

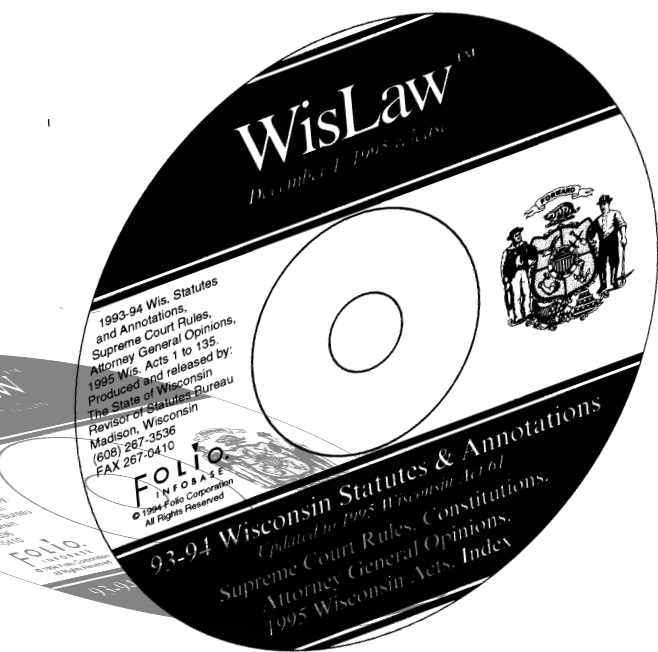
# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 488**



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

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



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## EMERGENCY RULES NOW IN EFFECT

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

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

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

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

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### EMERGENCY RULES NOW IN EFFECT (2)

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

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

#### Finding of Emergency

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

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

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

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

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

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

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

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

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

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

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

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

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

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Corrections*

Rules adopted creating s. DOC 309.05 (2)(d), relating to inmate mail.

## Finding of Emergency

The Department of Corrections finds 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:

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

**Publication Date:** August 15, 1996  
**Effective Date:** August 15, 1996  
**Expiration Date:** January 12, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Development*

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

## Finding of Emergency

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

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

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

treatment plant at an estimated cost of approximately \$900,000. Adoption of these emergency rules will allow the Department of Development to provide the Village of Lena with the financial assistance to address the foregoing problems.

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

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## EMERGENCY RULES NOW IN EFFECT

### *Emergency Response Board*

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

### Finding of Emergency

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

It is necessary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce.

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

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

The SERB, the Department of Military Affairs–Division of Emergency Government and the Department of Transportation are jointly developing a permanent rule to reflect the statutory fee structure enacted by the legislature in the DOT 1995–97 biennial budget. It is expected a revised permanent rule will be promulgated later this year.

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

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## EMERGENCY RULES NOW IN EFFECT (3)

### *Health and Social Services*

#### (Community Services, Chs. HSS 30--)

1. 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

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

### Exemption From Finding of Emergency

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

### Analysis

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

Key changes include:

#### 1. Provisional Certification

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

#### 2. Limited Certification

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

#### 3. Training for Regular Certification

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

#### 4. Criminal Records Check

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

#### 5. Certification Fee

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

#### 6. Acceptance of Certification

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

#### 7. Certification Exemption

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

#### 8. Sanction Authority

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

#### 9. School-Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

a. Physical exams for children and staff (replaced by a health history requirement).

b. 75 square feet of outdoor space per child.

c. Daily outdoor activities.

d. A place for rest or relaxation.

e. Ongoing communication with the child's parent.

f. Making copies of the certification standards available to all parents.

#### 10 Parochial and Private Schools

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

#### 11. Parent Checklist

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

#### 12. Other New or Changed Rules

a. Clarifying what is acceptable supervision and limiting the number of hours a provider can provide child care per day.

b. Requiring TB tests for all certified providers.

c. Requiring proper hand washing for child care providers and children.

d. Changing the water testing requirement when a public water supply is not available to be a one-time test prior to or within 3 months of initial certification.

e. Requiring certified providers to report relevant information to the certifying agency.

f. Prohibiting consumption of alcoholic beverages or controlled substances on the premises during hours of operation.

g. Prohibiting discrimination.

**Publication Date:** June 29, 1996

**Effective Date:** July 1, 1996

**Expiration Date:** November 28, 1996

3. Rules adopted repealing s. **HSS 55.76 (5)**, created as an emergency rule relating to the administration of child care funds and required co-payments.

### Finding of Emergency

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

Congress has just enacted welfare reform legislation which makes major changes to the federal welfare system, in many cases replacing federal entitlements with block grants to the states. The Governor has directed the creation of a Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin works program, and to

analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. Under these circumstances, it is necessary to withdraw the schedule for child care co-payments and the phase-in co-payment formula which were implemented by emergency rule on July 1 of this year. This will avoid the administrative problems and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

**Publication Date:** August 13, 1996  
**Effective Date:** August 13, 1996  
**Expiration Date:** January 10, 1997

## **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 (3)**

### **Health and Social Services**

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

1. 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

2. 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 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 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

3. 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

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## EMERGENCY RULES NOW IN EFFECT

### Health & Social Services

#### (Economic Support, Chs. HSS 200–)

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

### Exemption From Finding of Emergency

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

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

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

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

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

For an individual who becomes an AFDC recipient after fulfilling the applicant job search requirements, there is a second

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

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

**Publication Date:** March 1, 1996  
**Effective Date:** March 1, 1996  
**Expiration Date:** July 29, 1996  
**Hearing Date:** April 16, 1996  
**Extension Through:** September 26, 1996

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## EMERGENCY RULES NOW IN EFFECT

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

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

#### Finding of Emergency

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

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

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

**Publication Date:** May 8, 1996  
**Effective Date:** May 8, 1996  
**Expiration Date:** October 5, 1996  
**Hearing Date:** July 17, 1996

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## EMERGENCY RULES NOW IN EFFECT

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

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

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

#### Finding of Emergency

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

1. On August 8, 1995, the Department adopted revised rules relating to ventilation and energy conservation in public buildings and places of employment. The purpose of these rules was to improve indoor air quality in buildings and to comply with the federal Energy Policy Act of 1992 which requires all states to revise their commercial building codes to meet or exceed the American Society of Heating, Refrigerating and Air-Conditioning Engineers/Illuminating Engineering Society (ASHRAE/IES) standard 90.1-1989. The rules went into effect on April 1, 1996.

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

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

#### Emergency Rule Analysis

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

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

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations* (Unemployment Compensation, Chs. ILHR 100–150)

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

#### Finding of Emergency

The department of industry, labor and human relations finds that an emergency exists within the state of Wisconsin and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Under s. 108.04(2)(b), Stats., the requirements for searching for work, as a condition of eligibility for unemployment insurance benefits, are to be prescribed by rule of the department. The statute

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

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

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

The department believes that the number of affected 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

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## **EMERGENCY RULES NOW IN EFFECT (5)**

### *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

- Rules adopted revising emergency rules 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:** August 9, 1996  
**Effective Date:** August 12, 1996  
**Expiration Date:** January 9, 1997  
**Hearing Date:** September 12, 1996  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT (2)

### 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

- Rules were adopted revising **ch. PI 11**, relating to the handicapping condition of significant developmental delay.

## Finding of Emergency

1995 Wis. Act 298 adds an alternative category of significant developmental delay for the identification of disabled preschoolers when the diagnosis is not clear. The Act becomes effective July 1 and requires the department to conduct inservice training for early childhood special education teachers and directors and pupil services personnel in identifying children with significant developmental delay to ensure that only children meeting the criteria established by the department by rule are so identified.

In order to establish identification criteria under the significant developmental delay category and in order to conduct the required training sessions prior to the 1996-97 school year, rules must be in place as soon as possible.

**Publication Date:** July 31, 1996  
**Effective Date:** July 31, 1996  
**Expiration Date:** December 28, 1996

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## 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 opinion is qualified with respect to the recognition of property tax revenue. The emergency rule created in s. SEC 2.01 (1) (d)5 provides that the auditor's opinion with respect to the financial statements of a school district issuer covered by the 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



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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Administration*

**Subject:**

Adm Code – Manufactured home dealer trade practices, facilities and records.

**Description of policy issues:**

*Statement of the objective of the proposed rule:*

Section 218.101, Stats., created in 1991 Wis. Act 269, gives the Department of Administration authority to administer subchapter VI of chapter 218, Stats., as it relates to manufactured/mobile home dealers and salespeople engaged in the sale of primary housing units. The proposed rule will establish the standards for manufactured/mobile home dealer trade practices, facilities and records.

**Statement of the statutory authority for the rule:**

Sections 16.004 (1), 218.101 (1) and 218.16, Stats.

**Staff time required:**

The Department estimates that state employees will spend 20 hours to develop this rule.

### *Administration*

**Subject:**

Adm Code – Licensing periods and fees for manufactured home dealers and salespeople.

**Description of policy issues:**

*Statement of the objective of the proposed rule:*

Section 218.101, Stats., created in 1991 Wis. Act 269, gives the Department of Administration authority to administer subchapter VI of chapter 218, Stats., as it relates to manufactured/mobile home dealers and salespeople engaged in the sale of primary housing units. The proposed rule will describe the periods, expiration dates and fees for licenses issued to manufactured/mobile home dealers and salespeople. It will also establish the periods, expiration dates and fees for registration plates issued to dealers.

**Statement of the statutory authority for the rule:**

Sections 16.004 (1), 218.101 (1), 218.11 (2) (b) 1. and 218.12 (2) (b) 1., Stats.

**Staff time required:**

The Department estimates that state employees will spend 20 hours to develop this rule.

### *Administration*

**Subject:**

Adm Code – Manufactured home dealer financial eligibility.

**Description of policy issues:**

*Statement of the objective of the proposed rule:*

Section 218.101, Stats., created in 1991 Wis. Act 269, gives the Department of Administration authority to administer subchapter VI of chapter 218, Stats., as it relates to manufactured/mobile home dealers and salespeople engaged in the sale of primary housing units. The proposed rule will establish the financial qualifications of manufactured/mobile home dealer license applicants.

**Statement of the statutory authority for the rule:**

Sections 16.004 (1), 218.101 (1), 218.11 (3) and 218.16, Stats.

**Staff time required:**

The Department estimates that state employees will spend 20 hours to develop this rule.

### *Chiropractic Examining Board & Physical Therapists Affiliated Credentialing Board*

**Subject:**

Chir and PT Codes -- Relating to who may claim to render physical therapy or physiotherapy services.

**Description of policy issues:**

*Objective of the rule:*

To fulfill the mandate of 1995 Wis. Act 166, which requires the Physical Therapists Affiliated Credentialing Board and the Chiropractic Examining Board to jointly promulgate rules that establish the circumstances and to what extent a chiropractor may claim to render physical therapy and physiotherapy services within the scope of the practice of chiropractic.

*Policy analysis:*

The Physical Therapists Affiliated Credentialing Board and the Chiropractic Examining Board are required to promulgate rules that will further define physical therapy and physiotherapy services and who can claim to render and advertise those services. The statute does not provide for alternatives.

**Statutory authority:**

Sections 15.08 (5) (b) and 227.11 (2), Stats., and ss. 446.02 (10) and 448.525, Stats., as created by 1995 Wis. Act 166.

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

The anticipated time commitment is 20 hours.

### *Employe Trust Funds*

**Subject:**

The subject of this rule is the treatment of contributions to the Wisconsin Retirement System (WRS) made by an employer on behalf of a participant that exceed the federally mandated contribution limits. This rule is authorized by 1995 Wis. Act 302, relating to WRS compliance with federal laws governing qualified governmental retirement plans.

**Description of policy issues:**

*Objectives of the Rule:*

This rule will define the treatment of employer contributions to the WRS that are paid in error or exceed the annual contribution limit imposed by Sec. 415 (c) of the Internal Revenue Code (IRC). The purpose of this rule is to provide guidance to employers and Department staff as to the procedure that will be followed in situations where it is determined that overpayments or errors were made in employer contributions to the WRS.

*Policy Analysis:*

1995 Wis. Act 302 was enacted to ensure the WRS complies with the federal tax laws that regulate qualified retirement systems. Federal law prohibits direct refunds to employers for contributions that have been made to a qualified retirement plan. To ensure compliance with this provision, s. 40.08 (6) (b) and (c), Stats., were amended in Act 302 to require the Department to establish rules by which employer contributions made in error or those that exceed contribution limits as set forth in Sec. 415 (c) of the IRC will be credited to an employer account as an offset against future contributions.

