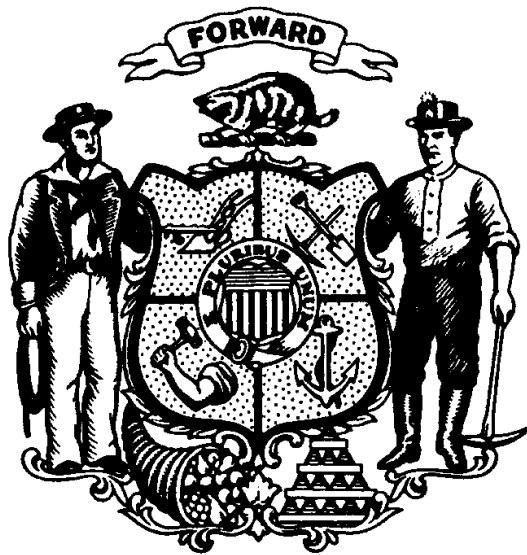


WISCONSIN ADMINISTRATIVE REGISTER

No. 489



Publication Date: September 14, 1996
Effective Date: September 15, 1996

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

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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Department of Agriculture, Trade & Consumer Protection

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

Finding of Emergency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finding of Emergency

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

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

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

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

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

The requirements under s. HSS 172.05 (2) (a)3. for lifeguard certification have to be modified due to changes in American Red Cross and the American Heart Association courses. The 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 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

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Economic Support, Chs. HSS 200-)

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

Exemption From Finding of Emergency

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

Analysis Prepared by the Department of Health and Social Services

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

Wisconsin has obtained approval from the Food and Consumer Service of the U.S. Department of Agriculture and from the Administration for Children and Families of the U.S. Department of

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations (Uniform Dwellings, Chs. ILHR 20-25)

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

Finding of Emergency

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

The Federal Emergency Management Agency (FEMA) has informed some municipalities that it will no longer allow variances to a local ordinance that prohibits the construction of homes in flood

fringe areas where the foundation extends below the base flood elevation. FEMA regulations allow this type of construction in some locations but require the construction to meet a suitable building code. The Uniform Dwelling Code, which regulates new home construction in Wisconsin, has never addressed this issue. FEMA's actions have halted some residential projects, causing serious financial hardship for those affected Wisconsin builders and residents.

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

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

EMERGENCY RULES NOW IN EFFECT

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

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

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

Finding of Emergency

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

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

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

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

Emergency Rule Analysis

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

Publication Date: April 6, 1996
Effective Date: April 6, 1996
Expiration Date: September 3, 1996
Hearing Date: May 28, 1996
Extension Through: November 1, 1996

EMERGENCY RULES NOW IN EFFECT**Industry, Labor & Human Relations****(Unemployment Compensation, Chs. ILHR 100-150)**

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

Finding of Emergency

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

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

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

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

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

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

other unemployed individuals in the labor market who do not have any such assurance of being recalled to their former jobs.

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

EMERGENCY RULES NOW IN EFFECT**Industry, Labor & Human Relations****[Workforce Development]
(Labor Standards, Chs. ILHR 270-279)**

Rules adopted revising **ch. ILHR 272**, relating to the minimum wage.

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:

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employes in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employes would be subjected to confusion and uncertainty in the calculation and payment of wages.

Publication Date: August 28, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997

EMERGENCY RULES NOW IN EFFECT**Insurance**

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

Finding of Emergency

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

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

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1996.

Because the provisions of this rule first apply on July 1, 1996, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on April 18, 1996.

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

EMERGENCY RULES NOW IN EFFECT (5)

Natural Resources

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

1. 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

2. 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

3. 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

4. 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

5. Rules adopted revising ch. NR 10, relating to the 1996 migratory game bird season.

Finding of Emergency

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

provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 3, 1996
Effective Date: September 3, 1996
Expiration Date: January 31, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. 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

2. 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

EMERGENCY RULES NOW IN EFFECT

Securities

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

Finding of Emergency

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

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

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

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

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

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

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

The parties who informed the Commissioner's Office regarding GASB Statement No. 14 stated that GASB Statement No. 14 would have an immediate, negative impact on the availability or use of the registration exemption in s. 551.22 (1) (a), Stats., by those governmental/municipal securities issuers who had component units that would be subject to GASB Statement No. 14 and who heretofore have had their general purpose financial statements prepared in full compliance with GAAP. In particular, auditors for such municipal/governmental issuers with component units subject to GASB statement No. 14 generally would no longer be able to issue unqualified opinions for general purpose financial of municipal governmental issuers—namely, that such financial are prepared, totally and without qualification, on the basis of generally accepted accounting principles. Two areas of concern in that regard were identified by the auditor groups, and with respect to each of the two areas, although the auditors could include unaudited information regarding such component units in the governmental issuers' general purpose financial statements, the auditor's opinion would have to be qualified, thus precluding use of the s. 551.22 (1) (a) exemption on a self-executing basis for offers and sales of the governmental issuers' securities to the public.

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

B. Recent Accounting Developments Warranting Present Emergency rule Treatment.

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

The specific accounting issue involves interpretation of the current accounting standard for property tax recognition established by the National Council on Governmental Accounting ("NCGA") Interpretation 3 "Revenue Recognition—Property Taxes." The

accounting interpretation issue is presented as a result of the interplay of the following two factors: (1) most public school and vocational school districts operate on (and their financial statements are prepared on) a July 1 to June 30 fiscal year; (2) the Wis. Statutes authorize the various Wisconsin local units of government to allow the payment of property taxes (which provide the funding for payment of public school and vocational school district debts and obligations) to be made in installments on January 1 and July 31 of a given year (for example 1996) relating to taxes levied (in the 1996 example given) for a school district's fiscal year extending from July 1, 1995 to June 30, 1996.

