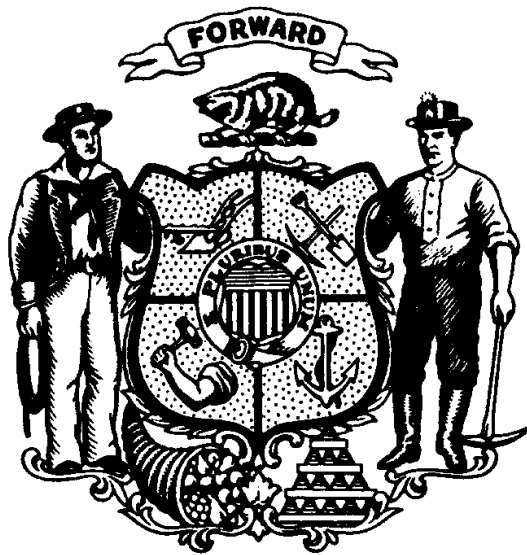


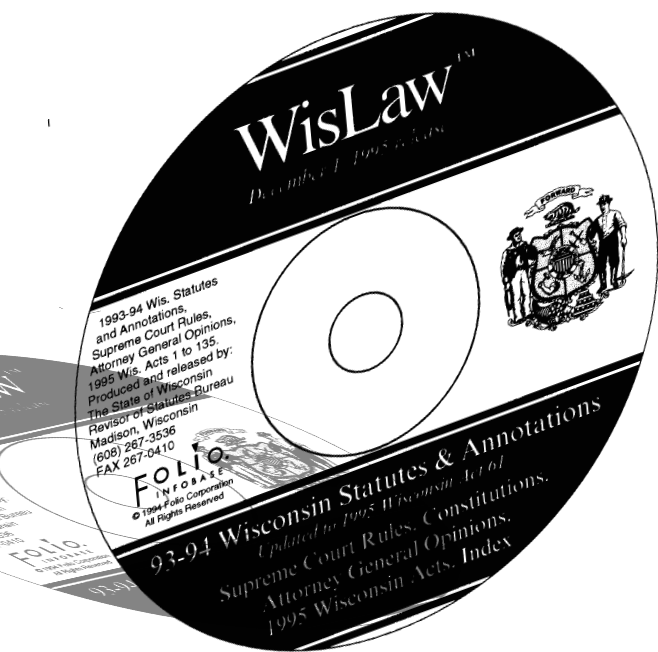
# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 487**



Publication Date: July 31, 1996  
Effective Date: August 1, 1996

REVISOR OF STATUTES BUREAU  
SUITE 800, 131 WEST WILSON STREET  
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## EMERGENCY RULES NOW IN EFFECT

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

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

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

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

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### EMERGENCY RULES NOW IN EFFECT (2)

#### Department of Agriculture, Trade & Consumer Protection

1. Rules were adopted creating **s. ATCP 21.15**, relating to potato late blight.

#### Finding of Emergency

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection finds, pursuant to s. 224.24 (1), Stats., that an emergency rule is necessary to preserve the public peace, health, safety or welfare. The following circumstances justify the emergency rule:

1) In recent years, new forms of the highly virulent "Irish potato famine" fungus, *Phytophthora infestans*, have caused increasingly devastating losses to potato and tomato growers in the United States and Canada. The fungus causes a disease of potato plants which is commonly known as "late blight."

2) The National Association of State Departments of Agriculture reports that late blight epidemics in 1992, 1993 and 1994 were the worst in decades, and that some individual farm losses have amounted to hundreds of thousands of dollars in a single year. The University of Wisconsin estimates that Wisconsin growers lost up to \$10 million in 1994 and \$6 million in 1995 due to late blight.

3) The potato industry is one of Wisconsin's most important agricultural industries. In 1995, Wisconsin was the 3rd leading state in the nation in potato production. Cash receipts to Wisconsin potato growers totalled over \$150 million in 1995. Potatoes are an important food source for the people of Wisconsin and other states. Potato production also supports important processing and distribution industries in Wisconsin. The uncontrolled spread of late blight would have a devastating impact on Wisconsin potato growers, and would seriously affect the public health, safety and welfare.

4) Late blight appears on potato plant leaves, stems and tubers. It causes foliar lesions which are followed by severe defoliation in

wet weather. It can also reduce marketable yield by directly infecting and rotting potato tubers. Once late blight appears, it spreads rapidly and can cause total crop loss.

5) Late blight fungal spores can be carried to other plants by many things, including wind, rain, machinery, workers, wildlife and infected seed potatoes. The University of Wisconsin reports that spores can be transported over 25 miles by storms.

6) There are very few registered fungicides in the United States that are effective in controlling the new forms of late blight fungus.

7) Because of the lack of registered fungicides, and the ease with which the late blight fungus spreads, potato growers must mitigate the spread of the disease by removing sources of the overwintering inoculum. Among other things, potato growers must properly dispose of potato cull piles and potato plants which germinate from waste potatoes.

8) If individual potato growers fail to implement necessary cultural practices to mitigate the spread of late blight, that failure will have a potentially devastating impact on other growers and on the Wisconsin potato industry as a whole.

9) In order to ensure that growers take adequate steps to mitigate the spread of late blight, it is necessary to adopt rules that spell out critical problems and establish sanctions for growers who fail to comply. Because of the imminent threat of harm to the potato industry, rules are urgently needed prior to the 1996 planting and growing season.

10) Under normal rulemaking procedures, it is not possible for the Department to adopt rules prior to the 1996 planting and growing season. Pending the adoption of permanent rules, the following emergency rules are needed to protect the public health, safety and welfare, and to mitigate the spread of late blight during the 1996 planting and growing season.

**Publication Date:** May 1, 1996  
**Effective Date:** May 1, 1996  
**Expiration Date:** September 28, 1996  
**Hearing Date:** May 30, 1996

2. Rules adopted revising **chs. ATCP 10 to 12**, relating to animal health.

#### Finding of Emergency

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

(1) 1995 Wis. Act 79 was published December 8, 1995. Under its provisions, no person may keep farm-raised deer in Wisconsin after June 1, 1996, unless that person is registered with the department.

(2) 1995 Wis. Act 79 requires the department to adopt rules which specify the fee for registration. In addition, rules are necessary to establish the mechanism for registration.

(3) Prior to 1995 Wis. Act 79, persons who kept farm-raised deer were required to be licensed by the department of natural resources (DNR). Many persons who keep farm-raised deer will have become licensed with DNR for calendar year 1996. Those licenses will be transferred to the department as registrations.

(4) Permanent rules implementing 1995 Wis. Act 79 will not take effect until on or about January 1, 1997. This emergency rule establishes an interim procedure for registering herds of farm-raised

deer, pending the effective date of the permanent rules. Without this emergency rule, no person would be able to start a farm-raised deer herd in Wisconsin between June 1, 1996, and the effective date of the permanent rules, because there would be no way to register that herd.

(5) 1995 Wis. Act 79 also requires animal owners to provide a means of testing those animals for tuberculosis without endangering the animal or the person performing the test. In addition, a non-statutory provision of that Act requires all keepers of farm-raised deer to have the deer tested for tuberculosis between December 8, 1995, and June 30, 1997.

(7) Concerns for the safety of farm-raised deer during testing prohibit testing during significant periods of the year. For example, deer should not be tested during the birthing season, the rut season and the season in which the animals are in velvet. Therefore testing is restricted to periods in late August to early October or during January and February.

(8) The department anticipates that many keepers of farm-raised deer will perform their testing in July, August or September of 1996, before a permanent rule can be adopted. This emergency rule establishes three alternative ways in which the animal owner can insure the safety of the persons doing the testing. This is necessary to insure the safety of the person conducting the test and to permit the keeper of farm-raised deer to know what constitutes adequate restraint of the animals.

(9) In September, 1995, the United States department of agriculture adopted new regulations relating to identification and slaughter shipment of bovines or cervidae which are reactors or suspects for bovine tuberculosis. Wisconsin's current administrative rules are in conflict with the current federal regulations. This emergency rule will make Wisconsin's rules consistent with the federal regulations, so that persons who comply with federal law will not be placed in violation of state law.

(10) In March 1996, the department was advised by the United States department of agriculture that the Russian federation intends to prohibit shipment of poultry meat into the Russian federation from any state which does not require veterinarians to report the presence of specific poultry diseases to the state animal health agency. Wisconsin's current administrative rules do not require reporting of 5 of the diseases which concern the Russian federation.

(11) Wisconsin poultry producers ship poultry meat valued in excess of \$1 million per year to the Russian federation. By adopting a provision requiring veterinarians to report the existence of 5 diseases to the department, the department will protect the poultry producers' export market in the Russian federation. The department has proposed a permanent rule requiring reporting of the diseases. This emergency rule protects the export market during the period before the permanent rule is effective.

**Publication Date:** June 3, 1996  
**Effective Date:** June 3, 1996  
**Expiration Date:** October 31, 1996

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## EMERGENCY RULES NOW IN EFFECT

### Development

Rule adopted amending **ss. DOD 6.18 (1) and 6.32 (2)**, relating to the community development block grant portion of the Wisconsin development fund.

### Finding of Emergency

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

On the evening of January 5, 1996, a fire broke out at Stella Foods' cheese processing and packaging plant in the Village of Lena, Wisconsin, resulting in more than \$15 million in property damage, more than \$10 million in business interruption losses, and the loss of more than 300 full-time equivalent jobs for that small rural community. As a result of the fire, 70 percent of Stella Foods' plant was destroyed, all dairy and cheese processing ground to a halt, and approximately 350 dairy farmers had to find alternative facilities to receive and process their dairy products.

The scope of the Stella Foods fire and resulting damages was exacerbated by the lack of adequate water supply and pressure to fight the fire. To address various water supply, waste water treatment and insurance needs, and to persuade Stella Foods to reconstruct the Lena plant and rehire more than 300 former employees, the Village of Lena needs to replace its 50-year old 40,000 gallon water tank with a new 300,000 gallon water tank at an estimated cost of approximately \$890,000, and to upgrade its current waste water treatment plant at an estimated cost of approximately \$900,000. Adoption of these emergency rules will allow the Department of Development to provide the Village of Lena with the financial assistance to address the foregoing problems.

**Publication Date:** April 3, 1996  
**Effective Date:** April 3, 1996  
**Expiration Date:** August 31, 1996  
**Hearing Date:** May 8, 1996

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## EMERGENCY RULES NOW IN EFFECT

### Emergency Response Board

Rules adopted revising **ch. ERB 4**, relating to a fee for transporting hazardous material.

### Finding of Emergency

The State Emergency Response Board finds that an emergency exists and that the attached 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 necessary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce.

This emergency rule is being promulgated to allow continuation of the Wisconsin hazardous materials transportation registration program established in s. 166.20(7g), Stats. The State Emergency Response Board (SERB) promulgated a rule, ch. ERB 4, to implement the program. The original rule had a sunset date of June 30, 1995. A revised ch. ERB 4 was promulgated December 1, 1995, but was superseded by statutory changes to s. 166.20(7g), Stats., enacted in the Department of Transportation (DOT) biennial budget.

The emergency rule will enable the DOT to collect registration fees for the billing period July 1, 1995 through June 30, 1996. This was agreed upon as a necessary step by several agencies including SERB, Division of Emergency Government and DOT in consultation with Legislative Council and Joint Committee For Review of Administrative Rules staff. Through this collection, DOT will meet the statutory requirement to collect an annual registration fee for the transport of hazardous materials. These fees are deposited to the State Transportation Fund to partially offset the DOT appropriations funding the level A and level B hazardous materials emergency response teams in Wisconsin. The legislature has supported the emergency response team system in Wisconsin by adopting legislation to authorize teams and fund them through a combination of fees and the State Transportation Fund.

The SERB, the Department of Military Affairs-Division of Emergency Government and the Department of Transportation are jointly developing a permanent rule to reflect the statutory fee structure enacted by the legislature in the DOT 1995-97 biennial

budget. It is expected a revised permanent rule will be promulgated later this year.

**Publication Date:** February 23, 1996  
**Effective Date:** February 23, 1996  
**Expiration Date:** July 22, 1996  
**Hearing Date:** April 2, 1996

## **EMERGENCY RULES NOW IN EFFECT**

### *Wisconsin Gaming Commission*

A rule was adopted amending s. WGC 24.13 (1) (d), relating to simulcasting fees.

#### **Finding of Emergency**

The Wisconsin Gaming Commission 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:

The previous fee of \$50 per performance made simulcasting cost prohibitive, and as a result, prevented the expansion of employment and residual economic benefits. The emergency rule will allow for the increased economic activity.

**Publication Date:** March 1, 1996  
**Effective Date:** March 1, 1996  
**Expiration Date:** July 29, 1996  
**Hearing Date:** April 15, 1996

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

### *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 Date:** January 24, 25 & 26, 1995

2. Rules were adopted revising ss. HSS 55.70 to 55.76, relating to administration of child care funds.

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

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for administration of health care funds. They will take effect on July 1, 1996.

#### **Analysis**

The Department's rules for county agency, tribal agency and other child care administrative agency administration of funds for child day care under s. 46.98, Stats., are revised by this order to bring the rules into compliance with statute changes made by 1995 Wis. Acts 27 and 289 and changes in federal regulations, including federal regulations for child care and development block grant funding, 45 CFR Parts 98 and 99, and at-risk child care, 45 CFR Part 257, since the rules were last revised in late 1991; to made policies relating to eligibility for low-income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

##### 1. Income Eligibility

Income eligibility for low income child care is changed to be in compliance with changes made in s. 46.98 (4), Stats., by Act 289.

##### 2. Costs Charged to Parents

Parent co-payment responsibilities are revised to be those established in state law based on family income and the cost of care.

##### 3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to received low-income child care funds when the parents are in training or educational programs is modified so that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

##### 4. Loss of Eligibility

A local agency is permitted to determine that a parent is no longer eligible for child care funds if the parent fails to make required co-payments or provides false information to the agency about income or other matters affecting eligibility.

##### 5. Recovery of Funds

Rules are added in compliance with 1995 Wis. Act 27 to provide for recovery of funds from a parent if the parent was not eligible for

child care funds, and for recovery of an overpayment made to a provider when the provider is responsible for the overpayment.

#### 6. Reimbursement

Local agencies are permitted to reimburse parents under certain circumstances for the cost of health care services or to make funds available to parents for the purchase of child care services, and local agencies are directed when to reimburse child care providers on the basis of authorized units of service or for days of attendance.

#### 7. Authorized Child Care Providers

Local agencies are permitted to make payments, under certain conditions, to child care providers who are not licensed or certified, including:

- a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.
- b. When child care is on-site and short-term for parents in training or education programs.
- c. When short-term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

#### 8. Higher Rates for Higher Quality Care

Local agencies are required to pay higher for child care to providers who meet higher quality of care standards, as allowed under federal regulations.

