's action injures competition or injures any producer:

* Discriminating between producers in the milk price paid to those producers. "Milk price" means a producer's average gross pay per hundredweight, less hauling charges.

* Discriminating between producers in the value of services which the operator furnishes to those producers but does not include in the payroll price.

Defenses

Under this emergency rule, a dairy plant operator may defend against a milk price discrimination charge by proving any of the following, based on documentation which the operator possessed at the time of the alleged discrimination:

* That the discrimination between producers was based on an actual difference in milk quality. Among other things, the operator must show that the milk quality premiums were based on a pre–announced premium schedule that was available on equal terms to all producers, and that the operator tested the milk according to current rules.

* That the discrimination between producers was fully justified by differences in procurement costs between producers. The rule spells out the relevant costs which the operator may consider, and the method by which the operator must calculate the comparative costs for each producer.

* That the discrimination between producers was justified in order to meet competition. A dairy plant operator may not claim this defense unless the operator proves all of the following:

  * The operator offered the discriminatory milk price or service in

response to a competitor's prior and continuing offer to producers in the operator's procurement area.

* The operator's discriminatory milk price or service did not exceed the competitor's offer.

* The operator offered the discriminatory milk price or service only in that part of the operator's procurement area which overlapped the competitor's procurement area.

Demanding Justification for Discriminatory Prices

Under this emergency rule, the Department may require a dairy plant operator to file documentation justifying an apparent discrimination in prices between producers. A dairy plant operator must file the documentation within 14 days after the operator receives the Department's demand, or by a later date which the Department specifies in its demand. The Department may extend the filing deadline for good cause shown.

Failure to Justify Discrimination

Under this emergency rule, if the Department finds that a dairy plant operator has not adequately justified the operator's discriminatory milk prices, the Department may give the dairy plant operator written notice of that finding. A notice is not a prerequisite to an enforcement action against the violator; however, the notice is open to public inspection under subch. II of ch. 19, Stats.

Injury to Producer

This emergency rule provides that, in an administrative or court enforcement action, evidence that a complaining producer was paid less than another producer shipping milk to the same dairy plant during the same pay period is presumptive evidence that the complaining producer has been injured.

Calculating Milk Procurement Costs

Under this emergency rule, if a dairy plant operator wishes to justify price discrimination between producers based on a difference in procurement costs between those producers, the operator must calculate procurement costs per hundredweight as follows:

STEP 1: Calculate the operator's average total cost, per producer per pay period, for all of the following:

* Dairy farm field service costs.

* Costs to test dairy farm milk shipments.

* Producer payroll expenses.

* Dairy farm license fees and other routine expenses incurred in connection with the licensing and regulation of dairy farms.

* Other costs which the Department allows in writing before the discrimination occurs.

STEP 2: Calculate the operator's average total cost, per producer per pay period, for milk collection and hauling services. An operator may calculate a separate average cost for producers with every–other–day pickup versus producers with every day pickup. An operator may not include:

* Collection or hauling costs which are charged to a producer.

* Costs which the hauler incurs before the first farm and after the last farm on the hauling route.

STEP 3: Add the above costs. To obtain the procurement cost per hundredweight for each producer, divide the sum by the producer's average milk production in hundredweights per pay period. When comparing procurement costs between volume pay classes, each class member's production is considered to be the same as the class average.

Dairy Plant Operator May Charge Procurement Costs to Producers

Nothing in this rule prohibits a dairy plant operator from charging each producer for the full cost of procuring that producers' milk. For example, a dairy plant operator may charge each producer the actual cost, per hundredweight, of hauling that producer's milk; however, a dairy plant operator may not shift hauling charges or other procurement costs between producers in a manner that discriminates between producers.

Fiscal Estimate

This emergency rule interprets s. 100.22, Stats., relating to price discrimination in milk procurement. This emergency rule will not increase DATCP's costs of administering this program, but will facilitate compliance and enforcement of s. 100.22, Stats. There will be nominal one–time costs associated with the rule–making, including costs to print, mail and hold a hearing on the emergency rule.

Initial Regulatory Flexibility Analysis

This emergency rule interprets s. 100.22, Stats., which prohibits price discrimination in milk procurement. This emergency rule applies to approximately 180 dairy plants that purchase milk from Wisconsin's approximately 27,000 dairy farmers. Some of the dairy plants and virtually all of the dairy farmers are small businesses as defined under s. 227.114 (1) (a), Stats.