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

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

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

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

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

Publication Date: June 24, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Hearing Date: September 4, 1996

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 1 – Wisconsin environmental procedures.

Description of policy issues:

Description of the objective of the rule:

The objectives of this rule revision are to establish and delineate the environmental procedures for those actions undertaken by the Department of Commerce.

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

The Department of Commerce was created as of July 1, 1996, by combining the former Department of Development with the Division of Safety and Buildings of the former Department of Industry, Labor and Human Relations, along with related programs from the Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection. Currently, the environmental procedures of the former Department of Development are delineated in chapter DOD 7, those covering the Division of Safety and Buildings are enumerated in chapter ILHR 1, and those for the Department of Natural Resources are found in chapter NR 150.

The rules of the proposed chapter Comm 1 will address the statutory responsibilities and obligations relating to s. 1.11, Stats. The chapter will delineate the actions typically undertaken by the Department and will categorize Department actions as to the impact on the quality of the human environment and establish procedures to describe and determine the impact on the quality of the human environment.

Section 1.11, Stats., directs all state agencies to consider the environmental impacts of their proposed actions. The only policy alternative to the proposed rule—making activity would be to leave the current administrative codes of chs. DOD 7 and ILHR 1 in place; however, this alternative would most likely result in confusion as to what actions would now be associated with the Department of Commerce and what environmental procedures would be followed.

Statutory authority for the rule:

The Department of Commerce is initiating this rule—making activity under the statutory authority of ss. 101.02 (1) and 560.02 (4), Stats., and interpreting s. 1.11, Stats.

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

It is estimated that the rule—making activity relating to environmental procedures will require the following:

Administration Input time	60 hours
Staff Research time	96 hours
Rule Drafting time	160 hours
Rule Coordination time	16 hours
<u>Rule Promulgation time</u>	<u>72 hours</u>
TOTAL TIME:	404 hours

Commerce

Subject:

Ch. ILHR 60 – Relating to child day care facilities.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to promulgate administrative rules to permit children under the age of 24 months to be cared for on a floor other than the first floor or ground floor of a group day care center.

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

The Department's current policy is to protect the public health, safety and welfare of small children in day care facilities by limiting children under the age of 24 months to those floor levels providing immediate egress to grade from the facility. The policy is proposed to allow infants and toddlers on upper or lower floor levels of a day care facility when adequate safeguards are in place.

Since this is a mandate by law, there is no policy alternative.

Statutory authority for the rule:

Section 101.02 (15) (j), Stats.

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

Administrative time:	10 hours
Code Consultant time:	80 hours
Program Manager time:	40 hours
<u>Program Staff time:</u>	<u>24 hours</u>
TOTAL TIME:	154 hours

Commerce

Subject:

Chs. Comm 16; ILHR 2, 3, 7, 8, 9, 10, 11, 12, 13, 17, 18, 20 to 25, 27, 32, 33, 34, 41, 42, 43, 45, 47, 48, 50 to 64, 66, 67, 68, 69, 70, 71, 81 to 87 and 90 – Relating to plan review and inspection general procedures within the Divisions of Safety & Buildings, and of Environmental & Regulatory Services.

Description of policy issues:

Description of the objective of the rule:

The objectives of this rule revision within the Divisions of Safety & Buildings and of Environmental & Regulatory Services are to:

- Standardize plan review and inspection data and details needed to conduct these business functions;
- Standardize efficient submittal processes for plan review applications and approvals;
- Standardize processes to more effectively and efficiently manage inspection activities; and
- Rely on current technology to facilitate communication, and manage and maintain an accurate database.

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

The Department's current policies for plan review applications and approvals vary widely throughout the technical program areas. Currently, separate application forms are required for a plan submittal; in some programs appointments are required, in others, none are required. Application forms currently require similar, but not identical, information about the customer and/or the plan proposed for review and approval. For plan approval, there are many and various letters generated to communicate the action taken by the Department; because of a lack of an integrated database and non-standard technology, these processes have been found to be inefficient and, in some cases, redundant.

The Department's current policies for managing mandatory and discretionary inspections vary widely throughout the technical program areas, for example:

- 1) Inspection reports require similar, but not identical information about the customer, a proposed project or an existing structure;
- 2) Mechanisms to trigger or schedule an inspection and time frames to conduct an inspection are not applied consistently throughout the various programs;
- 3) Certificates of operation are issued in a variety of formats; and
- 4) The enforcement procedures involve different vocabulary and steps across the programs.

In light of these variations, these inspection processes have been found to be inefficient.

The rule changes to reflect these general procedural changes will have an immediate effect on:

- 1) The timing of transferring data now residing on a WANG VAX computer system in a variety of databases and formats onto a PC-client server system utilizing one relational database;
- 2) Projected savings in staff time relating to keying and data maintenance efficiencies;
- 3) The proposed re-allocation of staff to conduct various other tasks and responsibilities with critical time frames; and
- 4) The goal of the Department to establish a "more consistent approach" when having contacts with and communicating with our customers.

An analysis of policy alternatives reveals that initiating no general administrative process changes at this time would be too costly in light of the fact that these business functions, as of 1995 Wis. Act 27, have been transferred to the new Department of Commerce and current information technology support is being contracted through a Memorandum of Understanding with the Department of Workforce Development (formerly DILHR).