Under s. 40.32, Stats., as created in Act 302, contributions to the WRS will be tested annually to ensure they are within the federally mandated limit. The current limit is 25% of taxable earnings, up to

\$30,000 per year. (As of August 8, 1996, HR3448 was passed by Congress and sent to the President for approval that will amend IRC Sec. 415 language. If this is signed into law, the maximum contribution will be based on an employee's gross compensation that includes certain tax deferred contributions such as deferrals to Sec. 403 (b) tax sheltered annuities, Sec. 457 deferred compensation programs and Sec. 125 employee reimbursement accounts.)

As there are several types of contributions made to the WRS by or on behalf of a participant that are included in the maximum contribution test, this rule will delineate the order by which contributions will be refunded [e.g., voluntary employee additional contributions will be refunded to a participant before employer additional contributions are credited to an employer account]. Employer required contributions would be affected last and rarely, if ever, exceed contribution limits. However, should employer required contributions exceed the limit, the rules will determine the effect on the amount of service credited to a participant's WRS account and the employer's responsibility to pay the amount of the credit to the employee as additional wages.

*Policy Alternatives to the Proposed Rule:*

Section 40.08 (6) (b) and (c), Stats., require the Department to promulgate this rule before crediting a refund to an employer account for contributions made in error or those that exceed contribution limits specified in s. 40.32, Stats.; therefore, there is no alternative to this rule.

**Statutory authority for rulemaking:**

Section 40.03 (2) (i) and (t), Stats., and s. 40.08 (6) (b) and (c), Stats., as affected by 1995 Wis. Act 302.

**Staff time required:**

The Department estimates that state employees will spend 60 hours developing this rule.

## ***Employe Trust Funds***

**Subject:**

This rule defines the special contribution and benefit limitations that are imposed by federal tax laws on individuals who participate in more than one qualified retirement plan. This proposed rule is authorized by 1995 Wis. Act 302, relating to Wisconsin Retirement System (WRS) compliance with federal laws governing qualified governmental retirement plans.

**Description of policy issues:**

*Objectives of the Rule:*

This rule is required under federal tax law to designate the basis by which benefits and contributions will be tested in situations where an employer offers more than one qualified retirement plan under Internal Revenue Code Section 401 (a). This rule will also establish the basis for increasing contribution and benefit limits to conform with any cost-of-living adjustments that may be established under U.S. Treasury regulations.

*Policy Analysis:*

For purposes of determining the maximum benefit or contribution allowed under Section 415 of the Internal Revenue Code, all qualified retirement plans an employer offers to their employees are treated as one. Special rules [under Code Section 415 (e)] apply to individuals who participate in both a defined contribution and a defined benefit plan.

In addition to the Wisconsin Retirement System (WRS), some local government or school district employers may be providing retirement benefits through other qualified programs to their employees. This rule will establish the method by which the contribution and benefit testing required under ss. 40.31 and 40.32, Stats., (as created in Act 302) will be completed. It further will establish that any contributions or benefits from other retirement plans will be affected by the maximum limits before WRS contributions and benefits would be adjusted to the WRS.

Code Section 415 benefit and contribution limits may be increased based on applicable U.S. Treasury regulations cost-of-living

adjustments. The cost-of-living adjustment for a calendar year is based on the increase in the applicable cost-of-living index for the calendar quarter ending Sept. 30 of the preceding calendar year over the same cost-of-living index for the base period. This rule will provide the basis by which the maximum WRS benefit and contribution limits [as stated in ss. 40.31 and 40.32, Stats.] will be increased to conform with these adjustments.

*Policy Alternatives to the Proposed Rule:*

The objectives of this rule are specifically authorized by 1995 Wis. Act 302 and are necessary to ensure compliance with federal tax laws. If no rule is promulgated, the qualified status of the WRS could be jeopardized.

**Statutory authority for rulemaking:**

Section 40.03 (2) (i) and (t), Stats.; ss. 40.31 (1) (d) and (3); and 40.32 (2), Stats., as created and amended by 1995 Wis. Act 302.

**Staff time required:**

The Department estimates that state employees will spend 40 hours developing this rule.

## ***Employe Trust Funds***

**Subject:**

Methods that will be used by the Department of Employee Trust Funds to locate participants, alternate payees and beneficiaries prior to declaring a Wisconsin Retirement System (WRS) account abandoned.

**Description of policy issues:**

*Objectives of the Rule:*

The rule will specify alternate methods which the Department may use to attempt to locate participants, alternate payees, and beneficiaries to whom a benefit is payable and will clarify other aspects of abandoned account procedures as necessary to inform the public.

*Policy Analysis:*

1995 Wis. Act 302, enacted to ensure WRS compliance with federal tax law concerning qualified retirement plans, provides that distributions from the WRS will be made within timeframes required by the internal revenue code. Section 40.08 (8), Stats., as affected by Act 302, specifies the deadlines within which a participant, alternate payee, or beneficiary, including the estate of a participant, may claim a WRS benefit. In the event that a person to whom a benefit is payable cannot be located, the WRS is authorized to distribute the benefit to another beneficiary or to declare the account abandoned.

Before declaring an account abandoned or passing over a beneficiary, the Department will first attempt to locate the proper payee. The methods it will use are required to be defined by rule and may include inquiring through the Social Security Administration or Internal Revenue service locator services or other public or private databases and services and publishing the names of those who cannot be located. In addition, the Department may take administrative measures to avoid losing contact with payees, for example, requiring participants to include the addresses of beneficiaries on the beneficiary designation and ensuring that employers report the participant's address at the time employment terminates.

The Department will begin searching for participants, other than those who are actively covered by the WRS or receiving an annuity, when they reach, or would have reached, age 65. If the participant is not located by his or her 70th birthday, the account is considered abandoned. However, participants may still reclaim the account by applying for a benefit before their 80th birthday. Alternate payees are subject to the same deadlines as participants, based on the age of the participant rather than that of the alternate payee.

Beneficiaries must be located within one year after the death of the participant. A primary beneficiary who is not located and has not filed a benefit application within this deadline is presumed by law to have predeceased the participant. The benefit is then payable to any secondary beneficiaries, but if these cannot be located within six months, the benefit will be paid to the estate. If the estate is closed, and is not reopened within six months after notification by the Department, the account is considered irrevocably abandoned.

If the participant's estate is the named beneficiary, but the estate is closed and is not reopened within six months after notification by the Department, the Department will attempt to locate possible beneficiaries under standard sequence. However, if no such beneficiaries are located within six months, the account is considered irrevocably abandoned.

*Policy Alternatives to the Proposed Rule:*

There is no alternative to the rule, since s. 40.08 (8) (a) 1. and 3., Stats., require the Department to promulgate this rule before proceeding to pay a benefit or declare an account abandoned under s. 40.08 (8), Stats.

**Statutory authority for rulemaking:**

Section 40.03 (2) (i) and (t), Stats., and s. 40.08 (8) (a) 1. and 3., Stats., as affected by 1995 Wis. Act 302.

**Staff time required:**

The Department estimates that state employees will spend 30 hours to develop this rule.

### ***Employe Trust Funds***

**Subject:**

Procedures to be used when the Department distributes a Wisconsin Retirement System (WRS) account to the beneficiary of a participant or alternate payee who dies before beginning to receive a WRS benefit. This rule is authorized by 1995 Wis. Act 302, relating to WRS compliance with federal law regarding qualification as a public retirement system under the Internal Revenue Code.

**Description of policy issues**

*Objectives of the Rule:*

The rule is intended to provide clear guidance to beneficiaries and to Department staff with regard to the deadlines within which beneficiaries of a deceased non-annuitant may apply for a death benefit, and the result of failure to apply.

*Policy Analysis:*

When participant or alternate payee in a qualified retirement plan dies before beginning a distribution from the retirement account, federal law requires that the distribution be made within certain deadlines. 1995 Wis. Act 302 created s. 40.23 (4), Stats., to require the following in conformance with federal law:

1. Upon the death of a WRS participant or alternate payee before beginning a distribution, a beneficiary who is not the spouse of the deceased may elect a life annuity by applying by December 31 of the year following the year of death. Otherwise the beneficiary must receive a lump sum payment by December 31 of the fifth calendar year following the year of death.

2. A beneficiary who is the spouse of the participant may defer the distribution until January 1 of the year that the deceased participant would have attained age 70.5 years. Otherwise, the spouse must begin a distribution by December 31 of the fifth calendar year following the year of death (or the year the deceased would have turned 69.5, whichever is earlier). This distribution may be in the form of a monthly life annuity if the spouse files an application. If the spouse does not apply for a benefit, the Department must pay a lump sum distribution by this deadline.

3. If the spouse dies before receiving the distribution but has designated a new beneficiary, the birthdate of the spouse is used to determine the required beginning date.

Section 40.08 (8) (a), Stats., as affected by Act 302, provides deadlines after which benefits are considered abandoned. This section may affect the application of s. 40.23 (4), Stats., if the Department is unable to locate a beneficiary within the required distribution deadlines.

The proposed rule will clarify how abandoned account procedures apply when beneficiaries defer application for benefits, and will specify the forms of payment for which individuals may apply in various circumstances and timeframes.

*Policy Alternatives to the Proposed Rule:*

The objectives of this rule are specifically authorized by 1995 Wis. Act 302 and are necessary to ensure compliance with federal tax laws. If no rule is promulgated, the qualified status of the WRS could be jeopardized.

**Statutory authority for rulemaking:**

Section 40.03 (2) (i) and (t), Stats., and s. 40.23 (4) (e) 5., Stats., as affected by 1995 Wis. Act 302.

**Staff time required:**

The Department estimates that state employees will spend 60 hours to develop this rule.

### ***Employe Trust Funds***

**Subject:**

Eligibility for benefits from the Wisconsin Retirement System (WRS), the Milwaukee County Employees Retirement System, and the City of Milwaukee Employees Retirement System which are calculated under s. 40.30, Stats., the reciprocity provision; application procedures and deadlines; specifics of the benefit calculations.

**Description of policy issues**

*Objectives of the Rule:*

The rule is intended to provide clear guidance to the public and to the staffs of the three affected retirement systems regarding retirement benefits calculated under the reciprocity provision of s. 40.30, Stats. Topics to be addressed include: definition of eligible employees; application procedures and deadlines; and calculation of the salary index in s. 40.30 (4) (b), Stats.

*Policy Analysis:*

Section 40.30, Stats., provides a special retirement benefit calculation ("reciprocity") for employees who have had consecutive service covered in least two public retirement systems in Wisconsin. The retirement systems established by chapter 589, laws of 1921, chapter 423, laws of 1923, chapter 201, laws of 1937 or chapter 396, laws of 1927 may elect to participate with the Wisconsin Retirement System (WRS) in the reciprocity program. Both the City of Milwaukee Employee Retirement System and the Milwaukee County Employees Retirement System have so elected.

Reciprocity confers two advantages. First, service earned in any of the three systems, beginning with the first system in which the employe was vested, may be used toward the vesting requirement in any other participating system. Second, upon termination of coverage in all the systems, the employe may elect to have the retirement benefit from the earlier system(s) computed using the reciprocity provisions authorized in s. 40.30, Stats. The computation includes increasing the final average earnings used in determining the retirement benefit by the National Social Security Wage Rate Index over the period of time between the date the employe terminated covered employment in the first system and the date of termination of covered employment in the last system. In addition, the formula factor used in determining the retirement benefit would be adjusted to reflect the formula in effect, as determined by each system, at the time the participant terminates covered employment from all of the systems.

Reciprocity as defined in s. 40.30, Stats., does not include crediting of service or contributions across the systems: each system remains responsible for computing and paying its own benefit. In order to be eligible for reciprocity, the employe must elect to have benefits calculated under reciprocity and retirement benefits from all the systems must begin within 60 days after employment terminates.

*Policy Alternatives to the Proposed Rule:*

Although s. 40.30, Stats., has been in effect for over six years, very few employes have been affected. Many employes begin benefits from a previous retirement system several years before retiring from employment covered by the second system. This strategy may be financially advisable but it disqualifies the employe from electing reciprocity. Employes who left a WRS employer to work for the City or County of Milwaukee often find that their WRS benefit has kept pace with salary inflation through interest crediting on their

retirement account, and the reciprocity calculation is less beneficial than the ordinary WRS benefit.

Since few employes invoke s. 40.30, Stats., it is arguable that the rule is not needed. However, the very infrequency of its use means that expertise in administering this statute is not widely available. Additionally, the three separate retirement systems must administer the provisions of the law uniformly. To prevent errors and disagreements, it is advisable to set out in rule the criteria for eligibility and the basic features of the reciprocity calculation.

**Statutory authority for rulemaking:**

Section 40.30 (6), Stats.

**Staff time required**

The Department estimates that state employes will spend 80 hours to develop this rule.

***Employe Trust Funds***

**Subject:**

Definition of termination of employment for purposes of chapter 40 of the Statutes.

