

WISCONSIN ADMINISTRATIVE REGISTER

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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

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 Dates: 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

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

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
Extension Through: August 30, 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 Dates: 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 that 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 Dates: March 1 & 8, 1996
Extension Through: September 26, 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
Hearing Date: August 28, 1996
 [See Notice this Register]

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
Hearing Date: August 28, 1996
 [See Notice this Register]

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
Hearing Date: August 30, 1996
 [See Notice this Register]

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
Extension Through: September 26, 1996

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
Hearing Date: July 17, 1996

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

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 employees 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 employees 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 employees 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

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

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 Dates: August 14 & 15, 1996

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
Hearing Dates: September 9 & 10, 1996

[See Notice this Register]

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

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

STATEMENTS OF SCOPE OF PROPOSED RULES

Natural Resources

Subject:

NR Code – Relating to shore protection guidelines

Description of Policy Issues:

Locational criteria and design standards for riprap and retaining wall shore protection on public water.

Groups likely to be impacted or interested in the issue:

All waterfront owners, including business interests, could be impacted.

Explain the facts that necessitate the proposed change:

For the last ten years, the Department has been recommending riprap use for shore protection, in lieu of retaining walls.

Informal guidelines have reflected this policy; however, the guideline was based upon the best judgment of biological staff and not quantifiable studies.

1993 Wis. Act 421 directed the Department to conduct a study of common shore protection measures and propose rules to implement study recommendations. The results of the scientific study overall confirm the past judgments of staff and the agency's practice.

Statutory authority:

Sections 30.12 (2) and (3) (a) 3 and 30.2035, Stats.

Staff time required:

The anticipated time commitment is 139 hours. Three hearings are proposed to be held in Green Bay, Rhinelander and Madison in January, 1997.

Natural Resources

Subject:

Ch. NR 25 — Relating to commercial fishing for whitefish and chubs in Lake Michigan

Description of Policy Issues:

This rule would:

- 1) Increase commercial whitefish quotas;
- 2) Close the Green Bay portion of the northern chub zone;
- 3) Adjust seasonal harvest limits for chubs;
- 4) Increase the open fishing area in Lake Michigan; and
- 5) Open a six–week winter chub fishing period.

Groups likely to be impacted or interested in the issue:

Commercial whitefish and chub fishers will be affected by this rule.

Explain the facts that necessitate the proposed change:

1) A very healthy whitefish population can support increased harvest.

2) The incidental harvest of chinook salmon, lake trout, and juvenile whitefish in northern Green Bay chub nets has increased recently, requiring a local closure of chub fishing.

3) Other changes in the northern chub fishing zone can be implemented to safely offset the closure.

Statutory authority:

Sections 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a), Stats.

Staff time required:

The anticipated time commitment is 145.2 hours. One hearing is proposed to be held in Sturgeon Bay on December 12, 1996.

Natural Resources

Subject:

Ch. NR 25 — Relating to commercial fishing for yellow perch in Lake Michigan.

Description of Policy Issues:

This rule closes the commercial fishing season for yellow perch from Lake Michigan. It will be presented for consideration by the Natural Resources Board in September, the same time the NRB considers adoption of permanent order [FM–40–96]. That permanent order would close the yellow perch fishery, but would not take effect until legislative review is complete. This emergency rule allows the closure of the fishery from October 1, the date the season otherwise would open, until permanent order [FM–40–96] takes effect.

Groups likely to be impacted or interested in the issue:

Sport and commercial fishers will be interested in this rule.

Explain the facts that necessitate the proposed change:

The limitation of commercial harvests when needed to protect fish populations is current Department and NRB policy.

Reproduction by yellow perch has been extremely poor for six consecutive years (1990–1995). If reproduction is again poor in 1996, further restrictions on commercial harvests are appropriate to maximize the probability that the surviving adult population will reproduce well in 1997.

Statutory authority:

Sections 29.085, 29.174 (3), 29.33 (1), 287.11 (2) (a) and 227.24 (1) (a), Stats.

Staff time required:

The anticipated time commitment is 29.2 hours. One hearing is proposed to be held in Racine on October 16, 1996.

Regulation & Licensing

Subject:

RL Code — Relating to use of titles by acupuncturists.

Description of Policy Issues:

Objective of the Rule:

To specify professional titles which are prohibited by statute and rule as false, deceptive or misleading advertising and to identify standards which an acupuncturist may use to determine whether use of a particular title is prohibited or permitted.

Policy analysis:

Existing law prohibits acupuncturists from advertising in a manner that is false, deceptive or misleading. Currently no statute or administrative rule identifies specific professional titles that are prohibited or generally permitted to be used by certified acupuncturists in professional practice. Certificate holders have questioned whether all certified acupuncturists may use certain professional titles, such as D.O.M. (Doctor of Oriental Medicine) or C.A. (Certified Acupuncturist) and under what circumstances a certificateholder may use the title “Dr.” or “Doctor.”

The use of a title, such as Ph.D., in professional practice is a form of advertising given limited constitutional protection as commercial speech. Formulation of rules must be consistent with constitutional protection from state regulation and also effectively enforce the requirement that advertising not be false, deceptive or misleading.

A policy objective of the rules is to set standards so that degree designations which are similar to other designations are presented in such a way as not to be misleading or deceptive.

Statutory authority:

Sections 227.11 and 451.14 (2) (d), Stats.

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

The anticipated time commitment is 40 hours.

Transportation

Subject:

Description of objective of the rule:

This proposal will amend three existing rules to bring them current with changes to the federal regulations which have gone into effect as of July 1, 1996.

1. Trans 325 (Motor Carrier Safety Regulations) – interstate. Amend the rule to include all changes already in effect up to July 1, 1996. Changes have been made to Federal Motor Carrier Safety regulations Title 49 CFR, Parts 390 through 397, regulating interstate operation. Amendment to this rule will bring state regulations in compliance with current interstate regulations.

2. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) – interstate. Amend the rule to include all changes which have been made to Federal Motor Carrier Safety regulations 49 CFR, Parts 107, 171, 172, 173, 177, and 178, and are already in effect as of July 1, 1996. Amendment to this rule will bring state regulations in compliance with current interstate regulations.

3. Trans 328 (Motor Carrier Safety Requirements for Intrastate Transportation of Hazardous Materials). Amend the rule to include all changes which have been made to Federal Motor Carrier Safety regulations and which are already in effect as of July 1, 1996. Amendment to this rule will bring state regulations in compliance with current interstate regulations, Title 49 CFR, Part 171 except 171.1 (a) (1), 171.4, 171.5, 171.10, 171.12 and 171.12a and 171.2 (a) and (b), Part 172, 173 except for 173.33 for cargo and portable tanks used in intrastate commerce and placed in operation prior to November 1, 1991, Part 177 and Part 180.

Description of Policy Issues:

1. Trans 325

● The Department proposes to incorporate recent changes to federal regulations that became effective April 3, 1996, that affect the

agricultural industry in Wisconsin. The new federal rules provide exceptions to hours of service requirements for drivers transporting agricultural commodities or farm supplies for agricultural purposes within a 100 air mile radius from the source of the commodities or the distribution point of the farm supplies. The exception will apply during the planting and harvesting season within the state as determined by the state. The Department will propose the planting and harvesting season to be from March 15th to December 15th each year. The proposal will be consistent with surrounding state declarations.

● Exceptions allowing drivers who operate groundwater well drilling equipment, transporting construction material, and utility service vehicles to restart the seven or eight day hours of service clock after being off duty 24 or more consecutive hours.

2. Trans 326

● The Department annually updates ch. Trans 326 to keep current with the most recent changes to federal regulation. The revision allows state inspectors and troopers to enforce the most current hazardous material regulation for interstate carriers.

3. Trans 328

● The Department annually updates ch. Trans 328 to keep current with the most recent changes to the Federal Hazardous Material Transportation (HM) regulations. The update to ch. Trans 328 allows state inspectors to enforce the most current HM regulations for intrastate carriers.

Statutory Authority for the rule:

1. Trans 325 — s. 110.075, and ch. 194, Stats.
2. Trans 326 — ss. 110.07, 346.45 (4) and ch. 194, Stats.
3. Trans 328 — ss. 110.07, 110.075, 194.38, 194.43, 346.45 (4) and ch. 194, Stats.

Estimates of the amount of time that State employes will spend developing the rule and of other resources necessary to develop the rule:

It is estimated that state employes will spend 50 hours on the rule-making process, including research, drafting and conducting public hearing(s).

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Employe Trust Funds

Rule Submittal Date

On August 1, 1996, the Wisconsin Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting s. ETF 10.75.

Analysis

The subject matter of the proposed rule relates to signature of Wisconsin Retirement System documents by an agent holding the person's power of attorney.

Agency Procedure for Promulgation

A public hearing is scheduled for September 5, 1996.

Contact Person

If you have any questions, you may contact Ms. Mary Anglim, Division of Retirement Services, at (608) 266–6611.

Employe Trust Funds

Rule Submittal Date

On August 1, 1996, the Wisconsin Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting chs. ETF 20 and 60.

Analysis

The subject matter of the proposed rule relates to automatic distributions of Wisconsin Retirement System (WRS) benefits to participants who have attained age 69.5 years, to alternate payees of participants who have attained or would have attained age 69.5 years, and to beneficiaries of deceased annuitants.

Agency Procedure for Promulgation

A public hearing is scheduled for September 5, 1996.

Contact Person

If you have any questions, you may contact Ms. Mary Anglim, Division of Retirement Services, at (608) 266–6611.

Employe Trust Funds

Rule Submittal Date

On August 1, 1996, the Wisconsin Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting chs. ETF 20, 40, 50 and 60.

Analysis

The subject matter of the proposed rule relates to conditions under which the Department of Employe Trust Funds will treat payments received under a court order or compromise settlement as earnings for retirement benefit purposes and will restore a reinstated employee's insurance coverages.

Agency Procedure for Promulgation

A public hearing is scheduled for September 6, 1996.

Contact Person

If you have any questions, you may contact Ms. Mary Anglim, Division of Retirement Services, at (608) 266–6611.

Financial Institutions--Banking

Rule Submittal Date

On July 29, 1996, the Wisconsin Department of Financial Institutions submitted to the Joint Legislative Council Staff a proposed administrative rule change to ch. Bkg 73.

Analysis

The proposed rule change will allow adjustment service companies (ASC) to receive voluntary contributions from creditors, while also charging a fee to debtors to cover the operational and administrative costs of the ASC. Under current law, an ASC may receive a voluntary contribution from the creditor or charge the debtor a minimal fee. Currently, an ASC may not do both.

Agency Procedure for Promulgation

A public hearing on the proposed change to ch. Bkg 73 will be scheduled. The Licensed Financial Services Section within the Division of Banking will be responsible for the promulgation of the rule.

Contact Person

If you have questions regarding this rule, you may contact Mr. Steven Little at (608) 261–9540.

Health and Family Services

Rule Submittal Date

Notice is hereby given that on July 19, 1996, the Department of Health and Family Services submitted ch. HSS 146, relating to vaccine-preventable diseases, to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Section 252.04 (1), Stats., permits the Department to add by rule to a statutory list of diseases which the Department is to aim at eliminating through a statewide immunization program.

This rulemaking order adds varicella, commonly called chickenpox, to the combined list of statute-specified and rule-added vaccine-preventable diseases found in ch. HSS 146. This is being done because the U.S. Food and Drug Administration recently approved and licensed the use of a vaccine to protect against the varicella virus.

The significance of addition of a disease to the list in ch. HSS 146 is that this gives the Department authority to purchase the vaccine with state funds and to distribute the vaccine on request and without charge to local health departments and school districts for local immunization programs. The Department recently began using federal funds to purchase the varicella vaccine. The state funds from an existing appropriation are to supplement the federal funds.