Statutory authority for the rule:

The following sections of the Statutes provide the Department plan submittal application and review authority:

Statutes	Wis. Adm. Rule
S. 101.19	Ch. ILHR 2
S. 101.02 (6) (e)	Ch. ILHR 3
S. 101.15	Chs. ILHR 7, 8 and 9
SS. 101.09 and 101.14	Ch. ILHR 10
SS. 101.14 and 101.16	Chs. ILHR 11, 12 and 13
S. 101.12 (1)	Ch. Comm 16
S. 101.64	Chs. ILHR 20 to 25
S. 101.12 (1)	Chs. ILHR 33 and 34
SS. 101.12 (15) and 101.17	Chs. ILHR 41-42 and 45
SS. 101.02 (15) and 101.17	Ch. ILHR 43
S. 168.07	Ch. ILHR 48
SS. 101.12 (1) and 101.73 (2)	Chs. ILHR 50-64
SS. 101.12 (1) and 101.973	Ch. ILHR 66
S. 101.122	Chs. ILHR 67-68
S. 101.12 (1)	Ch. ILHR 69
SS. 101.12 (1) and 101.121	Ch. ILHR 70
S. 145.03 and 236.11	Chs. ILHR 81-87
S. 145.26	Ch. ILHR 90

The following sections of the Statutes provide the Department inspection authority:

Statutes	Wis. Adm. Rule
S. 101.19	Ch. ILHR 2

S. 101.15	Chs. ILHR 7, 8 and 9
SS. 101.09 and 101.14	Ch. ILHR 10
SS. 101.14 and 101.16	Chs. ILHR 11, 12 and 13
SS. 101.82 and 101.84	Ch. ILHR 17
S. 101.64	Chs. ILHR 20 to 25
S. 101.92 and 101.93	Ch. ILHR 27
S. 101.055 (5)	Ch. ILHR 32
S. 101.02 (15)	Chs. ILHR 33 and 34
S. 101.02 (15)	Chs. ILHR 41-42 and 45
S. 101.02 (15)	Ch. ILHR 43
S. 101.144	Ch. ILHR 47
S. 168.05	Ch. ILHR 48
S. 101.02 (15)	Chs. ILHR 50-64
S. 101.122	Chs. ILHR 67-68
S. 101.02 (15)	Ch. ILHR 69
S. 101.02 (15)	Ch. ILHR 70
S. 101.175	Ch. ILHR 71
SS. 145.03 and 236.11	Chs. ILHR 81-87

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

It is estimated that these rule revisions, relating to changes in general administrative processes needed to reflect re-engineering efforts and use of current technology will require the following amount of staff time:

Administrative time	50 hours
Code Consultant's time	125 hours
Program Managers' time	250 hours
Rules Coordination time	10 hours
<u>Program Support time</u>	<u>120 hours</u>
TOTAL TIME:	555 hours

It is also estimated that staff may convene meetings throughout the state with various customer groups in communicating these changes and providing updated submittal materials.

Health & Family Services

Subject:

Ch. HFS 173 - Relating to regulation of tattooists, tattoo establishments, body piercers and body-piercing establishments by the DHFS or by local public health departments designated as agents of DHFS.

Description of Policy Issues:

Description of objective(s):

Mandated by 1995 Wis. Act 468.

Relevant existing policies, proposed new policies and policy alternatives considered:

This is a new regulatory program. Act 468 directs the Department to promulgate as rules:

- 1) Standards and procedures for the annual licensure of tattooists or tattoo establishments;
- 2) Standards for the performance of tattoos by a licensed tattooist;
- 3) Standards and procedures for the annual licensure of body piercers and body-piercing establishments;
- 4) Standards for the performance of body-piercing by a licensed body piercer and for maintenance of body-piercing establishments; and

5) Fees to offset the costs of the licensure programs.

Statutory authority:

Sections 252.23 (4) and 252.24 (4), Stats., as created by 1995 Wis. Act 468.

Estimates of staff time and other resources needed to develop the rules:

Estimated hours of staff time – 80 hours. An advisory group consisting of tattooists, body piercers and public health sanitarians from local health departments will be selected to advise the Department on drafts of ch. HFS 173.

Insurance, Commissioner of

Subject:

S. Ins 18.07 (5) (b) — Relating to decrease in Health Insurance Risk–Sharing Plan (HIRSP) rates.

Description of policy issues:

A statement of the objective of the proposed rule:

This proposed rule change is intended to lower non–subsidized rates for people purchasing insurance from the Health Insurance Risk–Sharing Plan (“HIRSP”).

A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

This proposed rule change seeks to lower current rates for HIRSP insurance. The old rates will be replaced with new rates. No other policies are to be changed.

Statutory authority for the rule:

Sections 601.41 (3), 619.11, 619.14 (5) (a) and (e) and 619.15 (5), Stats.

An estimate of the amount of time that state employees will spend to develop the rule:

Drafting and processing rule = 15 hours.

Natural Resources

Subject:

Chs. NR 132 and 182 and, if appropriate, ch. NR 140 — Relating to proposed revisions of mining rules.

Description of policy issues:

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

The Department received a petition for rule adoption from several Wisconsin state legislators. The petition requested the Department re–evaluate the application of groundwater standards to mining facilities, specifically the distance from such facilities that compliance be measured. The petition further requested that the Department proceed to modify any administrative rule which this re–evaluation identifies as warranting revision.

The petition also requested the Department adopt administrative rules requiring mine operators to carry insurance policies to cover the costs of remediation of certain potential environmental impacts identified in the petition, including failure of a tailings disposal area and movement into the environment of contamination from a mine shaft.

Explain the facts that necessitate the proposed change:

Presently, the “compliance boundary”, the point at which groundwater standards are measured for mining operations, is set at 1200 feet. Under differing conditions, that distance can be enlarged or reduced. The petition calls for re–evaluating this distance in light of the lesser distances applicable to other facilities which are subject to the groundwater law. Most of these facilities must meet groundwater standards at distances ranging from 100 feet to 300 feet from the facility.

Presently, the only insurance requirements are for injuries to people, or “property damage.” Property damage has been interpreted by state courts to mean damage to property belonging to others, not

for environmental damage on the property of the insured. For this reason, the Department staff have questioned whether the Department is empowered to require the type of insurance identified in the petition, which is perpetual funding availability for remediation and corrective action.

Statutory authority:

Sections 144.83, 144.85 and 227.11, Stats.