#### 9. Reimbursement Rate Categories

Reimbursement rates are required to two age categories and five provider types, a change from earlier policy.

#### 10. Elimination of Rules for Respite Child Care

Rules for respite child care are eliminated, now that there is no longer a separate fund program. The 1995-97 state budget folded funding for respite child care into general community aids allocations for counties.

**Publication Date:** June 29, 1996  
**Effective Date:** July 1, 1996  
**Expiration Date:** November 28, 1996

3. Rules adopted revising ss. HSS 55.55 to 55.63, relating to certification of child care providers.

### Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for certified child care. They will take effect on July 1, 1996.

### Analysis

The Department's current rules for certification of family day care providers, in-home day care providers and school-age day care programs are amended by this order to bring the rules into compliance with recent statute changes, in particular the changes made by 1995 Wis. Act 289 in establishing Wisconsin Works (W-2), a new system of assistance for families with dependent children which will replace Aid to Families with Dependent Children (AFDC), and to add needed protections for children, reduce or eliminate unnecessary requirements and clarify the authority of certifying agencies.

Key changes include:

#### 1. Provisional Certification

Modifying standards for provisional certification so that no training is required, in compliance with Act 289 changes in the statutes.

#### 2. Limited Certification

Deleting the category of limited certification, in compliance with Act 289 changes in the statutes.

#### 3. Training for Regular Certification

Deleting the optional requirement to add 5 hours of initial training for regular certification, in order to standardize regulation statewide.

#### 4. Criminal Records Check

Adding requirements for state criminal records checks and FBI criminal record check under certain circumstances, as required by Act 289 changes in the statutes.

#### 5. Certification Fee

Permitting counties and tribal agencies to charge certification fees, as allowed under Act 289, not to exceed licensing fees for family day care centers plus the cost of criminal record checks.

#### 6. Acceptance of Certification

Providing that certification issued by one certifying agency is to be accepted as valid by other certifying agencies.

#### 7. Certification Exemption

Exempting specified child care arrangements from certification because those arrangements are short-term.

#### 8. Sanction Authority

Giving sanction authority to certifying agencies when there is danger to the health, safety or welfare of children in care.

#### 9. School-Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

- a. Physical exams for children and staff (replaced by a health history requirement).
- b. 75 square feet of outdoor space per child.
- c. Daily outdoor activities.
- d. A place for rest or relaxation.
- e. Ongoing communication with the child's parent.
- f. Making copies of the certification standards available to all parents.

#### 10 Parochial and Private Schools

Deleting rules related to certification of parochial and private schools since those programs can become licensed in order to receive public child care funding.

#### 11. Parent Checklist

Deleting the rules requirement that parents in certified family day care and in-home day care complete and return a checklist of basic certification standards but permitting counties and tribes to continue to require it.

#### 12. Other New or Changed Rules

- a. Clarifying what is acceptable supervision and limiting the number of hours a provider can provide child care per day.
- b. Requiring TB tests for all certified providers.
- c. Requiring proper hand washing for child care providers and children.
- d. Changing the water testing requirement when a public water supply is not available to be a one-time test prior to or within 3 months of initial certification.
- e. Requiring certified providers to report relevant information to the certifying agency.
- f. Prohibiting consumption of alcoholic beverages or controlled substances on the premises during hours of operation.

g. Prohibiting discrimination.

**Publication Date:** June 29, 1996  
**Effective Date:** July 1, 1996  
**Expiration Date:** November 28, 1996

## **EMERGENCY RULES NOW IN EFFECT**

### **Health and Social Services**

#### **(Medical Assistance, Chs. HSS 100--**

Rules adopted revising **chs. HSS 101, 105 and 107**, relating to Medical Assistance coverage of school-based medical services.

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

The Legislature in s. 9126 (7m) of 1995 Wis. Act 27 directed the Department to promulgate rules required under s. 49.45 (39), Stats., as created by Act 27, by using emergency rulemaking procedures, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

#### **Analysis**

The 1995-97 Budget Act, 1995 Wis. Act 27, created s. 49.45 (39), Stats., which requires the Department of Health and Social Services to reimburse school districts and Cooperative Educational Service Agencies (CESAs) for Medical Assistance school-based services. This rule-making order describes the covered services: speech, language, audiology and hearing services; occupational therapy; physical therapy; nursing services; psychological services, counseling and social work; developmental testing and assessments; transportation; and certain durable medical equipment. The order also explains the recordkeeping collaboration with other health care providers required of school-based service providers.

**Publication Date:** June 15, 1996  
**Effective Date:** June 15, 1996  
**Expiration Date:** November 12, 1996

## **EMERGENCY RULES NOW IN EFFECT (4)**

### **Health and Social Services**

#### **(Health, Chs. HSS 110--)**

1. Rules adopted creating **ss. HSS 111.04 (2m) and 112.04 (3m)**, relating to authorized actions of emergency medical technicians-intermediate and paramedic.

#### **Finding of Emergency**

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

Actions that emergency medical technicians (EMTs) are authorized to carry out in providing emergency medical care in prehospital and interfacility settings are now specified in s. 146.50 (6m), Stats. A recent session law, 1993 Wis. Act 251, repealed that statute effective January 1, 1996 and directed the Department to have rules in place on that date that specify what those actions are. The Department has separate chapters of rules for licensing EMTs-basic, EMTs-intermediate and EMTs-paramedic. This emergency order amends ch. HSS 111, rules for licensing

EMTs-intermediate, and ch. HSS 112, rules for licensing EMTs-paramedic, to specify the actions that EMTs-intermediate and EMTs-paramedic may carry out.

Through separate permanent rulemaking orders, the Department is revising chs. HSS 111 and 112 in their entirety in order to specify the authorized actions of EMTs-intermediate and EMTs-paramedic and, at the request of the new Emergency Medical Services Board under s. 146.58, Stats., to update the chapters. However, those rulemaking orders have not yet been transmitted to the Legislative Council for review and therefore will not likely take effect until July 1, 1996 at the earliest. Consequently, the Department, in order to have the rules that specify the authorized actions of EMTs-intermediate and EMTs-paramedic in effect by January 1, 1996, when s. 146.50 (6m), Stats., will be repealed, is publishing the authorized actions subsections of the proposed revised permanent rules by this emergency order. This must be done because s. 146.50 (6n), Stats., which takes effect on January 1, 1996, provides that EMTs-intermediate and EMTs-paramedic may undertake only those actions that are authorized in rules promulgated by the Department. If those rules are not in effect on that date, ambulance services will not be able to provide emergency medical services using EMTs-intermediate or EMTs-paramedic and consequently there will be reduced availability of emergency medical services and a threat to public safety.

**Publication Date:** December 27, 1995  
**Effective Date:** January 1, 1996  
**Expiration Date:** May 30, 1996  
**Hearing Date:** March 1 & 8, 1996  
**Extension Through:** July 28, 1996

2. Rules adopted revising **chs. HSS 172, 175, 178, 195 to 198**, relating to permits and permit fees.

#### **Finding of Emergency**

The Department of Health & 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:

The Department and agent local government health departments regulate campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations, under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department's rules are in chs. HSS 172, 175, 178, 195, 196, 197 and 198, Wis. Adm. Code. None of these facilities may operate without receiving a permit from the Department or an agent local government health department. A permit is evidence that a facility complies with the Department's rules on the date of issuance of the permit. All permits except those for bed and breakfast establishments are one-year permits. A facility is charged a permit fee. Permit fee revenues support the regulatory program.

In 1993 the Budget Act for 1993-95 directed the Department to establish permit fees by rule beginning July 1, 1994. Until then the fees had been set by statute.

This rulemaking order increases permit fees effective July 1, 1996, by about 10% for campgrounds; recreational and educational camps; swimming pools that serve the public; restaurants; hotels, motels and tourist rooming houses; bed and breakfast establishments; and food vending operators and commissaries. It also increases preinspection fees for restaurants; hotels, motels and tourist rooming houses; bed and breakfast establishments; and food vending commissaries.

The fees are increased to cover higher costs for these regulatory programs.

The rules are being promulgated as emergency rules to protect public health and safety. The fee increases will take effect on July 1, 1996, which is the beginning of a new permit period. Raising the fees as provided in this order will enable the Department to avoid running

a deficit in program revenue and so avoid having to reduce inspections of food-serving, lodging and recreational facilities and taking longer to respond to foodborne and waterborne disease outbreaks.

The fees established by this order do not apply to facilities regulated by local health departments granted agent status under s. 254.69, Stats. Permit fees for those facilities are established by the local health departments, pursuant to s. 254.69 (2) (d), Stats.

**Publication Date:** June 8, 1996  
**Effective Date:** July 1, 1996  
**Expiration Date:** November 28, 1996

3. Rules adopted revising **ch. HSS 172**, relating to public swimming pools.

### Finding of Emergency

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

The Department and agent local government health departments regulate the operation of public swimming pools under the authority of s. 257.47, Stats, to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department rules are in ch. HSS 172, Wis. Adm. Code. No public swimming pool may operate without having a permit from the Department or an agent local government health department.

This rulemaking order clarifies and updates the definition of public swimming pool, updates requirements for lifeguards and adds rescue tubes as required lifeguard equipment.

Section 254.47 91), Stats., directs the Department to define "public swimming pool," in rule, for purposes of the regulatory program. The current rule definition has not been changes for many years and has some resulting ambiguity, one reason being that some types of facilities are called by new names.

The requirements under s. HSS 172.05 (2) (a)3. for lifeguard certification have to be modified due to changes in American Red Cross and the American Heart Association courses. The rules changes will ensure that all lifeguards are qualified to fulfill their duties as specified in ch. HSS 172. The exception under s. HSS 172.05 (2) (c) to lifeguard certification for persons holding a current American Red Cross Water Safety Instructor certificate is removed. This is because the American Red Cross Water Safety Instructor certification course no longer includes course work in lifesaving methods. The change, however, will allow persons currently certified under the old program to the use of that certification until it expires.

New lifeguard training incorporates use of rescue tubes. These tubes are therefore made required equipment when lifeguards are provided.

These changes are needed to protect the health and assure the safety of persons using public swimming pools.

**Publication Date:** June 22, 1996  
**Effective Date:** June 22, 1996  
**Expiration Date:** November 19, 1996

4. Rules adopted revising **chs. HSS 124, 132 and 134**, relating to fees for certain facility construction plans.

### Finding of Emergency

The Department of Health & 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:

Until the enactment of the State Budget for 1995-97, 1995 Wis. Act 27, construction plans for nursing homes, hospitals and facilities for the developmentally disabled (FDDs) were subject to review and

approval by two state agencies. The Department of Industry, Labor and Human Relations (DILHR) reviewed the plans for conformance to the State Building Code, chs. ILHR 50-64. The Department of Health and Social Services (DHSS), the licensing agency, reviewed the plans for conformance to the Life Safety Code as adopted by reference in chs. HSS 124, 132 and 134. Act 27 provided for consolidation of plan review and approval responsibility in the Department of Health and Social Services effective October 1, 1995. On that date, DILHR's nursing home and hospital facilities construction plan review responsibility and functions were transferred to DHSS. The State Building Code, however, remained a DILHR responsibility because it applies to other buildings in addition in addition to those health care facilities.

Through this rulemaking order, the Department is establishing hospital, nursing home and FDD construction plan review fees that, as required by ss. 50.02 (2) (b) and 50.36 (2), Stats., as affected by Act 27, are less than the sum of the amount that were charged on September 30, 1995, by the Department for review under ch. 50, Stats., and by DILHR for review under ch. 101, Stats.

For the period October 1, 1995 through, at the latest, June 30, 1996, s. 9126 of Act 27 authorized the Department to collect fees for the new consolidated review of hospital, nursing home and FDD construction plans that were equal to the sum of the fees collectible on September 30, 1995, when the two state agencies were reviewing the plans separately. By July 1, 1996, the Department was expected to have the new fee schedule in effect in the form of administrative rules.

The Department is publishing these rules as emergency rules so that the Department can continue to collect the necessary fees revenue for consolidated review of hospital, nursing home and FDD construction plans which will enable the Department to continue consolidated review of those plans. Fee revenue supports plan review. Without provision in rule for collecting fees for review plans for compliance with the State Building Code, the Department cannot continue doing that review pending the promulgation of permanent rules. This would mean delay in approval given to projects, which could delay improvements in health care for hospitals, patients and nursing home and FDD residents. Proposed permanent rules will not take effect for several months because it has taken the Department a long time to develop the policies and procedures included in the rules and these had to be developed before the lengthy process for making permanent rules could begin.

Included in this order, in addition to fees for consolidated plan review, are amendments to the Department's rules for hospitals, nursing homes and FDDs that incorporate by reference the State Building Code and make clear that it is now the Department that reviews hospital, nursing home and FDD construction plans for compliance with the State Building Code.

**Publication Date:** June 29, 1996  
**Effective Date:** July 1, 1996  
**Expiration Date:** November 28, 1996

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## EMERGENCY RULES NOW IN EFFECT

### Health & Social Services

(Economic Support, Chs. HSS 200-)

Rules were adopted revising **chs. HSS 201 and 206**, relating to pay for performance demonstration project under the AFDC program.

### Exemption From Finding of Emergency

The Legislature in s. 12 (2) and (3) of 1995 Wis. Act 12 permitted the Department to promulgate the rules required under s. 49.193 (3m) and (9m), Stats., as created by Act 12, by using emergency rulemaking procedures but without having to make a finding of emergency. They will take effect on March 1, 1996.

## Analysis Prepared by the Department of Health and Social Services

Under s. 49.19, Stats., families inquiring about the Aid to Families with Dependent Children (AFDC) program are immediately encouraged to apply for assistance without exploring possible alternatives to welfare. Once determined eligible, many families come to consider the AFDC program a program of long-term financial support, sometimes spanning generations. Yet AFDC was originally meant to be a temporary, emergency program.

Wisconsin has obtained approval from the Food and Consumer Service of the U.S. Department of Agriculture and from the Administration for Children and Families of the U.S. Department of Health and Human Services to conduct a Pay for Performance (PFP) demonstration project beginning March 1, 1996. The major objective of the Pay for Performance demonstration project is to focus on freedom from public assistance by encouraging immediate attachment to the work force and helping families explore alternatives to AFDC before becoming dependent on AFDC. The demonstration project will be conducted statewide except in Dane, Dodge, Jefferson and Waukesha counties. In those counties individuals may be assigned to a control group which will be exempt from the demonstration project requirements to permit evaluation of the demonstration project. Statutory authority for the Department to operate two related demonstration projects, Self-Sufficiency First and Pay for Performance, was included in 1995 Wis. Act 12. Under the federal government's terms and conditions of approval for demonstration project, the Department is now calling the combined project Pay for Performance.