Agency Procedure for Promulgation

Public hearings are scheduled for August 26, 27 and 28, 1996.

Contact Person

If you have any questions, you may contact Mr. Jerry Young, Division of Health, at (608) 266–5819.

Health and Family Services

Rule Submittal Date

Notice is hereby given that on July 19, 1996, the Department of Health and Family Services submitted ch. HSS 172, relating to the operation of public swimming pools, to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

No public swimming pool may be operated in the state unless the operator has a permit issued by the Department or a local health department acting as agent of the Department. A permit is evidence that operation of the pool complies with the Department's rules. There are currently 2064 public swimming pools in the state regulated under the Department's rules to protect public health and safety.

This order makes 4 changes in the rules. These are:

- 1) Modification of the definition of "public swimming pool" so that the definition clearly covers all establishments that have swimming pools for use by guests, patrons, students, etc.;
- 2) Modifications of lifeguard certification requirements because of recent changes made by the American Red Cross and American Heart Association in relevant training courses and certifications;
- 3) Elimination of an exception to lifeguard certification because of a change made in an American Red Cross course; and
- 4) Addition of a requirement that every lifeguard have a rescue tube.

Agency Procedure for Promulgation

A public hearing is scheduled for August 28, 1996.

Contact Person

If you have any questions, you may contact Mr. Elmo Smyth, Division of Health, at (608) 266-8294.

Health and Family Services

Rule Submittal Date

Notice is hereby given that on August 1, 1996, the Department of Health and Family Services submitted ch. HSS 136, relating to embalming standards, to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

These are updating amendments to the Department's standards for embalming dead human bodies. The Department makes the standards, pursuant to s. 157.01, Stats.; the Funeral Directors Examining Board enforces them.

This order amends ch. HSS 136, to:

- 1) Drop references to "embalmer" as a licensed professional, since embalmers are no longer licensed;
- 2) Replace outdated statutory references;
- 3) Improve rule language relating to preparation of a dead body; and
- 4) Require compliance, when preparing bodies for disposition, with the OSHA standard for occupational exposure to bloodborne pathogens.

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats. Public hearing(s) will be scheduled at a later date.

Contact Person

If you have any questions, you may contact Ms. Peggy Peterson, Division of Health, at (608) 267-7812.

Public Instruction, Dept. of

Rule Submittal Date

On July 10, 1996, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 11, relating to the handicapping condition of significant developmental delay.

Agency Procedure for Promulgation

Public hearings will be scheduled. The Division for Learning Support: Equity and Advocacy, is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact Mr. Paul Halverson, Director, Exceptional Education Team, at (608) 266-1781.

Public Instruction, Dept. of

Rule Submittal Date

On July 25, 1996, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 11, relating to the method of resolving disputes concerning children with exceptional educational needs (EEN) between school boards and the parents of those children.

Agency Procedure for Promulgation

Public hearings will be scheduled. The Division for Learning Support: Equity and Advocacy, is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact Mr. Paul Halverson, Director, Exceptional Education Team, at (608) 266-1781.

NOTICE SECTION

Notice of Hearing

Employe Trust Funds

The Wisconsin Department of Employee Trust Funds will hold a public hearing on the revision of s. ETF 10.75, Wis. Adm. Code, relating to signatures on Wisconsin Retirement System (WRS) documents by an agent holding a person's power of attorney in accordance with the provisions of s. 227.16 (1), Stats.

Hearing Information

The public hearing will be held on:

<p>September 5, 1996 Thursday At 12:00 p.m. (noon)</p>	<p>Room 611A, GEF #2 101 South Webster St. MADISON, WI 53702</p>
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Written Comments

The public record on this proposed rulemaking will be held open until **4:30 p.m. on Monday, September 9, 1996** to permit the submission of written comments from people unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to:

Mary Anglim
 Dept. of Employee Trust Funds
 201 E. Washington Ave.
 P.O. Box 7931
 Madison, WI 53707-7931

Analysis Prepared by the Wis. Dept. of Employee Trust Funds

Under s. ETF 10.75, Wis. Adm. Code, WRS participants are largely prevented from granting power of attorney to an agent to handle WRS-related decisions in cases of absence, emergencies, or future incompetence. Agents holding the principal's durable power of attorney as described in s. 243.07, Stats., may sign some WRS documents, but the most important categories, benefit applications and beneficiary designations, are excluded under the existing rule.

In May 1992, the Legislature enacted a so-called "Statutory Power of Attorney" provision, s. 243.10, Stats. This statute allows individuals to appoint an agent to act with complete authority on a wide variety of matters, including insurance and annuity transactions, beneficiary transactions, and retirement plan transactions.

To comply with the 1992 legislation, the Department now accepts the signature of an agent appointed under the Statutory Power of Attorney Act in all circumstances. The proposed rule change brings the current rule into conformance with s. 243.10, Stats. and facilitates submission of benefit applications, beneficiary designations, and other important documents to the Department of Employee Trust Funds. The new rule further states that the Department will accept the signature of an agent who holds a non-statutory power of attorney, provided the agent's powers include the transaction in question and the appointment is in effect. This policy provides greater flexibility to WRS participants who have appointed agents using instruments other than the statutory power of attorney.

General Summary of Rule

The proposed rule provides that:

- In lieu of a principal's signature, signature by an agent holding a statutory or non-statutory power of attorney will be accepted for all purposes, provided the principal has not withheld power to act in the relevant area (e.g., insurance, beneficiary designations, retirement plan transactions).

- Before approving or acting on a document signed by an agent, the Department must receive the original or a copy of the signed, dated, and notarized letter of appointment. The Department may require the agent to certify that the appointment is in effect.

- The Department may refuse to act on a document signed by an agent claiming to hold a principal's power of attorney if it has reason to believe that the letters of appointment are no longer in effect, do not apply to the transaction, or are otherwise defective.

Statutes Interpreted

Sections 243.07 and 243.10

The proposed rule would apply to:

- 1) Signatures on beneficiary designations under s. 40.02 (8) (a) 1., Stats.;
- 2) Annuity applications under s. 40.23 (1) (a), Stats., s. 40.23 (4) (b), Stats., as affected by 1995 Wis. Act 302, and s. 40.63 (8) (h) 2., Stats.;
- 3) Separation benefit applications under s. 40.25 (2) and (2m), Stats.;
- 4) Required spousal signatures under s. 40.23 (7), Stats.;
- 5) Insurance applications under ss. 40.51 (2), 40.61 (2), and 40.70 (1) (b), Stats.; and
- 6) To all other transactions administered by the Department of Employee Trust Funds for which the written instruction or consent of the affected person is required.

The proposed rule affects the application of s. 40.08 (9) and (9m), Stats. In cases where the person granted the relevant authority to an agent under a durable power of attorney before becoming incompetent, the rule would permit the Department to act on the instructions of the agent.

Authority for Rule

Section 40.03 (2) (i), Stats.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule & Contact Person

Copies of this rule are available without cost by making a request to:

Office of the Secretary
 Telephone (608) 266-1071
 Dept. of Employee Trust Funds
 P.O. Box 7931
 Madison, WI 53707

For questions about this rulemaking, please call Ms. Mary Anglim, Division of Retirement Services, (608) 266-6611.

Notice of Hearing

Employe Trust Funds

The Wisconsin Department of Employe Trust Funds will hold a public hearing to ss. ETF 20.07 and 60.53, Wis. Adm. Code, relating to automatic distributions of Wisconsin Retirement System (WRS) benefits to participants and alternate payees who have attained age 69.5 and to beneficiaries of deceased annuitants in accordance with the provisions of s. 227.16 (1), Stats.

Hearing Information

The public hearing will be held on:

September 5, 1996 **Room 611A, GEF #2**
Thursday **101 South Webster St.**
At 2:30 p.m. **MADISON, WI 53702**

Written Comments

The public record on this proposed rulemaking will be held open until **4:30 p.m. on Monday, September 9, 1996** to permit the submission of written comments from people unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to:

Mary Anglim
 Dept. of Employe Trust Funds
 201 East Washington Ave.
 P.O. Box 7931
 Madison, WI 53707-7931

Analysis Prepared by the Wis. Dept. of Employe Trust Funds

The federal Internal Revenue Code requires participants in qualified retirement plans to begin receiving distributions from their accounts by their "required beginning date," i.e., April 1 of the calendar year following the year in which they attain age 70.5 or retire, whichever is later. The period of the distribution cannot be greater than the participant's life expectancy or the combined life expectancies of the participant and a named joint survivor. Life expectancies must be determined using tables provided by the Internal Revenue Service (IRS).

Prior to 1995 Wis. Act 302, state statutes did not permit the Department to enforce this requirement. Under Act 302, the Department is required to begin distribution automatically to participants who have not voluntarily applied for a benefit by December 31 of the year in which they turn age 69.5 and to alternate payees who have not voluntarily applied by December 31 of the year in which the participant attains or would have attained age 69.5. Section 40.23 (4) (c), Stats., permits the Department to distribute the account in the form of a life annuity with 180 payments guaranteed or in some other form as determined by the Department by rule.

An alternative form of payment is necessary for participants who continue covered employment until age 72 or later or who have deferred application for benefits and are now age 72 or older. In these situations, the 180 payments guaranteed option will not meet federal distribution requirements because the guaranteed duration of payments exceeds the participant's life expectancy. For individuals age 72 and older, the proposed rule defines two alternative forms of payment:

- 1) A life annuity with a number of guaranteed payments equal to the annuitant's months of life expectancy as determined by IRS tables; and,
- 2) For persons whose life expectancy is less than 60 months, a lump sum payment.

The latter would apply only to a very few individuals who are over age 90 when the distribution begins and who, without a lump sum

option, would run a significant risk of forfeiting a portion of the value of the account through death.

The default payment options prescribed in this rule and in s. 40.23 (4) (c), Stats., are not binding on the participant. Section 40.24 (4), Stats., permits an annuitant to change the form of payment to any other available form (e.g., a joint survivor annuity) which meets the federal minimum distribution requirement by notifying the Department within 60 days after the date of the first payment.

Federal law also requires that a distribution from a qualified retirement plan to the beneficiary of a deceased annuitant continue to be made at least as rapidly as the manner of distribution selected by the annuitant. Act 302 provides that if a beneficiary fails to apply for the continuation of the monthly annuity in a timely fashion, the Department must initiate an automatic distribution of the benefit in a lump sum. The proposed administrative rule sets the deadline for a beneficiary to apply for continuation of the monthly annuity at between three and four months from the date the Department provides the application.

The Department expects to propose further rules in the future regarding automatic distributions to beneficiaries of deceased non-annuitants and specifying the methods it will use to attempt to locate participants and beneficiaries who are required by federal law to take a distribution.

General Summary of Rule

Section 1 specifies the forms of payment to be used in various situations when a participant or alternate payee fails to apply voluntarily for WRS benefits by the end of the year in which the participant turns age 69.5. It provides the deadlines within which a participant who is otherwise required to take an immediate distribution may apply for a benefit with a deferred effective date.

Section 2 provides that a beneficiary of a deceased annuitant who is eligible to receive the death benefit in the form of a monthly annuity must apply to do so by the end of three full calendar months after the Department provides the application form. Otherwise, the Department will pay the death benefit as a lump sum.

Authority for Rule

Sections 40.03 (2) (i) and (t), and 40.23 (1) (b) and (4) (c) and (d), as affected by 1995 Wis. Act 302.

Statutes Interpreted

Sections 40.02 (48r), 40.23 (1) (b) and (4) (a) to (d), as affected by 1995 Wis. Act 302.