**Description of policy issues:**

*Objectives of the Rule:*

To provide guidance to Wisconsin Retirement System (WRS) employers and participants and Department staff regarding the date that participating employment is considered to have terminated.

*Policy Analysis:*

The date of termination of participating employment is a critical factor in determining an employe's eligibility for WRS retirement benefits and associated insurance benefits. Only a person who is a participating employe may make contributions to the WRS, purchase service, or benefit from legislative changes. Eligibility for insurance frequently ceases upon termination of employment. Eligibility for disability benefits requires that the employe became disabled before employment terminated; thus the exact date of termination is sometimes an issue in disability cases. Annuitants are not eligible for a retirement benefit if they return to WRS-covered employment less than 31 days after the date employment terminates, nor may the annuity effective date be earlier than the day following termination of employment.

Termination of employment is indirectly defined in s. 40.02 (26), Stats.:

“Employe” means any person who receives earnings as payment for personal services rendered for the benefit of any employer including officers of the employer. An employe is deemed to have separated from the service of an employer at the *end of the day on which the employe last performed services for the employer, or, if later, the day on which the employe-employer relationship is terminated* because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence [emphasis added].

In most cases the date of termination is easy to identify: it is the last day for which the employe received wages (including sick leave, compensatory time, or vacation pay unless the accumulated leave time is paid as a lump sum). However, the date is ambiguous when the employe is on unpaid leave at the end of his or her employment. This may happen for medical reasons, when the employe's future health status is unclear, or for professional reasons, when the employe is granted a leave of absence but chooses not to return to work at the end of the leave. Questions may also arise concerning regular seasonal layoffs or summer vacation periods when the employe may have a special interest in being terminated (or not terminated) and the employe's actual status is unclear.

The employer is responsible for reporting the date of termination to the Department. When the employe is no longer receiving wages but has not formally resigned, or has fulfilled all contractual

obligations but is still technically under contract, it may be very difficult for the employer to determine “the day on which the employer-employe relationship is terminated.” The employer may be subject to pressure from the employe to report a termination date later than the actual last day paid in order to qualify for an enhanced benefit or an insurance program. By the same token, employers may be led to report a termination date earlier than the last day paid in order to qualify the employe for a benefit, when neither side actually intends that the employer-employe relationship shall terminate.

The proposed rule will provide guidelines on the requirements for an approved leave of absence, the termination date to be reported when employes are employed under a yearly contract, and the effect of a retroactively-reported termination date on service purchases, insurance eligibility, and similar matters. It will clarify the meaning of s. 40.63 (8) (f), Stats., which provides a special definition of termination date for employes who qualify for disability annuities.

*Policy Alternatives to the Proposed Rule:*

While the Department is not required to promulgate this rule, we anticipate that both employers and employes would benefit from clearer guidelines in this area. The definition is also expected to help the Department to make difficult eligibility determinations more efficiently.

**Statutory authority for rulemaking:**

Section 40.03 (2) (i), Stats.

**Staff time required:**

The Department estimates that state employes will spend 80 hours to develop this rule.

***Hearing and Speech Examining Board***

**Subject:**

HAS Code — Relating to how often audiometric equipment that is used in the evaluation of hearing sensitivity for the fitting and selling of hearing instruments must be calibrated.

**Description of policy issues:**

*Objective of the rule:*

To fulfill the requirements of 1995 Wis. Act 170, which requires the Hearing and Speech Examining Board to promulgate rules establishing the frequency of the calibration of audiometric equipment.

*Policy analysis:*

The Hearing and Speech Examining Board is required to promulgate rules that will establish the frequency of the calibration of audiometric equipment. The Board will be developing rules that will determine the standards of calibration, the frequency that calibration must take place and the standards for certification.

**Statutory authority:**

Sections 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.085 and 459.12 (2), Stats., as amended by 1995 Wis. Act 170.

**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 5 hours.

***Hearing and Speech Examining Board***

**Subject:**

HAS Code — Relating to the use of support personnel by speech-language pathologists and audiologists.

**Description of policy issues:**

*Objective of the rule:*

To further define the use of support personnel.

*Policy analysis:*

The Hearing and Speech Examining Board is authorized to promulgate rules that will redefine the use of support personnel. Recent changes in the profession have prompted the Board to look at a modification in the existing rule.



**Statutory authority:**

Sections 15.08 (5) (b) and 227.11 (2), 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 5 hours.

***Regulation and Licensing*****Subject:**

RL Code — Relating to amateur and professional boxing.

**Description of policy issues:***Objective of the rule:*

These changes relate to such issues as updating and clarifying statutory authority for the rules; amending requirements for boxing; form and style; clarity, grammar and punctuation; and safety and welfare of the public.

*Policy analysis:*

☞ Revising chapter headings to clearly state whether a chapter pertains to amateur or professional boxing.

☞ Creating additional definitions in chapters RL 100 and 110. The proposed rules would create definitions of “amateur,” “professional,” “second” and “sparring.”

☞ Adding a section at the beginning of each chapter which states the authority for the rules in the chapter.

☞ Using a single word for “boxer,” rather than such words as “participant,” “contestant,” “principal” and “competitor.”

☞ Amending provisions relating to “low blows.” The current provisions are unclear.

**Statutory authority:**

Sections 227.11 (2) and 440.42, 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 11 hours.



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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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

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

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

##### *Rule Submittal Date*

On August 8, 1996, the Wisconsin Department of Agriculture, Trade & Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

The proposed rule amends ch. ATCP 21, Wis. Adm. Code, relating to potato late blight.

##### *Agency Procedure for Promulgation*

Public hearings are required and will be held after the Wisconsin Legislative Council Clearinghouse completes its review of the proposed rule. The Division of Agricultural Resource Management is primarily responsible for promulgation of this rule.

##### *Contact People*

If you have questions regarding this rule, you may contact Mr. Bill Brener of the Division of Agricultural Resource Management at (608) 224-4573 or Attorney James Matson at (608) 224-5022.

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

##### *Rule Submittal Date*

On August 8, 1996, the Wisconsin Department of Agriculture, Trade & Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

The proposed rule amends ch. ATCP 98, Wis. Adm. Code, relating to financial standards and security requirements for vegetable contractors.

##### *Agency Procedure for Promulgation*

Public hearings are required and will be held after the Wisconsin Legislative Council Clearinghouse completes its review of the proposed rule. The Division of Trade and Consumer Protection is primarily responsible for promulgation of this rule.

##### *Contact People*

If you have questions regarding this rule, you may contact Mr. Don Furniss of the Division of Trade and Consumer Protection at (608) 224-4930 or Attorney Sherry Steffel at (608) 224-5029.

#### **State Emergency Response Board**

##### *Rule Submittal Date*

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on August 1, 1996, the State Emergency Response Board submitted to the Legislative Council Rules Clearinghouse a proposed rule creating ch. ERB 6.

##### *Analysis*

The subject matter of the proposed rule relates to reimbursement procedures for regional and local hazardous materials emergency response teams when a person responsible cannot be found or when the person responsible is unable or unwilling to pay.

The proposed rule delineates the procedure that a regional or local hazardous materials emergency response team must follow to be reimbursed from the money allocated in the Department of Transportation (DOT) transportation fund under s. 20.465 (3) (rp) and (rt), Stats. The proposed rule establishes standards to determine if a regional or local hazardous materials response team has made a good faith effort to identify a person responsible for a release and to determine if the person responsible is financially able or has the money or resources necessary to reimburse a response team.

##### *Agency Procedure for Promulgation*

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is Wisconsin Emergency Management.

##### *Contact Person*

If you have any questions, you may contact Mr. William Clare at (608) 242-3220.

#### **Employe Trust Funds**

##### *Rule Submittal Date*

Notice is hereby given that on August 9, 1996, the Wisconsin Department of Employee Trust Funds submitted to the Legislative Council Rules Clearinghouse a proposed order affecting ss. ETF 10.01 (3i) and 20.14, 20.15, 20.16 and 20.18.

##### *Analysis*

The subject matter of the proposed rule relates to purchases of service under the Wisconsin Retirement System, including forfeited, qualifying, and other governmental service.

##### *Agency Procedure for Promulgation*

A public hearing is scheduled for September 11, 1996.

##### *Contact Person*

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

#### **Natural Resources**

##### *Rule Submittal Date*

On August 5, 1996, the Wisconsin Department of Natural Resources submitted to the Legislative Council Rules Clearinghouse a proposed rule [LE-41-95] affecting s. NR 10.09 (1) (c) 1. a.

##### *Analysis*

The subject matter of the proposed rule relates to definition of a muzzleloader.

##### *Agency Procedure for Promulgation*

A public hearing is scheduled for September 25, 1996.

##### *Contact Person*

If you have any questions, you may contact Mr. Tim Lawhern, Bureau of Law Enforcement, at (608) 266-1317.

## **Natural Resources**

### **Rule Submittal Date**

On August 5, 1996, the Wisconsin Department of Natural Resources submitted to the Legislative Council Rules Clearinghouse a proposed rule [FM-43-96] affecting s. NR 20.03 (1) (k) 7.

### **Analysis**

The subject matter of the proposed rule relates to a daily bag limit for panfish.

### **Agency Procedure for Promulgation**

Public hearings will be held September 11, 12, 16, 17, 18 and 19, 1996.

### **Contact Person**

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

## **Natural Resources**

### **Rule Submittal Date**

Notice is hereby given that on August 5, 1996, the Department of Natural Resources submitted to the Legislative Council Rules Clearinghouse a proposed rule [ER-49-95] affecting ch. NR 27.

### **Analysis**

The subject matter of the proposed rule relates to endangered and threatened species lists.

### **Agency Procedure for Promulgation**

A public hearing is scheduled for September 24, 1996.

### **Contact Person**

If you have any questions, you may contact Ms. Betty Les, Bureau of Endangered Resources, at (608) 266-3369.

## **Natural Resources**

### **Rule Submittal Date**

Notice is hereby given that on August 5, 1996, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed rule [WR-45-96] affecting chs. NR 190 and 191.

### **Analysis**

The subject matter of the proposed rule relates to lake protection and lake planning grants.

### **Agency Procedure for Promulgation**

Public hearings are scheduled for September 17, 24 and 25, 1996.

### **Contact Person**

If you have any questions, you may contact Carroll Schaal, Bureau of Fisheries Management and Habitat Protection, at (608) 266-1877.

## **Regulation and Licensing**

### **Rule Submittal Date**

Notice is hereby given that on August 6, 1996, the Department of Regulation and Licensing submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order repealing and recreating s. RL 30.02 (7) and creating s. RL 30.02 (4m).

### **Analysis**

*Statutory authority:* SS. 227.11 (2) and 440.26, Stats., and s. 167.31 (4) (a) 4., Stats., as created by 1995 Wis. Act 122.

In this proposed rule-making order, the Department of Regulation and Licensing creates a definition of "in plain view," as directed in s. 167.31 (4) (a) 4., Stats., as created by 1995 Wis. Act 122. This section of this proposed order permits the private security person to carry a firearm in a holster or without a holster, provided that the firearm or the holster with the firearm in it is entirely discernible from ordinary observation of a person located outside and within the immediate vicinity of the vehicle and is at all times within the control of the private security person and not accessible to other occupants in the vehicle. The holster may not be partially or wholly covered by the uniform of the private security person.

The current definition of "on duty" is repealed and recreated to clarify that a private security person is not on duty when the private security person drives to or from his or her place of employment or a facility at which he or she receives or intends to receive training to act as a private security person. The effect of this change, and that described in the above paragraph, is to prohibit private security persons from having a loaded weapon in a vehicle when they drive to and from their place of employment or a facility at which they receive or intend to receive training to act as a private security person.

### **Agency Procedure for Promulgation**

Public hearing(s) will be scheduled.

### **Contact Person**

If you have any questions, you may contact Ms. Pamela Haack, Rules Center Coordinator, at (608) 266-0495.

## **Revenue**

### **Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on August 6, 1996, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule order amends ch. Tax 20, relating to the administration of lottery credit. The proposed amendment to ch. Tax 20 is required to implement changes in 1995 Wis. Act 27.

### **Agency Procedure for Promulgation**

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Division of State and Local Finance, Bureau of Local Financial Assistance, is primarily responsible for promulgation of the proposed rule.

### **Contact Person**

If you have questions regarding this proposed rule, you may contact Ms. Rebecca Boldt at (608) 266-6785.

## **Workforce Development**

### **Rule Submittal Date**

On August 15, 1996, the Wisconsin Department of Workforce Development submitted a proposed rule for Legislative Council review.

### **Analysis**

The proposed rule affects ch. DWD 55, Wis. Adm. Code, relating to child care certification.

### **Agency Procedure for Promulgation**

A public hearing will be held Sept. 17, 1996 in Madison, Wisconsin.