The first component of the Pay for Performance demonstration project encourages alternatives to AFDC through services of a financial planning resource specialist (FPRS) and up-front job search. This component is directed at helping applicants identify alternatives to AFDC, facilitating immediate orientation and referral to the Job Opportunities and Basic Skills (JOBS) program and requiring job search before receiving AFDC. Cooperation is made an AFDC eligibility requirement. An individual who fails without good cause to cooperate with these requirements will be ineligible to receive AFDC benefits for himself or herself and his or her family.

For an individual who becomes an AFDC recipient after fulfilling the applicant job search requirements, there is a second component of the Pay for Performance demonstration project. This requires the JOBS case manager to design an employability plan for the recipient that focuses on employment at the earliest opportunity and requires the recipient to participate in a set number of hours of participation in JOBS program activities or work to maintain AFDC eligibility. Failure, without good cause, to maintain participation as assigned will result in sanctions in the next possible month based on the number of hours missed without good cause multiplied by the federal minimum wage. Failure to participate in at least 25% of the assigned hours will result in no AFDC benefits being paid for that month and a reduction to \$10 in food stamp benefits.

These are the rules for the implementation of the Pay for Performance demonstration project.

**Publication Date:** March 1, 1996  
**Effective Date:** March 1, 1996  
**Expiration Date:** July 29, 1996  
**Hearing Date:** April 16, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations* (Uniform Dwellings, Chs. ILHR 20–25)

Rules adopted revising **chs. ILHR 20 and 21**, relating to one- and two-family dwellings constructed in flood hazard zones.

#### Finding of Emergency

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

The Federal Emergency Management Agency (FEMA) has informed some municipalities that it will no longer allow variances to a local ordinance that prohibits the construction of homes in flood fringe areas where the foundation extends below the base flood elevation. FEMA regulations allow this type of construction in some locations but require the construction to meet a suitable building code. The Uniform Dwelling Code, which regulates new home construction in Wisconsin, has never addressed this issue. FEMA's actions have halted some residential projects, causing serious financial hardship for those affected Wisconsin builders and residents.

The proposed rules add requirements to the Uniform Dwelling Code for construction in flood fringe areas in order to meet FEMA requirements. The primary source of these rules is the National Building Code published by Building Officials and Code Administrators International, Incorporated (BOCA).

**Publication Date:** May 8, 1996  
**Effective Date:** May 8, 1996  
**Expiration Date:** October 5, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations* (Building & Heating, etc., Chs. ILHR 50–64) (Multi-Family Dwellings, Ch. ILHR 66)

Rule adopted delaying the effective date of a rule revision to portions of **chs. ILHR 50 to 64 and 66**, relating to energy efficiency.

**Note:** A lawsuit has been filed challenging the validity of this emergency rule action.

#### 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:

1. On August 8, 1995, the Department adopted revised rules relating to ventilation and energy conservation in public buildings and places of employment. The purpose of these rules was to improve indoor air quality in buildings and to comply with the federal Energy Policy Act of 1992 which requires all states to revise their commercial building codes to meet or exceed the American

Society of Heating, Refrigerating and Air-Conditioning Engineers/Illuminating Engineering Society (ASHRAE/IES) standard 90.1-1989. The rules went into effect on April 1, 1996.

2. Information has been recently provided to the Department that indicates that two of the provisions of the rules will cause excessive costs for building owners without commensurate benefit.

3. The emergency rule is being promulgated to avoid economic hardship caused by imposing unnecessary building construction and operating costs on building owners and operators.

### Emergency Rule Analysis

The emergency rule will delay the effective date of the Energy Conservation related and Heating, Ventilating and Air Conditioning related rules for one year to give the Department and its advisory committee time to study the effect of the rules and make any necessary changes.

**Publication Date:** April 6, 1996  
**Effective Date:** April 6, 1996  
**Expiration Date:** September 3, 1996  
**Hearing Date:** May 28, 1996

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## EMERGENCY RULES NOW IN EFFECT

### Industry, Labor & Human Relations

(Unemployment Compensation, Chs. ILHR 100-150)

Rules adopted creating s. ILHR 127.035, relating to a limited waiver of work search requirement.

### Finding of Emergency

The department of industry, labor and human relations finds that an emergency exists within the state of Wisconsin 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:

Under s. 108.04(2)(b), Stats., the requirements for searching for work, as a condition of eligibility for unemployment insurance benefits, are to be prescribed by rule of the department. The statute further provides that the department may by general rule waive those requirements under certain conditions to be stated by the department. ILHR 127.02(2) allows the department to waive a claimant's work search requirement if she or he has been laid off from work but has a reasonable expectation of reemployment by an employer within 12 weeks after the week in which a claim is filed for unemployment insurance benefits.

On or about January 6, 1996, the Stella Foods plant in Lena, WI burned down. As a result, most of the workers were temporarily laid off. The company committed to rebuilding and reopening the plant. 35% of the plant was reopened after cleaning and about half the workers were recalled. The other 65% of the plant is being rebuilt. The company originally expected to be able to recall all or most workers within approximately 12 weeks. As a result, a work search waiver was granted to these claimants. Due to the vagaries of construction scheduling, especially during the winter months in Wisconsin, the rehire dates will be later than originally anticipated. The company expects to be able to open a line in part of the new construction in June or July of 1996 and will recall additional workers at that time. The company expects to be able to recall all workers by Labor Day.

Lena's population is approximately 590. The Stella Foods plant is a major employer in the Lena/Oconto Falls labor market, providing approximately 10% of all jobs in that labor market. Half of the jobs available with the plant remain unfilled. This constitutes 5% of all the jobs in that labor market. The unemployment rate in Oconto county before this fire was already 7.6%.

The department believes that the number of affected employes and the nature of the labor market in the Lena/Oconto Falls area makes it very unlikely that any substantial number of affected Stella Foods employes would be able to obtain suitable alternative work as a result of customary work search activities.

The existing permanent rule relating to work search requirements does not provide for waiver of the requirements in these circumstances. The department believes that it is necessary to promulgate this emergency rule in order to avoid wasting administrative funds and to avoid the hardship for other employers in the Lena/Oconto Falls area which will occur if this number of employes in this small labor market area are required to repeatedly canvass such other employers in order to comply with customary work search requirements. Other employers' hiring of those temporarily laid off due to the fire could also impose a hardship on other unemployed individuals in the labor market who do not have any such assurance of being recalled to their former jobs.

**Publication Date:** April 15, 1996  
**Effective Date:** April 15, 1996  
**Expiration Date:** September 12, 1996  
**Hearing Date:** May 28, 1996

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## EMERGENCY RULES NOW IN EFFECT

### Insurance

Rules adopted revising ch. Ins 17, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1996.

### Finding of Emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 96-045, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1996. The permanent rule was delayed pending legislative action on Senate Bill 378 which, if passed, would have resulted in a lowering of the fund fees originally proposed by the fund's board of governors. Senate Bill 378 was tabled by the assembly on May 8, 1996, before it adjourned for the year on May 13, 1996.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1996. Because the provisions of this rule first apply on July 1, 1996, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on April 18, 1996.

**Publication Date:** May 28, 1996  
**Effective Date:** May 28, 1996  
**Expiration Date:** October 24, 1996



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## EMERGENCY RULES NOW IN EFFECT (4)

### *Natural Resources*

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

1. Rules were adopted revising **ss. NR 1.15 (2) (a), 10.104 and 10.28**, relating to deer hunting permits.

#### 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. There is great public interest in white-tailed deer and their management in Wisconsin. Failure to adopt these rules would require that the 1996 antlerless deer quotas be based upon existing overwinter population goals that do not reflect the public interest in deer management. There has been more than a year of comprehensive public involvement in developing this rule.

**Publication Date:** April 15, 1996  
**Effective Date:** April 15, 1996  
**Expiration Date:** September 12, 1996  
**Hearing Date:** May 20, 1996

2. Rules adopted amending **s. NR 20.038**, relating to special size and bag limits for the Lac du Flambeau reservation.

#### Finding of Emergency

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

The department has recently come to an interim agreement with the Lac du Flambeau band regarding their off-reservation harvest goals. This rule change is needed for the 1996 fishing season in order to meet our obligation in the agreement, thus, an Emergency Order is required. This agreement will promote preservation and protection of public peace, safety, and welfare in the ceded territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters. Pursuant to litigation arising from *Lac Courte Oreilles v. Voight*, 70 F. 2d 341 (7th Cir. 1983), the Chippewa bands of Wisconsin, which includes the Lac du Flambeau, have the right to take walleye from off-reservation waters using efficient methods such as spearing and netting. The Lac du Flambeau have made initial 1996 harvest declarations for off-reservation lakes that are sufficiently high to require the department to reduce the daily bag limit to 0 on several lakes, consistent with the formula of s. NR 20.037. The Lac du Flambeau have agreed to reduce harvest declarations to a level commensurate with a daily bag limit of 2 walleye this year and a daily bag limit of 3 in future years, provided that the state reduces its daily bag limits for walleye to 3, with a minimum length limit of 18" and increase the muskellunge minimum length limit to 40" on waters within the Lac du Flambeau reservation. The state has agreed to do so in order to provide more socially acceptable sports fishing opportunity on off-reservation waters. This will lessen tensions caused by severely reduced bag limits and will assist local businesses dependent on the sport fishery.

**Publication Date:** May 3, 1996  
**Effective Date:** May 3, 1996  
**Expiration Date:** September 30, 1996  
**Hearing Date:** June 12, 1996

3. Rules were adopted revising **chs. NR 10 and 11**, relating to the 1996 deer hunting seasons.

#### 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. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and to minimize deer nuisance problems, thereby protecting the public peace, health, safety or welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify our rules will result in the failure to provide hunting opportunity and comply with administrative rules.

**Publication Date:** May 3, 1996  
**Effective Date:** August 12, 1996  
**Expiration Date:** January 9, 1997  
**Hearing Date:** June 11, 1996

4. Rules adopted amending **ss. NR 20.02 (1) (c) and 25.05 (1) (e)**, relating to sport and commercial fishing for yellow perch in lake Michigan.

#### Finding of Emergency

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

The yellow perch population in Lake Michigan is rapidly declining. This decline reflects six consecutive years of extremely poor reproduction. Sport and commercial harvests of adult yellow perch must be limited immediately in order to maximize the probability of good reproduction in the near future.

**Publication Date:** July 1, 1996  
**Effective Date:** July 1, 1996  
**Expiration Date:** November 28, 1996  
**Hearing Date:** August 14 & 15, 1996  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT

### *Public Instruction*

- Rules adopted revising **ch. PI 11**, relating to dispute resolution concerning children with exceptional educational needs between school boards and parents.

#### Finding of Emergency

Wisconsin is required under state and federal law to provide a due process hearing system for the resolution of special education disputes between parents and school districts. 1996 Wis. Act 431 will significantly revise that process and will require the department rather than school districts to conduct the due process hearings. Although the Act outlines the process, it does not fully describe the manner in which hearings are to be initiated, the manner in which hearing officers will be appointed, their qualifications and duties. The current rules addressing those issues will not apply under the new statutory process. It is, therefore, necessary to adopt an emergency rule addressing these issues so that the due process

hearing system will remain available to parents and districts when the Act becomes effective.

**Publication Date:** June 25, 1996  
**Effective Date:** June 25, 1996  
**Expiration Date:** November 22, 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  
**Extension Through:** September 1, 1996

## EMERGENCY RULES NOW IN EFFECT

### Securities

Rules adopted creating **s. SEC 2.01 (1) (c) 5 and (d) 5**, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

### Finding of Emergency

The Office of the Commissioner of Securities for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

A. Background Information Regarding Predecessor Emergency Rules Issued in 1982 and 1994.

Chapter 53, laws of 1981, took effect on January 1, 1982 and provided that the exemption from registration under s. 551.22 (1), Stats., for securities (other than revenue obligations) issued by any state or any local subdivision of the state or any agency or corporate or other instrumentality thereof, will be available “...only if the issuer’s financial statements are prepared according to generally accepted accounting principles or guidelines which the commissioner designates by rule.” The purpose of that statutory provision was to insure that financial statements prepared by governmental entities relating to their debt securities offerings are based on some recognized uniform accounting standards in order that a potential public investor can make a fully-informed and well-reasoned decision whether to purchase such debt securities.

As a result of the amendments created by Chapter 53, Laws of 1981, those governmental issuers of general obligation securities after January 1, 1982 that did not have their current financial statements prepared totally according to generally accepted accounting principles (“GAAP”), would not be able to utilize the securities registration exemption in s. 551.22 (1) (a), Stats., for the sale of their securities to the general investing public. Rather, those governmental issuers of such securities first would have had to obtain a registration which involves an extensive filing and review process under the Wisconsin Uniform Securities Law or, alternatively, make a regulatory filing under a registration exemption in order to offer the securities to the general public.

At the time the amendment to s. 551.22 (1) of the Stats., was enacted in 1982, many governmental issuers did not prepare their financial statements totally in accordance with GAAP. The result of the statutory change would have posed a hardship on those issuers of governmental general obligation securities subject to the full-GAAP financial statement requirement due to the time it would take for governmental issuers to be able to have their financial statements prepared totally according to GAAP.

To alleviate any disruption to the borrowing plans of governmental issuers of securities and the municipal securities marketplace, the Wisconsin Commissioner of Securities office promulgated emergency rules in 1982 that included the designation of alternative accounting guidelines (from full-GAAP) for the preparation of financial statements for certain governmental issuers of securities. The alternative (to full-GAAP) accounting guidelines were set forth by emergency rule in s. SEC 2.01 (1) (c) 2 and 3 for financial statements for fiscal years ending on or before December 31, 1985. [which was extended in later years by subsequent rule to December 31, 1990] which were either: (i) prepared in accordance with GAAP, but which were qualified for the fixed asset group or (ii) prepared in compliance with accounting guidelines or procedures mandated by state law or by rule of any state agency or recommended by any state agency. Additional emergency rule subsections under s. SEC 2.01 (1) (d) adopted in 1982 provided the method of determining accounting principles and guidelines.

Similar action to adopt emergency rules was taken in 1994 by the Commissioner of Securities Office after being informed by representatives of Wisconsin municipal/governmental securities issuers, bond attorneys and certified public accountant firms that the Governmental Accounting Standards Board (“GASB”) had issued in June 1991 Statement No. 14: “The financial reporting entity.” GASB Statement No. 14 requires that housing authorities and other types of authorities, commissions or boards of municipal/governmental entities (referred to as “component units”) be included in the financial statements of the particular municipal/governmental entity in order for such financial statements to be considered “full-GAAP” without qualification. GASB Statement No. 14 became effective accounting periods beginning after December 31, 1992.