Related Federal Statutes and Regulations

IRC Sec. 401 (a) (9) (A) and (C); Prop. Reg. s. 401 (a) (9)-1, B-1; Table V of Treas. Reg. s. 1.72-9.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule & Contact Person

Copies of this rule are available without cost by making a request to:

Office of the Secretary
 Telephone (608) 266-1071
 Dept. of Employe Trust Funds
 P.O. Box 7931
 Madison, WI 53707

For questions about this rulemaking, please call Ms. Mary Anglim, Division of Retirement Services, (608) 266-6611.

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Family Services

Permit Fee Increases

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. A facility is charged a permit fee. Permit fee revenues support the regulatory programs.

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 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 fee increases were effective on July 1, 1996, by emergency rule order.

The permit fees included in chs. HSS 172, 175, 178, 195, 196, 197 and 198, and increased 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.

Public Swimming Pools

The Department of Health and Family Services and agent local government health departments regulate the operation of public swimming pools under the authority of s. 254.47, 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(1), Stats., directs the Department to define "public swimming pool," in rule, for purposes of the regulatory program. The current rule definition has not been changed 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 rule 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 continue 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 in ch. HSS 172 have been in effect since June 22, 1996, when emergency rules were published.

Contact Person

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

Elmo Smyth
Bureau of Public Health
Room 88
1414 E. Washington Ave.
Madison, Wisconsin 53703
608–266–8294 or,
if you are hearing impaired,
608–266–1511 (TDD)

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

Written comments on the proposed rules received at the above address no later than **September 5, 1996**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

The **permit fee increases** are to cover increased program costs. The total fee increase is \$142,580. The Department regulates 16,275 establishments. A few campgrounds, camps and swimming pools regulated by the Department are operated by the Wisconsin Department of Natural Resources or by local governments. The fee increases are modest.

The amendments to rules for operation of **public swimming pools** clarify and update the definition of "public swimming pool," update requirements for lifeguard certification and add rescue tubes as required equipment for lifeguards. Although Department staff regulate 974 public swimming pools and agent local government health department staff regulate 1092 public swimming pools, these rule changes will not affect the costs of administration of state government or local governments. Nor are costs expected to increase for the more than 400 public swimming pools in the state that are operated by state government or local governments, including school districts. Although the rulemaking order adds a requirement that a pool that provides lifeguards have a rescue tube available for each lifeguard, pools are likely to already have rescue tubes for their lifeguards because in 1995 the American Red Cross and other lifeguard certification programs made the use of rescue tubes part of training for certification.

Initial Regulatory Flexibility Analysis

A. Permit Fee Increases

These rule changes apply to all restaurants, hotels, motels, tourist rooming houses, bed and breakfast establishments, food and beverage vending operations and commissaries, campgrounds, camps and public swimming pools issued permits by the Department. Most of these facilities are small businesses as "small business" is defined in s. 227.114(1)(a), Stats.

The rules provide for an increase of about 10% in permit fees and also an increase in preinspection fees. The fee increases are to cover increased costs of program administration.

There is some variation in the new fees, as there is in the current fees, depending on the size of operations. For campgrounds the new annual fee ranges from \$90 to \$145, depending on number of campsites. For hotels and motels, the new annual fee ranges from \$105 to \$180, depending on number of rooms. For restaurants there is variation depending on type of restaurant and whether there are any physically separate food holding, serving or preparation areas. The

variation is related to the amount of time that it takes to complete an inspection.

B. Public Swimming Pools

Many hotels, motels and apartment complexes that operate swimming pools are small businesses as defined in s. 227.114(1)(a), Stats. These small businesses will be affected by the changes being made through this order in ch. HSS 172, along with schools, government agencies, municipalities and private associations that operate swimming pools.

The purpose of the Department's rules for operation of public swimming pools is to protect the health and safety of the public. The rules provide a basis for enforcement action by the Department and agent county and city health departments.

The rule changes clarify and update the definition of public swimming pools; update lifeguard certification requirements so that they are consistent with changes made in American Red Cross and American Heart Association lifeguard and water safety instructor training courses and certifications; and require every lifeguard to have a rescue tube.

The proposed rule changes do not impose new reporting or bookkeeping procedures on pool operators. No new professional skills are necessary for pool operators to comply with the proposed changes.

Notice of Hearing

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

Notice is hereby given that pursuant to ss. 50.02 (2) (a) and (b) 2. and 50.36 (1) and (2) (b), Stats., as affected by 1995 Wis. Act 27, the Department of Health and Family Services will hold a public hearing to consider the proposed amendment of chs. HSS 124, 132 and 134, Wis. Adm. Code, relating to fees for the review of hospital, nursing home and facility for the developmentally disabled (FDD) construction plans, and emergency rules now in effect on the same subject.

Hearing Information

The public hearing will be held:

August 30, 1996	Room 141
Friday	State Office Building
Beginning at	One W. Wilson Street
9:00 a.m.	MADISON, WI

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

Analysis Prepared by the Dept. of Health & Family Services

Until recent enactment of the State Budget for 1995–97, 1995 Wis. Act 27, construction plans for nursing homes, hospitals and facilities for the developmentally disabled (FDD) 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 to 64, Stats. The Department of Health and Social Services (DHSS), the licensing agency, reviewed the plans for conformance to the Life Safety Code. 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, hospital and developmentally disabled 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 to those facilities. Through this rulemaking order, the Department of Health and Family

Services (the new name for what was the Department of Health and Social Services) is incorporating in its licensing rules for nursing homes, hospitals and facilities for the developmentally disabled references to the parts of the State Building Code that are relevant for its new review of facility construction plans for conformance with the State Building Code, and establishing plan review fees.

Sections 50.02 (2) (b) and 50.36 (2), Stats., as affected by 1995 Wis. Act 27, direct the Department to conduct plan reviews of all capital construction and remodeling projects for nursing homes, hospitals and facilities for the developmentally disabled to ensure that the plans comply with building code requirements under ch. 101, Stats., and with physical plant requirements under ch. 50, Stats. Sections 50.02 (2) (b) and 50.36 (2), Stats., as affected by Act 27, further provide that the Department's fees for conducting the reviews are to be less than the sum of the amounts charged on September 30, 1995, for plan review under ch. 50, Stats., and for examination of hospital, nursing home and facility for the developmentally disabled plans under s. 101.19 (1) (a), 1993 Stats.

The Department, beginning October 1, 1995, under the authority of s. 9126 of 1995 Wis. Act 27, has been collecting fees for the combined plan reviews that are equal to the sum of the fees collectible on September 30, 1995, under ss. 50.02 (2) (b) and 50.36 (2), 1993 Stats., and s. 101.19 (1) (a), 1993 Stats. The Department continued to collect fees calculated on that basis through June 30, 1996, at which time the new fees went into effect by emergency order. The new fees are 95 percent of the sum of the separate fees.

Through this rulemaking order, the Department is also dividing subch. V of ch. HSS 124, rules for hospitals, into 10 sections, for ease of reference and to give greater visibility to major divisions of the subchapter. Until July 1, 1996, the entire subchapter, which relates to physical environment, consisted of one section, s. HSS 124.27.

Contact Person

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

Larry Hartzke, (608) 267–1438 or,
if you are hearing-impaired, (608) 267–9880 (TDD)
Bureau of Quality Assurance
Division of Supportive Living
P.O. Box 309
Madison, WI 53701

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

Written comments on the proposed rules received at the above address no later than **September 6, 1996** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This rulemaking order establishes procedures for calculating fees the Department will charge for review of hospital, nursing home and facility for the developmentally disabled (FDD) construction or remodeling plans for compliance with both the Life Safety Code and the State Building Code.

The Department's fees for construction/remodeling plan review will be 95% of what the fees would have been if calculated separately by the two agencies doing reviews before 1995 Wis. Act 27 consolidated plan review responsibilities in the Department of Health and Social Services.

The rules will not affect expenditures or revenues of state government or local governments. State government operates 3 hospitals and 7 nursing homes and FDD's, and local governments (counties and cities) operate 5 hospitals and 76 nursing homes and FDD's. The rules provide that hospitals, nursing homes and FDD's

that submit construction/remodeling plans for consolidated review by the Department will receive a 5% reduction in fees; however, this reduction is consistent with the intent of Act 27.

Initial Regulatory Flexibility Analysis

These rule changes will affect hospitals, nursing homes and facilities for the developmentally disabled (FDD's) that propose to undertake new construction or remodeling. Their plans for new construction or remodeling are subject to review and approval by the Department. About 185 of the 466 nursing homes and facilities for the developmentally disabled are small businesses as defined in s. 227.114 (1) (a), Stats.

The rule changes will not add to facility reporting or record-keeping requirements nor will they require new professional skills for compliance with the rules. The Department is simply incorporating in its rules parts of the State Building Code that are relevant for its new review of facility construction plans for conformance with the State Building Code, and is revising its plan review fees so that they are 95% of the sum of the fees previously charged by the two state agencies that reviewed the plans before October 1, 1995.

Notice of Hearings

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

Notice is hereby given that, pursuant to s. 252.04(1), (2) and (10), Stats., the Department of Health and Family Services will hold public hearings to consider the amendment of ch. HSS 144, Wis. Adm. Code, relating to immunization of students, and the amendment of ch. HSS 146, Wis. Adm. Code, relating to vaccine-preventable diseases.

Hearing Information

August 26, 1996 Monday 1 p.m. to 3 p.m.	Room 450 North Central Technical College 1000 Campus Drive Wausau, WI
August 27, 1996 Tuesday 1 p.m. to 3 p.m.	Room 291 Washington Square Office Bldg. 1414 E. Washington Avenue Madison, WI
August 28, 1996 Wednesday 1 p.m. to 3 p.m.	Conference room #1 Italian Community Center 631 E. Chicago Street Milwaukee, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Family Services

A. Immunization of Students

These are amendments to the Department's rules for immunization of children before they enter elementary school, middle school or junior high school, senior high school or a day care center, and while in school. The rules implement s.252.04(2) to (7) and (10), Stats.

The rulemaking order adds Haemophilus influenzae b and hepatitis B to the list of diseases against which students are to be immunized. The current list consists of measles, mumps, rubella, polio, diphtheria, tetanus and pertussis. That list is statutory and is reproduced in the current rules. The Department is authorized under s. 252.04(2), Stats., to add diseases to that list by rule.

The requirement for immunization against Haemophilus influenzae b will apply only to children who attend day care centers.

The requirement for immunization against hepatitis B will apply as well to older students and will be phased-in beginning with the 1997-98 school year. For that school year, the requirement will apply to any child entering a day care center, kindergarten or 7th grade.

The Department has decided to add Haemophilus influenzae b and hepatitis B to its list of diseases against which students are to be immunized based on recommendations of the federal Centers for Disease Control (CDC) Advisory Committee on Immunization Practices (ACIP) that infants and preschool children receive the Haemophilus influenzae b (Hib) vaccine and that infants, young children and adolescents receive the hepatitis B (Hep B) vaccine. Prior to the availability of a vaccine, meningitis caused by Haemophilus influenzae b was the most common bacterial meningitis in children ages 2 months through 4 years. This form of meningitis is rare in older children. The acute and chronic consequences of hepatitis B virus (HBV) infection are major health problems. An estimated 200,000 new infections occur annually in the United States and one million persons have chronic HBV infections. Persons with chronic HBV infection are potentially infectious to others and are at risk of developing chronic liver disease and liver cancer. Hepatitis B vaccine is being required for infants and young children because they are at highest risk of developing chronic HBV disease, and is being required for adolescents because the majority of HBV infections occur in young adults.

This rulemaking order also tightens up the definition of "substantial outbreak" in the current rules to bring it into line with current incidence and to make its meaning clearer; adds provisions that expressly permit release of immunization information both between vaccine providers and schools, including day care centers, and among vaccine providers, without written or verbal permission from the student's parents or the student; and otherwise updates ch. HSS 144. Disclosure of immunization information does not violate rules of confidentiality, according to an Attorney General's opinion. Permitting this between vaccine providers and schools and among vaccine providers will facilitate parent and student compliance with ch. HSS 144 in instances where the student's own immunization records have been misplaced, lost or destroyed and will decrease the possibility that providers will over-immunize or under-immunize students.