### **Contact Person**

If you have questions regarding this rule, you may contact Ms. Bonnie Kendell at (608) 261-6971.

**Workforce Development**

*Rule Submittal Date*

On August 15, 1996, the Wisconsin Department of Workforce Development submitted a proposed rule for Legislative Council review.

*Analysis*

The proposed rule affects ch. DWD 56, Wis. Adm. Code, relating to the administration of child care funds.

*Agency Procedure for Promulgation*

A public hearing will be held Sept. 17, 1996 in Madison, Wisconsin.

*Contact Person*

If you have questions regarding this rule, you may contact Ms. Bonnie Kendell at (608) 261-6971.



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## NOTICE SECTION

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### Notice of Hearings

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

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold two public hearings on a proposed rule related to vegetable producer security. This rule amends ch. ATPC 98, Wis. Adm. Code.

#### Written Comments

The hearings will be held at the dates and places indicated below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **September 27, 1996** for additional written comments.

#### Copies of Rule

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

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

Copies will also be available at the public hearings.

An interpreter for the hearing-impaired will be available upon request for these hearings. Please make reservations for a hearing interpreter by September 4, 1996 by contacting Jamie Tukiendorf (608) 224-4924 or by contacting the TDD at the Department at (608) 224-5058.

#### Hearing Information

The hearings are scheduled as follows:

<b>September 11, 1996</b> <b>Wednesday</b> <b>Commencing</b> <b>at 10:30 a.m.</b> <i>Handicapped Accessible</i>	<b>Room 149</b> <b>University Extension Office</b> <b>Marathon Co. Courthouse</b> <b>500 Forest St.</b> <b>WAUSAU, WI</b>
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<b>September 12, 1996</b> <b>Thursday</b> <b>Commencing</b> <b>at 10:00 a.m.</b> <i>Handicapped Accessible</i>	<b>Room 106</b> <b>State Agriculture Bldg.</b> <b>2811 Agriculture Dr.</b> <b>MADISON, WI</b>
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#### Agency Analysis

*Statutory authority:* ss. 93.07 (1), and 100.03 (17)

*Statute interpreted:* s. 100.03

##### 1995 Wisconsin Act 460

1995 Wis. Act 460, published on July 10, 1996, made significant changes to the vegetable security law. Among other things, Act 460 increased the minimum financial standards for vegetable contractors. This rule amends the Department's current rules under ch. ATPC 98, to incorporate the statutory changes.

##### BACKGROUND

Under the vegetable security law, s. 100.03, Stats., vegetable contractors must do all of the following:

- ✓ Register annually with the Department.
- ✓ File financial statements with the Department.

✓ File security with the Department if they fail to meet the minimum financial standards.

1995 Wis. Act 460 makes the following changes to the vegetable security law:

- ✦ It exempts fruit from coverage under the law.
- ✦ It establishes higher minimum standards for vegetable contractors. Contractors who meet the prior standards, but fail to meet the new standards, must file security in the following amounts:
  - ➔ For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.
  - ➔ For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.
  - ➔ For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.

- ✦ It changes the annual registration year expiration date, from March 31 to January 31.

- ✦ It clarifies current requirements related to year-end financial statements. Vegetable contractors who do not either make "payment on delivery" or file security with the Department are currently required to file a year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year. Act 460 permits the Department to extend the filing deadline by up to 30 days.

- ✦ It requires a vegetable contractor that wants to be licensed on the basis of its financial standing to file an interim financial statement with each annual application for registration renewal.

- ✦ It requires vegetable contractors to report, at the end of each registration year, whether they have met producer payment deadlines under the law.

- ✦ It prohibits a contractor from assessing a separate charge to producers to finance the cost of security filed with the Department.

- ✦ It eliminates food processing plant trusteeships as a security option.

#### RULE CONTENTS

##### General

This rule implements 1995 Wis. Act 460, and makes other minor changes to clarify the Department's current rules under ch. ATPC 98, Wis. Adm. Code.

##### Rule Coverage

This rule applies to "vegetable contractors." A vegetable contractor is a processor or handler who buys vegetables grown in this state for use in food processing, or who contracts with a producer to grow vegetables in this state for use in food processing.

This rule does not apply to fruit contractors. Act 460 exempted fruit contractors from regulation under s. 100.03, Stats. This rule modifies current rules to reflect the new exemption.

##### Registration Year

Act 460 changed the registration year for vegetable contractors. The registration year now expires on January 31 of each year, rather than on March 31 as before. This rule modifies current rules to incorporate this change.

##### Contractor's Payments to Producers: General

Current law specifies payment deadlines under vegetable procurement contracts:

- If a procurement contract does not specify a payment date in writing, the contractor must pay the producer by the 15th day of the month immediately following the month in which the producer tendered or delivered the vegetables.

- By January 31 of each registration year, a contractor must pay for all vegetables tendered or delivered prior to December 31 of that registration year unless a contract specifying a later payment date is approved by a vote of producers.

- If a producer tenders or delivers vegetables after December 31 of any registration year, the contractor must pay by the 15th day of the month following the month in which the vegetables were tendered or delivered, or by the 30th day after tender or delivery, whichever is later. (Act 460 clarifies this provision.)

Under Act 460 and this rule, the Department may not renew a contractor's registration unless, before February 5 of the registration year for which renewal is sought, the contractor files a sworn statement declaring that the contractor has paid in full all producer obligations which were due and payable in the preceding registration year ending January 31.

#### Annual Financial Statement

Under current law, most contractors must file an annual financial statement with the Department. (There are certain exceptions.) A contractor must file the year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year.

Under Act 460 and this rule:

- Year-end financial statements must be audited or reviewed by a CPA or public accountant. A year-end financial statement must be audited if the contractor incurs more than \$250,000 in producer obligations during the year to which the financial statement pertains.

- The Department may, for good cause, extend the filing deadline for up to 30 days.

#### Interim Financial Statement to Accompany Renewal Application

Under 1995 Wis. Act 460 and this rule, contractors who are required to file year-end financial statements must also file interim financial statements when they apply for renewal of their annual registration certificate. A contractor must file an interim financial statement as of the quarter that ends closest to November 30.

#### Minimum Financial Standards

Under the prior law, a vegetable contractor was required to file security unless the contractor met both of the following financial standards:

- ◆ The contractor's ratio of current assets to current liabilities was at least 1.2 to 1.0.

- ◆ The contractor's total assets exceeded total liabilities.

Act 460 changes these minimum financial standards. Under Act 460 and this rule, a contractor must now file security unless the contractor meets all of the following standards:

- ★ The contractor's ratio of current assets to current liabilities must be at least 1.2 to 1.0 at the end of the contractor's fiscal year, and at least 1.0 to 1.0 at all other times.

- ★ The contractor must have equity equal to at least 20% of total assets at the end of contractor's fiscal year, and at least 10% at all other times.

#### Security Required

Under current law, a contractor who fails to meet minimum financial standards must file security with the Department unless the contractor pays cash "on delivery" for all vegetables procured from producers. The contractor must file security equivalent to at least 75% of the contractor's anticipated "maximum liability to producers" during the registration year.

Under Act 460 and this rule, a contractor who meets the minimum financial standards under the prior law, but fails to meet the new minimum financial standards under Act 460, must file "transitional" security in the following amounts for the following years:

- For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.

- For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.

- For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.

Act 460 and this rule prohibit a contractor from assessing a separate deduction against producers to finance the cost of security filed with the Department. This rule also clarifies current standards for calculating a contractor's "maximum liability to producers."

#### Food Processing Plant Trusteeships

Under prior law, a contractor who was also a food processing plant operator could, as an alternative to filing security with the Department, enter into a food processing plant trusteeship. This allowed a contractor to set aside, in trust for producers, processed vegetables equivalent to not less than 30% of the raw vegetables received from producers. Act 460 repealed the option of a food processing plant trusteeship, which was difficult to administer and enforce. Consistent with Act 460, this rule repeals current rules related to food processing plant trusteeships.

#### Releasing Security

Under current rules, the Department may release security only if one of the following applies:

- ▶ The contractor complies with minimum financial standards for at least 2 consecutive years.

- ▶ The contractor files alternative security.

- ▶ The contractor goes out-of-business after paying producers in full.

- ▶ The contractor demonstrates that the amount of security on file exceeds the amount required (e.g., because of a substantial appreciation in the value of the security or a substantial reduction in the contractor's maximum liability to producers).

This rule provides a different standard for the release of "transitional" security which a contractor is first required to file for the registration year beginning February 1, 1997, because the contractor fails to meet the new minimum standards under Act 460. Under this rule, the Department may release that "transitional" security at any time on or before January 31, 1999 if the contractor files a single year-end financial statement that meets the new financial standards.

#### Notice to Producers; Financial Information

Under current rules, whenever a contractor offers a producer a procurement contract, the contractor must notify the producer of the basis on which the contractor is registered with the Department. The contractor must give the notice in writing, in the exact form prescribed in the rule. The notice must indicate which of the following applies:

- \* The contractor must pay cash on delivery as a condition to registration.

- \* The contractor is registered on the basis of the contractor's financial statement.

- \* The contractor is registered on the basis of security voluntarily filed with the Department in lieu of a financial statement.

- \* The contractor is registered on the basis of security which the contractor is required to file because the contractor's financial statement does not meet minimum standards.

This rule modifies the current notice requirements to reflect law changes made by Act 460. This rule specifies a different notice for contractors who must file "transitional" security because they fail to meet the new minimum financial standards under Act 460.

### **Fiscal Estimate**

The proposed rule incorporates changes to s. 100.03, Stats., as amended by 1995 Wis. Act 460, in the current ch. ATCP 98, Wis. Adm. Code. These changes include the following:

- 1 Exempts contractors who procure fruit only from the registration and financial security requirements;

- 2 Changes the registration certificate expiration date to January 31 of each year;

- 3 Strengthens the minimum financial standards that must be met on the contractor's annual financial statement to avoid having to file security with the Department or make payment on delivery;

- 4 Sets lower minimum financial standards that a contractor who does not file security or make payment on delivery must maintain at all times;

- 5 Requires the filing of an interim financial statement as of the quarter ending nearest to November 30 with the contractor's



application for registration renewal if the contractor does not file security or make payment on delivery.

Because the changes take effect as the result of the enactment of 1995 Wis. Act 460, effective July 11, 1996, whether or not the Department adopts the proposed rule, there is no fiscal effect attributed solely to the adoption of this rule; however, there are one-time costs, associated with the rulemaking, of approximately \$500 (consisting of the costs of holding hearings, and printing and mailing copies of the rule).

### **Initial Regulatory Flexibility Analysis**

Proposed changes to ch. ATCP 98, Wis. Adm. Code

#### Vegetable Contractors: Security Requirements

This rule amends ch. ATCP 98, Wis. Adm. Code, to incorporate changes made to s. 100.03, Stats., by the enactment of 1995 Wis. Act 460. The statute, as amended:

- ① Exempts contractors who procure only fruit from the registration and financial security requirements;
- ② Changes the expiration date of the registration to January 31;
- ③ Requires that some contractors submit an interim financial statement as of the quarter ending closest to November 30 of the prior year with their application for renewal;
- ④ Changes the minimum financial standards that a vegetable contractor must meet in order to *not be required* to file security or make "payment on delivery" for all vegetables purchased; and
- ⑤ Phases-in over three years the filing of security for contractors who met the previous minimum financial standards but do not meet the "new" minimum standards.

This rule incorporates those changes.

The increased minimum financial standards in the statute, and this rule, may require additional contractors to file security for the first time, but this rule softens the impact of this requirement by allowing the Department to return security to a contractor who later files one annual financial statement which meets the higher minimum standards during the transitional security-filing period. Without these higher financial standards, however, the appearance that this program provides some assurance of payment to growers would be an empty shell.

The requirement in the amended statute, and in this rule, related to the filing of an interim financial statement with the contractor's application for registration renewal will impact on some contractors, many of whom are small businesses as defined in s. 227.114 (1) (a), Stats.; however, Wisconsin's vegetable growers, many of whom are also small businesses, will benefit from the Department having more current financial information available on which to base its registration renewal decision.

In summary, the impacts on contractors, who may be small businesses, are the result of the enactment of 1995 Wis. Act 460, which amends s. 100.03, Stats., and this rule simply incorporates those amendments.