This emergency rule prohibits a dairy plant operator from discriminating between milk producers in the amount paid for milk unless the discrimination is based on a difference in milk quality, is justified by a difference in procurement costs, or is justified in order to meet a competitor's price. This emergency rule establishes standards which a dairy plant operator must meet in order to establish a defense based on milk quality, cost–justification or meeting competition.

This emergency rule also spells out enforcement standards and procedures. The Department may require a dairy plant operator to file documentation justifying discriminatory prices, and may take enforcement action against an operator who fails to provide adequate justification. The Department may ask the Attorney General or a district attorney to prosecute a violator in court, and may take action against a violator's dairy plant license.

This rule requires dairy plant operators, many of whom are "small businesses," as defined by s. 227.114 (1) (a), Stats., to justify discriminatory milk prices; however, that justification is already required by s. 100.22, Stats. This rule does not add to current statutory requirements, but merely clarifies those requirements.

Effective enforcement of s. 100.22, Stats, and this emergency rule may result in a reduction of milk volume premiums to large dairy farmers, most of whom fall within the statutory definition of "small businesses"; however, effective enforcement may also result in increased payments to small dairy farmers, most of whom are also "small businesses".

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 454.08 (4), Stats., and interpreting s. 454.08 (4), 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 3.03 (5), relating to booth rental arrangements.

Hearing Information

February 5, 1996
Monday
10:00 A.M.

Room 179A
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 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 (2) and 454.08 (4)

Statute interpreted: s. 454.08 (4)

In this proposed rule–making order, the Barbering and Cosmetology Examining Board clarifies that an establishment may enter into booth rental arrangements for reimbursement of staff without requiring all booths to be individually licensed. The rule specifies that a booth rental arrangement between a licensed establishment and an individual practitioner creates an obligation to license the rented premises as an independent business.

Text of Rule

SECTION 1. BC 3.03 (5) is created to read:

BC 3.03 (5) The rental of a chair or booth from a licensed establishment creates a separate establishment, and a separate establishment license is required for the leased area.

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

Industry, Labor & Human Relations (Boilers & Pressure Vessels, Chs. ILHR 41–42)

Notice is hereby given that pursuant to ss. 101.02 (1) and (15) (h) to (j) and 101.17, Stats., the Department of Industry, Labor & Human Relations proposes to hold a public hearing at the time and place indicated below, to consider the revision of chs. ILHR 41–42, Wis. Adm. Code, relating to boilers and pressure vessels.

Hearing Information

The public hearing is scheduled as follows:

January 26, 1996	**Room 103, GEF #1**
Friday	**201 E. Washington Ave.**
10:00 a.m.	**MADISON, WI**

This 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) 266–3151 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.

Copies of Rules

A copy of the rules to be considered may be obtained from the following address or at the appointed time and place the hearing is held.

Division of Safety & Buildings
Telephone (608) 266–3151
State Department of Industry, Labor and Human Relations
201 East Washington Ave.
P.O. Box 7969
MADISON, WI 53707

Written Comments & Contact Person

Interested people are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than Friday, **Feb. 2, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Ronald Acker at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1) and (15) (h) to (j) and 101.17

Statute interpreted: s. 101.17

The Division of Safety and Buildings within the Department of Industry, Labor and Human Relations is responsible for adopting and enforcing administrative rules relative to the protection of the life, health, safety and welfare of employes and frequenters of public buildings and places of employment. The rules of chs. ILHR 41–42 contain safety and health requirements relating to the design, construction, installation, operation and inspection of boilers and pressure vessels.

The proposed rules consist of miscellaneous changes in chs. ILHR 41–42 in order to clarify intent and address new products and technology. The proposed rules contain clarifications relating to boiler blowoff piping and tanks. The rules relating to power boiler inspections are revised by allowing inspection. A rule is being added for approval of boilers and pressure vessels designed to non–ASME standards and accepted by an independent third party. The rules relating to wood–burning boilers are revised by eliminating the plan submittal requirements and clarifying the installation requirements. A specific rule for the construction of electric boilers and the rules applying to boilers and pressure vessels installed before 1957 are being removed from ch. ILHR 41.