B. Vaccine-Preventable Diseases

The U.S. Food and Drug Administration recently approved and licensed the use of a vaccine to protect against varicella, commonly called chickenpox, which is mainly a disease of children.

The Department through this rulemaking order is adding varicella to the list of vaccine-preventable diseases in ch. HSS 146. This action will permit the Department to purchase varicella virus vaccine with state funding for distribution without charge to school districts and local health departments that request the vaccines for local immunization programs.

Contact Person

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

Jerry Young
Bureau of Public Health
Room 167
1414 E. Washington Ave.
Madison, Wisconsin 53703
608-266-5819 or,
if you are hearing impaired,
608-266-1511 (TDD)

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

Written comments on the proposed rules received at the above address no later than **September 5, 1996**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

A. Immunization of Students

The changes in rules for immunization of students will not affect the expenditures or revenues of state government. The vaccines for immunization against *Haemophilus influenzae b* and hepatitis B that the Department provides under ch. HSS 146, upon request and without charge, to local health departments and school districts are purchased by the Department with a line of credit provided by the federal government's Centers for Disease Control (CDC) or with GPR funds under s. 20.435(1)(cm), Stats., which is a standing appropriation of \$2,666,000.

The rule changes will not affect the expenditures or revenues of local county and city health departments. Local health departments are responsible under s. HSS 144.08 for making available the required immunizations but only insofar as free vaccines are available from the Department. Local health departments are to administer the vaccines without charging for the vaccines but they may charge, and some do charge, for the costs of administration.

The rule changes may increase costs for schools and for district attorney or corporation counsel offices. Schools, including day care centers, will experience some increase in workload in tracking compliance with the new requirements, in referring students to the district attorney or corporation counsel for enforcement action and in choosing to operate school-based immunization clinics, and district attorneys/corporation counsels will have more cases to handle. It is not known how much workload will increase or its impact, if any, on costs.

B. Vaccine–Preventable Diseases

Varicella (chickenpox) is being added to the Department's list of vaccine–preventable diseases in ch. HSS 146. The significance of the list is that the Department is permitted to purchase vaccines with state funds to immunize against diseases on that list and to distribute the vaccines without charge to local health departments and school districts for immunization programs. The state funds that may be used to purchase the varicella vaccine are from an existing appropriation and will supplement federal funds that are now used to purchase the vaccine. No additional state funds will be necessary to pay for the varicella vaccine.

The addition of varicella to the Department's list of vaccine–preventable diseases will not affect the expenditures or revenues of local governments. Local governments may request the vaccine and will receive it at no cost, and may charge for the cost of administration.

Initial Regulatory Flexibility Analysis

These rule changes will affect students, parents, schools, local public health agencies, county attorney offices and the Department. They will not affect small businesses as "small business" is defined in s. 227.114(1)(a), Stats.

Notice of Hearing *Department of Justice*

Notice is hereby given that under ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats., the Wisconsin Department of Justice will hold a public hearing to consider the creation of rules relating to the DNA data bank.

Hearing Information

September 18, 1996
Wednesday
at 1:30 p.m.

Mezzanine Conference Room
Department of Justice
123 West Washington Avenue
Madison, Wisconsin

Notice is given that under the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified persons with disabilities on request. Please call Ms. Sharon

Miemietz at (608) 266–7380 with specific information on your request at least 10 days before the date of the scheduled hearing.

Contact Person

For further information about or for a copy of the proposed rule, contact Sharon Miemietz, the Division of Law Enforcement Services, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707–7857. The telephone number is (608) 266–7380.

Persons wishing to comment in writing about the proposed rule, either instead of or in addition to any oral testimony given at a public hearing, may do so by sending written comments to Assistant Attorney General Eileen W. Pray at the above address. To be considered in this rulemaking, written comments must be received by **Friday, September 27, 1996**.

Analysis Prepared by the Wisconsin Department of Justice

Statutory authority: ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats., created by 1993 Wis. Act 16 and 1995 Wis. Act 71.

Statutes interpreted: ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats., created by 1993 Wis. Act 16 and 1995 Wis. Act 71.

Summary of the rule: The legislature by enacting ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats., established the DNA data bank, the procedures for carrying out the submission of human biological specimens for the DNA data bank, and the analysis of the DNA for the DNA data bank. Under ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats., the Department of Justice must promulgate rules to administer and carry out its duties for the DNA data bank. This rule meets those statutory requirements.

This rule, like the statute, applies to persons convicted, adjudicated delinquent, or found not guilty because of mental disease or defect of certain sex offenses. Those offenses include sexual assault, first or second degree sexual assault of a child, repeated acts of sexual assault of the same child, and other offenses when a court orders submission of a biological specimen. This rule also applies to persons found to be sexually violent under ch. 980, Stats. This rule requires that such offenders provide a biological specimen to the state crime laboratories for DNA analysis. The rules specify the place for submission of the human biological specimen and the procedures for collection of the specimen.

The state crime laboratories are required to analyze the DNA in any specimen submitted under these rules. A data bank is established based on the data obtained from the DNA analysis of those specimens. The data in the DNA data bank may be used by law enforcement agencies, prosecutors and defense attorneys for investigations concerning crimes or delinquency proceedings. For example, if DNA evidence is found at a crime scene, the DNA can be compared against the convicted sex offenders in the data bank to develop a suspect. Except for release of the DNA analyses to law enforcement agencies, prosecutors, defense attorneys or the subject of the data, the DNA analyses in the data bank must remain confidential.

Failure to provide a biological specimen may result in criminal penalties under s. 165.765, Stats. It may also constitute a disciplinary offense or probation or parole violation.

A court is required to impose a DNA analysis surcharge of \$250 on persons convicted of sexual assault, burglary, sexual assault of a child, and certain other offenses when the court ordered the person to provide a biological specimen.

Fiscal Estimate

This rule is to be adopted under ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats. It prescribes the procedures required under ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats. As such, the rule has no independent fiscal effect beyond that of the statute under which it is adopted.

Assumptions Used in Arriving at Fiscal Estimate

Under 1993 Wis. Act 16, the Legislature established the DNA data bank, the procedures for carrying out the submission of human biological specimens for the DNA data bank, and the analysis of the

deoxyribonucleic acid for the DNA data bank. Statute sections 165.76 (4), 165.77 (8), 48.34 (15)(b) and 973.047 (2) provided that the Department of Justice promulgate administrative rules to develop and maintain the DNA data bank.

The rules apply to persons convicted, adjudicated delinquent or found not guilty because of mental disease or defect of certain sex offenses. These offenses include sexual assault, first or second degree sexual assault of a child, repeated acts of sexual assault of the same child and other offenses when a court orders submission of a biological specimen. Such offenders are required to provide a biological specimen to the state crime laboratories for DNA analysis.

The state crime labs are required to analyze the DNA in specimens submitted under these rules. A data bank, for use by law enforcement agencies, prosecutors and defense attorneys, is established based on the data obtained from the analysis of these specimens. Data bank samples will be collected from the more than 2,000 persons who are convicted of sexual assault each year. In addition, judges may require a sample from persons convicted of certain other crimes. If DNA evidence is found at a crime scene, that DNA can then be compared to those offenders' DNA samples in the data bank to develop a suspect.

The Legislature authorized resources in the 1993–95 biennial budget for serology casework and the DNA program. Three staff positions related directly to the DNA data bank were included in that legislation. No additional positions will be required under these administrative rules.

The Department provides DNA sample collection kits to local agencies free of charge. This kit includes a postage–paid envelope in which the sample may be mailed to the crime lab. As a result, it is projected that there will be minimal costs to local agencies.

Initial Regulatory Flexibility Analysis

This rule will not affect small businesses as defined in s. 227.114, Stats., except in an entirely minimal and indirect manner.

Notice of Proposed Rule

Law Enforcement Standards Board

Notice is hereby given that pursuant to ss. 165.85 (3)(a) and 165.85 (4)(b)1., Stats., and interpreting ss. 165.85 (2)(d), (3)(a) to (d), (3)(e), (4)(a), (b)1., 2., 3., (bn)1. (intro.), (c), (e) and (5)(a), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Law Enforcement Standards Board will adopt the following rule as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, on **August 15, 1996**, the Law Enforcement Standards Board is petitioned for a public hearing by 26 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.

Analysis Prepared by the Training and Standards Bureau, Wisconsin Department of Justice

Statutory Authority: s. 16.85 (3)(a) and (4)(b)1.

Statute Interpreted: s. 165.85 (2)(d), (3)(e), (4)(b)1., 2., 3., (c), (5)(a) and (b)

Introduction

The Law Enforcement Standards Board proposes an order to consecutively renumber LES 1.03(1) through (25) to read LES 1.03(2) through (26); to amend LES 1.02 **Objectives**; to amend LES 1.03(3), (19), (22) and (23); to amend LES 2.01(1) and (e) and (g); to amend LES 3.01(1) and (a) and (c); to amend LES 3.01(2) and (a); to amend LES 3.05(2) through (9); to amend LES 4.01(1) and (3); to amend LES 4.02(1)(a); to amend LES 6.01 **Decertifications**; to amend LES 6.02(1), (2) and (3); to amend LES 6.03 **Decertifications by order of the board**; to repeal and recreate LES 2.01(1)(f); to repeal and recreate LES 3.01(1)(b); to repeal and recreate LES

3.01(2)(b); to repeal and recreate LES 3.03; to repeal and recreate LES 3.04; to repeal and recreate LES 5.01; to create LES 1.03(1); to create LES 1.03(17m) and to create LES 1.03(18m).

Analysis

1) For consecutively renumbering LES 1.03(1) through (25) to read LES(2) through (26):

The following proposed rules are structural changes to accommodate the creation of an additional subsection.

2) For amending LES 1.02 **Objectives**; LES 1.03(3), (22) and (23); LES 2.01(1) and (e) and (g); LES 3.01(1) and (a) and (c); LES 3.01(2) and (a); LES 3.05(2) through (9); LES 4.01(3); LES 6.01 **Decertifications** LES 6.02(1), (2) and (3); LES 6.03 **Decertifications by order of the board**; and for creating LES 1.03 (17m) and (18m):

The following proposed rules expand, define and apply the authority of the law enforcement standards board to establish minimum employment, training, certification and decertification requirements for tribal law enforcement officers and/or for secure detention officers. Tribal law enforcement officers fall under the authority of the board only when tribal governments and their law enforcement officers comply with requirements established by 1993 Wis. Act 407.

3) For amending LES 1.03(19):

The following proposed rule expands by definition the authority of the law enforcement standards board to establish minimum employment, training, certification and decertification requirements for law enforcement officers employed by public inland lake protection and rehabilitation districts.

4) For amending LES 2.01(1)(e) and LES 4.02(1)(a):

The following proposed rules rename the vocational, technical and adult education system and its administrative rules to conform with their statutory identifications.

5) For amending LES 3.01(1)(a) and (c):

The following proposed rules increase the number of hours of basic law enforcement training and, for part–time law enforcement officers, decrease the time within which basic training must be completed. The law enforcement standards board proposes these amendments to comply with statutory requirements.

6) For amending LES 3.01(2)(a):

The following proposed rule increases the number of hours of basic training for jail and for secure detention officers to comply with statutory requirements.

7) For amending LES 4.01(1):

The following proposed rule moves the period of certification for schools approved by the law enforcement standards board to two years from one year.

8) For repealing and recreating LES 2.01(1)(f):

The following proposed rules create flexible, effective requirements for background investigations of applicants for law enforcement, tribal law enforcement, jail and secure detention employment.