The parties who informed the Commissioner’s Office regarding GASB Statement No. 14 stated that GASB Statement No. 14 would have an immediate, negative impact on the availability or use of the registration exemption in s. 551.22 (1) (a), Stats., by those governmental/municipal securities issuers who had component units that would be subject to GASB Statement No. 14 and who heretofore have had their general purpose financial statements prepared in full compliance with GAAP. In particular, auditors for such municipal/governmental issuers with component units subject

to GASB statement No. 14 generally would no longer be able to issue unqualified opinions for general purpose financial of municipal governmental issuers—namely, that such financial are prepared, totally and without qualification, on the basis of generally accepted accounting principles. Two areas of concern in that regard were identified by the auditor groups, and with respect to each of the two areas, although the auditors could include unaudited information regarding such component units in the governmental issuers' general purpose financial statements, the auditor's opinion would have to be qualified, thus precluding use of the s. 551.22 (1) (a) exemption on a self-executing basis for offers and sales of the governmental issuers' securities to the public.

Therefore, in similar fashion to emergency rule-making action taken by the agency in 1982, and for the purpose of alleviating disruption that would occur to the near-term borrowing/bonding plans of governmental issuers of securities claiming registration exemption status under s. 551.22 (1) (a), Stats., and because it would require a period of time for those governmental issuers to be able to have their financial statements prepared according to full-GAAP including the additional requirement under GASB Statement No. 14 (which necessitates having the audit report include all "component units" of a governmental/municipal issuer), the Office of the Wisconsin Commissioner of Securities, in consultation with representatives of municipal issuers, municipal bond dealers, financial advisors, bond attorneys and certified public accountant groups, promulgated emergency rules that: (i) designated (in current subpar. (c)2) as an alternative accounting guideline, GAAP but where the auditor's opinion is qualified with respect to the omission of component units required to be included by GASB Statement No. 14; (ii) designated (in current subpar. (c)3) as an alternative accounting guideline, GAAP but where the auditor's opinion is qualified with respect to the unaudited financial statements of an included component unit; and (iii) designated (in current subpar. (c)4) as an alternative accounting guideline, GAAP but where the auditor's opinion is qualified with respect to the general purpose financial statements for component units whose securities financial statements are not presented in accordance with generally accepted accounting principles, but which are included in the reporting entity in accordance with GASB Statement No. 14.

**B. Recent Accounting Developments Warranting Present Emergency rule Treatment.**

The Commissioner's Office was recently informed by representatives of various Wisconsin governmental securities issuers (principally with respect to Wisconsin public school district and Wisconsin vocational school district issuers of debt securities), bond attorneys, and certified public accounting firms that interpretations by the Governmental Accounting Standards Board ("GASB") through its staff with respect to accounting treatment for property tax recognition may cause many Wisconsin public school districts and vocational school districts to have the audit opinions for their financial statements qualified with respect to the deferral of taxes. The existence of a qualified audit opinion would preclude use of the s. 551.22 (1) (a), Stats., registration exemption on a use of the s. 551.22 (1) (a), Stats., registration exemption on a self-executing basis for offers and sales of a school district's debt securities to the public.

The specific accounting issue involves interpretation of the current accounting standard for property tax recognition established by the National Council on Governmental Accounting ("NCGA") Interpretation 3 "Revenue Recognition—Property Taxes." The accounting interpretation issue is presented as a result of the interplay of the following two factors: (1) most public school and vocational school districts operate on (and their financial statements are prepared on) a July 1 to June 30 fiscal year; (2) the Wis. Statutes authorize the various Wisconsin local units of government to allow

the payment of property taxes (which provide the funding for payment of public school and vocational school district debts and obligations) to be made in installments on January 1 and July 31 of a given year (for example 1996) relating to taxes levied (in the 1996 example given) for a school district's fiscal year extending from July 1, 1995 to June 30, 1996.

Because the July 31 date for payment of the second property tax installment is after the June 30 fiscal year for the school districts, the staff of the GASB in communications with representatives of Wisconsin accounting organizations and school district associations on the issue, set forth the GASB staff's view that the July 31 tax installment revenues may not be recognized for purposes for fiscal years ending the preceding June 30. As a result, auditors for Wisconsin public school districts and vocational school districts would need to show in such school districts' financial statements, deferred revenue for the July 31 installment property taxes. Despite requests for reconsideration, the GASB staff has not changed its position.

Such GASB staff interpretation has resulted in property tax revenue and fund balance amounts as shown in most Wisconsin school districts' audit reports being different from that required to be shown in such districts' Annual Reports and budget documents, thus causing confusion as to what a particular district's financial position actually is. The State of Wisconsin Department of Public Instruction believes that the GASB staff interpretation, in the context of the Wisconsin statutes governing the timing of property tax levies and payments, does not result in appropriate school district revenue and fund balance financial statement presentations.

As a consequence, Wisconsin public school and vocational school districts may be requesting that their external auditors prepare their district's audited financial without showing deferred revenue for uncollected property taxes—which may result in the auditor issuing a qualified opinion. The issuance of such a qualified audit opinion would preclude use of the s. 551.22 (1) (a), Stats., registration exemption on a self-executing basis for offers and sales in Wisconsin of the school district's debt securities to the public.

Therefore, in similar fashion to emergency rule-making action taken by the agency in 1982 and 1994, and for the purpose of alleviating disruption that would occur to the near-term borrowing/bonding plans of governmental school district issuers that regularly claim exemption status under s. 551.22 (1) (a), Stats., for the offer and sale in Wisconsin of their debt securities, the Office of the Wisconsin Commissioner of Securities, in consultation with representatives of school district issuers, bond attorneys and accounting groups, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement provision to deal with this accounting issue to enable school district issuers to continue to use the exemption in s. 551.22 (1) (a), Stats., on a self-executing basis.

The emergency rule created in s. SEC 2.01 (1) (c)5 designates as a permitted alternative accounting guideline for purposes of use of the registration exemption in s. 551.22 (1) (a), Stats., GAAP, but where the auditor's opinions is qualified with respect to the recognition of property tax revenue. The emergency rule created in s. SEC 2.01 (1) (d)5 provides that the auditor's opinion with respect to the financial statements of a school district issuer covered by the emergency rule in s. SEC 2.01 (1) (c)5 must contain language corresponding to the qualification language in s. SEC 2.01 (1) (c)5.

**Publication Date:** June 24, 1996  
**Effective Date:** July 1, 1996  
**Expiration Date:** November 28, 1996  
**Hearing Date:** September 4, 1996  
**[See Notice this Register]**

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**EMERGENCY RULES NOW IN EFFECT*****Department of Transportation***

Rules adopted creating **Ch. Trans 258**, relating to seed potato overweight permits.

**Finding of Emergency**

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through normal procedure, the Department finds an emergency exists for the following reasons: (1) seed potatoes are transported to market between late February and April. Promulgation of an administrative rule through the normal process would not be timely for this planting season; (2) the Department believes the Legislature intended the provisions of 1995 Wis. Act

163 to be effective during this spring planting season. In order to promulgate rules in time for this spring growing season, this emergency process must be employed. The statute does not specify truck configurations, such as trailer length, axle spacing and weight distribution, but delegates responsibility to the Department. Without specified configurations vehicles that will impose damage to the roadway will be eligible for permits; and (3) the statute confers authority to identify an alternate route through rule but does not specify the alternate route. A suitable alternate route should be in place prior to the issuance of permits to allow diversion of permitted loads if any of the low weight bridges along the primary route manifests overstress. Closure of any of those bridges would substantially impede movement of other legal weight traffic in an area with few alternate routes.

**Publication Date:** April 3, 1996  
**Effective Date:** April 3, 1996  
**Expiration Date:** August 31, 1996  
**Hearing Date:** May 13, 1996

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Department of Employment Relations*

**Subject:**

Catastrophic Leave Program

**Description of the objective of the rule:**

To establish a catastrophic leave program that permits classified nonrepresented employees to donate certain types and amounts of leave credits to other classified nonrepresented employees who have been granted an unpaid leave of absence due to a catastrophic need.

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

Catastrophic leave programs currently exist in the majority of the collective bargaining agreements. These programs contain eligibility criteria which an employe must meet before being considered an eligible donor or recipient, as well as defining limits on the types and amounts of leave that can be donated. These programs have been well received by represented employes and no significant administrative problems have been identified.

1995 Wisconsin Act 37 provides the authority for the Secretary of the Department of Employment Relations to establish a catastrophic leave program for classified nonrepresented employes. It is anticipated that policies and procedures similar to those developed to administer the union-run programs will be adopted for implementation and administration of the catastrophic leave program to be created under this rule. These policies and procedures will describe eligibility criteria for donors and recipients, the types and amounts of leave credits covered by the program, and the conditions under which leave may be donated.

**Statutory authority for the rule:**

s. 230.35(2r), Stats., as created by 1995 Wisconsin Act 37.

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

Estimated time to be spent by state employes—220 hours. No other resources are necessary.

### *Medical Examining Board*

**Subject:**

The Medical Examining Board gives notice, pursuant to s. 227.135, Stats., that it proposes to amend rules relating to registration requirements for a podiatrist whose license has been suspended or revoked and continuing education programs, and to create rules relating to completion of postgraduate training by podiatrists.

**Statutory Authority:**

Sections 15.08 (5) (b) and 227.11, Stats., and s. 448.05 (3) (b), Stats., as created by 1995 Wisconsin Act 245 and ss. 448.07 (1) (d) and 448.13 (1), Stats., as amended by 1995 Wisconsin Act 245.

**Policy Issues:**

**Objective**

To fulfill the mandate of 1995 Wisconsin Act 245 which requires:

—Applicants for any class of license to practice podiatry must supply evidence satisfactory to the board that he or she has completed 12 months of postgraduate training in a program approved by the board.

—No registration may be permitted by the board of any podiatrist whose license, certificate or limited permit has been suspended or revoked and the registration of any such person shall be deemed automatically annulled upon receipt by the board of a verified report

of such suspension or revocation. A person whose license, certificate or limited permit has been suspended or revoked and subsequently restored shall be registered by the board upon tendering a verified report of such restoration of the license, certificate or limited permit, together with an application for registration and the registration fee.

—Each podiatrist shall, in each 2nd year at the time of application for a certificate of registration, submit proof of attendance at and completion of continuing education programs or courses of study approved for at least 30 hours of credit by the board within 2 calendar years preceding the calendar year for which the registration is effective. The board may waive this requirement if it finds that exceptional circumstances have prevented a podiatrist from meeting the requirement.

**New policies that the rule proposes to include – analysis of policy alternatives:**

The Medical Examining Board is required to promulgate rules establishing continuing education requirements for podiatrists. At the time of application for renewal of registration, each podiatrist shall submit proof of completion of continuing education programs or courses of study for at least 30 hours of credit. These programs or courses must be approved by the Council of Podiatry Education of the American Podiatric Medical Association.

These rules first apply to applications that are submitted to the Department of Regulation and Licensing to renew a license to practice podiatry that expire on November 1, 1997.

**Staff time required:**

The board estimates 10 hours to promulgate these rules.

**Affect on the budget, staff or uniform policies or procedures of the department:**

These proposed rules will have no affect on the budget, staff or uniform policies or procedures of the Department of Regulation and Licensing.

### *Natural Resources*

#### *(Fish, Game, etc., Chs. NR 1–)*

**Subject:**

Fish, hunting and trapping regulations.

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

Unknown.

**Statutory authority for rule:**

s. 29.174, Stats.

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

239 hours.

### *Natural Resources*

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

**Subject:**

The proposed rule will create ch. NR 441, Wis. Adm. Code. The new chapter will be titled “Standards of Performance for Designated Facilities” and will include a section on municipal waste combustors incorporating the federal emissions guidelines from 40 CFR Part 60, Subpart Cb (60 FR 6387).

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

This proposed rule would regulate air emissions from existing municipal waste combustors in Wisconsin. The rule will be based on federal emissions guidelines which were promulgated by US EPA on December 19, 1995. If the Department of Natural Resources wants to implement these guidelines for sources in Wisconsin, it is required to submit a state rule and plan to US EPA by December 19, 1996. Alternatively, if the DNR does not implement the guidelines, US EPA is required to develop a federal rule and plan to cover Wisconsin facilities by December 19, 1997. The Department would prefer that the state implement the guidelines and, therefore, is proposing this rule. The affected facilities are already regulated by the state under existing provisions of the Wis. Adm. Code, and potential conflicts with these existing rules should be minimized by state implementation of the new rules as well.

This rule will apply to three facilities in Wisconsin. These facilities will be required to comply with the rule in a one to three year time frame or cease operation. The three facilities are expected to need some pollution control equipment upgrades in order to comply. Persons likely to be interested in the rule are the owners and operators of these facilities, citizens in the communities where they are located, and environmental groups.

**Statutory authority for the rule:**

SS. 144.31 (1) (a), (e), (f) and 227.11 (2) (a), Stats.

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

344 hours.

***Natural Resources***

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

***(Environmental Protection—Remediation of Environmental Contamination, Chs. NR 700—)***

**Subject:**

Amendment to the rules on the management of solid waste excavated during response actions to facilitate landspreading of contaminated soil; chs. NR 419 and NR 718.

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

As of June 15, 1995 district Remediation and Redevelopment staff (then ERR program) have had the responsibility to review proposals for single-application landspreading of contaminated soil. However, that review must be conducted under the authority of ch. NR 518 (a solid waste program rule) in accordance with guidance based on the requirements of ch. NR 518. The Bureau for Remediation and Redevelopment proposes to revise ch. NR 718 to include standards for the one-time landspreading of contaminated soil and to remove such standards from ch. NR 518. Multiple application landspreading will continue to be regulated under ch. NR 518.

This request was made of the board at the December 1995 NRB meeting. Hearings on the proposed rule changes were held during the week of February 26, 1996. Based on comments received on the proposed rule amendment and in order to address Air Management concerns regarding the proposed amendments, the RR Bureau requests that the NRB authorize proceeding with developing a significantly modified package, in comparison to the first proposal. In addition, to provide a clear understanding on how chs. NR 718 and 419 will interact, amendments are also proposed to ch. NR 419. The ch. NR 419 changes would address the emissions from landspreading contaminated soil in a ten county area in southeastern Wisconsin.

**Statutory authority for the rule:**

SS. 144.43 to 144.44, 14.442 and 144.76, Stats.

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

273 hours.

***Regulation & Licensing***

**Subject:**

The Department of Regulation and Licensing gives notice, pursuant to s. 227.135, Stats., that it proposes to create administrative rules relating to the regulation of interior designers, which was created by 1995 Wisconsin Act 322. The Act became effective on May 17, 1996; however, the regulation commences on December 1, 1996.

1995 Wisconsin Act 322 requires applicants for registration as interior designers to meet any other registration requirements established by the department, and requires registered interior designers to complete continuing education requirements established by rules promulgated by the department.