In order to keep the Wisconsin boiler and pressure vessel code up–to–date with national standards, the proposed rules include the incorporation by reference of the latest edition of the ASME Boiler and Pressure Vessel Code currently incorporated by reference in chs. ILHR 41–42. Approval of the Revisor of Statutes and the Attorney General to incorporate the updated ASME code has been received, in accordance with s. 227.21, Stats.

The Department is also updating the material in the Appendix of chs. ILHR 41–42, but the proposed rules do not include those changes. In Appendix A, a sample copy of the certificate of operation is being added. In Appendix B, the excerpts from the ASME Boiler and Pressure Vessel Code are being updated to the 1995 edition.

Initial Regulatory Flexibility Analysis

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

The proposed rules will affect any business involved in the design, construction, installation, operation, and inspection of boilers and pressure vessels.

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

For the proposed power boiler internal inspection exemption, maintenance and water treatment programs must be developed. The boiler inspection agency must verify in writing to the Department that the programs are adequate.

The proposed rules require the installation of a wood–burning boiler to be registered with the Department by the installer on a Department form.

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

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

Fiscal Estimate

The Division of Safety and Buildings within the Department of Industry, Labor & Human Relations currently administers and enforces the provisions of chapters ILHR 41–42. The proposed rules consist of miscellaneous changes to the existing administrative code now being enforced, with no new requirements that would affect costs or revenues; therefore, the proposed rules will have no state or local government fiscal impact.

Long–Range Fiscal Implications:

None known.

Notice of Hearing

Medical Examining Board

Notice is hereby given that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats., and interpreting s. 448.40 (1), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ch. Med 15 (title), s. Med 15.02 (title) and s. Med 15.02, relating to tattooing and body piercing.

Hearing Information

February 1, 1996	**Room 179A**
Thursday	**1400 E. Washington Ave.**
10:00 A.M.	**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 12, 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 (2) and 448.40 (1)

Statute interpreted: s. 448.40 (1)

In this proposed rule–making order, the Medical Examining Board amends the current rule regarding tattooing and ear piercing to conform with the actual practices that are taking place today. When the Medical Examining Board originally promulgated this rule to define that tattooing and ear piercing were not to be considered the practice of medicine and surgery if it was done for bodily adornment, body piercing was not included, as it was not done on a regular basis. This proposed amendment will bring the current rule up to the current practice that is taking place in regards to body piercing for bodily adornment.

Text of Rule

SECTION 1. Chapter Med 15 (title) is amended to read:

Chapter Med 15
PRACTICE OF MEDICINE AND SURGERY DEFINED:
EXCLUSION OF TATTOOING AND ~~EAR~~ BODY PIERCING~~.~~

SECTION 2. Med 15.02 (title) and 15.02 are amended to read:

Med 15.02 Tattooing and body piercing. The practice of medicine and surgery is further defined not to include tattooing and ~~ear~~ body piercing when done for purposes of bodily adornment.

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 Proposed Rules

Revenue

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 73.09 (1) 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 15, 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 Wallace T. Tews at (608) 266–9759, if you have any questions regarding this proposed rule order.

Analysis by the Dept. of Revenue

Statutory authority: s. 227.11 (2) (a)

Statute interpreted: s. 73.09 (1)

SECTION 1. Tax 12.07 (2) (b) is amended to include the individual municipalities within Kenosha County. Prior to this time, Kenosha County was under a county assessor system. Due to the dissolution of the county assessor office, this rule delineates the requirements for these municipalities in regard to the Assessor 2 level of certification: the Town of Bristol, Town of Salem, Town of Somers, Village of Pleasant Prairie, Village of Twin Lakes, and City of Kenosha.

Text of Rules

SECTION 1. Tax 12.07 (2) (b) is amended to read:

Tax 12.07 (2) (b) Municipalities requiring an assessor 2 level of certification:

1. Town of Allouez – Brown county
2. Town of Bristol – Kenosha county
~~2.~~ 3. Town of Caledonia – Racine county
~~3.~~ 4. Town of Grand Chute – Outagamie county
~~4.~~ 5. Town of Menasha – Winnebago county
~~5.~~ 6. Town of Mt. Pleasant – Racine county
7. Town of Salem – Kenosha county
8. Town of Somers – Kenosha county
~~6.~~ 9. Village of Ashwaubenon – Brown county
~~7.~~10. Village of Brown Deer – Milwaukee county
~~8.~~11. Village of Elm Grove – Waukesha county
~~9.~~12. Village of Fox Point – Milwaukee county
~~10.~~13. Village of Greendale – Milwaukee county
~~11.~~14. Village of Hales Corners – Milwaukee county
~~12.~~15. Village of Menomonee Falls – Waukesha county
16. Village of Pleasant Prairie – Kenosha county
~~13.~~17. Village of Shorewood – Milwaukee county
18. Village of Twin Lakes – Kenosha county
~~14.~~19. Village of Whitefish Bay – Milwaukee county
~~15.~~20. City of Appleton – Calumet, Outagamie and Winnebago counties
~~16.~~21. City of Beaver Dam – Dodge county
~~17.~~22. City of Beloit – Rock county
~~18.~~23. City of Brookfield – Waukesha county
~~19.~~24. City of Cudahy – Milwaukee county
~~20.~~25. City of DePere – Brown county
~~21.~~26. City of Eau Claire – Chippewa and Eau Claire counties
~~22.~~27. City of Fitchburg – Dane county
~~23.~~28. City of Fond du Lac – Fond du Lac county
~~24.~~29. City of Franklin – Milwaukee county
~~25.~~30. City of Glendale – Milwaukee county
~~26.~~31. City of Green Bay – Brown county
~~27.~~32. City of Greenfield – Milwaukee county
~~28.~~33. City of Janesville – Rock county
34. City of Kenosha – Kenosha county
~~29.~~35. City of LaCrosse – La Crosse county
~~30.~~36. City of Manitowoc – Manitowoc county
~~31.~~37. City of Marshfield – Marathon and Wood counties
~~32.~~38. City of Mequon – Ozaukee county
~~33.~~39. City of Middleton – Dane county
~~34.~~40. City of Monona – Dane county
~~35.~~41. City of Muskego – Waukesha county
~~36.~~42. City of Neenah – Winnebago county
~~37.~~43. City of New Berlin – Waukesha county
~~38.~~44. City of Oak Creek – Milwaukee county
~~39.~~45. City of Oconomowoc – Waukesha county
~~40.~~46. City of Oshkosh – Winnebago county
~~41.~~47. City of Racine – Racine county
~~42.~~48. City of Sheboygan – Sheboygan county
~~43.~~49. City of South Milwaukee – Milwaukee county
~~44.~~50. City of Stevens Point – Portage county
~~45.~~51. City of Sun Prairie – Dane county
~~46.~~52. City of Superior – Douglas county
~~47.~~53. City of Waukesha – Waukesha county
~~48.~~54. City of Wausau – Marathon county
~~49.~~55. City of Wauwatosa – Milwaukee county
~~50.~~56. City of West Allis – Milwaukee county
~~51.~~57. City of West Bend – Washington county
~~52.~~58. City of Wisconsin Rapids – Wood county

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Currently, all municipalities, except those in Kenosha County, require a specific level of assessor certification based on the complexity of the assessment. Municipalities in Kenosha County were not rated for a level of assessor certification because they were under a county assessor system, which has been dissolved.

The proposed rule adds six municipalities in Kenosha County to the list of those that require an Assessor 2 level of certification due to the complexity of the assessment.

Local Fiscal Effect:

Assessment costs are determined by the amount of work required to assess a municipality, not the assessor certification level. This means that the proposed rule has no fiscal effect on the six municipalities to which it pertains.

State Fiscal Effect:

The proposed rule will require minor changes to update the Wisconsin Property Assessment Manual.

Notice of Hearing

Revenue

Notice is hereby given that pursuant to ss. 70.32 (2) (c) 1 and 227.24 (1), Stats., and interpreting s. 70.32 (2) and (2r) (a), Stats., the State of Wisconsin Department of Revenue will hold a public hearing at the time and place indicated below, to consider the emergency rule promulgated December 6, 1995, relating to the assessment of agricultural land in 1996.

Hearing Information

January 25, 1996 **Room 207, GEF #3**
Thursday **125 South Webster St.**
Commencing at 1:00 p.m. **MADISON, WI**

Analysis by the Dept. of Revenue

Statutory authority: ss. 70.32 (2) (c) 1 and 227.24 (1)

Statute interpreted: s. 70.32 (2) and (2r) (a)

Chapter Tax 18 is repealed and recreated to guide assessors in classifying and valuing agricultural property for the assessments on January 1, 1996.