## **Notice of Hearing**

### ***Employe Trust Funds***

The Wisconsin Department of Employee Trust Funds will hold a public hearing in accordance with s. 227.16 (1), Stats., to review this proposed rule, which repeals ss. ETF 20.15 (4) and (5), 20.16 (3), (4), (4m) and (5), and 20.18 (6) (g), (7) (g), (8) (title), (a), and (b), rennumbers s. ETF 20.18 (3) (b) 2. and (8) (c) and (d), rennumbers and amends s. ETF 20.18 (3) (b) 3. and 4., and (9), amends ss. ETF 20.15 (1), 20.18 (3) (b) (intro.), (5) (a), (b) 3., and (d), and (7) (e), repeals and recreates s. ETF 20.15 (2) and (3) and creates ss. ETF 10.01 (3i), 20.14, and 20.18 (3) (c) (intro.), Wis. Adm. Code, relating to purchases of service under the Wisconsin Retirement System (WRS), including forfeited, qualifying, and other governmental service.

### **Hearing Information**

The public hearing will be held on:

September 11, 1996  
Wednesday  
At 10:00 a.m.

Room 611A, GEF #2  
101 South Webster St.  
MADISON, WI 53702

### **Written Comments**

The public record on this proposed rulemaking will be held open until **2:00 p.m. on Thursday, September 12, 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  
FAX (608) 267-0633  
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**

Section 40.25 (6), Stats., permits participating employes who meet certain conditions to reestablish creditable service that was forfeited by a withdrawal of employe contributions. The cost to purchase each year of forfeited service is the percentage specified in s. 40.05 (1) (a), Stats., of the employe's average annual earnings based on the three highest years. Section 40.25 (6) (a) 2, Stats., requires that applications to reestablish creditable service include all creditable service that has been forfeited, up to a maximum of ten years, but not more than the amount of creditable service that the employe has on the date of application. Section ETF 20.15 (3), Wis. Adm. Code, currently limits participants to one application to reestablish forfeited service. As a result, most participants wait until near retirement to purchase forfeited service.

In addition to forfeited service, ss. 40.02 (17) and 40.25 (7), Stats., allow participating employes to purchase certain other types of service, the most common of which is the six-month qualifying period that was served by non-teachers prior to 1973. Costs for the service types vary depending on the provisions of statute and rule, but all are based in some way on the employe's WRS earnings.

Applicants who purchase service initially pay an estimated cost calculated by the Department. The estimate may be imprecise because earnings and service information is incomplete at the time it is prepared. The Department audits service purchases based on final earnings and service information and bills the participant for any remaining balance or deducts the amount due from an annuity being paid. Due to the timing of annual employer reporting, it is common for these supplementary billings to be paid in the calendar year following the date of application, sometimes well after the employe has retired.

Prior to October 1, 1992, employes who had more than two years of forfeited service were permitted to pay in five annual installment payments [see s. 40.25 (6) (a) 3., 1989 Stats., and s. ETF 20.15 (2) and (4), Wis. Adm. Code] based on their final average earnings on the date of application. Interest at the WRS effective rate was assessed on the unpaid balance and default resulted in cancellation of the entire purchase. 1991 Wis. Act 152 repealed the installment purchase method and substituted the option of paying for forfeited service purchases from employe-paid additional contributions accumulated over several years. 1995 Wis. Act 302 extended this option to all service purchases. Additional contributions are advantageous to employes because they earn interest at the WRS effective rate, which can be applied to the purchase. However, employes whose wages increase significantly in the years before they apply to purchase service also pay a higher cost for the service, due to the delay.

1995 Wis. Act 302 limits annual contributions to the WRS to comply with Sec. 415 (c) of the Internal Revenue Code (IRC), which limits contributions that may be made to a qualified retirement plan. Payments to reestablish forfeited service and to purchase other types of service are included in the calculation of maximum contributions permitted in a given calendar year, as are additional contributions. After employer reporting for the calendar year is complete, the

Department will test all employees' contributions against the IRC Sec. 415 (c) limits and will refund any excess contributions.

Purchase of service in any one calendar year will therefore be restricted by IRC Sec. 415 (c). As a broad rule of thumb, a full-time, full-year general employee or teacher can purchase no more than about 5 years of general service in one calendar year if the employee was hired after 1981 or about 3 years if the employee was hired before 1982. (Differences in amount of the IRC Sec. 415 (c) limit are related to different interest crediting provisions for pre-1982 and post-1981 employees.) It may be impossible for an employee nearing retirement to reestablish all of his or her forfeited service, as is required under existing rules.

Under Treasury Regulations s. 1.415-6 (b) (iii), corrections to employee-paid contributions must be made by January 30 of the year following the year of the contribution. This time limit renders the current supplementary billing procedure problematic because the Department frequently does not have final information on WRS earnings and taxable compensation by that date. If the supplementary billing is paid after January 30, it is subject to testing in the next calendar year.

Act 302 permits the Department to promulgate a rule on purchase of forfeited service to allow participants to make payments for forfeited service over more than one calendar year. However, s. 40.15 (6) (a) 2., Stats., requires the application to include all of the forfeited service which the employee is eligible to purchase. Because of the potentially heavy interest assessments on applicants and the complexity of administering a multi-year installment plan within the constraints of IRC Sec. 415 (c), the Department does not contemplate a return to the installment method of purchase. Instead, the proposed rule implements the statutory provisions by requiring that the employee purchase as much service as possible, subject to the IRC Sec. 415 (c) limits.

Under the proposed rule, an applicant must contribute the full cost of the forfeited service or the maximum contribution permitted under IRC Sec. 415 (c) for that calendar year, whichever is less. Service will be credited up to the amount funded by the payment. Since at the time of application the Department cannot predict the employee's taxable compensation for that year, the employee is responsible for computing his or her maximum voluntary contribution. Normally the maximum voluntary contribution will approach 25% of compensation for employees hired after 1981, and 10% to 15% of compensation for employees hired before 1982. Forfeited service granted will be adjusted if a refund is necessary. The Department retains the right to reject an application if it appears that the employee has significantly under- or over-estimated the maximum voluntary contribution.

**EXAMPLE.** A general employee has taxable compensation of \$25,000 and WRS earnings of \$26,000. The employee's total permitted contribution is \$6,250 (25% of \$25,000). The employer pays the employee-required contributions on the employee's behalf, but the employee is required to pay 0.5% of earnings toward the benefit adjustment contribution. The employee has 6.33 years of forfeited service to purchase, at a total cost in 1997 of \$7,956.

If hired before 1982, the employee's WRS account earns interest at the effective rate. The employee's required contribution rate is 5% of WRS earnings, or \$1,300 (5% of \$26,000). The matching employer contribution is also \$1,300. The employee pays 0.5% for the benefit adjustment contribution, or \$130. The employee's maximum voluntary contribution is \$3,520 (\$6,250 - \$2,730). The employee can purchase 2.80 years of service (\$3,520 / \$7,956 \* 6.33) in 1997.

If hired after 1981, the employee's WRS account earns 5% interest. Only the \$130 benefit adjustment contribution is included in

the maximum contribution. The employee's maximum voluntary contribution is \$6,120. The employee can purchase 4.87 years of service in 1997.

When the purchase is completed, employees who still have more forfeited service to buy will be billed for the cost of the remaining service based on the new final average earnings in effect in the next calendar year. While the employee is not required to pay interest on the unpaid cost, each year's cost increases proportionately to the increase in the employee's final average earnings. The purchase process can be repeated in each year in which the employee has some taxable earnings from a WRS employer until all service is purchased or the employee terminates employment. There is no penalty if the employee does not continue to make annual purchases.

The same procedures apply to other types of service purchases, except that, due to absence of statutory authority, service under s. 40.02 (17), Stats., cannot be pro-rated.

#### General Summary of Rule

Section 1 provides a definition of "maximum voluntary contribution," (i.e., the maximum amount that a participating employee may contribute in one calendar year to purchase service).

Section 2 creates s. ETF 20.14, specifying general provisions regarding service purchases of all types. The employee must file an application on or before the date participating employment terminates and must pay the lesser of the full cost of the service or his or her maximum voluntary contribution for that year. The employee may choose to use additional contributions to pay some or all of the cost. If the employee's contributions for the year are in excess of the IRC Sec. 415 (c) limits, the Department will refund the excess. Applications to purchase service under s. 40.02 (17), Stats., will be rejected if the cost is not fully paid. Forfeited service and other governmental service will be pro-rated if the payment is insufficient.

If the employee applied to purchase more than one type of service during the year and the total payment is insufficient, the Department will allocate the monies at its discretion. This provision is intended to allow the Department to choose the most beneficial and efficient allocation possible under the particular circumstances. Contributions which are within the federal limits but cannot be allocated will be refunded or deposited in the employee's additional account, whichever the participant elects on the application form.

Section 3 amends s. ETF 20.15 (1) to clarify the existing provision on computation of the employee's final average earnings.

Sections 4, 5, and 6 repeal most current provisions on reestablishing forfeited service and purchasing qualifying service. Section 4 recreates s. ETF 20.15 (2) and (3) to provide transitional procedures for purchases begun before January 1, 1997 and new procedures for purchases initiated on or after January 1, 1997.

Sections 7 - 16 amend s. ETF 20.18, concerning purchase of other governmental service, to conform to Act 302 and the newly-created s. ETF 20.14.

#### Statutes Interpreted

S. 40.02 (17), Stats.; ss. 40.05 (1) (a) 7, 40.06 (d) and (e), and 40.25 (6) and (7), Stats., as affected by 1995 Wis. Act 302.

#### Related Federal Statutes and Regulations

IRC Sec. 415 (c); Treas. Reg. 1.415-6 (b) (iii).

#### Authority for Rule

SS. 40.03 (2) (i) and (t), and 40.25 (6), Stats., as affected by 1995 Wis. Act 302.

### **Fiscal Estimate**

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

### **Initial Regulatory Flexibility Analysis**

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

## **Copies of Rule and Contact Person**

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

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 Mary Anglim, Division of Retirement Services, (608) 266-6611.

## **Notice of Hearing**

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

Notice is hereby given that pursuant to ss. 29.155(1g) and 227.11(2)(a), Stats., interpreting s. 29.155(1j) and (1r), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 19.025, Wis. Adm. Code, relating to the waiver of approvals, fees and other requirements of ch. 29, Stats., for an educational, recreational skills activity.

### **Agency Analysis**

1993 Wis. Act 217 allows the Department to waive fishing and hunting approval requirements for special events or programs that involve fishing or hunting and that are sponsored or approved by the Department. It further allows the Department, by rule, to waive conditions, limitations or restrictions of ch. 29, Stats., for these activities.

The proposed rule establishes the procedures to be followed and the conditions, limitations and restrictions required of a sponsor to obtain a waiver of portions of ch. 29, Stats., for conducting an educational, recreational fishing or hunting skills activity. The rule only allows the waiver of approval fees for individuals who are novice hunters or anglers. Individuals can only participate in the program if they have less than two years of hunting or fishing experience. The Department may make appropriate inquiry into the criminal history, character and background of mentoring applicants if the Department receives information indicating prior relevant illegal activity.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

**September 25, 1996**  
**Wednesday**  
**at 10:30 a.m.**

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

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Gerald Meronk at (608) 266-4539 with specific

information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Gerald Meronk, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than **September 30, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE-16-95] and fiscal estimate may be obtained from Mr. Meronk.

### **Fiscal Estimate**

We assume that this proposal will only affect novices in hunting and fishing who do not currently purchase hunting or fishing approvals. Therefore there will be no loss of current revenue. We assume there will be less than 100 skills activities events per year. If processing the application takes 1 hour per application, then the administrative cost to the department will be \$2,000.00 (100 events x 1 hr. x \$20/hr.). The department can handle this proposal under its current appropriation.

## **Notice of Hearing**

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

Notice is hereby given that pursuant to s. 227.11(2), Stats., interpreting s. 29.174(1), Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 10.09(1)(c)1 a., Wis. Adm. Code, relating to the definition of a muzzleloader for the muzzleloader gun deer season.

### **Agency Analysis**

The proposed rule will amend the definition to include all muzzleloaders that have a solid breech plug, are loaded from the muzzle and use black powder or other gunpowder with equivalent properties. The change will make it easier for hunters to comply with the law without confusion relative to the advances in technology of the muzzleloader industry.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

**September 25, 1996**  
**Wednesday**  
**at 10:30 a.m.**

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

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Lawhern at (608) 266-1317 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Tim Lawhern, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than **September 30, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE-41-95] and fiscal estimate may be obtained from Mr. Lawhern.

**Fiscal Estimate**

None.

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

Notice is hereby given that pursuant to ss. 29.415(3) and 227.11(2)(a), Stats., interpreting s. 29.415(3), Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 27.03(2) and (3), Wis. Adm. Code, relating to the Wisconsin endangered and threatened species lists.

**Agency Analysis**

The proposed rule will add 14 new animal species and 20 new plant species, remove 3 species from the lists, change the status of 3 species from threatened to endangered and downlist 3 species from endangered threatened.