**Statutory Authority:**

Section 227.11 (2), Stats., and subchapter IX of chapter 440, Stats., as created by 1995 Wisconsin Act 322.

**Policy Issues:**

***Objective***

The Department of Regulation and Licensing has initially determined that new rules are required in the following 3 areas: examinations, continuing education, and issues relating to the use of the term "Wisconsin registered interior designer" or "Wisconsin registered interior designers" by firms, partnerships and corporations. It is possible that a few other areas may need to be addressed in the rules.

**Describe The Existing Policies That Are Relevant To The Rule:**

There are no existing policies that are relevant to the proposed rules. However, 1995 Wisconsin Act 322 requires persons who wish to use the title "Wisconsin registered interior designer" to register and to have taken an examination or, depending on past experience and education, at least the building and barrier-free codes section of the examination administered by the National Council for Interior Design. This Act also requires registered interior designers, at the time that they apply for renewal of a certificate of registration, to submit proof of completion of continuing education requirements. Finally, the Act permits a "firm" to use two titles, as stated above; however, "firm" is not defined in the Wisconsin Statutes and requires a definition in the administrative code.

**Describe the new policies that the rule proposes to include and provide an analysis of policy alternatives:**

These proposed rules would address issues such as the time and place for taking the examination, penalties for cheating on examinations, and conditions under which an examination may be retaken after a candidate has failed the examination. It is possible that, after a given number of examination retakes, a candidate may be required to wait several months before another retake. Then again, there need not be any conditions on retaking the examination other than properly registering for a future examination.

The proposed rules would specify the number of hours of continuing education which registered interior designers must complete before renewal, course contents, approval of the providers of such education, approval of course instructors and acceptable proof of having completed the education. 1995 Wisconsin Act 322 does not state the minimum or the maximum number of hours which may be required of registered interior designers. Therefore, the department may propose the number of hours and contents which it believes will assure that registrants remain minimally competent to protect the health, safety and welfare of consumers. The rules could specify the content areas or the rules could be quite general about what courses are available and should be taken by registrants. The rules could describe criteria for approval of courses and instructors by the department before courses are taken by registrants, or the rules could accept courses offered by certain types of providers.

Finally, the rules could require registrants to submit certificates of completion of courses they have taken or simply require registrants to

state on their registration renewal application that they completed certain specified education.

**Staff time required:**

The department estimates 20 hours to promulgate these rules.

**Affect on the budget, staff or uniform policies or procedures of the department:**

These rules would not have any affect on the department's staffing and budget which exceeds the effect resulting from 1995 Wisconsin Act 322 itself, which did not provide any additional staffing or budget resources. The administration of continuing education requirements does require considerable staffing for providing information to registrants and course providers about the continuing education policies and procedures. Continuing education requirements also make registration renewals more complicated and require actions by the department resulting from incorrect, incomplete or no education taken by registrants.

***Department of Revenue***

**Subject:**

Taxation of telecommunications services for sales and use tax purposes.

**Administrative code reference:**

Section Tax 11.66, Wis. Adm. Code.

**Objective of the rules:**

The objective of the rule order is to correct s. Tax 11.66, due to (a) the repeal of s. 77.54(24), Wis. Stats. (1993-94), by 1995 Wisconsin Act 27, and (b) the amendment to s. 77.52(2)(a)5, Wis. Stats. (1993-94), by 1995 Wisconsin Act 351.

**Policy issues:**

***Existing policies***

This rule order reflects the Department of Revenue's existing policy of providing accurate information to taxpayers practitioners, and department employees regarding the taxation of telecommunications services and equipment.

***New policies proposed***

No new policies are proposed.

***Policy alternatives***

● Do nothing. The rule will be incorrect in that it does not reflect recent legislative changes.

**Statutory authority:**

Section 227.11(2)(a), Stats.

**Estimate of staff time required:**

The department estimates it will take approximately 20 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The department will assign existing staff to develop this rule order.





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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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

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

#### **Natural Resources**

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

Notice is hereby given that on July 10, 1996, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [WZ-35-96] affecting chs. NR 103, 299 and 504.

##### **Analysis**

The subject matter of the proposed rule relates to water quality standards for wetlands; water quality certification and landfill location, performance and design criteria.

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

Public hearings are scheduled for August 13, 16, 19, 20, 21 and 23, 1996.

##### **Contact Person**

If you have any questions, you may contact Dale Simon, Bureau of Fisheries Management and Habitat Protection, at (608) 267-9868.

#### **Natural Resources**

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

Notice is hereby given that on July 10, 1996, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [FM-40-96] affecting ss. NR 20.02 and 25.05.

##### **Analysis**

The subject matter of the proposed rule relates to sport and commercial fishing for yellow perch in Lake Michigan.

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

Public hearings are scheduled for August 14 and 15, 1996.

##### **Contact Person**

If you have any questions, you may contact Bill Horns, Bureau of Fisheries Management and Habitat Protection, at (608) 266-8782.

#### **Natural Resources**

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

Notice is hereby given that on July 10, 1996, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [WR-29-96] affecting chs. NR 108, 110, 213, 214, 600, 635, 640, 645, 660, 680 and 712.

##### **Analysis**

The subject matter of the proposed rule relates to the use of the term "professional geologist" in Natural Resources administrative codes.

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

Public hearings are scheduled for August 12, 13, 14 and 15, 1996.

##### **Contact Person**

If you have any questions, you may contact Mike Lemcke, Bureau of Drinking Water and Groundwater, at (608) 266-2104.

#### **Natural Resources**

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

Notice is hereby given that on July 10, 1996, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [FM-31-96] affecting s. NR 20.08 (10).

##### **Analysis**

The subject matter of the proposed rule relates to fishing tournament permitting.

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

A public hearing is scheduled for August 12, 1996.

##### **Contact Person**

If you have any questions, you may contact Ron Poff, Bureau of Fisheries Management and Habitat Protection, at (608) 266-2176.

#### **Natural Resources**

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

Notice is hereby given that on July 10, 1996, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed board order [FM-37-96] affecting ch. NR 20.

##### **Analysis**

The subject matter of the proposed rule relates to sturgeon spearing in Lake Winnebago.

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

Public hearings are scheduled for August 12 and 13, 1996.

##### **Contact Person**

If you have any questions, you may contact Tim Simonson, Bureau of Fisheries Management and Habitat Protection, at (608) 266-5222.

#### **Transportation, Dept. of**

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

Notice is hereby given that on July 15, 1996, the Department of Transportation submitted to the Wisconsin Joint Legislative Council Staff a proposed order affecting ch. Trans 276.

##### **Analysis**

The subject matter of the proposed rule relates to allowing the operation of "double bottoms" and certain other vehicles on specified highways.

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

A public hearing is required and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is the Division of Transportation Infrastructure Development/Bureau of Operations.

##### **Contact Person**

If you have any questions, you may contact Julie Johnson, Paralegal, at (608) 266-8810.



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## NOTICE SECTION

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### Notice of Hearings

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

► (Reprinted from July 15, 1996 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule (proposed ch. ATCP 77, Wis. Adm. Code) relating to laboratory certification fees.

#### Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **August 16, 1996**, for addition written comments.

#### Copies of the Rule

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade & Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling (608) 224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1996**, either by writing to Debbie Mazanec, 2811 Agriculture Drive, P.O. 8911, Madison, WI 53708, (608) 224-4712, or by contacting the message relay system (TTY) at (608) 266-4399 to forward your call to the Department at (608) 224-5058. Handicap access is available at the hearings.

#### Hearing Information

July 30, 1996  
Tuesday  
10:00 a.m. – 2:00 p.m.

Marathon County Health Dept.  
West Conference Room  
1200 Lakeview Drive  
Wausau, WI 54401

August 1, 1996  
Thursday  
10:00 a.m. – 2:00 p.m.

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

#### Analysis

*Statutory Authority:* ss. 93.07 (1), 93.12 (7) and 97.24 (3)

*Statutes Interpreted:* ss. 93.12 (4) & (7) and 97.24

The 1995-97 biennial budget act, 1995 Wis. Act 27, transferred much of the administration of Wisconsin's laboratory certification program from the department of health and social services to the department of agriculture, trade and consumer protection ("department"), effective July 1, 1996.

Under this program, the department will be responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local laws. Under 1995 Wis. Act 27, the department's public health lab certification program must be funded by certification fees paid by the certified laboratories. The department must establish these fees by rule.

Current rules governing the public health lab certification program are contained in ch. HSS 165, Wis. Adm. Code. The current rules remain in effect until the department amends or repeals them. This rule

repeals portions of ch. HSS 165 related to lab certification and fees, and creates new certification and fee requirements under ch. ATCP 77, Wis. Adm. Code. The department expects to proposed additional rules related to the lab certification program later this year.

This rule does all of the following:

- Identifies the laboratories which must be certified by the department.
- Establishes a procedure by which a laboratory may obtain and annually renew its certification.
- Establishes certification fees.

Under this rule, a certified laboratory must pay the following fees:

- A basic annual certification fee of \$400, except that the basic fee is \$200 for a dairy plant laboratory which is solely engaged in performing antibiotic drug residue screening tests on bulk milk tanker loads of milk received at that dairy plant.
- A supplementary annual fee of \$120 for each different type of milk test performed by the laboratory, if the laboratory is engaged in milk testing. This supplementary fee finances proficiency testing of milk analysts, which is currently required under state and federal law. If a milk testing laboratory applies for certification in mid-year, this supplementary fee is prorated by the number of months remaining in the calendar year for which the applicant seeks certification.

#### Fiscal Estimate

See page 21 of the July 15, 1996 Wis. Adm. Register.

#### Initial Regulatory Flexibility Analysis

See page 22 of the July 15, 1996 Wis. Adm. Register.

### Notice of Hearings

#### *Natural Resources*

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

Notice is hereby given that pursuant to ss. 29.085, 29.174 (3) and (4a), 29.33 (1) and (7) and 227.11 (2) (a), Stats., interpreting ss. 29.085 and 29.174 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 20.02 and 25.05, Wis. Adm. Code, relating to sport and commercial fishing for yellow perch in Lake Michigan.

#### Analysis

The proposed rule will limit the sport fishing bag limit to 5 fish and close the commercial fishery for yellow perch in Lake Michigan. There have been 6 consecutive years of extremely poor reproduction and the remaining adult stock is rapidly declining.

#### Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. *Types of small businesses affected:* Lake Michigan commercial fishers of yellow perch.
- b. *Description of reporting and bookkeeping procedures required:* No new procedures.
- c. *Description of professional skills required:* No new skills.

#### Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental

analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### **Emergency Rule**

Notice is hereby further given that pursuant to ss. 29.085, 29.174 (3) and (4a), 29.33 (1) and (7), 227.11 (2) (a) and 227.24 (1) (a), Stats., interpreting ss. 29.085 and 29.174 (2) (a), Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. FM-39-96 (E), relating to sport and commercial fishing for yellow perch in Lake Michigan.

### **Analysis**

This emergency order took effect on **July 1, 1996**. This emergency order limited the sport fishing bag limit to 5 and postponed the start of the commercial season from September 15 to October 1.

### **Hearing Information**

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

**August 14, 1996**  
**Wednesday**  
**At 5:00 p.m.**

**Council Chambers**  
**Manitowoc City Hall**  
**817 Franklin Street**  
**MANITOWOC, WI**

**August 15, 1996**  
**Thursday**  
**At 5:00 p.m.**

**Auditorium**  
**Public Ives Grove Complex**  
**14200 Washington Ave.**  
**STURTEVANT, WI**

*Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.*

### **Written Comments and Contact Person**

Written comments on the proposed and emergency rules [FM-40-96] and [FM-39-96 (E)] may be submitted to:

Mr. Bill Horns  
Bureau of Fisheries Management & Habitat Protection  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **August 25, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the emergency rule, proposed rule and fiscal estimate may be obtained from Mr. Horns.

### **Fiscal Estimate**

This proposal contains rule changes approved by the Natural Resources Board and the rules themselves will have no fiscal impact on either state or local units of government.

The procedure required to implement these rules will have a minor fiscal effect on state government due to one-time costs for travel to hearings and printing hearing materials.

## **Notice of Hearing**

### *Natural Resources*

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

Notice is hereby given that pursuant to ss. 29.174 (3) and 227.11 (2) (a), Stats., interpreting s. 29.174 (1) and (2), Stats., the Department of Natural Resources will hold a public hearing on the

amendment of s. NR 20.08 (10), Wis. Adm. Code, relating to extending the tournament fishing permit system.

### **Agency Analysis**

The proposed rule extends the existing fishing tournament permitting rules which are scheduled to sunset on December 31, 1996, for 2 more years. The current tournament permitting rules were developed with the hopes that a private entity would develop a sanctioning board to administer fishing tournament rules. A private sanctioning body (C.A.S.T.) has formed and is preparing to sanction tournaments as an alternative to the current permitting system. As yet, statutory authority to authorize an outside organization to sanction tournaments has not been granted. The proposed rule will allow more time to work out the details of the transition.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

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

**August 12, 1996**  
**Monday**  
**At 1:00 p.m.**

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

*Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ron Poff at (608) 266-2176 with specific information on your request at least 10 days before the date of the scheduled hearing.*

### **Written Comments and Contact Person**

Written comments on the proposed rule [FM-31-96] may be submitted to:

Mr. Ron Poff  
Bureau of Fisheries Management & Habitat Protection  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **August 14, 1996**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Poff.

### **Fiscal Estimate**

This proposal contains rule changes approved by the Natural Resources Board and the rules themselves will have no fiscal impact on either state or local units of government.

The procedure required to implement these rules will have a minor fiscal effect on state government due to one-time costs for travel to hearing and printing hearing materials.

## **Notice of Hearings**

### *Natural Resources*

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

Notice is hereby given that pursuant to ss. 29.174 (3) and 227.11 (2) (a), Stats., interpreting ss. 29.174 (1) and (2) and 29.148 (3),

Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 20, Wis. Adm. Code, relating to sturgeon spearing in the Lake Winnebago system.

### Agency Analysis

The proposed rule:

- 1) Reduces the length of the sturgeon spearing season on Lake Winnebago from approximately 20 days to 9 days;
- 2) Provides the secretary of the Department with the authority to extend the sturgeon spearing season beyond the closing date for a period up to March 1, provided that water transparency is 10 feet or less;
- 3) Prohibits the covering of ice holes larger than 12" in diameter or square with ice shanties on Lakes Winneconne, Butte des Morts, Little Butte des Morts and Poygan during other than the period from 48 hours before and continuing through the open season for sturgeon spearing;
- 4) Requires that the person who spears a sturgeon accompany the carcass during transport until the carcass is registered;
- 5) Establishes boundaries around waters open to sturgeon spearing, beyond which unregistered sturgeon may not be possessed; and
- 6) Reduces the hours of sturgeon registration stations by one hour, to close at 6:00 p.m.