Under prior law, agricultural land was assessed for property tax purposes at the market value of its highest and best use. 1995 Wis. Act 27 changes the way certain agricultural land is assessed for property taxes, and requires the Department of Revenue to promulgate rules and define terms necessary to implement the new assessment procedure.

This rule provides the following definitions:

1) "Land devoted primarily to agricultural use" means land classified agricultural in 1995 that is not in a use that is incompatible with agricultural use on the assessment date. Swamp or waste or productive forest land located in villages and cities is not devoted primarily to agricultural use, and agricultural buildings and improvements and the land necessary for their location and convenience are not devoted primarily to agricultural use. Under prior law, swamp or waste or productive forest land located in villages and cities was classified agricultural because villages and cities were not permitted to classify land swamp or waste or productive forest land. Since 1995 Wis. Act 27 requires villages and cities to use the swamp or waste and productive forest land classifications, all such land located in villages or cities is to be reclassified swamp or waste or productive forest, according to the Wisconsin Property Assessment Manual.

2) "Other" means agricultural buildings and improvements and the land necessary for their location and convenience.

3) "Parcel of agricultural land" means land devoted primarily to agricultural use within a single legal description.

The definition of "parcel of agricultural land" used here implements the intent of the legislature in only freezing the assessment of agricultural land. If a "parcel of agricultural land" were defined as the complete legal description of a tract which was predominantly agricultural, the assessment of agricultural land within a legal description which was not predominantly agricultural would not be frozen.

Under 1995 Wis. Act 27, the assessment of each parcel of agricultural land on January 1, 1996 is frozen at the amount of its assessment on January 1, 1995. "Other", which consists solely of agricultural buildings and improvements and the land necessary for their location and convenience, is assessed according to s. 70.32 (1), Stats., on January 1, 1996.

This rule took effect **December 6, 1995**, upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

Fiscal Estimate

Under prior law, agricultural land was assessed at full market value. Under current law, parcels of agricultural land are assessed on January 1, 1996 at the January 1, 1995 level of assessment.

Since the taxable value of agricultural land will not increase on January 1, 1996, property taxes will be shifted from agricultural land to other classes of property; therefore, state equalization aids will be reallocated and state forestry laws will be lower than under prior law. The property tax shift will also affect state costs for tax credit programs and state tax revenues. In addition, the state and municipalities will incur costs to implement the new assessment system.

Local Fiscal Effect:

Property Tax Shifts:

Assuming the value of agricultural land grows by 5.9% in 1996, as it did in 1995, agricultural land assessments in 1996 would be lower than under prior law by $0.53 billion (5.9% x 1995 equalized value of agricultural land of $9.02 billion). Assuming a net statewide tax rate of $24 per $1,000 of value in 1996, $12.7 million ($0.53 billion x 0.024) in property taxes would be shifted from agricultural land to other classes of property. On average, property taxes on agricultural land would be 5.53% less, and property taxes on other classes of property would be 0.22% higher, than under prior law.

Administrative Costs:

Under the new system for assessing agricultural land, property assessors will have to determine how much land is devoted primarily to agricultural use. Assessors will have to reclassify agricultural buildings and improvements into a new class of property, called "other". In addition, some land in cities and villages must be reclassified forest or swamp or waste under the new classification system. Also, the number of objections filed with boards of review are likely to increase as the new system of property classification and assessment of agricultural land is implemented. The costs of reclassification and other implementation costs required under the new system cannot be reliably estimated.

State Fiscal Effect:

Revenue and Expenditure Effects:

The $12.7 million shift in property taxes from agricultural land to other classes of property would also affect state revenues. The major effects are:

1) Farmland Preservation tax credits will decline by approximately $1.4 million, due to the decline in property taxes of claimants of about $5 million and a consequent increase of $5 million in their household incomes.

2) Farmland Tax Relief credits are 10% of up to $10,000 in property tax paid on agricultural land. Assuming $10 million of the $12.7 million reduction in the property tax on agricultural land is attributable to Farmland Tax Relief credit claimants, the credits will decline by $1 million (10% x $10 million). The $1 million decline in Farmland Tax Relief credits will increase the amount available for the lottery credit by $1 million.