**Initial Regulatory Flexibility Analysis**

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

**Environmental Assessment**

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

**Hearing Information**

**September 24, 1996**  
**Tuesday**  
**at 10:00 a.m.**

**Room 041**  
**GEF #3**  
**125 S. Webster St.**  
**Madison**

**September 26, 1996**  
**Thursday**  
**at 4:00 p.m.**

**Conference Room #4**  
**DNR Headquarters**  
**107 Sutliff Ave.**  
**Rhineland**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Betty Les at (608) 266-3369 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Ms. Betty Les, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 no later than **September 30, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Ms. Les.

**Fiscal Estimate**State Fiscal Impacts

Enforcement and administrative programs for rules and permits are already in place. No changes are expected in rule enforcement costs or the costs of issuing permits for endangered and threatened species. Increases can be expected in the amount of time required to administer the resulting list of endangered and threatened species, but costs are expected to be absorbed within existing DNA budgets. Management and protection costs may increase with the addition of new species to the list; however, it is not possible at this time to determine what, if any, additional costs will need to be incurred.

Ongoing efforts to minimize fiscal impact through cooperative planning and consultation with other state agencies will continue. In many cases, costs are project-based and thus will not increase in proportion to the number of listed species.

Local Fiscal Impacts

In permit situations (e.g., sewer extensions, landfill sitings), no additional costs are anticipated, since permit fees are project-based rather than species-based. Additional listing of species could result in increased cost to local governments to comply with the Wisconsin Endangered Species Act for projects. However, it is not possible to determine costs at this time. Ongoing efforts to minimize impact through cooperative planning and consultation will continue.

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

Notice is hereby given that pursuant to ss. 29.174 and 227.11(2)(a), Stats., interpreting ss. 29.085 and 29.174(2)(a), Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 20.03(1)(k)7., Wis. Adm. Code, relating to the panfish daily bag limit. The proposed rule will reduce the daily panfish bag limit from 50 to 25.

**Initial Regulatory Flexibility Analysis**

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

**Environmental Assessment**

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

**Hearing Information**

**September 11, 1996**  
**Wednesday**  
**at 6:00 p.m.**

**Room B52**  
**UW-Milwaukee**  
**Bolton Hall**  
**3210 N. Maryland Ave.**  
**Milwaukee**

**September 12, 1996**  
**Thursday**  
**at 6:00 p.m.**

**Room 041**  
**GEF #3**  
**125 South Webster St.**  
**Madison**

**September 16, 1996**  
**Monday**  
**at 6:00 p.m.**

**Room 2550-2560**  
**Eau Claire Co. Courthouse**  
**721 Oxford Ave.**  
**Eau Claire**

**September 17, 1996**  
**Tuesday**  
**at 6:00 p.m.**

**Cafeteria**  
**Spooner High School**  
**500 College St.**  
**Spooner**

**September 18, 1996**  
**Wednesday**  
**at 6:00 p.m.**

**Auditorium**  
**Rhineland High School**  
**665 Coolidge Ave.**  
**Rhineland**

**September 19, 1996**  
**Thursday**  
**at 6:00 p.m.**

**Room 203-205**  
**Green Bay City Hall**  
**100 N. Jefferson St.,**  
**Green Bay**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the

provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Simonson at (608) 266-5222 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Tim Simonson, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **September 20, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FM-43-96] and fiscal estimate may be obtained from Mr. Simonson.

### **Fiscal Estimate**

None anticipated.

## **Notice of Hearing**

### *Natural Resources*

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

Notice is hereby given that pursuant to ss. 29.174(3), 227.11(2)(a) and 227.24, Stats., interpreting ss. 29.107, 29.1075, 29.174(1) and (2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-44-96(E) pertaining to the 1996 deer hunting season.

### **Agency Analysis**

This emergency order took effect on August 12, 1996. The emergency rule modifies tagging requirements and bag limits for the 1996 deer hunting seasons in 19 deer management units, including Governor Dodge, Blue Mound and Peninsula state parks. The rule requires that a hunter must first tag an antlerless deer before the hunter can tag a buck during both the bow and the firearm deer season.

### **Hearing Information**

**September 12, 1996**  
**Thursday**  
**at 1:00 p.m.**

**Room 317**  
**GEF #2**  
**101 South Webster St.**  
**Madison**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Todd Peterson at (608) 267-2948 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Mr. Todd Peterson, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than September 13, 1996. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [WM-44-96-E] may be obtained from Mr. Peterson.

### **Fiscal Estimate**

Applicants purchased slightly more than one bonus permit per hunter in 1995 in these units. Sale of these permits in 1995 generated \$760,560 in revenues for the Wildlife Damage Program. Under this proposal, a special permit will be made available free of charge with each archery and gun license and each bonus permit purchased. Fewer bonus permits will be purchased due to the availability of free permits. Revenues to the damage program will decrease an estimated \$660,000.

No Hunters Choice permits will be issued in these units. The \$3 application fee will be charged to those hunters applying for a bonus permit through the mail. It is assumed most bonus permits sold will be sold over the counter. The loss of application fee revenues is estimated at \$195,000 based on the number of Hunters Choice permits sold in these units in 1995.

Additional wage costs for Wildlife Management, Law Enforcement, Parks and Licensing staff will be incurred to cover the additional 4-day early season and the administration of the special permits and buck validation process. Payments to registration stations in these units will increase due to additional requirements.

Approximately \$79,000 in additional state sales and income tax revenue will be generated by the 4-day early season.

### *Fiscal Impact*

Revenues to damage program will decrease by an estimated \$660,000.

Revenues from application fees will decrease by an estimated \$195,000.

Increased costs associated with the extra 4-day season and administrative requirements are approximately \$129,500.

### *Long-Range Fiscal Implications*

Sufficient carryover monies exist in the Damage program to offset the loss of Damage revenues for 1996. If this season framework is extended to future years, carryover will need to be calculated and the impact on farmer payments analyzed. The increased costs associated with administration can be absorbed for one year, but would require new monies or reallocation if the framework is extended to additional years.

## **Notice of Hearings**

### *Natural Resources*

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

Notice is hereby given that pursuant to ss. 144.253, 144.254(3) and 227.11(2)(a), Stats., interpreting ss. 144.253 and 144.254, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 190 and 191, Wis. Adm. Code, relating to lake protection and lake planning grants.

### **Agency Analysis**

In addition to general housekeeping, the proposed rule makes the following changes:

#### Lake planning grants

1. Clarify the status of nonprofit conservation organizations as eligible sponsors to be consistent with state law and other department grant programs.

2. Replace the \$50,000 lifetime per lake funding cap with a limitation of \$40,000 per biennium to support continued planning on large and complex lake systems.

3. Make the boating access determinations consistent with the overall department access policy in s. NR 1.91(4).

#### Lake protection grants

1. Conform to changes in legislation which raised state share percentage and grant amounts.

2. Create an application deadline consistent with other department grant programs involving land acquisition to improve customer service.

3. Make donations of labor, services, equipment and land eligible as local share to be consistent with other programs and expand grantee opportunities.

4. Streamline funding decision-making by consolidating priorities including making boating access determinations consistent with s. NR 1.91(4) to improve the project selection process.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant

adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### Hearing Information

September 17, 1996  
Tuesday  
Bldg.  
at 1:00 p.m.

Room 137B  
Dept. of Transportation State Office  
Bldg.  
141 N. West Barstow  
Waukesha

September 24, 1996  
Tuesday  
at 1:00 p.m.

Conference Room  
State Patrol Hdqrs.  
Junction of Hwys. 253 & 63  
Spooner

September 25, 1996  
Wednesday  
at 10:00 a.m.

Conference Room  
DNR Area Office  
8770 Hwy. J  
Woodruff

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carroll Schaal at (608) 261-6423 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Carroll Schaal, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **September 30, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WR-45-96] and fiscal estimate may be obtained from Mr. Schaal.

### Fiscal Estimate

The following changes are being proposed to NR 190.

1. Removes a \$50,000 lifetime cap with a \$40,000 biennium cap.

Changes proposed to NR 191 include:

2. Conform to changes in legislation which raised state share percentage from 50% to 75% and per grant cap from \$100,000 to \$200,000.
3. Make donations of labor, equipment and services an eligible part of the local share consistent with ch. NR 190 Lake Planning Grants and the Stewardship Program and clarify the use of donated land for land acquisition projects.

There is no fiscal impact to the State. While the proposed rule changes will mean that more money is available to individual sponsors and raising the local share will be easier, the appropriated amount available statewide will not increase.

While we expect increased participation, at this time it is not possible for the department to estimate the impact on the lake grant program.

### Notice of Hearing Securities

Notice is hereby given that, pursuant to ss. 551.63 (1), (2), and (3), 551.22 (10), 551.23 (11), 551.23 (18), 551.27 (4) and (10), 551.28 (1) (e), 551.32 (1) (b) and (7), 551.33 (1), (2) and (6), 551.34 (1) (g), 553.26 (1), 553.27 (2), 553.31 (1) and (2), 553.58 (1) and (2), and 553.72 (2) and (3), Stats., the Division of Securities of the Department of Financial Institutions will hold a public hearing at the time and place indicated below to consider the amendment, adoption and repeal of rules in connection with its annual review of the rules of the

Division of Securities relating to the operation of ch. 551, Stats., the Wisconsin Uniform Securities Law, ch. 552, Stats., the Wisconsin Corporate Take-Over Law, and ch. 553, Stats., the Wisconsin Franchise Investment Law.

### Hearing Information

October 3, 1996  
Thursday  
At 10:00 a.m.

Room 328 Northwest  
State Capitol  
MADISON, WI

### Written Comments

Written comments in lieu of public hearing testimony may be submitted, which must be received no later than the hearing date and should be addressed to:

Administrator of the Division of Securities  
101 East Wilson Street  
P.O. Box 1768  
Madison, WI 53701

### Analysis Prepared by the Division of Securities

The statutory rulemaking procedures under ch. 227, Stats., are being implemented for the purpose of effectuating the agency's annual review of the rules of the Division of Securities. Proposed revisions are being made in a total of over 40 different SECTIONS. Some of the more significant revisions relate to:

- 1) Repealing all of the "merit review"/"fair and equitable" securities law administrative rules in ch. SEC 3 because of the enactment of 1995 Wis. Act 356, published June 6, 1996, that repealed the statutory "merit review" authority in s. 551.28 (1) (e), (f) and (i), Stats., for securities registration applications.

- 2) Repealing "merit review"/"fair and equitable"-related requirements established for use of various securities registration exemption rules (for employee benefit plans under s. 551.22 (10), Stats., for the "10 offeree" exemption in s. 551.23 (11), Stats., and for employee stock option plans under s. 551.23 (18), Stats.)

- 3) Amending the prospectus disclosure rules in s. SEC 3.23 (3) to reflect the repeal of the securities law "merit review"-related rules in ss. SEC 3.001 and 3.01 to 3.19, and to specify the categories of offerings for which the Division may review the prospectus for disclosure adequacy.

- 4) Adding a subsection to the prospectus disclosure rules in s. SEC 3.23 (4), to provide that in those registration application filings for which the Division may conduct a prospectus disclosure adequacy review, the Division may utilize the disclosure-related provisions only of specified NASAA Statements of Policy or Guidelines.

- 5) Creating a separate subsection of the broker-dealer licensing rule in s. SEC 4.06 (1) (c), regarding customer suitability to reflect the investor financial suitability standards that have been contained in registration rule s. SEC 3.29.

- 6) Amending the broker-dealer reporting rule in s. SEC 4.04 (2) (requiring copies to be filed with the Division of Complaints, relating to its Wisconsin activities in any civil or criminal proceeding or any administrative or disciplinary proceeding by a regulatory authority) to add a requirement to file a copy of any arbitration claim or action filed against the broker-dealer or its agents relating to its Wisconsin activities.

- 7) Creating separate "unethical business practices" rules for both broker-dealers and investment advisers based on Federal Trade Commission rules regarding the prohibition of deceptive and abusive telemarketing as well as related rules of the NASD Regulation, Inc.

- 8) Creating rule-of-conduct provisions for investment advisers who provide their advisory activities on the premises of financial institutions, which rules establish disclosure and advertising requirements (paralleling existing rules applicable to broker-dealers) to ensure that actual or prospective advisory customers are not

confused or misled to think that the advisory services are provided by the financial institution rather than the investment advisor.

9) Repealing a number of substantive and procedural franchise registration rules because of the enactment of 1995 Wis. Act 364, effective July 1, 1996, that repealed the Division's disclosure review authority under ss. 553.26 and 553.27, Stats., for franchise registration applications and which changed the franchise registration process to a "file-and-go" basis.

10) Revising the franchise registration amendment process in s. SEC 32.07 under s. 551.31, Stats., to be equivalent to the franchise registration process established under 1995 Wis. Act 364—namely, that the amendment filing becomes effective upon receipt by the Division of the required information.