### Initial Regulatory Flexibility Analysis

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

### Environmental Assessment

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

### Hearing Information

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

|  |  |
|--|--|
| <b>August 12, 1996</b><br><b>Monday</b><br><b>At 7:00 p.m.</b> | <b>Room 214</b><br><b>Fox Valley Tech. College</b><br><b>150 N. Campbell Rd.</b><br><b>OSHKOSH, WI</b> |
|--|--|

|   |   |
|---|---|
| <b>August 13, 1996</b><br><b>Tuesday</b><br><b>At 7:00 p.m.</b> | <b>Gymnasium</b><br><b>Stockbridge High School</b><br><b>110 School St.</b><br><b>STOCKBRIDGE, WI</b> |
|---|---|

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

### Written Comments and Contact Person

Written comments on the proposed rule [FM-37-96] may be submitted to:

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

Written comments must be received no later than **August 14, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Simonson.

### Fiscal Estimate

This proposal contains rule changes approved by the Natural Resources Board and the rules themselves will have no fiscal impact on either state or local units of government.

The procedure required to implement these rules will have a minor fiscal effect on state government due to one-time costs for travel to hearings and printing hearing materials.

### Notice of Hearings

#### Natural Resources

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

*(Environmental Protection--WPDES,  
Chs. NR 200--)*

*(Environmental Protection--Solid &  
Hazardous Waste, Chs. NR 500--)*

Notice is hereby given that pursuant to ss. 144.025, 147.01, 144.43 to 144.47 and 227.11 (2) (a), Stats., interpreting ss. 144.025, 147.01 and 144.43 to 144.47, Stats., the Department of Natural Resources will hold public hearings on amendments to ss. NR 103.08 (4) (a) 1., 299.05 (4) to (6) and 504.04 (2) (a), Stats., and the creation of ss. NR 103.02 (1m) and (4) and 103.08 (1m), Wis. Adm. Code, relating to water quality standards for wetlands, water quality certification and landfill location, performance and design criteria.

### Agency Analysis

The proposed revisions will:

1. Provide staff greater flexibility in determining the scope of alternatives required for projects having minimal wetland impacts;
2. Define artificial wetlands and identify those artificial landscape features that should not be subject to ch. NR 103;
3. Amend ch. NR 103 to be more consistent with federal wetland delineation protocol;
4. Eliminate mandatory public notice requirements reducing costs to the regulated public and the Department without jeopardizing the opportunity for public input;
5. Clarify terms in ch. NR 299 that will eliminate unsubstantiated hearing requests saving time and costs for the regulated public and the Department;
6. Eliminate the opportunity for duplicative hearing requests for water quality issues that have been previously adjudicated under other provisions of law; and
7. Amend s. NR 504.04 to limit the scope of alternatives required for the expansion of existing landfills.

### Initial Regulatory Flexibility Analysis

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

### Environmental Analysis

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

### Hearing Information

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

**August 13, 1996**  
**Tuesday**  
**At 11:00 a.m.**  
**Rm. 255**  
**Waukesha Co. Adm. Bldg.**  
**1320 Pewaukee Rd.**  
**WAUKESHA, WI**

**August 16, 1996**  
**Friday**  
**At 11:00 a.m.**  
**Room 604**  
**Green Bay City Hall**  
**100 N. Jefferson St.**  
**GREEN BAY, WI**

**August 19, 1996**  
**Monday**  
**At 1:00 p.m.**  
**Basement Auditorium**  
**La Crosse Co. Office Bldg.**  
**300 North 4th Street**  
**LA CROSSE, WI**

**August 20, 1996**  
**Tuesday**  
**At 11:00 a.m.**  
**Auditorium**  
**Ag Research Station**  
**Route 2**  
**SPOONER, WI**

**August 21, 1996**  
**Wednesday**  
**At 11:00 a.m.**  
**Council Chambers**  
**Wausau City Hall**  
**407 Grant Street**  
**WAUSAU, WI**

**August 23, 1996**  
**Friday**  
**At 11:00 a.m.**  
**Room 027, GEF #2**  
**101 South Webster St.**  
**MADISON, WI**

*Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dale Simon at (608) 267-9868 with specific information on your request at least 10 days before the date of the scheduled hearing.*

### **Written Comments & Contact Person**

Written comments on the proposed rule [WZ-35-96] may be submitted to:

Mr. Dale Simon  
 Bureau of Fisheries Management & Habitat Protection  
 P.O. Box 7921  
 Madison, WI 53707

Written comments must be received no later than **August 30, 1996**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Simon.

### **Fiscal Estimate**

The rules themselves will have no fiscal impact on either state or local units of government.

## **Notice of Hearings**

### **Natural Resources**

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

*(Environmental Protection--WPDES,  
 Chs. NR 200--)*

*(Environmental Protection--Hazardous  
 Waste, Chs. NR 600--)*

*(Environmental Protection--Remediation,  
 Chs. NR 700--)*

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., interpreting ss. 443.08, 443.09, 443.11, 443.14, 443.16, 443.17 and 443.18, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 108.03, 108.04, 110.03, 110.09,

213.02, 213.04, 213.11, 214.03, 214.20, 600.03, 635.16, 635.18, 640.06, 645.06, 660.09, 660.13, 680.05, 680.09, 680.45, 712.03, 712.05, 712.07, 712.09 and 712.11, Wis. Adm. Code, relating to integration of the registration of professional geologists into applicable Natural Resources administrative codes.

### **Agency Analysis**

Revised ch. 443, Stats., requires that anyone working in the field of geology in Wisconsin meet a minimum set of requirements related to their proficiency in the science of geology. Because of these new requirements, the Department reviewed our administrative codes which refer to "hydrogeologist", "soil scientist" and "groundwater scientist" and determined where they need to be revised in order to be consistent with the statutes. The requirements for a "professional geologist" are not as stringent as the current requirements for "hydrogeologist".

### **Environmental Assessment**

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

### **Hearing Information**

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

|   |   |
|---|---|
| <b>August 12, 1996</b><br><b>Monday</b><br><b>At 10:00 a.m.</b>   | <b>Room 140</b><br><b>DNR Southeast District Hdqrs.</b><br><b>2300 N. Dr. Martin L. King, Jr. Dr.</b><br><b>MILWAUKEE, WI</b> |
| <b>August 13, 1996</b><br><b>Tuesday</b><br><b>At 1:00 p.m.</b>   | <b>Room 511, GEF #2</b><br><b>101 South Webster St.</b><br><b>MADISON, WI</b>   |
| <b>August 14, 1996</b><br><b>Wednesday</b><br><b>At 2:00 p.m.</b> | <b>Conference Room</b><br><b>River Falls School Dist. Adm. Bldg.</b><br><b>852 E. Division</b><br><b>RIVER FALLS, WI</b>      |
| <b>August 15, 1996</b><br><b>Thursday</b><br><b>At 9:00 a.m.</b>  | <b>Conference Room B</b><br><b>Portage Co. Courthouse</b><br><b>1516 Church St.</b><br><b>STEVENS POINT, WI</b>               |
| <b>August 15, 1996</b><br><b>Thursday</b><br><b>At 2:00 p.m.</b>  | <b>Council Chambers</b><br><b>Green Bay City Hall</b><br><b>100 N. Jefferson St.</b><br><b>GREEN BAY, WI</b>                  |

*Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Michael Lemcke at (608) 266-2104 with specific information on your request at least 10 days before the date of the scheduled hearing.*

### **Written Comments and Contact Person**

Written comments on the proposed rule [WR-29-96] may be submitted to:

Mr. Michael Lemcke  
 Bureau of Drinking Water & Groundwater  
 P.O. Box 7921  
 Madison, WI 53707

Written comments must be received no later than **August 23, 1996**, and will have the same weight and effect as comments presented at the public hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Lemcke.

## Fiscal Estimate

Current DNR requirements for "Hydrogeologists" are more stringent than that of the proposed requirements for "Professional Geologists"; therefore, there should be no fiscal impact on state or local entities.

## Notice of Proposed Rule

### Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.61(4)(c), 77.76(3) and (3m) and 77.79, 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 **August 1, 1996**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

### Contact Person

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

### Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.61(4)(c), 77.76(3) and (3m) and 77.79

SECTION 1. Tax 11.95, relating to the retailer's discount, is repealed and recreated for the following reasons:

- To reflect the amendment to s. 77.61(4)(c), Stats., by 1995 Wis. Act 280, which provides for a minimum amount of retailer's discount.
- To reflect the creation of the stadium sales and use tax by 1995 Wis. Act 56.
- To improve readability per Legislative Council Rules Clearinghouse standards.

### Text of Rule

SECTION 1. Tax 11.95 is repealed and recreated to read:

Tax 11.95 **RETAILER'S DISCOUNT**. (ss. 77.61(4)(c), 77.76(3) and (3m) and 77.79, Stats.) (1) **COMPUTATION**. (a) Effective for Wisconsin sales and use tax returns filed for periods ending on or after January 1, 1997, for timely reporting state, county and stadium sales or use tax collected on their retail sales, except as provided in par. (b), retailers may deduct 0.5% of the sales and use tax payable on retail sales.

(b) If, for each reporting period required under s. 77.58(1), Stats., multiplying the sales and use tax payable on retail sales by 0.5% results in \$10 or less, the retailer's discount is the lesser of \$10 or the amount of the sales and use tax payable on retail sales.

(2) **RETAILER'S DISCOUNT ALLOWED**. The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted.

(3) **RETAILER'S DISCOUNT NOT ALLOWED**. The retailer's discount is not allowed if any one of the following applies:

- The payment of sales and use tax is delinquent.
- The sales and use tax payable is as a result of a deficiency determination or filing an amended return after the due date of the return, or after the expiration of any extension period if one has been granted.

(c) The use tax payable is imposed pursuant to s. 77.53(2), Stats.

*Note: (a) The amount of retailer's discount on or after January 1, 1983 until December 31, 1992 was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year; 1% of the second \$10,000 of sales and use tax payable and 0.5% of the sales and use tax payable in excess of \$20,000 each year; (b) The requirement that county tax be remitted by dealers to the registering state agency was*

*repealed effective May 1, 1988, pursuant to 1987 Wis. Act 141; (c) The amount of retailer's discount for returns filed for periods ending on or after January 1, 1993 and before January 1, 1997, was 0.5% of sales and use tax payable on retail sales, pursuant to 1991 Wis. Act 269; and (d) The amount of retailer's discount in sub. (1) became effective for returns filed for periods ending on or after January 1, 1997, pursuant to 1995 Wis. Act 280.*

### Initial Regulatory Flexibility Analysis

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

### Fiscal Estimate

There is no fiscal effect from the proposed rule.

## Notice of Hearing

### Securities

Notice is hereby given that, pursuant to ss. 551.63(1) and (2) and 551.22(1)(a), Stats., and interpreting s. 551.22(1)(a), Stats., the Division of Securities will hold a public hearing in **Room 328 Northwest of the State Capitol in Madison, Wisconsin, at 10:00 a.m. on Wednesday, September 4, 1996** to consider the creation of s. SEC 2.01(1)(c) 5 and (d)5, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

Written comments in lieu of public hearing testimony may be submitted which must be received no later than **September 4, 1996**, and should be addressed to the Administrator of the Division of Securities, 101 East Wilson Street, P.O. Box 1768, Madison, Wisconsin 53701.

### Analysis Prepared by the Division of Securities

Statutory Authority: ss. 551.63(1) and (2) and 551.22(1)(a)

Statute Interpreted: s. 551.22(1)(a)

These proposed permanent rules are being developed to be in place upon the expiration of identical emergency rules that were issued by Order of the Wisconsin Commissioner of Securities Office on June 18, 1996, and became effective on July 1, 1996 following publication in the official state newspaper and the required filings with the Secretary of State and the Revisor of Statutes Bureau. The proposed permanent rules, as do the emergency rules, adopt an alternative accounting guideline for the preparation of financial statements for certain governmental issuers of securities (principally Wisconsin public school districts and Wisconsin vocational school districts) utilizing the securities registration exemption in s. 551.22(1)(a), Wis. Stats., for purposes of offering and selling their debt securities to public investors in Wisconsin. The alternative guideline created in SEC 2.01(1)(c)5, Wis. Adm. Code, allows an exception to the "full-GAAP" financial statement requirement where the issuer's financial statements are full-GAAP except that the auditor's opinion is qualified with respect to the recognition of property tax revenue (which results from an interpretation by the staff of the Governmental Accounting Standards Board). Wisconsin public school and vocational school district securities issuers having "full-GAAP" financial statements have previously to date been able to sell their debt securities in reliance on automatic use of the registration exemption in s. 551.22(1)(a), Wis. Stats., (without the need for any exemption filing with this Division). Under the new alternative accounting guidelines (which still require "full-GAAP" financials, but allow the auditor's opinion to be qualified with respect to the recognition of property tax revenue item) those governmental securities issuers impacted by the GASB staff interpretation—which in absence of the alternative accounting guidelines in the new rules would have to make filings under Ch. 551—will continue to be able to rely on "automatic" use of the registration exemption of 551.22(1)(a) without the need for any filing with this Division.

The emergency rules adopting the alternative accounting guideline were developed in consultation with representatives of municipal/governmental securities issuers, bond attorneys and public

accounting groups who recently informed the Administrator that interpretations by the Governmental Accounting Standards Board ("GASB") through its staff with respect to accounting treatment for property tax recognition may cause many Wisconsin public school districts and vocational school districts to have the audit opinions for their financial statements qualified with respect to the deferral of taxes. The existence of a qualified auditor's opinion would preclude use of the s. 551.22(1)(a), Wis. Stats., registration exemption on a self-executing basis for offers and sales of a school district's debt securities to the public.

The specific accounting issue involves interpretation of the current accounting standard for property tax recognition established by the National Council on Governmental Accounting ("NCGA") Interpretation 3 "Revenue Recognition—Property Taxes." The accounting interpretation issue is presented as a result of the interplay of the following two factors: (1) most public school and vocational school districts operate on (and their financial statements are prepared on) a July 1 to June 30 fiscal year; (2) the Wisconsin Statutes authorize the various Wisconsin local units of government to allow the payment of property taxes (which provide the funding for payment of public school and vocational school district debts and obligations) to be made in installments on January 1 and July 31 of a given year (for example 1996) relating to taxes levied (in the 1996 example given) for a school district's fiscal year extending from July 1, 1995 to June 30, 1996.

Because the July 31 date for payment of the second property tax installment is after the June 30 fiscal year for the school districts, the staff of the GASB in communications with representatives of Wisconsin accounting organizations and school district associations on the issue, set forth the GASB staff's view that the July 31 tax installment revenues may not be recognized for purposes for fiscal years ending the preceding June 30. As a result, auditors for Wisconsin public school districts and vocational school districts would need to show in such school districts' financial statements, deferred revenue for the July 31 installment property taxes. Despite requests for reconsideration, the GASB staff has not changed its position.