3) State income tax paid by owners of agricultural land will increase, since a $12.7 million property tax reduction increases their incomes by $12.7 million. Assuming a 5% marginal income tax rate, income taxes paid by owners of agricultural land would increase by $635,000 (5% x 12.7 million). Income taxes of other property owners, whose property taxes are slightly higher, would decline.

4) Revenues from the state forestry tax, levied at $0.20 per $1,000, would be about $106,000 ($0.0002 x $0.53 billion) less than under prior law.

Administrative Costs:

The Department of Revenue will have to reprogram its computer systems to include "other" property and update its equalization databases for property reclassifications and for changes in acreages. The Department will also have to change a number of property tax reporting forms and systems. In addition, the Wisconsin Property Assessment Manual will require revision to incorporate the substance of this rule.

Contact Person

Following the public hearing, the hearing record will remain open until **February 2, 1996**, for additional written comments.

Copies of the complete rule text and fiscal estimate are available at no charge on request from Gregory Landretti at the address listed below. An interpreter for the hearing–impaired will be available on request for the hearing. Please make reservations for a hearing interpreter by January 22, 1996, either by writing or by calling:

Gregory Landretti, (608) 266–8202
FAX (608) 264–6887
Office of Assessment Practices
Wisconsin Department of Revenue
125 South Webster Street
Madison, WI 53702

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 Journal 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 Agriculture, Trade & Consumer Protection

Rules were adopted amending **ch. ATCP 100 (note)** and creating **s. ATCP 100.76 (3m)** and **subchapter VI of ch. ATCP 100**, relating to price discrimination in milk procurement.

FINDING OF EMERGENCY

1) Each year, Wisconsin's approximately 27,000 dairy farmers sell approximately $3 billion worth of milk to dairy plant operators. Milk sales represent the primary or exclusive source of income for thousands of Wisconsin farm families.

2) Currently, many dairy plant operators appear to be discriminating between milk producers in the amount paid for milk. Many operators appear to be paying higher prices to large producers which cannot be fully justified on the basis of milk quality or differences in procurement cost. Discrimination in milk prices may injure small milk producers and competing dairy plant operators, and may contribute to unwarranted concentration in the dairy industry.

3) Recently, discrimination in milk prices has reached historic highs, with some dairy plants paying volume premiums of up to 70 cents to 90 cents per hundredweight. In order to pay volume premiums at this level, a dairy plant operator must reduce the price paid to other producers. This affects the livelihood of many smaller milk producers, and may affect their ability to continue farming.

4) The state of Wisconsin Department of Agriculture, Trade and Consumer Protection is responsible for enforcing s. 100.22, Stats., which prohibits dairy plant operators from discriminating between milk producers in the prices paid to those producers. However, a dairy plant operator may defend a discrimination in prices if the operator can prove that the discrimination is based on differences in milk quality, is justified on the basis of differences in procurement costs, or is justified in order to meet competition.

5) The Department recently completed a survey of dairy plant pricing programs. The Department presented the survey results to the Board of Agriculture, Trade and Consumer Protection on November 14, 1994. The survey suggests that many dairy plant operators are paying discriminatory prices which cannot be justified on the basis of differences in milk quality or procurement costs. Many of the surveyed dairy plant operators claimed that their discriminatory prices were justified in order to meet prices offered by competitors. Many operators stated that they were willing to reduce their discriminatory payments to levels that could be cost–justified if their competitors would do the same. But compliance by an individual dairy plant operator may put that operator in an untenable competitive position unless the operator's competitors also comply.

6) Enforcement of s. 100.22, Stats., is hampered by the lack of clear standards in the law. For example, there are no clear standards of cost–justification or "meeting competition." Currently, there are no rules interpreting s. 100.22, Stats. Clarifying rules would facilitate compliance and enforcement.

7) Effective January 1, 1996, federal milk marketing orders will be modified to incorporate a new system of milk component pricing. Dairy plant operators will be making changes to their payment schedules and computer programs in order to implement the new component pricing system. Although the marketing order changes do not address the issue of discrimination in milk pricing, they provide an opportunity for all dairy plant operators to modify their pay programs to comply with s. 100.22, Stats. Simultaneous compliance by dairy plant operators would minimize competitive losses by individual dairy plant operators who choose to comply.