Staff time required:

The anticipated time commitment is 246 hours. Four hearings are proposed to be scheduled in November, to be held at locations in northwest Wisconsin, northeast Wisconsin, Madison and Milwaukee.

Natural Resources

Subject:

Ch. NR 25— Relating to commercial fishing – outlying waters.

Description of policy issues:

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

This rule change will amend ch. NR 25 in accordance with the State–Tribal Joint Management Plan for Lake Superior which was agreed to by the Department, the Red Cliff Band, and the Bad River Band. The proposed changes will impact both non–Indian commercial fishers and sport fishers. For the most part, the changes will allow for increased opportunities in both the sport and commercial fisheries.

Explain the facts that necessitate the proposed change:

Both the Red Cliff and Bad River Bands have treaty rights to fish commercially in Lake Superior. Since 1980, the Department has worked with the Bands to reach a negotiated settlement which divides the fishery between state and tribal users. As the old agreement recently expired, the state and tribes needed to negotiate a new 10–year agreement. This rule change reflects the policy of negotiated settlements. The changes themselves are necessary to implement the terms of the proposed agreement.

Statutory authority:

State v. Gurnoe, s. 29.33, Stats.

Staff time required:

The anticipated time commitment is 45 hours. One hearing is proposed to be scheduled.

Natural Resources

Subject:

Ch. NR 24 – Relating to commercial clam harvest.

Description of policy issues:

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

This proposal would protect and preserve the mussel resource of the Mississippi River through the revision of the season length and size limit components of the commercial clamming regulations. Specifically, a one–month reduction in the season length in the Wisconsin/Minnesota boundary waters, and an increase in the size limit on threeridge (2 5/8” to 2 3/4”) and cooked washboard (3 3/4” to 4”) mussels will be proposed. The Upper Mississippi River Conservation Committee (UMRCC), working through the appropriate state resource management agency, has advocated uniformity in mussel regulations and has obtained support from the shelling industry for such regulation changes. Groups likely to be interested and involved in the issue are both federal and state resource management agencies, the shelling industry, commercial clam buyers and commercial clam harvesters.

Explain the facts that necessitate the proposed change:

Rules governing the commercial harvest of mussels have not been substantially revised since the inception of Wisconsin Administrative Code chapter NR 24 in 1987. Since that time, significant changes have occurred within the commercial mussel industry, affecting harvest patterns and mussel stocks. The Upper Mississippi River states have agreed that regulation uniformity is the best way to protect

this interjurisdictional resource while maintaining the existence of the commercial mussel industry.

Statutory authority:

Sections 29.16 and 29.38, Stats.

Staff time required:

The anticipated time commitment is 67 hours. Public hearings are proposed to be held in Prairie du Chien and La Crosse.

Natural Resources

Subject:

Permission to add additional compounds to the soil standards tables in ch. NR 720, *Soil Quality Standards*, to develop guidance and outreach efforts for the continuing implementation of the ch. NR 720 rule series.

Description of policy issues:

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

On April 1, 1995, the soil standards code, Ch. NR 720, went into effect. It has been the intention of the Department to add chemicals to the tables within the code for both the groundwater protection pathway and the direct contact protection pathway. Since the promulgation of this code, it has become apparent that the Department must provide supporting guidance on certain elements critical to implementation of this code. The Department is proposing to calculate standards for additional compounds, based upon the same process used to establish the existing soil standards.

Statutory authority:

Sections 144.025 (2) (c), 144.431, (1) (a), 144.435 (1), 144.44 (4) (f) 6. and (7) (g), 144.442 (4) (c), (5) (intro.) and (8) (b) and (c) 3, 144.62 (8), 144.76 (5) (a), 144.77 (3), 159.03 (1) (a) and 227.11 (2), Stats.

Staff time required:

The anticipated time commitment is 245 hours. Six public hearings are proposed to be scheduled in Milwaukee, Spooner, Wausau, Eau Claire, Green Bay and Madison.

Transportation

Subject:

Trans 206 is the rule that interprets and administers procedures for assisting in the improvement of deteriorating local highways, streets, and roads under s. 86.31 (6), Stats.

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

The 1994 revision of the rule was to make a provision, within the rule, for the newly-added appropriation for high-cost town road projects. The Town Road Improvement Discretionary Program (TRIP-D) was added to LRIP to provide funding for high-cost town road improvement projects that otherwise would not be funded. The existing rule requires that a county administrative fee be deducted from the total allocation of the county Town Road Improvement (TRI) and Municipal Street Improvement (MSI) components of LRIP. There was never an intent to include the TRIP-D component in this provision. The county commissioners have already received and have agreed upon a level of reimbursement for administrative costs for the entire program. The addition of the few geographically diverse projects does not have an effect on county administrative costs.

Statutory authority for the rule:

s. 86.31, Stats.

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

20 hours

Transportation

Subject:

Ch. Trans 269 – Relating to permits for overweight movement of scrap and garbage or refuse.

Description of policy issues:

Description of the objective of the rule:

This proposal will amend an existing rule, ch. Trans 269, related to permits for overweight movement of scrap and garbage or refuse.

Trans 269 will be amended to:

- Allow overweight movement of garbage or refuse on the portion of Interstate highway 39 (I-39) that had been USH 51 and was recently declared I-39 by federal law.

- Include the word “scrap” in the same authorization for overweight movement on the portion of I-39 that had been USH 51 and was recently declared I-39 by federal law.

- Eliminate wording which had authorized overweight movement of garbage or refuse on a portion of I-43, which was allowed until September 30, 1994.

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

An Act of Congress declared a portion of USH 51 to be part of I-39. By this Act, Congress also allowed the continued operation of overweight divisible loads, which had been allowed on USH 51 but are generally prohibited from movement on Interstate highways.