Such GASB staff interpretation has resulted in property tax revenue and fund balance amounts as shown in most Wisconsin school districts' audit reports being different from that required to be shown in such districts' Annual Reports and budget documents, thus causing confusion as to what a particular district's financial position actually is. The State of Wisconsin Department of Public Instructions believes that the GASB staff interpretation, in the context of the Wisconsin statutes governing the timing of property tax levies and payments, does not result in appropriate school district revenue and fund balance financial statement presentations.

As a consequence, Wisconsin public school and vocational school districts may be requesting that their external auditors prepare their district's audited financials without showing deferred revenue for uncollected property taxes—which may result in the auditor issuing a qualified opinion. The issuance of such a qualified audit opinion would preclude use of the s. 551.22(1)(a), Wis. Stats., registration exemption on a self-executing basis for offers and sales in Wisconsin of the school district's debt securities to the public.

Therefore, in similar fashion to emergency rule-making action taken by the agency in 1982 and 1994, and for the purpose of alleviating disruption that would occur to the near-term borrowing/bonding plans of governmental school district issuers that regularly claim "automatic" exemption status under s. 551.22(1)(a), Wis. Stats., for the offer and sale in Wisconsin of their debt securities, the Division of Securities, in consultation with representatives of school district issuers, bond attorneys and accounting groups, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement provision to deal with this accounting issue to enable school district issuers to continue to use the exemption in s. 551.22(1)(a), Wis. Stats., on a self-executing basis. Also, this rule-making action is warranted because there is no investor protection securities regulatory purpose served by having such school district issuers make a filing with this agency (for a bond offering they otherwise would be making without a filing) solely

because of the existence of a one-sentence qualification contained in the auditor's opinion for the issuer's financial statements.

The emergency rule created in s. SEC 2.01(1)(c)5 designates as a permitted alternative accounting guideline for purposes of use of the registration exemption in s. 551.22(1)(a), Wis. Stats., GAAP, but where the auditor's opinion is qualified with respect to the recognition of property tax revenue. The emergency rule created in s. SEC 2.01(1)(d)5 provides that the auditor's opinion with respect to the financial statements of a school district issuer covered by the rule in SEC 2.01(1)(c)5 must contain language corresponding to the qualification language in SEC 2.01(1)(c)5.

### **Text of Rule**

**SECTION 1.** SEC 2.01(1)(c)5 is created to read:

SEC 2.01(1)(c)5 The issuer's annual general purpose financial statement are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the recognition of property tax revenue.

**SECTION 2.** SEC 2.01(1)(d)5 is created to read:

SEC 2.01(1)(d)5 With respect to par. (c)5, the financial statements are prepared in accordance with generally accepted accounting principles, except that the auditor's opinion is qualified with respect to the recognition of property tax revenue, or equivalent language.

### **Initial Regulatory Flexibility Analysis & Fiscal Effect**

There is no small business impact to these rules because the rules relate solely to municipal/governmental securities issuers.

The proposed rules will have no fiscal effect on the agency, and a copy of the complete Fiscal Estimate is available upon request to the agency. The proposed rules' effect on local units of government is discussed in detail in the Summary portion of this Rule-Making Hearing Notice.

### **Contact Person**

Questions regarding the proposed rule may be directed to agency General Counsel Randall E. Schumann, 101 East Wilson Street, P.O. Box 1768, Madison, WI 53701; (608) 266-3414.

### **Notice of Hearing** *Transportation*

Notice is hereby given that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of "double bottoms" and certain other vehicles on certain specified highways.

### **Hearing Information**

**August 12, 1996**  
**Monday**  
**10:00 A.M.**

**Room 88**  
**Hill Farms State Trans. Bldg.**  
**4802 Sheboygan Ave.**  
**Madison, WI**

*The hearing location is accessible to people with disabilities.*

### **Written Comments and Contact Person**

The public record on this proposed rulemaking will be held open until close of business, **August 14, 1996**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to:

Mark Morrison, (608) 266-1675  
Traffic & Safety Engineer, Room 601  
P. O. Box 7916  
Madison, WI 53707-7916



## **Analysis Prepared by the Wis. Dept. of Transportation**

*Statutory Authority:* ss. 85.16 (1) and 348.07 (4)

*Statute Interpreted:* s. 348.07 (4)

### **General Summary of Proposed Rule**

This proposed rule amends s. Trans 276.07 (4), Wis. Adm. Code, to add a segment of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segment that this proposed rule adds to the designated highway system is:

| <b>Hwy.</b> | <b>From</b>                      | <b>To</b>           |
|-------------|----------------------------------|---------------------|
| STH 19      | USH 12 S. of Springfield Corners | STH 113 in Waunakee |

The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, "double bottoms" and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit:

- 1) A single vehicle with an overall length in excess of 40 feet;
- 2) A combination of vehicles with an overall length in excess of 65 feet;
- 3) A semitrailer longer than 48 feet;
- 4) An automobile haulaway longer than 66 feet plus allowed overhangs; or
- 5) A "double bottom".

Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin. 45-foot buses are allowed on the National Network and Interstate system by Federal law, Section 4006 (b) of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this proposed rule will be to extend the provisions of ss. 348.07 (2) (f), (fm), (gm) and (gr), and 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may

legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor-semi-trailer combination, a "double bottom" or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semi-trailer combination or as part of a "double bottom" or an automobile haulaway. "Double bottoms" will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin-to-rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

### **Initial Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

### **Copies of Proposed Rule**

Copies of this proposed rule are available without cost upon request to the Office of the State Traffic Engineer, P. O. Box 7916, Madison, Wisconsin, 53707, telephone (608) 266-1675. For questions about this rulemaking, please call Mark Morrison, Traffic & Safety Engineer at (608) 266-1675. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

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

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

**Health & Family Services (CR 96-26):**

Ch. HFS 34 – Relating to standards for emergency mental health service programs.

**Regulation & Licensing (CR 96-33):**

S. RL 120.02 (intro.) and ch. RL 128 – Relating to education requirements by registered auctioneers.

**Revenue (CR 96-53):**

S. Tax 11.69 – Relating to the Wisconsin sales and use tax treatment of sales and purchases by financial institutions.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

**Dentistry Examining Board (CR 96-50):**

An order amending ch. DE 12.01 (3), relating to the delegation of the polishing portion of an oral prophylaxis by a dentist to an unlicensed person.

Effective 09-01-96.

**Health & Family Services (CR 94-203):**

An order repealing s. HFS 61.81 and creating ch. HFS 40, relating to mental health day treatment services for children and adolescents.

Effective 09-01-96.

**Health & Family Services (CR 94-204):**

An order creating ch. HFS 38, relating to treatment foster care for children.

Effective 09-01-96.

**Health & Family Services (CR 96-8):**

An order affecting s. HFS 124.20 (5), relating to the administration of labor-inducing agents in hospitals.

Effective 09-01-96.

**Medical Examining Board (CR 95-189):**

An order amending ch. Med 15 (title) and s. Med 15.02, relating to tattooing and body piercing.

Effective 09-01-96.

**Natural Resources (CR 94-183):**

An order repealing and recreating ch. NR 113, relating to servicing septic or holding tanks.

Effective 01-01-97.

**Natural Resources (CR 95-47):**

An order creating ss. NR 1.60 and 1.61 and ch. NR 44, relating to master planning and the management and recreational use classification system for lands managed by the Department of Natural Resources.

Effective 09-01-96.

**Revenue (CR 95-161):**

An order affecting ch. Tax 9, relating to cigarette taxes.

Effective 09-01-96.

**Revenue (CR 96-58):**

An order repealing and recreating ch. Tax 18, implementing ss. 70.32 (2) and (2r) (a), Stats., as affected by 1995 Wis. Act 27, relating to assessment of agricultural land in 1996 and 1997.

Effective 09-01-96.

**Savings & Loan (CR 96-32):**

An order creating s. S-L 3.02, relating to establishing a procedure for a mutual savings and loan association with deposits not insured by a deposit insurance corporation to reorganize into another type of mutual depository institution (including a state credit union) with insured deposit accounts.

Effective 09-01-96.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the **July 31, 1996 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

**Agriculture, Trade & Consumer Protection (CR 95-14):**

An order creating ch. ATCP 123, relating to telecommunications and cable television service.

Effective 01-01-97.

**Agriculture, Trade & Consumer Protection (CR 95-146):**

An order repealing and recreating ch. ATCP 116, relating to work recruitment schemes.

Effective 08-01-96.

**Chiropractic Examining Board (CR 95-232):**

An order amending s. Chir 9.03 (6), relating to approved chiropractic college preceptorship programs.

Effective 08-01-96.

**Corrections, Dept. of (CR 95-227):**

An order affecting ch. DOC 328, relating to supervision fees charged to probationers and parolees.

Effective 08-01-96.

**State Emergency Response Board (CR 95-216):**

An order creating ch. ERB 5, relating to the computer grant.

Effective 08-01-96.

**Employment Relations, Dept. of (CR 96-51):**

An order creating s. ER 29.03 (8) (bm), relating to the rate of pay as a result of voluntary demotions by employes who are notified they may be subject to layoff.

Effective 08-01-96.

**Health & Social Services (CR 92-216):**

An order repealing ch. HSS 3 and creating ch. HSS 83, relating to Community-Based Residential Facilities (CBRF's) for adults.

Part effective 08-01-96.

Part effective 01-01-97.

Part effective 01-01-98.

**Health & Social Services (CR 94-193):**

An order affecting ch. HSS 62, relating to assessment and treatment of intoxicated drivers.

Effective 08-01-96.

**Health & Social Services (CR 95-229):**

An order affecting ss. HSS 201.30 and 201.303, relating to participation of Aid to Families with Dependent Children (AFDC) recipients in the AFDC Benefit Cap Demonstration Project.

Effective 08-01-96.

**Industry, Labor & Human Relations (CR 96-5):**

An order affecting ss. Ind 80.60 and 80.64, relating to self-insurance application fees.

Effective 08-01-96.

**Industry, Labor & Human Relations (CR 96-6):**

An order creating s. Ind 80.62, relating to the uninsured employers fund.

Effective 08-01-96.

**Industry, Labor & Human Relations (CR 96-24):**

An order creating s. Ind 80.15, relating to payment after order.

Effective 08-01-96.

**Insurance, Office of the Commissioner of (CR 95-204):**

An order affecting ss. Ins 3.455 and 3.46, relating to the requirements for long-term care insurance sold in Wisconsin.

Effective 08-01-96.

**Natural Resources (CR 94-180):**

An order repealing and recreating ss. NR 1.15 (2) (a), 10.104 and 10.28, relating to deer hunting permits.

Part effective 08-01-96.

**Natural Resources (CR 95-108):**

An order affecting ch. NR 120, relating to the Nonpoint Source Pollution Abatement program.

Effective 08-01-96.

**Natural Resources (CR 95-117):**

An order creating s. NR 19.30, relating to requiring criminal history checks on all volunteer all-terrain vehicle (ATV), boating, bowhunter, hunter education and snowmobile safety instructors.

Effective 08-01-96.

**Natural Resources (CR 95-185):**

An order creating s. NR 1.52, relating to a policy on promulgation of environmental quality standards.

Effective 08-01-96.

**Natural Resources (CR 95-194):**

An order creating s. NR 19.02, relating to requiring a handling fee for certain approvals required for hunting, trapping or fishing.

Effective 08-01-96.

**Natural Resources (CR 95-221):**

An order affecting ss. NR 28.03 and 28.04, relating to wild ginseng.

Effective 08-01-96.

**Regulation & Licensing (CR 95-80):**

An order creating ch. RL 7 and Appendix I, relating to the impaired professionals procedure.

Effective 08-01-96.

**Regulation & Licensing (CR 95-211):**

An order affecting ch. RL 1, relating to procedures to review denials of credentials.

Effective 08-01-96.

**Regulation & Licensing (CR 96-14):**

An order affecting ch. RL 4, relating to examination fees, refunds and fees for test reviews.

Effective 08-01-96.

**Securities, Commissioner of (CR 96-65):**

An order creating s. SEC 2.01 (3) (e), relating to designating the Chicago stock exchange under s. 551.22 (7), Stats.

Effective 08-01-96.

**Transportation, Dept. of (CR 94-202):**

An order amending s. Trans 201.16 (2) (e), relating to on-private property political signs next to interstates and freeways.

Effective 08-01-96.

**Transportation, Dept. of (CR 95-197):**

An order repealing and recreating ch. Trans 104, relating to examination procedures for operator's license.

Effective 08-01-96.

**Transportation, Dept. of (CR 96-43):**

An order amending s. Trans 6.04 (1) (e), relating to administration of the federal section 18 program.

Effective 08-01-96.

**Tourism (CR 96-48):**

An order affecting ss. Tour 1.02, 1.03 and 1.05, relating to the joint effort marketing program.

Effective 08-01-96.

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Agriculture, Trade & Consumer Protection (CR 95-146)

Ch. ATCP 116 – Relating to work recruitment schemes.

#### Summary of Final Regulatory Flexibility Analysis:

This rule strengthens and clarifies the department's current rules. Like the current rules, this rule regulates recruitment schemes that are aimed at getting money from job applicants, not just recruiting them as workers. This rule does not affect other businesses that recruit and hire workers.

This rule expands the coverage of the current rules. The current rules apply when a business requires a "purchase or investment" from prospective employees, agents or independent contractors whom the business recruits to sell "products." This rule applies, more broadly, when a businesses requires or solicits a "purchase or investment" from either of the following:

- Prospective employees, regardless of the work for which they are recruited.
- Prospective sales workers, regardless of whether they are recruited as employees, agents or independent contractors. "Sales work" means any work that involves soliciting persons to purchase or lease goods, services or contract rights (not just "products") which the recruiter is in the business of selling or leasing.

The current rules do not define what is meant by a "purchase or investment." This rule clarifies that a "purchase or investment" means a direct or indirect payment to the recruiter and provides an inclusive list of such purchases and investments.

Like the current rules, this rule requires that the amount of a required purchase or investment must be disclosed. This rule clarifies what kind of disclosures comply with the rule.

Unlike the current rule, this rule provides that, if an earnings claim is made, that claim be accurately and clearly stated. Also, this rule specifically prohibits certain practices related to the solicitation of a purchase or investment from a recruit.

A small business is affected by this rule only if, as a condition to hire a job applicant, it effectively requires that job applicant to make a "purchase or investment" involving a payment to the small business. Since most small businesses do not require such payments from prospective workers, they will not be affected.