8) In order to promote prompt and effective compliance with s. 100.22, Stats., and to minimize continuing harm to dairy plant operators and smaller milk producers, it is necessary to adopt rules interpreting s. 100.22, Stats., before January 1, 1996. Failure to adopt rules by January 1, 1996 will reduce the chance of securing industry–wide compliance with s. 100.22, Stats., and may therefore result in continuing harm to milk producers and competition.

9) The Department cannot adopt interpretive rules by normal rulemaking procedures by January 1, 1996. Pending the adoption of rules by normal rulemaking procedures, it is therefore necessary to adopt emergency rules to protect the public welfare.

Publication Date: **January 1, 1996**
Effective Date: **January 1, 1996**
Expiration Date: **May 30, 1996**
Hearing Date: **February 1, 1996**

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules were adopted revising **ch. DOC 328**, relating to the procedure and timing for collecting fees charged for supervision.

EXEMPTION FROM FINDING OF EMERGENCY

In section 6360 in 1995 Wis. Act 27, the Legislature directed the Department to promulgate rules required under ss. 304.073 (3) and 304.074 (5), Stats., for supervision fees charged to probationers and parolees, by using the emergency rule–making procedures under s. 227.24, Stats., but without having to make a finding of emergency. These rules will remain in effect until replaced by permanent rules.

ANALYSIS PREPARED BY THE DEPARTMENT OF CORRECTIONS

This rule–making order implements ss. 301.08 (1) (c), 304.073 and 304.074, Stats., establishing the procedure and timing for collecting fees charged for supervision.

Currently, offenders on probation or parole pay no supervision fee. Through this emergency rule making order, the Department will charge

offenders on probation and parole a supervision fee. Offenders under administrative or minimum supervision and supervised by the Department will pay a fee sufficient to cover the cost of supervision. Offenders under medium, maximum, or high risk supervision will pay a supervision fee based on the ability to pay.

These rules exempt an offender who is supervised by another state under an interstate compact from paying a Wisconsin supervision fee. An offender who is serving a concurrent sentence of prison and probation or parole is not required to pay the supervision fee while in prison.

These rules authorize the Department to contract with a vendor to provide monitoring of an offender. Offenders who are on monitoring are required to pay a fee sufficient to cover the cost of monitoring, supervision by the Department and cost of administering the contract.

These rules require the Department to establish the rate for supervision and monitoring fees and to provide the offender with the supervision fee schedule.

These rules require offenders to comply with the procedures of the Department or vendor for payment of the supervision or monitoring fee. These rules require the Department to provide the offender with a copy of the procedures for paying the supervision or monitoring fee. These rules permit an offender to pay the supervision fee in monthly installments or in a lump sum.

These rules permit the Department to take certain action for the offender's failure to pay the supervision or monitoring fee. The actions include counseling, wage assignments, review of supervision level, recommendation for revocation of probation or parole and any other appropriate means of obtaining the supervision or monitoring fee.

Publication Date: **December 21, 1995**
Effective Date: **January 1, 1996**
Expiration Date: **May 30, 1996**

EMERGENCY RULES NOW IN EFFECT (2)

Department of Development

1. 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**

2. Rules were adopted revising **ch. DOD 13**, relating to volume cap on private activity bonds.

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:

Section 560.032, Stats., has been interpreted by the Legislature and legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Development expires at the end of each calendar year.

To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1996 is in process, but because of the length of the rule–making process will not be effective until March 1, 1996.

Without this emergency rule, which is effective January 2, 1996, there will be several months during which Wisconsin will be unable to take advantage of the approximately $260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of this federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investments occur.

Publication Date: **January 2, 1996**
Effective Date: **January 2, 1996**
Expiration Date: **May 31, 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 Legislature 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

1. 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 s. WGC 9.12 (4), Wis. Adm. Code. There will be no increase in revenues as a result of this rule.

Section 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.

Section 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**
Extension Through: **January 31, 1996**

2. 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**

EMERGENCY RULES NOW IN EFFECT (2)

Health and Social Services

(Community Services, Chs. HSS 30––)

1. 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

2. 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**

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 or 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**

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 simply 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 (2)

Insurance

1. 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**

2. Rules were adopted revising **s. Ins 3.25**, relating to credit life insurance.

FINDING OF EMERGENCY

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

The rule adjusts the rate charged for credit life insurance upward from 32¢ to 39¢ per hundred dollars of initial indebtedness and requires that credit life insurance in amounts less than $15,000 be issued without underwriting. This rate increase is necessary to provide adequate provisions for expenses of insurers.