State statutes have been amended to correspond with federal law, allowing continuation of overweight movement of certain loads on that portion of I-39 that had been USH 51. Statutes were amended in the 1995–97 Transportation Biennial Budget, 1995 Wis. Act 113.

This proposal will amend ch. Trans 269 to clarify that overweight movement of scrap is allowed on that portion of I-39 that had been USH 51; this makes the rule consistent with statutory change.

In addition, for one type of overweight movement — garbage or refuse overweight movement — the prohibition of movement on Interstate highways is stated in rule, not in statute. Thus, statutory amendments have not affected this provision, and the rule must be changed to allow overweight movement on the portion of I-39 that had been USH 51.

Finally, since ch. Trans 269 must be amended for the above reasons, we propose to eliminate wording which is no longer relevant. This wording allows specific overweight movement on a portion of I-43, and this permission expired September 30, 1994.

Statutory authority for the rule:

s. 348.27 (9r) and (12), Stats.

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

It is estimated that state employees will spend 40 hours on the rulemaking process, including research, drafting, and conducting public hearings.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On August 19, 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 30, Wis. Adm. Code, relating to the atrazine pesticides.

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. Jim VandenBrook of the Division of Agricultural Resource Management at (608) 224–4501 or Attorney James Matson at (608) 224–5022.

Commerce

Rule Submittal Date

On August 29, 1996, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. ILHR 63 and 64, Wis. Adm. Code, relating to energy conservation and ventilation.

Agency Procedure for Promulgation

Public hearing(s) are required and will be held after the Wisconsin Legislative Council Clearinghouse completes its review of the proposed rule. The Division of Safety and Buildings is primarily responsible for promulgation of this rule.

Contact People

If you have questions regarding this rule, you may contact Bernice Mattsson at (608) 266–2725.

Employe Trust Funds

Rule Submittal Date

On August 30, 1996, the Wisconsin Department of Employee Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse, a proposed order affecting s. ETF 10.12.

Analysis

The subject matter of the proposed rule relates to withdrawal of funds invested in the Public Employee Trust Fund by a separate retirement system as permitted by s. 40.03 (1) (n) and (2) (q), Stats.

Agency Procedure for Promulgation

A public hearing is scheduled for Thursday, October 3, 1996.

Contact People

If you have any questions, you may contact Robert Weber, Chief Legal Counsel at (608) 266–5804.

NOTICE SECTION

Notice of Hearing

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its rule relating to "late blight", a serious plant disease which poses an imminent threat to Wisconsin's potato industry. The rule interprets ss. 93.07 and 94.02, Stats., and amends ch. ATCP 21, Wis. Adm. Code.

Written Comments

The public is invited to attend the hearing and comment on the rule. Following the public hearing, the hearing record will remain open until **October 18, 1996** for additional written comments.

Copies of Rule

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

Bureau of Plant Industry
Telephone (608) 224-4573
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
Madison, WI 53708

Copies will also be available at the public hearing.

Contact Person

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by calling Jayne Krull at (608) 224-4614 or by contacting the TDD at the Department at (608) 224-5058.

Hearing Information

The hearing is scheduled as follows:

<p>October 8, 1996 Tuesday 7:00 p.m. to 9:00 p.m.</p>	<p>Conference Room B (lower level) UW-Extension City-County Bldg. 1516 Church St. STEVENS POINT, WI</p>
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Handicapped accessible

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

Statutory authority: ss. 93.07 (1) and (12) and 94.01 (1)

Statutes interpreted: ss. 93.07 (12) and 94.02 (1)

This rule requires potato growers to take steps to control "late blight," a serious plant disease which poses an imminent threat to Wisconsin's potato industry. This rule is needed to prevent the spread of the disease.

Background

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

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.

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.

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.

Late blight fungal spores can be spread 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.

There are very few registered fungicides in the United States that are effective in controlling the new forms of late blight fungus. 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 "volunteer" potato plants which germinate from waste potatoes.

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

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 practices and establish sanctions for growers who fail to comply.

Rule Contents

Under this rule, a person who owns or controls land on which potato "cull piles" are located must dispose of those cull piles by May 20. ("Cull piles" are piles of waste potatoes.) The person must dispose of the "cull piles" by one of the following methods:

- By feeding the cull potatoes to livestock so that they are completely consumed by May 20.
- By spreading the cull potatoes on fields and incorporating the cull potatoes into the soil.
- By depositing the cull potatoes in a licensed landfill with the written permission of the landfill operator.
- By another method which the Department approves in writing.

Under this rule, whenever volunteer potato plants appear on land where cull potatoes were spread, or on land where potato plants were intentionally grown in a prior year, the person who owns or controls that land must immediately remove or kill those volunteer potato plants. Pesticides used to kill volunteer potato plants must be labeled for the crop in which the volunteer potatoes emerge, or for the site at which they emerge.

Under this rule, the Department may issue pest quarantine and abatement orders to prevent or control late blight infestations, or to remedy violations of this rule. If the Department finds any field infested with late blight, the Department may order the person owning or controlling that field to treat it, in a manner specified by the Department, in order to control or eliminate the infestation. Treatment may include pesticide applications specified by the Department.

Under this rule, the Department may order the destruction of a potato crop infested with late blight, if the Department finds that alternative measures will not adequately prevent or mitigate the spread of late blight.

Fiscal Estimate

This rule clarifies integrated pest management control practices needed to mitigate the spread of a serious potato plant disease which poses an imminent threat to Wisconsin's potato industry. It also reiterates existing Department authority to enforce these control measures. Because these are existing practices and authority, no significant increase in Department workload or costs is anticipated. There are no additional costs to local government.

Initial Regulatory Flexibility Analysis

The proposed rule will not significantly affect small businesses because it does not impose any new reporting or recordkeeping requirements and does not require new professional skills that might be needed by a small business (technical assistance is available from the University of Wisconsin-Extension and the growers' association). This proposed rule applies to potato growers. (Currently, there are 262 growers, 237 of which meet the definition of a small business.)