11) Repealing the franchise registration exemption in s. SEC 32.05 (1) (c) (based on guarantees of performance by a franchisor's parent) because of the repeal of an equivalent exemption in s. 553.22, Stats., as a result of 1995 Wis. Act 364.

12) Amending the escrow-of-franchise-fee rule in s. SEC 32.08 to reflect the amendment to the statutory escrow provision in s. 553.27 (2), Stats., in 1995 Wis. Act 364.

Each section that adopts, amends or repeals a rule is followed by a separate analysis which discusses the nature of the revision as well as the reason for it.

### **Copies of Proposed Rule**

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to:

Division of Securities  
Dept. of Financial Institutions  
101 East Wilson Street, 4th Floor  
P.O. Box 1768  
Madison, WI 53701

### **Initial Regulatory Flexibility Analysis:**

1. *Types of small businesses that could be affected by certain of the rule revisions are:*

(i) Any business looking to raise capital can utilize the rule revisions adopted consistent with 1995 Wis. Act 356 that limit applicability of securities "merit" review requirements to thereby facilitate selling debt or equity securities in registered offerings in Wisconsin to raise capital;

(ii) Any business considering entering into a franchise relationship with a franchisor can utilize the new franchise rules adopted consistent with 1995 Wis. Act 364 which facilitate both a franchisor's ability to advertise and contact prospective Wisconsin franchisees without any prior regulatory filing under the Wisconsin franchise law, and a franchisor's being able to become registered to sell a franchise immediately upon the filing with the Division of prescribed information.

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

An amendment to the broker-dealer reporting rules under s. SEC 4.04 (2) would require a broker-dealer to file a copy of any arbitration claim or action naming the broker-dealer or its agents relating to its Wisconsin activities involving an amount exceeding \$10,000. An amendment to the broker-dealer rule-of-conduct provision in s. SEC 4.05 (5) provides regulatory flexibility by permitting a broker-dealer to utilize an alternative, computer-generated customer information form in lieu of the traditional version of the customer information form.

### **Fiscal Estimate**

A summary of the fiscal effects of the proposed rule revision is as follows:

(i) No one-time revenue fluctuations.

(ii) An estimated increase of \$2,000 in annual franchise registration fee revenue as a result of the repeal of the franchise registration rule in s. SEC 32.05 (1) (i).

(iii) No long-range fiscal implications will result from the repeal of the securities merit-review rules or from the changes to the substantive and procedural franchise registration rules because those rule changes only follow upon and reflect the statutory changes contained in the securities-related legislation in 1995 Wis. Act 356 and the franchise-related legislation in 1995 Wis. Act 364.

(iv) No fiscal effect on local units of government.

A copy of the full fiscal estimate may be obtained upon request to the:

Division of Securities  
Dept. of Financial Institutions  
101 East Wilson St.  
P.O. Box 1768  
MADISON, WI 53701

## **Notice of Hearing** *Workforce Development*

Notice is given that, pursuant to ss. 46.98 (5) (e), and 49.50 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal of ss. HSS 55.55 to 55.62, and the creation of ch. DWD 55, Wis. Adm. Code, relating to the child care certification.

### **Hearing Information**

The public hearing is scheduled as follows:

September 17, 1996  
Tuesday  
1:00 p.m. to  
6:00 p.m.

Room 751  
One West Wilson Street  
MADISON, WI

*The hearing will be held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6971 or Telecommunication Device for the Deaf (TDD) at (608) 267-9880, at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.*

### **Analysis Prepared by the Dept. of Workforce Development**

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. Level II (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 Level I (regular) Certification

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

4. Criminal Records Check

Adding requirements for state criminal records checks and FBI criminal record checks 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 relating 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. Health, Safety and Conduct Standards

Creates the following new health, safety and conduct requirements:

- 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 1 month 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.

### **Copies of Rule**

A copy of the rules to be considered may be obtained from:

Division of Economic Support  
Telephone (608) 261-6971  
Wis. Dept. of Workforce Development  
One West Wilson Street  
P.O. Box 7935  
Madison, WI 53707

Copies will also be available at the appointed time and place the hearing is held.

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

Interested people are invited to appear at the hearing and will be afforded the opportunity of making oral presentations of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **September 24, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Bonnie Kendell at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

### **Initial Regulatory Flexibility Analysis**

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

Most of Wisconsin's 4,500 certified family day care centers, 2,500 licensed family day care centers, and 2,200 licensed day care centers, except those affiliated with franchisers, qualify as small businesses, as defined in s. 227.114 (1) (a), Stats. The adoption of the rules will not significantly impact upon these small businesses. The rules were promulgated to address the need for essential protection of children, and to ensure a greater supply of day care services.

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

Not applicable.

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

Not applicable.

### **Fiscal Estimate**

This order will update the Department's rules for certification of people who provide day care for up to six children in an unlicensed setting and whose services are purchased with state or federal child care funds. The order includes two rule amendments that may affect state and local government expenditures and revenues. One provision permits county and tribal agencies to charge a certification fee of up to \$100 for initial certification and biennial recertification. The other provision requires county and tribal agencies to obtain criminal record checks for all new applicants for certification and for adults living in an applicant's home.

Although the authority for county and tribal agencies to charge a certification fee is a new provision added by this order, some counties have been charging fees based on a Department-numbered memo dated May 1994 (DCS 94-11), which advised counties that, according to a recent Department legal opinion, they have the authority to charge the fee with county board authorization. The rule change, therefore, will codify current practice in some counties and may not affect local government revenues. Since the number of counties and tribes that have been charging a fee in accordance with the numbered memo cannot be determined, the increased county revenues generated from this change cannot be determined.

Currently, there are approximately 4,450 certified child care providers in Wisconsin, and, on average, one other adult living in a provider's home. There is also considerable turnover of certified child care providers. If 4,000 criminal record checks are obtained each year from the Department of Justice at a cost of \$5 each by county and tribal agencies, the effect of this provision would be to add \$20,000 a year to total county and tribal expenditures. As noted earlier, counties could recover this amount through certification fees. It is also possible that counties will obtain criminal background checks through local law enforcement agencies, which may provide this service without cost to the county. Given a lack of available information, it is not possible to estimate the increased expenditures associated with obtaining these background checks.



## Notice of Hearing

### Workforce Development

Notice is given that, pursuant to ss. 46.98 (2) (b), (2r) (d), (4) (d) and (e) 2. and (5) (e) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal of ss. HSS 55.70 to 55.76, and the creation of ch. DWD 56, Wis. Adm. Code, relating to the administration of child care funds.

### Hearing Information

The public hearing is scheduled as follows:

<b>September 17, 1996</b>	<b>Room 751</b>
<b>Tuesday</b>	<b>One West Wilson Street</b>
<b>1:00 p.m. to</b>	<b>MADISON, WI</b>
<b>6:00 p.m.</b>	

*The hearing will be held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6971 or Telecommunication Device for the Deaf (TDD) at (608) 267-9880, at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.*

### Analysis Prepared by the Dept. of Workforce Development

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 make 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. Eligibility for Parents in Training or Educational Programs

Parent eligibility to receive 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.

#### 3. Loss of Eligibility

A local agency is permitted to determine that a parent is no longer eligible for child care funds if the parent is in serious violation of program requirements or provides false information to the agency about income or other matters affecting eligibility.

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

#### 5. Reimbursement

Local agencies are permitted to reimburse parents under certain circumstances for the cost of child 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.

#### 6. 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 Aid to Families with Dependent Children (AFDC) recipient is involved in orientation, enrollment or initial assessment in the Job Opportunities and Basic Skills (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.

#### 7. Higher Rates for Higher Quality Care

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

#### 8. Reimbursement Rate Categories

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

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

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

### Copies of Rule

A copy of the rules to be considered may be obtained from:

Division of Economic Support  
Telephone (608) 261-6971  
Wis. Dept. of Workforce Development  
One West Wilson Street  
P.O. Box 7935  
Madison, WI 53707

Copies will also be available at the appointed time and place the hearing is held.

### Written Comments and Contact Person

Interested people are invited to appear at the hearing and will be afforded the opportunity of making oral presentations of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **September 24, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Bonnie Kendell at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

### Initial Regulatory Flexibility Analysis

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

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

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

Not applicable.

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

Not applicable.

### Fiscal Estimate

The revision of these rules, relating to administration of child care funds, reflect recent statutory changes concerning eligibility of parents for low-income child care, parent co-payment responsibilities, recovery of funds from negligent parents and of overpayments made to providers and authorization for local agencies,

under certain conditions, to purchase child care from providers who are not licensed or certified.

The adoption of these rules will not affect the expenditures or revenues of state government or local governments.

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

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

**Agriculture, Trade & Consumer Protection (CR 96-2):**

S. ATCP 3.02 and ch. ATCP 50 – Relating to soil and water resource management.

**Natural Resources (CR 96-73):**

SS. NR 200.06, 200.07 and 205.07 – Relating to electronic submission of WPDES permit applications and monitoring data.

**Transportation (CR 96-110):**

S. Trans 102.22 – Relating to commercial driver's license (CDL) waivers for snowplow operators employed by local units of government with populations of less than 3000.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

**Administration (CR 95-233):**

An order creating ch. Adm 25, relating to the Information Technology Investment Fund.  
Effective 10-01-96.

**Agriculture, Trade & Consumer Protection****(CR 95-190):**

An order repealing and recreating ch. ATCP 42, relating to commercial feed.  
Effective 10-01-97.

**Elections Board (CR 96-28):**

An order creating s. El Bd 1.655, relating to source identification in polls or other political communications.  
Effective 10-01-96.

**Natural Resources (CR 95-195):**

An order creating ch. NR 48, relating to applications to withdraw lands entered as county forest.  
Effective 10-01-96.

**Natural Resources (CR 95-222):**

An order creating subch. VII of ch. NR 51, relating to administration of Heritage State Park and Forest Trust grants.  
Effective 10-01-96.

**Public Instruction (CR 96-59):**

An order affecting ch. PI 19, relating to education for school age parents.  
Effective 10-01-96.

**Public Instruction (CR 96-60):**

An order affecting ch. PI 3, relating to teacher licenses.  
Effective 10-01-96.

**Public Instruction (CR 96-61):**

An order affecting ch. PI 32, relating to AODA programs.  
Effective 10-01-96.

**Transportation (CR 96-88):**

An order affecting ch. Trans 107, relating to driver licensing of persons with chemical abuse or dependency problems.  
Effective 10-01-96.

**University of Wisconsin System (CR 96-31):**

An order affecting ss. UWS 18.02 and 18.06, relating to conduct on university lands.  
Effective 10-01-96.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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

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

**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. ATP 99, relating to grain warehouse keepers and grain dealers.

Effective 09-01-96.

**Commerce (CR 96-13):**

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

Effective 09-01-96.

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

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

Effective 09-01-96.

**Emergency Response Board (CR 96-35):**

An order amending ch. ERB 1, relating to temporary construction facility hazardous chemical inventory reporting.

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 94-203):**

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

Effective 09-01-96.

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

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

Effective 09-01-96.

**Health & Family Services (CR 95-226):**

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

Effective 09-01-96.

**Health & Family Services (CR 96-3):**

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

Effective 09-01-96.

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

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

Effective 09-01-96.

**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 95-189):**

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

Effective 09-01-96.

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

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

Part effective 09-01-96.

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

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

Effective 09-01-96.

**Natural Resources (CR 95-196):**

An order repealing and recreating ss. NR 10.01 (1) (g) 1. L. and 10.31 (11) and creating s. NR 10.01 (1) (g) 1. m., relating to migratory game bird hunting.

Effective 09-01-96.

**Natural Resources (CR 96-19):**

An order affecting ss. NR 10.102 (1) (d) and (f) and NR 10.30, relating to bear hunting.

Effective 09-01-96.

**Natural Resources (CR 96-20):**

An order affecting ss. NR 10.01, 10.09 and 10.117, relating to hunting and trapping.

Part effective 09-01-96.

**Natural Resources (CR 96-22):**

An order affecting ss. NR 10.01, 10.02, 10.106, 10.145, 10.27, 10.29 and 10.40, relating to hunting and trapping.

Effective 09-01-96.

**Regulation & Licensing (CR 95-210):**

An order creating ch. RL 9, relating to establishing a procedure for determining whether an applicant for credential renewal is liable for any delinquent taxes.

Effective 09-01-96.

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

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

Effective 09-01-96.

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

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

Effective 09-01-96.

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

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

Effective 09-01-96.

**Transportation (CR 96-57):**

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

Effective 09-01-96.

**Veterans Affairs (CR 96-46):**

An order creating ch. VA 14, relating to the establishment of fees for burial at state veterans' cemeteries.