9) For repealing and recreating LES 3.01(1)(b) and (2)(b):

The following proposed rules improve the uniformity of testing in law enforcement, jail and secure detention basic training. They reflect the recent approval by the law enforcement standards board of comprehensive training and testing guides which include expanded emphases on competency–based instruction.

10) For repealing and recreating LES 3.03, and LES 3.04:

The following proposed rules identify main goals of basic training for law enforcement, jail and secure detention officers. They also create flexibility for the law enforcement standards board to respond to contemporary training needs by establishing student performance objectives to reach the main goals of training.

11) For repealing and recreating LES 5.01:

The following proposed rule establishes training expense reimbursements for law enforcement, jail and secure detention

officers for basic and for annual recertification training to conform with statutory requirements.

12) For creating LES 1.03(1):

The following proposed rule defines accredited college credits in support of the requirement of the law enforcement standards board that new law enforcement officers achieve at least 60 college credits within five years of their employment.

Text of Rule

SECTION 1. LES 1.03 (1) through (25) are consecutively renumbered to read (2) through (26).

SECTION 2. LES 1.02 is amended to read:

LES 1.02 **Objectives.** The objectives of the law enforcement standards board are to assist law enforcement by establishing minimum standards of recruitment and recruit training, and by encouraging and supporting other programs designed to improve law enforcement, tribal law enforcement, and jail and secure detention administration and performance.

SECTION 3. LES 1.03 (3), (19), (22) and (23) are amended to read:

LES 1.03 (3) “Applicant” means a person, including a currently employed law enforcement, tribal law enforcement, ~~or jail or secure detention~~ officer seeking employment as a law enforcement, tribal law enforcement, ~~or jail or secure detention~~ officer in the state of Wisconsin.

(19) “Political subdivision” is a county, city, village, ~~or town~~, or public inland lake protection and rehabilitation district.

(22) “Prospective employing agency” means the state or any political subdivision of the state considering employing an applicant as a law enforcement officer, jail or secure detention officer ~~or any political subdivision of the state considering employing an applicant as a jail officer or any tribal government considering employing an applicant as a tribal law enforcement officer~~.

(23) “Recruit” is a law enforcement, tribal law enforcement, jail or secure detention officer ~~or jail officer~~ employed on a probationary or temporary basis, in compliance with the minimum recruitment qualifications set by the board, who is thereby eligible to take the preparatory training required for certification of eligibility for permanent appointment.

SECTION 4. LES 2.01 (1), (e) and (g) are amended to read:

LES 2.01 (1) Before an individual may commence employment, on a probationary, temporary, part–time, or full–time basis as a law enforcement, tribal law enforcement, ~~or jail or secure detention~~ officer, that individual must have met recruit qualifications established by the board. The minimum qualifications for recruitment shall be:

(e) An applicant for employment as a law enforcement or tribal law enforcement officer shall possess either a 2 year associate degree from a Wisconsin vocational, technical, and adult education ~~technical college system~~ district or its accredited equivalent from another state or a minimum of 60 fully accredited college level credits. An applicant who has not met this standard at the time of employment shall meet this standard as a requirement of recertification by the board at the end of his or her fifth year of employment as a law enforcement or tribal law enforcement officer. At the request of an applicant and upon documentation of experiences that have enhanced his or her writing, problem solving and other communication skills, the board may waive a maximum of 30 college level credits. This educational standard shall apply to applicants first employed as law enforcement or tribal law enforcement officers on or after February 1, 1993.

(g) The applicant shall be free from any physical, emotional, or mental condition which might adversely affect performance of duties as a law enforcement, tribal law enforcement, ~~or jail or secure detention~~ officer.

SECTION 5. LES 3.01 (1), (a) and (c) are amended to read:

LES 3.01 **Minimum standards for recruit training.** (1) Minimum standards for ~~recruit preparatory~~ training for law enforcement and tribal law enforcement officers shall require that:

(a) The minimum amount of preparatory training which must be successfully completed by a law enforcement or tribal law enforcement recruit before that recruit may be certified as eligible for permanent appointment shall be a total of 240–400 hours. The subjects and the minimum time during which they are to be covered in this preparatory training shall be determined by the board after due consideration of recommendations made by the advisory curriculum committee identified in s. LES 3.02. The curriculum so decided upon may be changed by the board as the need becomes apparent due to technological changes affecting law enforcement, current problems involving the public welfare or additional recommendations made by the advisory curriculum committee. The 240–400 hour preparatory training curriculum approved by the board is identified in s. LES 3.03, (1) to (11). ~~A 320 hour competency-based curriculum which has been developed to eventually replace the conventional 240 hour course and in which new officers are encouraged to be enrolled is identified in s. LES 3.04 (1) to (11).~~

(c) Each trainee must successfully complete this training within the original probationary period. Under justifiable circumstances, this period may be extended for a period not to exceed one year, but the total period during which a person may serve as a full–time law enforcement or tribal law enforcement officer on a probationary or temporary basis without successfully completing this training shall not exceed 2 years. Part–time officers must successfully complete at least one 40 hour block of instruction from the 240 hour preparatory course ~~during each subsequent 12 month period following their initial employment and successfully complete the entire course in not more than 6–3 years.~~ The total period during which a person may serve as a part–time law enforcement or tribal law enforcement officer on a probationary or temporary basis without successfully completing this training shall not exceed 6–3 years. For purposes of this section, a part–time law enforcement or tribal law enforcement officer is a law enforcement or tribal law enforcement officer who routinely works not more than one–half of the normal annual work hours of a full–time employee of the employing agency or unit of government.

SECTION 6. LES 3.01 (2) (intro.) and (a) are amended to read:

LES 3.01 (2) Minimum standards for jail and secure detention officer ~~recruit preparatory~~ training shall be as follows:

(a) A minimum of ~~80–120~~ hours of preparatory training shall be successfully completed by a jail or secure detention officer recruit before that recruit may be certified as eligible for permanent appointment. The subjects and minimum number of hours for each subject to be covered in this preparatory training shall be determined by the board. The curriculum as established may be changed by the board as the need becomes apparent due to technological changes affecting jail or secure detention administration, current problems involving the public welfare or additional recommendations made by the advisory curriculum committee identified in s. LES 3.02. The 120 hour preparatory training curriculums approved by the board are identified in LES 3.04.

SECTION 7. LES 3.05 (2) through (9) are amended to read:

LES 3.05 (2) Newly employed law enforcement or tribal law enforcement officers who were either grandfathered into the board’s program or who have already been certified by the board or newly employed jail or secure detention officers who have already been certified by the board, who have been out of law enforcement, tribal law enforcement, ~~or jail or secure detention~~ employment in Wisconsin for a period of 2 years or less and left voluntarily with a good record may be recertified without additional training.

(3) Newly employed law enforcement or tribal law enforcement officers who were either grandfathered into the board’s program or who have already been certified by the board or newly employed jail or secure detention officers who have already been certified by the board and who have been out of law enforcement, tribal law enforcement, ~~or jail or secure detention~~ employment in Wisconsin for a period of over 2 years but not more than 3 years and who left voluntarily with a good record may be recertified upon successful completion of the contingency law enforcement, ~~or jail or secure detention~~ officers training course. An equivalency examination with

a grade of 70% or above may be substituted for any portion of said course the board deems appropriate.

(4) Newly employed law enforcement or tribal law enforcement officers who were either grandfathered into the board's program or who have already been certified by the board and newly employed jail or secure detention officers who have already been certified by the board and who have been out of law enforcement, tribal law enforcement, or jail or secure detention employment in Wisconsin for a period of over 3 years may be recertified upon successful completion of the basic preparatory course for law enforcement officers or successful completion of the basic preparatory course for jail or secure detention officers. This rule may be varied by board action on an individual basis with appropriate recommendation from the bureau.

(5) A law enforcement, tribal law enforcement, or jail or secure detention officer who has been certified or grandfathered into the system or another state, who left law enforcement, tribal law enforcement, or jail or secure detention officer employment voluntarily with a good record and who has been out of that employment for three years or less shall be required to successfully complete the contingency law enforcement, or jail or secure detention officer's training course. An equivalency examination with a grade of 70% or above may be substituted for any portion of said course the board deems appropriate.

(6) A law enforcement, tribal law enforcement, or jail or secure detention officer previously certified or grandfathered by another state, who left law enforcement, tribal law enforcement, or jail or secure detention employment voluntarily with a good record, and who has been out of that employment over 3 years shall be required to successfully complete the appropriate basic preparatory course for his or her specialty. The board may establish such other requirements it deems appropriate on an individual basis.

(7) The board shall consider on an individual, case-by-case basis, the waiver request of any person who has previously worked as a law enforcement, tribal law enforcement, or jail or secure detention officer but has not been certified or grandfathered in Wisconsin or any other state.

(8) There shall be no recognition of the status of grandfathered jail or secure detention officers, and any newly employed jail or secure detention officer who had previously been considered grandfathered into the board system may only be recertified upon completion of the preparatory course for jail or secure detention officers.

(9) The exact curriculum for the law enforcement, or jail or secure detention officer's contingency program shall be designated by the board.

SECTION 8. LES 4.01 (1) and (3) are amended to read:

LES 4.01 (1) Schools shall be certified on the basis of adequacy of facilities and competency of staff and faculty. Where the school is a permanent or on-going unit, the certification shall be for a period of ~~one two year years~~, subject to renewal.

(3) TRAINEES. Trainees shall be certified as eligible for permanent appointment when they have met the recruitment qualifications and recruit training standards for law enforcement, tribal law enforcement, or jail or secure detention officers as determined by information received from the employing authorities and training schools concerned.

SECTION 9. LES 4.02 (1)(a) is amended to read:

LES 4.02 (1)(a) Any person who has been certified as an instructor by the Wisconsin ~~state board of vocational, technical and adult education technical college system~~ under ch. ~~VTAE-TCS 3~~, administrative rules of the Wisconsin ~~state board of vocational, technical and adult education technical college system~~ shall be certified by the board. Complete copies of records which have been submitted to the state ~~board of vocational, technical and adult education technical college system~~ in compliance with requirements of ch. ~~VTAE-TCS 3~~, in addition to copies of any certificates issued by the state ~~board of vocational, technical and adult education technical college system~~ shall be forwarded by the applicant to the board; and upon receipt of the documents the board shall certify the applicant.

SECTION 10. LES 6.01 is amended to read:

LES 6.01 **Decertifications.** All jail, secure detention, and law enforcement and tribal law enforcement basic training certificates issued by the board shall be subject to cancellation and recall upon decertification of the officer.

SECTION 11. LES 6.02 (1), (2) and (3) are amended to read:

LES 6.02 **Decertification on termination of employment.** (1) Upon the termination of employment of any law enforcement, tribal law enforcement, or jail or secure detention officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards from required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification. Recertification on a contingency basis shall be effective immediately upon receipt ~~by~~ of the bureau of the verification of employment standards form from the officer's new employer. Final recertification shall be effective upon action by the board upon completion by the officer of all requirements of the bureau for recertification.

(2) It shall be the responsibility of all law enforcement, tribal law enforcement and secure detention agencies to notify the director of the bureau of the termination of any law enforcement, tribal law enforcement, or jail or secure detention officer. This notification shall be made regardless of the reason for the termination.

(3) Any officer decertification by reason of termination of his or her law enforcement, tribal law enforcement, or jail or secure detention employment shall have the right to a hearing thereon, as provided in these rules.

SECTION 12. LES 6.03 is amended to read:

LES 6.03 **Decertification by order of the board.** The certification of any law enforcement, tribal law enforcement, jail or secure detention officer may be revoked by the board for failure to comply with a rule or order of the board relating to curriculum or training.