The proposed rule defines the practices that are necessary to control a highly virulent potato fungus, commonly known as "late blight." It also clarifies the Department's authority to enforce those practices. Growers are required to dispose of cull potatoes and volunteer potato plants and must treat or dispose of diseased crops in order to mitigate the spread of late blight.

Most growers are well aware of the severe economic damage that this disease can cause and are already following pest management practices recommended by the University-Extension/Plant Pathology Department and outlined in the proposed rule.

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides.

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The Department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **October 11, 1996** for additional written comments.

Copies of Rule

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

Agricultural Resource Management Division
Telephone (608) 224-4505
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
P.O. Box 8911
Madison, WI 53708-8911

Copies will also be available at the public hearings.

Contact Person

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **September 20, 1996** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, telephone (608) 224-4505 or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at the hearings.

Hearing Information

Four hearings are scheduled:

September 30, 1996
Monday
1:00 to 4:00 p.m.
evening session
6:00 to 8:00 p.m.

Ramada Inn
3431 Milton Ave.
JANESVILLE, WI

October 1, 1996
Tuesday
1:00 to 4:00 p.m.
evening session
6:00 to 8:00 p.m.

Timberland Room
Best Western Arrowhead Lodge
600 Oasis Rd.
BLACK RIVER FALLS, WI

October 2, 1996
Wednesday
1:00 to 4:00 p.m.
evening session
6:00 to 8:00 p.m.

Best Western Royale
5110 Main Street
STEVENS POINT, WI

October 3, 1996
Thursday
1:00 to 4:00 p.m.
evening session
6:00 to 8:00 p.m.

Room A
Brillion Community Center
120 Center Street
BRILLION, WI

Written comments will be accepted until **October 11, 1996**.

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

Statutory authority: ss. 93.07 (1), 94.69 (9), 160.19 (2), and 160.21 (1)

Statutes interpreted: ss. 94.69, 160.19 (2) and 160.21 (1)

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards.

Based on new groundwater test data, this rule expands the number of areas in which atrazine use is prohibited.

Atrazine Prohibition Areas

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 91 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule repeals and recreates 2 current prohibition areas to expand those areas, and creates 6 new prohibition areas, resulting in a new total of 97 prohibition areas throughout the state. The rule includes maps describing each of the new and expanded prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited, unless conducted over a spill containment surface which complies with s. ATCP 29.151 (2) to (4), Wis. Adm. Code.

Fiscal Estimate

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 2 existing prohibition areas (PAs), and creating 6 additional PAs in 1997.

Administration and enforcement of the proposal will involve new costs for the Department. The Department estimates that 0.1 FTE of specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs. Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated \$2,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be \$2,000.

In total, the Department estimates an additional staff impact of 0.1 FTE and \$4,000 in sampling and public information costs. These

costs can be absorbed by the Department. The complete fiscal estimate is available upon request.

Initial Regulatory Flexibility Analysis

Businesses Affected:

The amendments to the atrazine rule will affect small businesses in Wisconsin. The greatest small business impact of the rule will be on users of atrazine -- farmers who grow corn. The proposed prohibition areas contain approximately 19,000 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 4,750 acres of corn will be affected. This acreage would represent between 30 and 75 producers, depending on their corn acreage. These producers are small businesses, as defined by s. 227.114 (1) (a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in new or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance:

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current atrazine rule.

Atrazine cannot be used in certain areas of the state where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10, Wis. Adm. Code.

Professional Skills Required to Comply:

The rule affects how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in the state, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past, this type of assistance has been provided by University Extension personnel and farm chemical dealers. In recent years, many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The Department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Notice to Department of Development

The Department has given notice of this proposed rule to the Wisconsin Department of Development, as required by s. 227.114 (5), Stats.

Environmental Impact Statement

The Department has prepared a draft environmental impact statement (EIS) for proposed 1997 amendments to rules on the use of pesticides containing atrazine. Copies are available from the

Department on request and will be available at the public hearings. Comments on the EIS should be directed to:

Jeff Postle, telephone (608) 224-4503
Agricultural Resource Management Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708

Written comments on the EIS will be accepted until **October 11, 1996**.

Notice of Hearing

Commerce

(Building & Heating, etc., Chs. ILHR 50-64)

Notice is given that pursuant to s. 101.02 (1) and (15), Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of chs. ILHR 63 and 64, Wis. Adm. Code, relating to Energy Conservation and Ventilation.

Hearing Information

September 27, 1996
Friday
9:30 a.m.

Madison
GEF III, Rm. 041
125 W. Webster St.

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

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings, may be submitted no later than **October 4, 1996** for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Bernice Mattsson at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-9375 or Telecommunication Device for the Deaf (TDD) at (608) 2648777 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 of Proposed Rules

Statutory Authority: s. 101.02 (1) and (15)

Statutes Interpreted: ss. 101.02 (15) and 101.12

Under ss. 101.02 (15) and 101.12, Stats., the Department of Industry, Labor and Human Relations has the responsibility of protecting public health, safety and welfare relative to the construction of public buildings and places of employment. A key element of fulfilling this responsibility has been promulgation of the commercial building code, chs. ILHR 50 to 64.

The proposed rule changes are primarily a revision of ch. ILHR 63, Energy Conservation, and ch. ILHR 64, Heating Ventilating and Air Conditioning (HVAC) in the code edition that was published in December, 1995 which are to become effective on April 1, 1997.

The purpose of the December, 1995 edition of the rules was to improve indoor air quality in buildings and to comply with the federal Energy Policy Act of 1992 (EPACT) 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/EIS) standard 90.1-1989.