A public hearing was held on the rule on September 27, 1995. The rule was sent to the Legislature on November 22, 1995 and there has been no comment or modification sought.

The permanent rule will be effective after publication, probably February 1, 1996. This emergency rule is identical to the permanent rule, only with an effective date of January 1, 1996. The January 1, 1996 effective date is necessary so that insurers and creditors can charge the new rates for the entire year.

Publication Date: **December 28, 1995**
Effective Date: **January 1, 1996**
Expiration Date: **May 30, 1996**

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**

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**
Hearing Date: **January 25, 1996**

[See Notice this Register]

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**

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

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

Agriculture, Trade & Consumer Protection (CR 94–156):
Ch. ATCP 30 Appendix A – Relating to atrazine use restrictions.

Agriculture, Trade & Consumer Protection (CR 95–146):
Ch. ATCP 116 – Relating to work recruitment schemes trade practices.

Agriculture, Trade & Consumer Protection (CR 95–167):
Ch. ATCP 70 – Relating to food processing plants.

Banking, Office of the Commissioner of (CR 95–119):
S. Bkg 3.05 – Relating to leasing of personal property.

Banking, Office of the Commissioner of (CR 95–120):
S. Bkg 3.01 – Relating to bank–owned banks, lending and depository authority.

Health & Social Services (CR 95–106):
Ch. HSS 343 – Relating to the conduct of youth on aftercare supervision following their release from youth correctional institutions, and revocation of a youth's aftercare for violation of a rule or special condtion of aftercare.

Transportation, Dept. of (CR 95–184):
Ch. Trans 106 – Relating to certification of traffic safety programs and instructions.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.

Agriculture, Trade & Consumer Protection (CR 95–17):

An order affecting ss. ATCP 29.01, 29.15, 29.152, 29.154 and 29.155, relating to pesticide worker protection and pesticide application site posting.

Effective 03–01–96.

Agriculture, Trade & Consumer Protection (CR 95–60):

An order affecting chs. ATCP 10 & 11 and ss. ATCP 12.01 & 12.05, relating to animal health and diseases of bovine animals, cervidae, goats, South American camelidae and swine.

Effective 03–01–96.

Chiropractic Examining Board (CR 95–4):

An order repealing and recreating ch. Chir 5, relating to the requirements for continuing chiropractic education for chiropractors, and specifying criteria for approval of programs for continuing education credit.

Effective 03–01–96.

Health & Social Services (CR 95–79):

An order amending ch. HSS 82 and creating ch. HSS 88, relating to adult family homes licensed for three or four residents.

Effective 02–01–96.

Natural Resources (CR 95–77):

An order repealing and recreating s. NR 1.40 (2), relating to Natural Resources Board policies for land acquisition.

Effective 03–01–96.

Pharmacy Examining Board (CR 95–22):

An order affecting ss. Phar 2.01, 3.01, 3.04, 4.02, 6.04, 7.01, 7.02, 7.06 and 8.05, relating to:

1) Licensure of graduates of a foreign pharmacy school or college;
2) Patient consultation portion of the laboratory practical examination;
3) Display of pharmacists' licenses in a pharmacy;
4) Illumination of pharmacy signs;
5) Patient consultation;
6) Drug names on prescription labels;
7) Providing pharmaceutical services; and
8) Missing information on prescription orders for controlled substances.

Effective 02–01–96.

Psychology Examining Board (CR 94–10):

An order affecting s. Psy 4.02, relating to continuing education.

Effective 03–01–96.

Transportation, Dept. of (CR 91–98):

An order amending ss. Trans 149.03, 149.04 and 149.06, relating to the inspection of a repaired salvage vehicle; and repealing ch. MVD 5 and creating ch. Trans 305, relating to standards for motor vehicle equipment.

Effective 03–01–96.

Veterans Affairs, Dept. of (CR 95–160):

An order affecting ss. VA 2.01 and 2.03, relating to the health care aid grant and retraining grant programs.

Effective 02–01–96.

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