SECTION 13. LES 2.01 (1)(f) is repealed and recreated to read:

LES 2.01 (1)(f) The applicant shall be of good character. "Good character" shall be determined from a written report containing the results of the following:

1. The fingerprinting of all applicants with a search of local, state and national fingerprint records.

2. A background investigation conducted by or in behalf of an employer. The employer shall certify in a document subscribed and sworn to by the affiant that a reasonably appropriate background investigation has been conducted, what person(s) or agency conducted the investigation and where written results of the investigation are maintained on file.

3. Such other investigation as may be deemed necessary to provide a basis of judgement on the applicant's loyalty to the United States or detect conditions which adversely affect performance of one's duty as a law enforcement, tribal law enforcement, jail or secure detention officer.

SECTION 14. LES 3.01 (1)(b) is repealed and recreated to read:

LES 3.01 (1)(b) Trainees must obtain passing grades of at least 70% or its lettered equivalent in written examinations in all subjects with exception of competency-based subjects for which there are board approved examination checklists. For such competency-based subjects, trainees must demonstrate their achievements of training objectives as identified on checklists to the satisfaction of board certified instructors.

SECTION 15. LES 3.01 (2)(b) is repealed and recreated to read:

LES 3.01 (2)(b) Trainees must obtain passing grades of at least 70% or its lettered equivalent in written examinations in all subjects with exception of competency-based subjects for which there are board approved examination checklists. For such competency-based subjects, trainees must demonstrate their achievements of training objectives as identified on checklists to the satisfaction of board certified instructors.

SECTION 16. LES 3.03 is repealed and recreated to read:

LES 3.03 **Curriculum.** (1) The curriculum of preparatory law enforcement and tribal law enforcement training shall consist of student performance objectives approved by the board to reach the following instructional goals:

- (a) Demonstrate professional orientation.
- (b) Demonstrate defensive tactics.
- (c) Demonstrate care and use of firearms.
- (d) Demonstrate community awareness.
- (e) Perform emergency medical services.
- (f) Demonstrate knowledge of legal procedures.
- (g) Operate patrol vehicles.
- (h) Enforce traffic laws and conduct accident investigations.
- (i) Perform patrol operations.
- (j) Conduct investigations.
- (k) Reach performance objectives for elective subjects.
- (l) Follow administrative procedures.

SECTION 17. LES 3.04 is repealed and recreated to read:

LES 3.04 **Curriculum.** (1) The curriculum of preparatory jail and secure detention training shall consist of student performance objectives approved by the board to reach the following instructional goals:

(a) Student performance objectives for preparatory jail officer training shall reach the following instructional goals:

- 1. Receive introduction to corrections.
- 2. Maintain security.
- 3. Admit inmates to custody.
- 4. Prepare reports.
- 5. Supervise inmates.
- 6. Supervise special inmates.
- 7. Supervise juvenile inmates.
- 8. Apply correctional law.
- 9. Discipline inmates.
- 10. Assist health care program.
- 11. Assist fire safety program.
- 12. Assist cleanliness, sanitation and food services.
- 13. Manage personal stress.
- 14. Release inmates from custody.

(b) Student performance objectives for preparatory secure detention officer training shall reach the following instructional goals:

- 1. Receive introduction to detention operations.
- 2. Maintain security.
- 3. Admit and release juveniles.
- 4. Prepare reports.
- 5. Supervise juveniles.
- 6. Discipline and control juveniles.
- 7. Apply legal requirements.
- 8. Assist fire safety program.
- 9. Assist health care program.
- 10. Manage personal stress.

(2) Instructional goals for LES 3.04 (1)(a) 2,4,10,11 and 13 are identical with goals for LES 3.04 (1)(b) 2,4,8,9 and 10 and count toward preparatory training requirements for either jail or secure detention recruits.

SECTION 18. LES 5.01 is repealed and recreated to read:

LES 5.01 **Grants** (1) Political subdivisions shall be eligible for reimbursement of the allowable tuition, living and travel expenses incurred by officers who satisfactorily complete preparatory training in schools certified by the board. Reimbursement of those expenses shall be on a uniform basis as follows:

(a) Expenses listed in sub. (1) for up to 400 hours of preparatory law enforcement training.

(b) Expenses listed in sub. (1) for up to 96 hours of preparatory jail or secure detention training. Full salary expenses including allowable fringe benefit expenses shall be reimbursed in addition to expenses

listed in sub. (1) for an additional 24 hours of preparatory jail or secure detention training.

(2) Political subdivisions shall receive reimbursement in the amounts listed in sub. (1) upon meeting the following conditions:

(a) Successful completion of the entire 400 hour preparatory law enforcement course by full–time law enforcement or tribal law enforcement officers or of blocks of instruction from the preparatory law enforcement course by part–time law enforcement or tribal law enforcement officers at board certified schools by officers for whom reimbursements are claimed.

(b) Successful completion of the entire 120 hour preparatory jail or secure detention course by full–time jail or secure detention officers or of blocks of instruction from the preparatory jail or secure detention course by part–time jail or secure detention officers at board certified schools by officers for whom reimbursements are claimed.

(3) Political subdivisions shall be eligible for reimbursement of at least \$160 for each law enforcement, jail or secure detention officer who completes at least 24 hours of annual recertification training.

(a) Reimbursement shall be based on training received from board certified instructors.

(b) Law enforcement, tribal law enforcement, jail or secure detention recruit officers enrolled in the preparatory course may not be utilized by their employing agencies, except for emergency situations, on any day during which the recruit completes 8 hours of training.

SECTION 19. LES 1.03 (1) is created to read:

LES 1.03 (1) “Accredited” credits for the board’s determination of the value of education to meet its employment standards shall mean those credits which have been awarded by a member of the Wisconsin technical college system or by its equivalent in another state or by a private or state college or university with current membership in good standing in a predominant, nationally recognized accrediting organization for private or state colleges or universities.

SECTION 20. LES 1.03 (17m) is created to read:

LES 1.03 (17m) “Secure detention officer” means any person employed by any political subdivision of the state to supervise, control or maintain a secure detention facility or the persons confined in a secure detention facility. “Secure detention officer” includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full–time or part–time basis.

SECTION 21. LES 1.03 (18m) is created to read:

LES 1.03 (18m) “Tribal law enforcement officer” means a person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe’s laws or ordinances and who is authorized by the tribe to make arrests of Indian persons for violations of the tribe’s laws or ordinances and who agrees to accept the duties of law enforcement officers under the laws of this state.

Initial Regulatory Flexibility Analysis

Proposed rules of the Law Enforcement Standards Board do not affect small businesses.

Fiscal Estimate

This fiscal estimate is drafted to reflect costs associated with the renumbering, amending, repealing and recreating, and creating of administrative rules of the Law Enforcement Standards Board (LESB). These proposed rules expand, define and apply the authority of the law enforcement standards board to establish minimum employment, training, certification and decertification requirements for tribal law enforcement officers and secure detention officers. Other changes are technical in nature to maintain conformity with state statutes.

The majority of the rule changes will have no fiscal impact. However, certain changes will affect law enforcement agencies, tribal governments and a variety of political subdivisions in different ways. The identifiable sections and costs are outlined below.

Amending LES 1.02, there is no fiscal impact on political subdivisions of the state or state agencies. There will be an impact on Native American tribal governments amounting to an estimated

\$4,000 per law enforcement officer who is employed and trained to meet basic requirements of the Law Enforcement Standards Board. There will be an additional annual expense of \$160 per officer to meet recertification training requirements of the LESB.

Amending LES 1.03 (19), there will be a negligible fiscal impact on inland lake protection and rehabilitation districts that choose to employ law enforcement officers who are already qualified to be certified by the LESB upon employment. Districts which employ officers who are required by the LESB to receive basic training will absorb an expense of approximately \$4,000 per officer. There is no impact on state agencies or other local government units.

Amending LES 3.01 (1)(a) and (2) (a), the fiscal impact will be similar to the costs for repealing and recreating LES 5.01. (See below). NOTE: There is no increase in local expenses related to amending LES 3.01 (2)(a). The state absorbs the full annual cost to expand basic jail and secure detention training by employing approximately \$50,000 GPR.

Repealing and recreating LES 5.01, there is negligible fiscal impact if local or state governments choose to employ law enforcement candidates who are qualified to be certified by the LESB upon employment. To implement statutory training expense reimbursement requirements for law enforcement, jail and secure detention officers, the Department of Justice nearly exactly compensated — on a statewide basis — a reduction in expense reimbursements for basic training with an increase in expense reimbursements for advanced training.

Local and state agencies who employ new law enforcement, jail and secure detention officers who require basic training to be certified by the LESB, will absorb an additional expense of about \$6,500 per law enforcement officer and about \$1,300 per jail or secure detention officer.

Contact Person

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Training and Standards Bureau
Wisconsin Department of Justice
2 East Mifflin Street
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Madison, WI 53707-7070
Phone: 608/266-7864

Notice of Hearing

Psychology Examining Board

Notice is hereby given that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2), 455.045 (3) and 455.08, Stats., and interpreting ss. 455.045 and 455.08, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Psy 2.01 (3) and 3.01 (3); to repeal and recreate s. Psy 2.05; and to create s. Psy 2.015, relating to transcripts of undergraduate training, passing scores on examinations, and abandonment of applications.

Hearing Information

September 10, 1996
Tuesday
9:15 a.m.

1400 E. Washington Ave.
Room 179A
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box

8935, Madison, Wisconsin 53708. Written comments must be received by **September 24, 1996** to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 455.045 (3) and 455.08

Statutes interpreted: ss. 455.045 and 455.08

SECTIONS 1 and 4. Applicants need to have an undergraduate degree in order to receive a graduate degree. Therefore, there is no need for the applicant to bear the expense or effort of submitting an undergraduate degree. The board proposes to repeal the requirement of submitting the undergraduate degree.

SECTION 2. The Psychology Examining Board does not have a policy for considering an inactive file abandoned and appropriate for disposal. Section Psy 2.015 is created to define applications as abandoned if the applicant does not respond to an application request for additional information within one year.

SECTION 3. The current rules relating to passing scores reference a specific numeric score. Rather than indicating a specific score, which could change, s. Psy 2.05 is repealed and recreated to indicate that to pass the examination, each applicant shall receive a score determined by the board to represent minimum competence to practice, and that the board shall make the determination of the passing score after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession. The board accepts the recommendations of the Association of State and Provincial State Board for the passing score of the professional practice of psychology examination.

Text of Rule

SECTION 1. Psy 2.01 (3) is amended to read:

Psy 2.01 (3) Official transcripts of graduate and undergraduate training, properly attested to by the degree granting institution and submitted by the institution directly to the board.

SECTION 2. Psy 2.015 is created to read:

Psy 2.015 APPLICATION ABANDONMENT. An applicant who files an application but who does not comply with a request for information related to the application within one year of the date of the application shall file a new application. An applicant who files an application but who does not fully complete the application within 3 years of the date of the application shall file a new application.

SECTION 3. Psy 2.05 is repealed and recreated to read:

Psy 2.05 (title) PASSING SCORES. (1) The passing scores set by the board represent the minimum competency required to protect public health and safety.

(2) The professional practice of psychology examination and the examination on the elements of practice essential to the public health, safety or welfare are scored separately. An applicant shall achieve a passing score on each of the required examinations to qualify for licensure.

(3) The board accepts the recommendations of the association of state and provincial examining boards for the passing score on the professional practice of psychology examination.

(4) To pass the examination on the elements of practice essential to the public health, safety or welfare, the applicant shall receive a score determined by the board to represent minimum competence to practice. The board shall make the determination of the passing score after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

SECTION 4. Psy 3.01 (3) is amended to read:

Psy 3.01 (3) Official transcripts of graduate and undergraduate training, properly attested to by the degree granting institution and submitted by the institution directly to the board.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting s. 115.76(3), Stats., the department of public instruction will hold public hearings as follows to consider emergency and proposed permanent rules, relating to the handicapping condition of significant developmental delay. Emergency rules were promulgated by the department effective July 31, 1996.