After adoption of the rules, but before the effective date, information was provided to the department that indicates that two of the provisions of the rules will cause excessive costs for building owners without commensurate benefit. The two provisions were: the requirement for ventilation systems to be sized to accommodate the maximum building capacity when the intended use is for fewer occupants; and the requirement that buildings that are used as factories and unconditioned warehouses be insulated to the same level as buildings for other uses.

The Department reconvened its Energy/HVAC Code Advisory Committee to review the issues and revise the rules. The major revisions to the rules are summarized below.

The scope sections of both chapters have been expanded to provide more guidance and detail on how the rules are applied to additions and alterations of existing buildings.

The requirements for insulation of building thermal envelopes under the ASHRAE/EIS standard 90.1-1989 are based on the assumption that the primary energy use in the building is to provide human comfort. The proposal revises the code so that factories and warehouses that are not conditioned to provide human comfort may be constructed in accordance with the thermal envelope requirements contained in the code that is currently in effect (published January 1994).

In factories, although there may be some space heating for occupant comfort, the primary energy use is usually associated with manufacturing or commercial or industrial processing. The ASHRAE/EIS standard recognizes that the levels of insulation appropriate for other building types may not be appropriate for factories.

The requirements for building thermal envelopes have been reformatted to achieve the same level of energy efficiency with greater ease of use. Easier methods are provided for trade-offs between the insulation levels in opaque portions of walls and roofs and for trade-offs between the opaque portions of walls and windows.

The exemption of high efficiency lighting from the exterior lighting budget is inconsistent with the EPACT law and is repealed.

The ventilation system requirements are revised so that the design and operation of the system may be based on the actual occupant load in the entire area served by the system, with outside air supplied at 7.5 cubic feet per minute per person. This eliminates the requirement to oversize the system.

The term "air movement" is replaced by "air change" or "air change rate" throughout the chapter.

The proposed rules were developed after consultation with the Energy/HVAC Code Advisory Committee. The current membership of the committee is given below.

ENERGY/HVAC COMMITTEE

Gary Ambach, Wisconsin Utilities Association
 Michael Broge, Wisconsin Association of Consulting Engineers
 Jim Edelson, Wisconsin Environmental Decade
 Bert Fredericksen, Jr., Public
 Curt Hastings, Associated General Contractors of America, Wis. Chapter
 Russ Lerum, Department of Health and Social Services
 Michael Mamayek, Mechanical Contractors Association of Wisconsin
 James Mapp, Division of Energy and Intergovernmental Relations
 Michael Mesenbourg, Building Owners & Managers Assoc. of Milwaukee, Inc.
 Harold Olsen, Self - Private Consultant
 Charles Opferman, Associated General Contractors of Greater Milwaukee

Dave Osborne, Wisconsin Builders Association
 John Paulson, Self - Private Consultant
 George Robak, Wisconsin Society of Architects/AIA
 Jim Schey, Department of Administration
 Randy Sikkema, Wisconsin Chapter ASHRAE
 Carol Stemrich, Public Service Commission
 David Stockland, Associated Builders & Contractors of Wisconsin, Inc.
 Harry Suizer, City of Madison Planning & Development Department
 Robert Wiedenhofer, Sheet Metal & Air Conditioning Contractors' National Association, Madison Chapter

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.
Any business involved in the design or construction of buildings.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.
None.
3. Types of professional skills necessary for compliance with the rules.

The proposal modifies existing rules that require knowledge of building construction principles and practices relating to energy efficiency and health, ventilating, and air-conditioning systems.

Fiscal Estimate

The proposed rules only modify previously adopted rules. The proposed modifications will make it easier for building owners and designers to comply with the rules but will have insignificant impact on education, plan review and inspection activities.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 301.03 (3), 301.048 (10), 227.11 (2) (a), 941.26 (4) (a) and 941.26 (4) (c) 1., Stats., and, ss. 301.03 (3), 301.03(3c), 301.03(9m), and 301.048 (3) (a) 3. and 4., Stats., relating to the use of oleoresin of capsicum, firearms and other weapons by division of community corrections.

Hearing Information

September 30, 1996 Monday 10:00 A.M.	Room 223 State Office Building 141 Northwest Barstow Street Waukesha, Wisconsin
October 1, 1996 Tuesday 1:00 P.M.	Room 105 State Office Building 718 West Clairemont Eau Claire, Wisconsin
October 4, 1996 Friday 10:00 A.M.	Secretary's Conference Room Department of Corrections 149 E. Wilson Street, 3rd Floor Madison, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

Some Division of Community Corrections (DCC) employees have experienced physical injuries while on duty. In one incident, an offender physically injured a DCC employee. In another incident, a neighbor of an offender physically injured a DCC employee. The Department believes that the use of some type of self-protective tool could have prevented injuries to those DCC employees. Without this provision, the Department believes more DCC employees may be injured unnecessarily.

Section 941.26 (4) (a), Stats, permits a person to possess or use oleoresin capsicum. Section 941.26 (4) (c) 1., Stats., permits a person to use oleoresin of capsicum for self–defense or defense of another. Permitting DCC employes to use oleoresin of capsicum provides DCC staff members a legal, safe, and effective alternative for protection of themselves and others.

These rules permit DCC employes to possess and use oleoresin of capsicum while on duty. These rules authorize DCC employes to use oleoresin of capsicum against an offender or another person while acting in self–defense or defense of another, as allowed under s. 939.48, Stats.

These rules prohibit DCC employes from using or possessing oleoresin of capsicum while on duty unless the DCC employe has successfully completed a department approved training program. These rules require a DCC employe to update training pursuant to policy and procedures.

These rules prohibit DCC employes from using oleoresin of capsicum against another DCC employe or against an offender merely because the offender refuses to follow orders. These rules continue to prohibit an employe from using or possessing firearms or other weapons except for oleoresin of capsicum.