Effective 09-01-96.

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Administration (CR 95–234)

Ch. Adm 9 – Relating to contract administration fees and subscription service.

Summary of Final Regulatory Flexibility Analysis:

*1) Types of small businesses that will be affected by the rule:*

Small businesses requesting to be placed on a list maintained under s. 16.7015, Stats., in connection with transactions in excess of the amount indicated in s. 16.75 (1) (c), Stats., will be obligated to pay a bidder's list registration fee. Also, small businesses that wish to subscribe to an electronic service provided by the Department regarding state procurement opportunities and other relevant procurement information will pay a subscription fee.

*2) Reasons for failing to include in the rule any of the methods specified in s. 227.114 (2), Stats.:*

The fees in the rule are not mandatory, they are voluntary. A vendor can bid without paying either the registration fee or the subscription fee.

*3) Summary of issues raised by small businesses during the hearing of the rule, any changes in proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses:*

Issue: Add exceptions for small, minority or disadvantaged businesses.

Response: The rule was amended to make the fees voluntary and the bidder's list registration fee for minority businesses and work centers will be significantly lower than the same fee for other vendors.

Issue: Do not pay a fee until a sale is actually made or until a contract is executed.

Response: The rule was amended to make the fees voluntary.

Issue: Substantially reduce the amount of the fees.

Response: The rule was amended to substantially reduce fees.

*4) Reporting, bookkeeping and other procedures required for compliance with the rule:*

None.

*5) Nature and cost of other measures and investments that will be required for compliance with the rule:*

None.

*6) Additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s. 227.114 (2), Stats.:*

None.

*7) Impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s. 227.114 (2), Stats.:*

None.

Summary of Comments from Legislative Committees:

No comments were reported.

### 2. Agriculture, Trade & Consumer Protection (CR 96–15)

Ch. ATPC 99 – Relating to grain warehouse keepers and grain dealers.

Summary of Final Regulatory Flexibility Analysis:

The amendments to the rule interpret ch. 127, Stats., which requires grain warehouse keepers and grain dealers, with certain exceptions, to be licensed with the Department of Agriculture, Trade & Consumer Protection (Department). The statute requires licensed grain warehouse keepers and certain grain dealers (Class A and Class B who use deferred payment) to file annual financial statements with the Department, showing that they meet specified minimum financial standards or, if they do not meet those standards, to file security with the Department. The statute also requires warehouse keepers and grain dealers to employ various trade practices, to give producers and depositors various written documents and to retain certain records.

The amendments to the rule regulate 116 warehouse keepers, 150 Class A dealers, 108 Class B dealers, 38 Class B2 dealers and 95 Class C dealers and a number of exempt warehouse keepers and dealers, for the benefit of over 45,000 producers in Wisconsin who grow grain for the cash market. Many of the warehouse keepers, grain dealers, and virtually all of the producers, are small businesses, as defined by s. 227.114 (1) (a), Stats.

The amendments to ch. ATPC 99 are insignificant in relation to the specific requirements for documentation and records required under the current statute. The increase in revenue (fees) imposed by the amendments to the rule, beyond those included in the statutory requirements, is related to the conversion of 1.68 full time equivalent (FTE) positions from general purpose revenue (GPR) to program revenue (PR). The conversion of 1.68 FTE from general purpose revenue (GPR) to program revenue (PR), effective July of 1997, was approved by the legislature in the last budget session and is consistent with Department and Board policy.

The amendments to the rule do not require warehouse keepers or grain dealers to acquire any knowledge beyond that currently necessary to engage in their business.

Summary of Comments from Legislative Committees:

The rule was referred to the Assembly Committee on Agriculture on May 28, 1996; referred to the Senate Committee on Transportation, Agriculture and Local Affairs on May 22, 1996 (reappointed as the Senate Committee on Agriculture, Transportation, Utilities and Financial Institutions on June 19, 1996). The Department received no comments from any of the committees.

### 3. Commerce, Dept. of (CR 96-13)

Ch. Comm 16 – Relating to the electrical code, volume 2.

Summary of Final Regulatory Flexibility Analysis:

In accordance with sections 101.63 (1), 101.73 (1) and 101.82 (1), Stats., the Department is required to adopt rules for the safe use and installation of electricity in all public buildings, places of employment and one- and two-family dwellings. This protection must be provided regardless of the size of any business located in the building or dwelling. The proposed rules of ch. Comm 16 are minimum requirements to provide the needed level of safety, and any exception from compliance would be contrary to the statutory objectives which are the basis for the rules.

Summary of Comments of Legislative Standing Committees:

The rule was sent to the Assembly Committee on Labor and Employment and to the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs. No comments were received.

### 4. Dentistry Examining Board (CR 96-50)

S. DE 12.01 (3) – Relating to the delegation of the polishing portion of an oral prophylaxis by a dentist to an unlicensed person.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Committees:

No comments were reported.

### 5. Emergency Response Board (CR 96-35)

SS. ERB 1.01, 1.02, 1.04, 1.06 and 1.07 – Relating to temporary construction facility hazardous chemical inventory reporting.

Summary of Final Regulatory Flexibility Analysis:

Inventory fees required under s. 166.20 (7), Stats., currently provide for alternative hazardous chemical reporting and a \$20.00 reporting fee for temporary construction facilities. The proposed revisions for temporary construction facilities reporting would require the submission of only a Temporary Construction Facility Emergency Response and Hazardous Chemical Report.

This would provide relief from costs associated with determining if reportable amounts of hazardous chemicals are present, and from the costs associated with the current submission requirements of the Construction Site Emergency Response and Hazardous Chemical Report, site location diagram, floor plans contained in the plans, and the project specifications. The \$20.00 fee remains the same. Reporting exemptions under s. 166.20 (5) (a) 3, Stats., would no longer be applicable.

All temporary construction sites which meet the definition for a temporary construction facility would need to submit the report and the \$20.00 fee, unless exempt under s. 16.20 (7) (d), Stats.

This rule revision would impact small business by reducing the costs associated with determining if the temporary construction facility will have reportable amounts of hazardous chemicals. Small businesses with fewer than 10 full time equivalent (FTE) employees in the state are already exempt from these fees. Section 166.20 (7) (d), Stats., provides for a fee exemption for facilities with operators with fewer than 10 full time equivalent (FTE) employees in the state.

Summary of Comments of Legislative Committees:

No comments were reported.

### 6. Gaming Commission (CR 96-30)

S. WGC 24.13 (1) (d) – Relating to simulcasting fees.

Summary of Final Regulatory Flexibility Analysis:

There is no effect on small businesses.

Summary of Comments of Legislative Committees:

No comments were reported.

### 7. Health and Family Services (CR 94-203)

S. HFS 61.81 and ch. HFS 40 – Relating to mental health day treatment services for children and adolescents.

Summary of Final Regulatory Flexibility Analysis:

These rules will not have a significant economic impact on a substantial number of small businesses, as small business is defined in s. 227.114 (1) (a), Stats. There are currently 15 certified mental health day treatment programs for children and adolescents. Not more than one or 2 are operated by or as a small business. The revised rules greatly expand program requirements; however, the expanded requirements are conditions for programs to qualify for reimbursement from Medical Assistance and private group health insurance.

Summary of Comments of Legislative Committees:

No comments were reported.

### 8. Health and Family Services (CR 94-204)

Ch. HFS 38 – Relating to treatment foster care for children.

Summary of Final Regulatory Flexibility Analysis:

These rules apply to persons who propose to provide or who represent themselves as providing treatment foster care to children, to agencies that license treatment foster homes for children and to agencies providing services to children living in treatment foster homes. Some of the care providers and other service providers and a few of the private child-placing agencies that will license treatment foster homes are likely to be organized as small businesses as defined in s. 227.114 (1) (a), Stats.

The rules will not have a significant economic impact on a substantial number of small businesses. Few small businesses are involved. The rule requirements are related to the children's care needs and, for the most part, are good management practices and operating policies and procedures that are normally in place.

The purpose of the rules is to protect children placed in treatment foster homes and to ensure that they receive the care they require.



The rules consist of minimum standards that are more demanding than and are in addition to or substitute for the minimum standards found in ch. HSS 56 for operation of regular foster homes, because children in treatment foster care have complex problems that require significant attention.

No issues were raised by small businesses as such during public review of the proposed rules.

Summary of Comments of Legislative Standing Committees:

No comments were received.

## 9. Health and Family Services (CR 95–226)

Ch. HFS 111 – Relating to licensing of emergency medical technicians–intermediate (EMTs–intermediate) and approval of operational plans for use of EMTs–intermediate.

Summary of Final Regulatory Flexibility Analysis:

These rules will not have a significant economic impact on a substantial number of small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

Although there are some 450 ambulance service providers in the state, only about 25 of them are small businesses.

The rule changes involve moving authorized actions of EMTs–intermediate from s. 146.50, Stats., to ch. HFS 111, with some elaboration, and generally updating that chapter. There are no new reporting or bookkeeping requirements for ambulance service providers, and no new professional skills are required of ambulance service providers in order for them to comply with the revised rules.

Summary of Comments of Legislative Standing Committees:

No comments were received.

## 10. Health and Family Services (CR 96–3)

Ch. HFS 112 – Relating to licensing of emergency medical technicians–paramedic (EMTs–paramedic) and approval of operational plans for use of EMTs–paramedic.

Summary of Final Regulatory Flexibility Analysis:

These rules will not have a significant economic impact on a substantial number of small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

Although there are some 450 ambulance service providers in the state, only about 25 of them are small businesses.

The rule changes involve moving authorized actions of EMTs–paramedic from s. 146.50, Stats., to ch. HFS 112, with some elaboration, and generally updating that chapter. There are no new reporting or bookkeeping requirements for ambulance service providers using EMTs–paramedic, and no new professional skills are required of ambulance service providers using EMTs–paramedic in order for them to comply with the revised rules.

Summary of Comments of Legislative Standing Committees:

No comments were received.

## 11. Health and Family Services (CR 96–8)

S. HFS 124.20 (5) (a) and (i) – Relating to the administration of labor–inducing agents in hospitals.

Summary of Final Regulatory Flexibility Analysis:

These rules do not apply to small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. The rules apply to hospitals. No hospital in Wisconsin is a small business.

Summary of Comments of Legislative Committees:

No comments were reported.

## 12. Historical Society (CR 95–215)

Ch. HS 3 – Relating to a state 25% tax credit program for rehabilitation of owner–occupied historic residences.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule will have no effect on small businesses. The ability to claim the credit is limited to natural persons who own and reside in historic houses. The rule imposes no restrictions on small businesses.

Summary of Comments of Legislative Committees:

No comments were reported.

## 13. Insurance, Commissioner of (CR 96–45)

SS. Ins 17.01 (3), 17.28 (6) and 17.26 (4) (a) – 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.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

## 14. Medical Examining Board (CR 95–189)

Ch. Med 15 (title), 15.02 (title) and 15.02 – Relating to tattooing and body piercing.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Committees:

No comments were reported.

## 15. Natural Resources (CR 94–180)

Chs. NR 1 and 10 – Relating to deer management goals, quotas and units.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

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

**16. Natural Resources (CR 95-47)**

Chs. NR 1 and 44 – Relating to master planning and the management and recreational use classification system for lands managed by the Department of Natural Resources.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not directly affect small businesses; therefore, a final regulatory flexibility analysis was not prepared.

Summary of Comments by Legislative Review Committees:

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

**17. Natural Resources (CR 95-196)**

Ch. NR 10 – Relating to the early goose hunt subzone.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

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

**18. Natural Resources (CR 96-22)**

Ch. NR 10 – Relating to hunting and trapping.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

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

**19. Regulation & Licensing (CR 95-210)**

Ch. RL 9 – Relating to establishing a procedure for determining whether an applicant for credential renewal is liable for any delinquent taxes.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments by Legislative Committees:

No comments were reported.

**20. Revenue (CR 95-161)**

Ch. Tax 9 – Relating to cigarette taxes.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Committees:

No comments were reported.

**21. Revenue (CR 96-58)**

Ch. Tax 18 – Relating to assessment of agricultural land in 1996 and 1997.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments of Legislative Committees:

No comments were reported.

**22. Transportation (CR 96-57)**

Ch. Trans 258 – Relating to seed potato overweight permits.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments by Legislative Committees:

No comments were reported.

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## *EXECUTIVE ORDERS*

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

**Executive Order 290.** Relating to the Creation of the Governor's Task Force on the Compulsory School Attendance Age.

**Executive Order 291.** Relating to a Proclamation Declaring a State of Emergency and Calling to Active Duty Elements of the Wisconsin National Guard.

**Executive Order 292.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff to Commemorate National Korean War Veterans Armistice Day.

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