Hearing Information

September 9, 1996 4:00–6:00 p.m.	Wausau North Central Technical College 1000 Campus Drive Room 451
September 10, 1996 4:00–6:00 p.m.	Madison GEF 3 Building 125 South Webster Street Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Jenny Lange, Consultant, Early Childhood: Exceptional Educational Needs Programs, at (608) 267-9172 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

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

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

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **September 16, 1996**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

1995 Wisconsin Act 298 added the handicapping condition of “significant developmental delay” to the list of categories under s. 115.76(3), Stats. The emergency and proposed permanent rules specify criteria to be used in identifying children under the handicapping condition of significant developmental delay.

The proposed permanent rules also modify ch. PI 11 due to provisions included in [Clearinghouse Rule 94–59](#). Effective May 1, 1995, [Clearinghouse Rule 94–59](#) added the handicapping conditions of “autism”, “traumatic brain injury”, and “other health impairment” to the list of handicapping conditions criteria under s. PI 11.35. Also, the term “orthopedic impairment” was substituted for the term “physical handicapped.” When making these additions/modifications to the handicapping conditions eligibility criteria, the definition of handicapping condition under s. PI 11.02(23) was overlooked.

The proposed rules have been modified to correlate the definitions of handicapping conditions under s. PI 11.02(23) with the handicapping conditions eligibility criteria created under [Clearinghouse Rule 94–59](#).

Fiscal Estimate

The rules specify that use of the criteria for significant developmental delay could only occur after consideration had been given to identifying a child’s disability under criteria for the other specified handicapping conditions, and that a delay would need to be present in two or more areas of development and not just one area. These delays must be at least one and one-half standard deviations below the mean using standardized assessment instruments. Further, the department will provide training on a statewide basis to special education teachers, psychologists, directors of special education and others involved in the evaluation of young children to ensure understanding of the intent of this category as well as consistency in interpretation of the eligibility criteria.

Because of the restrictive eligibility criteria in addition to the staff training provisions in the rule, it is not anticipated there would be an increase in the number of children identified with exceptional educational needs as a result of the addition of this new category of significant developmental delay.

Administrative costs associated with providing inservice training for early childhood special education teachers, directors and pupil services personnel in identifying children with significant developmental delays will be absorbed by the agency.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114(1)(a), Stats.

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting s. 115.81, Stats., the department of public instruction will hold public hearings as follows to consider emergency and proposed permanent rules, relating to the method of resolving disputes concerning children with exceptional educational needs between school boards and the parents of those children. Emergency rules were promulgated by the department effective June 25, 1996.

Hearing Information

September 9, 1996
4:00–6:00 p.m.

Wausau
North Central Technical College
1000 Campus Drive
Room 451

September 10, 1996
4:00–6:00 p.m.

Madison
GEF 3 Building
125 South Webster Street
Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Elliot Weiman, Consultant, Exceptional Education Team, at (608) 266–3648 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

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

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

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **September 16, 1996**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

1996 Wis. Act 431 eliminates the two–tier system for resolving disputes concerning a child with exceptional educational needs who is enrolled in the school district and the parents of the child. The Act eliminates the initial hearing conducted by a hearing officer appointed by a school board. Instead, the Act provides that the school board or the parent of the child may initiate the process by filing a written request for a hearing with the department. The department must appoint a hearing officer who is not employed by or under contract with a school board (or otherwise employed by the department) to conduct the hearing. The school board must pay the cost of the hearing. Either party may appeal the decision of the hearing officer to circuit court or federal district court.

The proposed rules have been modified to conform to statutory language amended as a result of the Act.

Fiscal Estimate

Local Fiscal Effect: Elimination of the second tier appeal prior to appeal to circuit court will result in savings to school districts which have first–tier decisions appealed. Although only a few second tier appeals are made each year (usually less than 6), the costs to the school districts involved can be significant. Making the initial appeal directly to the department is also expected to save time in resolving the appeal, which would result in savings to school districts in staff time and attorney fees. The provision requiring the school board to pay the costs of the hearing officer does not result in increased cost to school boards since they are already required to pay first–tier hearing officer costs under current law.

State Fiscal Effect: There may be some additional work to the department to receive requests for hearings and appointing a hearing officer. Any additional work will be accomplished with existing resources, however, due to staff reductions, any additional work may result in delay or reduction of other department activities.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114(1)(a), Stats.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.51(14), 77.52(14), 77.53(11), 77.54(20) and 77.56(3), 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 15, 1996**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Contact Person

Please contact 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. 77.51(14), 77.52(14), 77.53(11), 77.54(20) and 77.56(3)

SECTION 1. Tax 11.28(title), relating to gifts and other advertising specialties given away, is amended to more generally reflect the content of the rule.

Tax 11.28(1)(a), relating to definitions of “sale” and related terms, is amended to conform punctuation to Legislative Council Rules Clearinghouse standards.

Tax 11.28(2)(title), relating to gifts and sales incentive plans, is amended to more clearly reflect the text of the subsection.

SECTIONS 2, 3 AND 4. Tax 11.28(2)(intro.), relating to gifts, is renumbered Tax 11.28(2)(a) and a title is created, to conform to Legislative Council Rules Clearinghouse standards. Similarly, Tax 11.28(2)(a) through (e) are renumbered Tax 11.28(b) through (f).

Tax 11.28(2)(b), as renumbered, relating to the purchase of grand opening gifts, is amended to reflect:

a. The department’s current position with respect to determining whether a retailer has accepted an exemption certificate in “good faith.”

b. Section 77.56(3), Stats., which provides an exemption from use tax for property purchased without tax for resale which is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

c. Correct punctuation, per Legislative Council Rules Clearinghouse standards.

Tax 11.28(2)(e), as renumbered, relating to purchases of awards, is amended to create a title and to change punctuation, to conform to Legislative Council Rules Clearinghouse standards.

SECTION 5. Tax 11.28(3)(b), relating to cents–off coupons, is amended to conform punctuation to Legislative Council Rules Clearinghouse standards.

SECTION 6. Tax 11.28(3)(c), relating to items redeemed from a retailer, is repealed and recreated to reflect the department’s current position that a resale exemption applies to property given away with a required purchase of another item, regardless of whether the item purchased is subject to, or exempt from, Wisconsin sales tax. There is no provision in the sales and use tax law that supports the position that a resale exemption is not allowed based on whether the related property purchased is taxable or exempt.

SECTION 7. Tax 11.28(4)(c), relating to items given away, is amended to clarify the department’s position that food products given away are not subject to tax, assuming exemption applies under s. 77.54(20), Stats.

Tax 11.28(5), relating to trading stamps, is amended to conform language to Legislative Council Rules Clearinghouse standards.

SECTION 8. Tax 11.46(3)(c), relating to sales by summer camps, is repealed and recreated to clarify that groceries sold at camps, which are not subject to tax, are only those that are exempt from tax under s. 77.54(20), Stats.

SECTION 9. Tax 11.46(5)(intro.), relating to combined charges, is amended to conform grammar, punctuation and style to Legislative Council Rules Clearinghouse standards.

SECTION 10. Tax 11.51(1), relating to sales by grocers, is amended to reflect the proper reading of s. 77.54(20), Stats., which in no way requires that, for food, food products, and beverages to be exempt from tax, they must be used in the “home preparation of meals.” The statute provides that food, food products, and beverages sold for direct consumption on the premises of the seller are subject to tax.

Tax 11.51(2)(a) and (b), relating to sales by grocers, are amended to reflect the Wisconsin Tax Appeals Commission decision in *Artesian Water Company v. Wisconsin Department of Revenue* (April 8, 1994), which held that bottled water was exempt from Wisconsin sales or use tax. Section 77.54(20)(b), Stats., specifically excludes from exemption soft drinks and soda water beverages (which would include carbonated or flavored bottled water).

Both subunits are also amended to conform punctuation and style to Legislative Council Rules Clearinghouse standards.

SECTIONS 11, 12 AND 13. Tax 11.87(1)(a) through (g), relating to sales of meals, are renumbered Tax 11.87(1)(b) through (h) and Tax 11.87(1)(a) is created to reflect the amendment to s. 77.54(20)(c)4, Stats., by 1993 Wisconsin Act 332, which exempted from sales or use tax meals sold on premises by community–based residential facilities. Tax 11.87(1)(b) as renumbered is amended to clarify that whether food is exempt from tax is determined under s. 77.54(20), Stats.

SECTION 14. Tax 11.87(3)(a), relating to sales of meals, is amended to reflect the amendment to s. 77.54(20)(c)4, Stats., by 1993 Wisconsin Act 332, which exempted from sales or use tax meals sold on premises by community–based residential facilities.

Tax 11.87(3)(d) is amended to reflect the proper reading of s. 77.54(20), Stats., which in no way requires that, for food, food products, and beverages to be exempt from tax, they must be used in the “home preparation of meals.” The statute only requires that food, food products, and beverages sold for direct consumption on the premises of the seller are subject to tax.

Tax 11.87(3)(e) is amended to correct terminology.

Text of Rule

SECTION 1. Tax 11.28(title), (1)(a) and (2)(title) are amended to read:

Tax 11.28(title) GIFTS AND OTHER ADVERTISING SPECIALTIES. (ss. 77.51(4)(a) and (14)(k) and 77.56(3), Stats.)

(1)(a) Section 77.51(14)(k), Stats., provides that “sale,” “sale, lease or rental,” “retail sale,” “sale at retail” or equivalent terms includes the sale of tangible personal property to a purchaser even though the property may be used or consumed by another person to whom the purchaser transfers the property without valuable consideration, such as gifts and other advertising specialties distributed gratis apart from the sale of other tangible personal property or services.

(2)(title) GIFTS AND SALES INCENTIVE PLANS.

SECTION 2. Tax 11.28(2)(intro.) is renumbered Tax 11.28(2)(a).

SECTION 3. Tax 11.28(2)(a)(title) is created to read:

Tax 11.28(2)(a)(title) General.

SECTION 4. Tax 11.28(2)(a), (b), (c), (d) and (e) are renumbered Tax 11.28(2)(b), (c), (d), (e) and (f) and Tax 11.28(2)(b) and (e) are renumbered are amended to read:

Tax 11.28(2)(b) Grand opening gifts. A person who sells tangible personal property to a retailer who uses the property as gifts at a “grand opening” or similar event, such as an open house, celebrity appearance or “farm days,” cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of

reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in this volume. In cases where a seller furnishes free property to a retailer for use as gifts at a “grand opening” or similar event, the person seller furnishing the property to the retailer without charge is subject to the sales or use tax pursuant to s. Tax 11.14(2)(e) on its cost of the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

(e)(title) Awards. Persons transferring tangible personal property to salespersons or distributors or both in redemption of awards, such as “points,” given under a sales incentive plan shall pay the tax on their purchases of the property.

SECTION 5. Tax 11.28(3)(b) is amended to read:

Tax 11.28(3)(b)(title) Cents-off coupons redeemable by manufacturers. A common arrangement between manufacturers and retailers involves the use of “cents-off” coupons. The coupons are distributed as part of a retailer’s advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer’s taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon, less any coupon handling fees paid by the manufacturer.

SECTION 6. Tax 11.28(3)(c) is repealed and recreated to read:

Tax 11.28(3)(c) Coupons issued and redeemable by retailers. 1. When a retailer distributes coupons which its customer may use to obtain free tangible personal property, the following shall apply:

a. When purchasing tangible personal property which will be given away to customers who must purchase other property to obtain the free property, a retailer may use a resale certificate to purchase the free property without payment of the sales tax, since the transaction is deemed a sale of both the free property and the other property. The sale of the free property and other property by the retailer is subject to Wisconsin sales or use tax, unless an exemption applies.

b. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the use tax based on the cost of the property.