Even if a legitimate business requires job applicants to make a "purchase or investment" in order to get a job, it should not be difficult or costly for that business to comply with this rule. Compliance will not require specialized professional skills or significant recordkeeping. In order to comply, the business must do the following:

- Disclose the nature and amount of the required "purchase or investment" in its advertisements for that job.
- Document the required "purchase or investment" in writing, and give a copy to the job applicant before the applicant agrees to make the "purchase or investment." The documentation must include certain disclosures about the job, such as type of work, source of earnings, and form and amount of earnings.

- If the business makes any earnings claim to prospective workers from whom the business solicits a "purchase or investment," the business must disclose the source of the earnings (if other than the business), the form of earnings (e.g., wages, commissions or profits on sales), and the basis on which the earnings will be paid.

- The business must also disclose any requirements, such as training or probationary service requirements, which a recruit must meet in order to qualify for the stated earnings. These disclosures are required so that job applicants will have a fair chance to evaluate earnings claims before they make a required "purchase or investment."

- Refrain from making false, deceptive or misleading advertisements or representations to prospective workers from whom the business solicits a "purchase or investment."

Compliance with this rule should be difficult only for small businesses engaged in fraudulent work recruitment schemes. The purpose of this rule is to eliminate those schemes.

#### Summary of Comments from Legislative Committees:

The rule was referred to the Legislature on December 20, 1995. In response to concerns raised by the Wisconsin Merchants Federation, the department offered possible changes to the final draft rule at a hearing before the Senate Committee on February 14, 1996. The Merchants Federation endorsed the proposed changes at that hearing.

On February 14, 1996, the Senate Committee adopted a motion asking the department to modify the final draft rule to address the concerns of the Merchants Federation. The Assembly Committee took similar action on February 16, 1996.

The revised final draft rule, fully addressing the committees' requests, was approved by the DATCP Board on March 12, 1996. The revised final draft rule was referred to the Senate Committee on Transportation, Agriculture, and Local Affairs and to the Assembly Committee on Consumer Affairs on March 29, 1996. The department received no comments or request for hearing from either committee.

### 2. Agriculture, Trade & Consumer Protection (CR 95-014)

Ch. ATCP 123 – Telecommunications and cable television service.

#### Summary of Final Regulatory Flexibility Analysis:

This rule regulates businesses that sell telecommunications or cable television service services. The rule provides methods whereby buyers who contract for provision of services can be informed of their agreements with the providers of those services, can be alerted to changes in the agreements and be allowed to cancel the contract before the changes are enacted.

#### *Scope*

This proposed rule regulates certain practices by businesses engaged in providing continuing or ongoing delivery of telecommunications and cable television services. The rules do not apply to these activities regulated by the Public Service Commission of Wisconsin.

*Negative Options*

This proposed rule prohibits billing for services which the consumer has not affirmatively ordered. Silence or inaction by the buyer when offered the contract does not constitute an affirmative order. It does allow for expansion of existing services without affirmative orders as long as the expansion does result in the addition of a service which is optional. This should have no impact on small business.

*Price Increases*

The proposed rule also requires the seller to inform the buyer of price increases and allow the buyer the opportunity to cancel the amended contract.

Providers of continuing service periodically increase prices. Buyers who do not pay close attention to their bill or whose bill is combined with other bills, such as automatic deductions, are unaware of these increases. The requirement that the seller notify the buyer of the change should not significantly increase costs under this rule. Offering a method of rejecting the service at the new price should have no impact since the nature of continuing service contracts is to operate until canceled by one of the parties.

*Promotional Offers*

The proposed rule requires a seller who offers a good or service for free or at reduced price to clearly inform the buyer of that fact and notify the buyer of the date when the regular price will be billed.

Businesses that furnish promotional products generally provide the product free or at reduced price for one billing cycle. Notification on the regular invoice of the impending date of full charge for the product should not significantly increase costs.

*Contracts*

Under this proposed rule, sellers who contract orally or through telecommunication devices to provide goods or services must furnish the buyer with a written statement describing the terms and conditions of the order. This statement must be furnished no later than billing for the service or 15 days whichever is greater.

Businesses generally protect themselves by documenting customer orders in writing. Including that statement with the first invoice is already common practice. For some businesses, the information on the invoice may be sufficient to satisfy this requirement. The department anticipates no increased cost to business under this section.

*Billing Practices*

Under this proposed rule, a seller may not bill for goods or services which are not itemized on the invoice. The seller may not bill for cancellation or late penalty fees unless those charges were previously disclosed to the buyer.

It is common business practice to produce itemized invoices. Additionally, businesses that following the contract requirements should have already disclosed late payment or cancellation fees on the original contract. These requirements should have no impact on small business.

Summary of Comments from Legislative Committees:

On March 14, 1996, this department transmitted the above rule for legislative committee review. On March 28, the rule was assigned to the Assembly committee on Environment and Utilities and the Joint Committee on Information Policy.

The Assembly Committee on Environment and Utilities did not take any action on the rule during its review period. However, the Joint Committee on Information Policy held a hearing and approved a minor modification to the rule. That committee also waived further jurisdiction over the rule under s. 227.19 (4) (c), Stats., based on the department's agreement to make the proposed modification.

The modification consists of a note inserted before the definition section of the rule. The note merely acknowledges that under federal law, the federal government may take action to preempt portion of state rules.

The note reads:

"Federal law recognizes that state administrative rules may under certain circumstance be preempted by federal law or administrative action. It is the position of the department that any provision of this rule which specifically conflicts with any federal law which now exists, or is later enacted or amended, would be superseded by the federal law."

On May 6, 1996, the Assembly Committee on Environment and Utilities received the rule as modified for another 10 days review period. The department received no comments or request for hearing from that committee.

**3. Chiropractic Examining Board (CR 95-232)**

S. Chir 9.03 (6) – Approved chiropractic college preceptorship programs.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

**4. Health & Social Services (CR 94-193)**

Ch. HSS 62 – Assessment and treatment of intoxicated drivers.

Summary of Final Regulatory Flexibility Analysis:

These rules will not affect small businesses as "small business" is defined in s. 227.114 (1), Stats. The rules apply to public agencies that provide assessments and driver safety plan services to motor vehicle drivers ordered by a court or the Wisconsin Department of Transportation to receive those services because of a suspected alcohol or controlled substance problem.

Summary of Comments:

No comments reported.

**5. Health & Social Services (CR 92-216)**

Ch. HSS 83 – Community-based residential facilities (CBRFs) for adults.

Summary of Final Regulatory Flexibility Analysis:

More than half of the 1120 community-based residential facilities (CBRFs) in the state are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

The rules are being updated, with requirements clarified and further developed and new requirements added, in the interests of better protecting residents and promoting their well-being.

There are about 15,000 residents of the 1120 CBRFs. All residents need supervision and help with daily living, although generally not care provided by nursing staff. Because of their vulnerability, they need to be protected from harm and there must be assurances that their care needs are met and their interests are safeguarded. The Department's rules establish expectations for the protection and care of CBRF residents, and enforcement of the rules is intended to help assure protection and good care. Standards and procedures must apply equally to all facilities, varying only on the basis of the care needs and capabilities of residents.

At the Department's public hearings on the proposed rules there were a number of comments that relate to CBRFs as small businesses even though no hearing participant asked for regulatory relief specifically on small business grounds. Concerns were raised about the costs of implementing the revised rules and, in particular, about the costs of training, meeting minimum staffing requirements, complying with detailed medication procedures and adding heat detectors to smoke detection systems in existing facilities. Hearing participants recommended that documentation and reporting requirements be reduced, that past education, training and experience be accepted in place of required training and that individual training plans not be required for CBRF staff members.

In response to concerns and suggestions of public hearing participants, the Department deleted some documentation and reporting requirements; exempted CBRF administrators with at least 2 years of experience from most training requirements; permitted substitution of pertinent education, training and experience of other staff for required training; limited the individual training plan requirement to lead or sole resident care staff; reduced the minimum staffing requirements at night and on weekends; and gave more time to existing facilities to add heat detectors to their smoke detection systems. Changes made in training requirements following the hearings will reduce training costs.

Summary of Comments of Legislative Committees:

The Senate committee on Health, Human Services and Aging held a legislative public hearing on the proposed rule on May 11, 1994 and requested the Department on May 13, 1994 to make unspecified modifications in the rules. The Assembly Committee on Children and Human Services held a legislative public hearing on the proposed rules on May 16, 1994 and the same day requested the Department to make unspecified modifications in the rules.

Following the public hearings, the chairpersons of the two standing committees established a workgroup to review comments received on the proposed rules at the hearings and to recommend to the Department changes in proposed ch. HSS 83. The Department submitted resulting modifications of the rules to the standing committees in December, 1994. These included taking out most specified minimum staff-to-resident ratios; reducing initial required training for resident care staff from 68 hours to 56 hours; permitting a CBRF to do its own staff training on the basis of a Department-approved plan; expanding the list of persons exempt from some or all of the required initial training; changing the resident nursing care limit without waiver from no more than 3 hours a day for 30 days to no more than 3 hours a day for 90 days, and adding the possibility of a waiver of this limit for certain residents; changing the requirement for quarterly review by a pharmacist of a resident's medications to at least every 12 months by either a physician or a pharmacist; requiring that services for a terminally ill resident be provided by a hospice or home health agency only if the resident needs more than 3 hours of care a week; for an involuntary discharge or transfer, adding a requirement for Department review if requested by the resident or that person's guardian; and adding

requirements for criminal records checks of license applicants and prospective employees.

## 6. Health & Social Services (CR 95-229)

SS. HSS 201.30 (1) and 201.303 – Participation of Aid to Families with Dependent Children (AFDC) recipients in the AFDC Benefit Cap Demonstration Project.

Summary of Final Regulatory Flexibility Analysis:

These rules relate to county and tribal administration of a federal and state program. They will not directly affect small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

## 7. Industry, Labor & Human Relations (CR 96-5)

S. Ind 80.60 (4) – Self-Insurance application fees.

Summary of Final Regulatory Flexibility Analysis:

There are approximately 175 non-public self-insured. None are small businesses.

Summary of Comments of Legislative Standing Committees:

No comments were received.

## 8. Industry, Labor & Human Relations (CR 96-6)

S. Ind 80.62 – Uninsured employers fund.

Summary of Final Regulatory Flexibility Analysis:

The rule will affect employers who operate illegally without proper worker's compensation insurance coverage. The rule requires these employers to cooperate with the Department in its investigation of a claim by an employee by providing records and other documents. There are no specific reporting requirements.

Summary of Comments of Legislative Standing Committees:

No comments received.

## 9. Industry, Labor & Human Relations (CR 96-24)

S. Ind 80.15 – Payment after an order.

Summary of Final Regulatory Flexibility Analysis:

The rule has no impact on small business.

Summary of Comments of Legislative Standing Committees:

No comments received.

## 10. Insurance (CR 95-204)

SS. Ins 3.455 and 3.46 – Requirements for long term care insurance sold in Wisconsin.

Summary of Final Regulatory Flexibility Analysis:

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



Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

**11. Natural Resources (CR 95–108)**

Ch. NR 120 – Nonpoint source pollution abatement program.

Summary of Final Regulatory Flexibility Analysis:

Participation in the nonpoint source pollution abatement program is voluntary except that participation is required in designated critical sites where voluntary participation has not reach the water quality goals after 36 months notification. The proposed rule revisions will primarily affect counties, municipalities, landowners and land operators.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy. On November 29, 1995, the Assembly Natural Resources Committee held a public hearing. At that hearing, the Committee voted to consider modifications to the rule. After discussions with the Department, on April 17, 1996, the Committee voted not to request any modifications.

**12. Natural Resources (CR 95–117)**

S. NR 19.30 – Requiring criminal history checks on all volunteer all-terrain vehicle, boating, bowhunter, hunter education and snowmobile safety instructors.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate small business.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy. No request for modification was received.

**13. Natural Resources (CR 95–185)**

S. NR 1.52 – Policy on promulgation of environmental quality standards.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not regulate businesses in Wisconsin. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy. On April 17, 1996, the Assembly Committee on Natural Resources held a public hearing. No request for modifications was received.

**14. Natural Resources (CR 95–194)**

S. NR 19.02 – Requiring a handling fee for certain approvals required for hunting, trapping or fishing.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not regulate businesses; therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

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

**15. Natural Resources (CR 95–221)**

Ch. NR 28 – Wild ginseng.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not have a significant economic impact on a substantial number of small businesses. If the proposed rule were not adopted and the U.S. Fish and Wildlife Service were to no longer approve the export of Wisconsin wild ginseng, the impact on certain small businesses would be significant.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy. On April 17, 1996, the Assembly Committee on Natural Resources held a public hearing. No request for modifications was received.

**16. Regulation & Licensing (CR 95–80)**

Ch. RL 7 – Impaired professionals procedure.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**17. Regulation & Licensing (CR 95–211)**

Ch. RL 1 – Procedures to review denials of credentials.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

**18. Regulation & Licensing (CR 96–14)**

Ch. RL 4 – Examination fees, refunds and fees for test reviews.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**19. Securities (CR 96-65)**

S. SEC 2.01 (3) (e) – Designating the Chicago Stock Exchange under s. 551.22 (7), Stats.

Summary of Final Regulatory Flexibility Analysis:

No final regulatory flexibility analysis is included on the basis that the Office of the Wisconsin Commissioner of Securities has determined that the proposed rule amendments will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

**20. Transportation (CR 95-197)**

Trans 104 – Examination procedures for operator's license.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no significant effect on small businesses.

Summary of Comments:

No comments were reported.

**21. Transportation (CR 96-43)**

S. Trans 6.04 (1) (e) – Administration of the federal section 18 program.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule should have no significant adverse impact on small businesses.

Summary of Comments:

No comments were reported.

**22. Transportation (CR 94-202)**

S. Trans 201.16 (2) (e) – On-private property political signs next to interstates and freeways.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will not have an adverse impact on small businesses.

Summary of Comments:

No comments were reported.

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## EXECUTIVE ORDERS

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

**Executive Order 285.** Relating to Proclamation of a State of Emergency.

**Executive Order 286.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Brave Men and Women of the Armed Forces of the United States Who Lost Their Lives in the Terrorist Bombing in Dhahran, Saudi Arabia.

**Executive Order 287.** Relating to Amending Executive Order #283 and to the Transfer to the Department of Administration of Responsibilities for Higher Educational Aid Programs Currently Assigned to the Higher Educational Aids Board and to the Transfer to the Department of Administration of Responsibilities for the Regulation of Proprietary Schools and the Approval of Schools and Courses of Instruction for the Training of Veterans Receiving Assistance from the Federal Government Currently Assigned to the Educational Approval Board and to the Creation of the Higher Educational Aids Council and the Educational Approval Council.

**Executive Order 288.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Technical Sergeant Patrick Fennig of the United States Air Force Who Lost His Life in the Terrorist Bombing Near Dhahran, Saudi Arabia.

**Executive Order 289.** Relating to the Creation of the Governor's Blue Ribbon Commission on 21st Century Jobs.

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