Examples: 1) A retailer knows key chains it purchases will be given away to customers when those customers purchase gasoline, food items, or other tangible personal property. The retailer may purchase the key chains without Wisconsin sales tax by giving a resale certificate to its supplier.

2) A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier a resale certificate, the retailer is liable for tax measured by the cost of the key chains given away.

2. The taxable gross receipts of retailers, who issue cents-off coupons which reduce the price of merchandise they sell, and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

SECTION 7. Tax 11.28(4)(c) and (5) are amended to read:

Tax 11.28(4)(c) Except for meals, retailers Retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

Note to Revisor: Insert the following example after sub. (4)(c):

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods (rolls, bagels, muffins, bread), ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A’s customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods (rolls, bagels, muffins, bread), ground coffee beans, and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items not for direct consumption on the premises of the vendor under s. 77.54(20), Stats. Motel A's purchases of the napkins, plastic utensils, and paper plates and cups are subject to sales or use tax because no exemption applies.

(5) TRADING STAMPS. (a) Furnishing trading stamps and stamp books, with or without a charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of ~~such~~ the material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts ~~shall~~ may not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of ~~such~~ the stamps.

SECTION 8. Tax 11.46(3)(c) is repealed and recreated to read:

Tax 11.46(3)(c) Food, food products and beverages as defined in s. 77.54(20)(a) and (b), Stats., excluding those food, food products and beverages listed in s. 77.54(20)(c), Stats., sold at a camp for consumption off the premises of the camp. "Off the premises of the camp" means a location outside the boundaries of the camp.

SECTION 9. Tax 11.46(5)(intro.) is amended to read:

Tax 11.46(5)(intro.) An allocation between taxable and exempt receipts shall be made when a single, combined, charge is made for all the privileges extended by a camp. Adequate records shall be ~~kept~~ and maintained to enable the proper allocation; otherwise, the total charge shall be taxable. For purposes of allocating, the following shall apply:

SECTION 10. Tax 11.51(1) and (2)(a) and (b) are amended to read:

Tax 11.51(1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages," which generally exempts all basic food items for human consumption ~~necessary for the home preparation of meals off the premises of the grocer.~~ This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages, including bases or concentrates to produce soft drinks and fruit drinks, beer, intoxicating liquors, candy, paper products and detergents. The following lists in sub. (2)(a) and (b) shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

Note to Revisor: Amend only the following portions of the alphabetical lists in sub. (2)(a) and (b):

(2)(a) . . .

Cameras and supplies.

Can openers.

Candied fruits.

Candy.

Candy apples.

Canning and freezer supplies.

Can openers.

. . .

Water, bottled, sparkling, spring and distilled carbonated or flavored.

Water conditioners.

Wax paper.

Waxing.

~~Wax paper.~~

. . .

(b) . . .

Granola bars, ~~see par. (a) except candy or yogurt coated.~~

. . .

Pasta.

Peanut butter.

Peanuts, in shell or canned, salted or not, ~~see par. (a) except candy or yogurt coated.~~

~~Peanut butter.~~

. . .

Raisins, ~~see par. (a) except candy or yogurt coated.~~

. . .

Waffle mix.

Water, uncarbonated and unflavored.

Yeast.

. . .

SECTION 11. Tax 11.87(1)(a) is renumbered Tax 11.87(1)(b) and amended to read:

Tax 11.87(1)(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20), Stats.

SECTION 12. Tax 11.87(1)(a) is created to read:

Tax 11.87(1)(a) "Community-based residential facility" has the meaning in s. 50.01(1g), Stats.

SECTION 13. Tax 11.87(1)(b), (c), (d), (e), (f) and (g) are renumbered Tax 11.87(1)(c), (d), (e), (f), (g) and (h).

SECTION 14. Tax 11.87(3)(a), (d) and (e) are amended to read:

Tax 11.87(3)(a) Health care facilities. Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption does not apply.

(d) Groceries. Sales of ~~the basic food items food, food products and beverages~~ for human consumption ~~purchased for the home preparation of meals exempt from tax under s. 77.54(20), Stats.~~ This includes sales of prepackaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

Note to Revisor: Insert the following note after sub. (3)(d):

Note: See s. Tax 11.51 for more information.

(e) Supervised boarding facilities. The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental social security income, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

Note to Revisor: Replace the note at the end of Tax 11.87 with the following:

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chapter 250, Laws of 1977; (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; and (c) Sales of meals by community-based residential facilities on their premises became exempt on June 1, 1994, pursuant to 1993 Wis. Act. 332.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

It is anticipated that these changes will have no significant fiscal effect.

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

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

Agriculture, Trade & Consumer Protection (CR 95–97):

Chs. ATCP 88 and 89 – Relating to egg grading, handling and labeling.

Department of Financial Institutions—Banking

(CR 96–67):

SS. Bkg 76.01, 76.03, 76.04 and 76.14 – Relating to sales finance companies.

Department of Financial Institutions—Banking

(CR 96–68):

S. Bkg 80.25 – Relating to open end credit, maximum periodic rates and licensed lenders under s. 138.09, Stats.

Natural Resources (CR 96–18):

Ch. NR 140 and ss. NR 700.03, 722.07, 724.13, 726.05 and 726.17 – Relating to the closure of hazardous substance spill cases where the Department has determined that naturally occurring physical, chemical or biological processes will restore groundwater quality within a reasonable period of time.

Natural Resources (CR 96–21):

SS. NR 149.22 and 219.05 – Relating to whole effluent toxicity testing methods.

Natural Resources (CR 96–74):

SS. NR 7.04, 7.05 and 7.06 – Relating to the recreational boating facilities program.

Natural Resources (CR 96–84):

S. NR 46.30 (2) (a) to (c) – Relating to the administration of the Forest Crop Law and the Managed Forest Law.

Natural Resources (CR 96–98):

SS. NR 25.03 (1) (a) and 25.06 (1) (a) 2 – Relating to commercial fishing licenses and lake trout quotas on Lake Superior.

Public Defender (CR 96–101):

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

Public Defender (CR 96–102):

S. PD 2.03 (4), (5) and (8) – Relating to the procedures for assignment of counsel.

**Social Workers, Marriage & Family Therapists and
Professional Counselors Examining Board (CR 96–34):**

SS. SFC 2.01 and 3.13 – Relating to social worker training certificates.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Administration (CR 95-234):

An order creating ch. Adm 9, relating to contract administration fees and subscription service.

Effective 09-01-96.

Agriculture, Trade & Consumer Protection (CR 96-15):

An order affecting ch. ATCP 99, relating to grain warehouse keepers and grain dealers.

Effective 09-01-96.

Department of Commerce (CR 95-228):

An order affecting chs. ILHR 2, 5, 7, 9, 10, 11, 17, 20, 26, 34, 41, 42, 45, 48, 50, 51, 66, 68, 74 and 81; and ss. ILHR 18.13, 27.20, 53.53, 67.07 and 82.21, relating to credentials, licenses, certifications and registrations, administered by the division of safety and buildings.

Effective 11-01-96.

Department of Commerce (CR 96-13):

An order affecting ch. ILHR 16, relating to the electrical code, volume 2.

Effective 09-01-96.

Gaming Board (CR 96-30):

An order amending s. WGC 24.13 (1) (d), relating to simulcasting fees.

Effective 09-01-96.

Health & Family Services (CR 95-226):

An order repealing and recreating ch. HSS 111, relating to licensing of emergency medical technicians (EMT's-intermediate) and approval of operational plans for EMT's-intermediate.

Effective 09-01-96.

Health & Family Services (CR 96-3):

An order repealing and recreating ch. HSS 112, relating to licensing of emergency medical technicians-paramedic (EMT's-paramedic) and approval of operational plans for EMT's-paramedic.

Effective 09-01-96.

Historical Society (CR 95-215):

An order creating ch. HS 3, relating to a state 25% tax credit program for rehabilitation of owner-occupied historic residences.

Effective 09-01-96.

Insurance, Commissioner of (CR 96-45):

An order affecting ss. Ins 17.01, 17.26 and 17.28, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1996, future medical expense attachment point changing from \$25,000 to \$100,000.

Effective 09-01-96.

Medical Examining Board (CR 96-27):

An order amending s. Med 10.02 (2) (q), relating to unprofessional conduct.

Effective 10-01-96.

Transportation (CR 96-57):

An order creating ch. Trans 258, relating to seed potato overweight permits.

Effective 09-01-96.

PUBLIC NOTICE

Public Notice

Health & Family Services

(Medical Assistance Reimbursement of Providers of Disposable Medical Supplies)

The State of Wisconsin reimburses providers for disposable medical supplies provided to Medical Assistance recipients. This is done under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

This notice regarding reimbursement is not required under federal law, but is being published to convey information to the public. Effective August 1, 1996, the Department will modify the reimbursement system for disposable medical supplies to prevent excessive utilization and to establish controls on billing errors. The modifications include the following:

- Limits will be placed on the quantities of disposable medical supplies which may be dispensed to a recipient.
- Prior authorization will be required for quantities in excess of limits and for certain items which are particularly susceptible to abuse.

The estimated net effect of these modifications on expenditures of the Wisconsin Medical Assistance Program is to decrease spending in FY 1997 by \$160,417 all funds (\$96,250 federal financial participation and \$64,167 general purpose revenue).

Copies of the Proposed Changes

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

State Plan Coordinator
Bureau of Health Care Financing
Division of Health
P.O. Box 309
Madison, WI 53701–0309

Written Comments

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

Bureau of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

NOTICES OF NONACQUIESCENCE

Notice of Nonacquiescence *Department of Workforce Development* *(Labor & Industry Review Commission)*

 In the matter of the contribution liability, :
 or status, under Chapter 108, Wis. Stats., of :
 : Hearing No. S9500228MW
ED BRISTOL ADVERTISING, INC.,
 Account No. 067446-9 :

Please take notice that the Wisconsin Department of Workforce Development, f/k/a the Department of Industry, Labor and Human Relations (department), pursuant to Wis. Stats., s. 108.10 (7) (b), has chosen to nonacquiesce in the decision of the Labor and Industry Review Commission (commission) dated June 21, 1996.

More specifically, the Department does not acquiesce in the commission's construction of s. 108.02 (15) (L), Wis. Stats., to permit a corporation to exclude from employe status an officer who has deliberately chosen not to obtain any of the corporate stock or to otherwise have an ownership interest in the corporation. Accordingly, pursuant to s. 108.10 (7) (a), Wis. Stats., the department does not intend to follow or apply the commission's decision in this case in other cases, and the department will not be bound in other cases by the commission's decision in this case.

Notice of Nonacquiescence *Department of Revenue* *(Tax Appeals Commission)*

 CHERNEY MICROBIOLOGICAL :
 SERVICES, LTD., :
 :
 Petitioner, : NOTICE OF NONACQUIESCENCE
 v. :
 : Docket No. 94-S-209
 WISCONSIN DEPARTMENT OF REVENUE,
 Respondent. :

Pursuant to s. 73.01 (4) (e) 2., Stats., the respondent hereby gives notice that, although it is not appealing the Order of the Tax Appeals Commission rendered in the above-captioned matter dated April 23, 1996, as affected by the Correction Order dated May 3, 1996 and the Decision and Order Upon Rehearing dated July 15, 1996, it has adopted a position of nonacquiescence in regard to those parts of the Order which reverse the assessment for use tax on equipment and other items not incorporated, consumed or destroyed in performing testing services on work-in-process samples for manufacturers. The effect of this action is that, although said Order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale and construction of statutes with regard to exemption for equipment and other items not incorporated, consumed or destroyed in performing testing services on work-in-process samples for manufacturers are not binding upon or required to be followed by the respondent in other cases.

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