Text of Rule

SECTION 1. DOC 328.20 is repealed and recreated to read:

DOC 328.20 OLEORESIN OF CAPSICUM, FIREARMS AND OTHER WEAPONS. (1) **OLEORESIN OF CAPSICUM.** For the purpose of this section, “oleoresin of capsicum” means the oleoresin extracted from fruits of plants of the genus capsicum. The oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

(2) **AUTHORIZED USE OF OLEORESIN OF CAPSICUM.** An employe may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a), Stats., while on duty, only under the following conditions:

(a) After successfully completing a department approved training program for oleoresin of capsicum or, if applicable, after successfully updating training according to department policy and procedure.

(b) While acting in self–defense or defense of a third person, as allowed under ss. 941.26 (4) (c) 1. and 939.48, Stats.

(c) Toward an offender, another person or an animal.

(3) **PROHIBITED USE.** An employe may not use oleoresin of capsicum under any of the following:

(a) Against another employe, except for training purposes.

(b) Toward an offender merely because the offender refuses to follow orders.

(c) Merely to cause bodily harm or bodily discomfort.

(4) **APPROVED PRODUCTS.** An employe shall carry and use only products and delivery systems approved by the department.

(5) **MEDICAL CARE.** An employe shall immediately provide medical attention to the person exposed to oleoresin of capsicum.

(6) **DOCUMENTATION.** The employe using oleoresin of capsicum shall document its use according to department policy and procedure.

(7) **FIREARMS OR OTHER WEAPONS.** No employe may carry or use a firearm or other weapons while on duty, except as permitted under s. DOC 328.20 (2).

SECTION 2. DOC 333.16 is repealed and recreated to read:

DOC 333.16 OLEORESIN OF CAPSICUM, FIREARMS AND OTHER WEAPONS. (1) **OLEORESIN OF CAPSICUM.** For the purpose of this section, “oleoresin of capsicum” means the oleoresin extracted from fruits of plants of the genus capsicum. The oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

(2) **USE OF OLEORESIN OF CAPSICUM.** An employe may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a), Stats., while on duty, only under the following conditions:

(a) After successfully completing a department approved training program or, if applicable, after successfully updating training according to department policy and procedure.

(b) While acting in self–defense or defense of a third person, as allowed under ss. 941.26 (4) (c) 1. and 939.48, Stats.

(c) Toward an offender, another person or an animal.

(3) **PROHIBITED USE.** An employe may not use oleoresin of capsicum under the following:

(a) Against another employe, except for training purposes.

(b) Toward an offender merely because the offender refuses to follow orders.

(c) Merely to cause bodily harm or bodily discomfort.

(4) **APPROVED PRODUCTS.** An employe shall carry and use only products and delivery systems approved by the department.

(5) **MEDICAL CARE.** An employe shall immediately provide medical attention to the person exposed to oleoresin of capsicum.

(6) **DOCUMENTATION.** The employe involved in the use of oleoresin of capsicum shall document its use according to department policy and procedure.

(7) **FIREARMS OR OTHER WEAPONS.** No employe may carry or use a firearm or other weapons while on duty, except as permitted under s. DOC 333.16 (2).

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

Chapters DOC 328 and 333 allow Department of Correction’s employes of the Divisions of Intensive Sanctions and Probation and Parole to possess and use oleoresin capsicum (pepper spray) while on duty. Use of the spray is voluntary and requires yearly training.

This administrative rule affects only employes of the Division of Intensive Sanctions and Probation and Parole. There are currently 1,486 FTE in these divisions. Assuming 50% of employes choose to carry the spray, 743 would be trained during the initial year. The Department estimates 38 classes with 20 participants each, held at locations around the state. The initial training will take approximately 6 hours and includes:

- policy review
- discussion and review of threat evaluation and force options
- exposure to the spray (all participants)
- clean up (health care if needed, wash up, change clothes)

Each fog–type pepper spray dispenser holds 60 applications per canister. The Department will need 13 canisters for training the first year and 743 canisters for employes at a cost of \$10 each. The Department also estimates \$1 per participant for other materials.

An in–house trainer’s travel expenses the first year would be \$3,600.

Yearly refresher classes will be done by video tape. The in–house produced video costs approximately \$500 and 15 copies can be duplicated for \$100.

The Divisions of Intensive Sanctions and Probation and Parole estimate turnover rates to be approximately 10% per year. Assuming 50% of the turnover employees ($1,485/10 = 149/2 = 75$) choose to use pepper spray, 75 new employees will need to be trained each year. Trainer travel expenses would be approximately \$400 per year and other materials would total \$75.

Each canister lasts 2 years. Assuming the Department replaces half the canisters each year, the continuing yearly cost is \$3,700.

The Department estimates start–up costs will be approximately \$12,500. Annual costs thereafter are estimated at \$4,200.

Contact Person

Deborah Rychlowski (608) 266-8426
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707-7925

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

Written Comments

Written comments on the proposed rules received at the above address no later than **October 11, 1996**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Employe Trust Funds

The Wisconsin Department of Employee Trust Funds will hold a public hearing in accordance with the provisions of s. 227.16 (1), Stats., to review this proposed rule, which repeals s. ETF 10.12 (4) (d) and amends s. ETF 10.12 (4) (b) and (c), Wis. Adm. Code, relating to withdrawal of funds invested in the Public Employee Trust Fund by a separate retirement system as permitted by s. 40.03 (1) (n) and (2) (q), Stats.

Hearing Information

The public hearing will be held on:

October 3, 1996	Room 103, GEF I
Thursday	201 East Washington Ave.
At 10:00 a.m.	Madison, WI

Written Comments

The public record on this proposed rulemaking will be held open until 4:30 p.m. on **Friday, October 4, 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:

Robert Weber, Chief Legal Counsel
Dept. of Employee Trust Funds
201 E. Washington Ave.
P.O. Box 7931
Madison, WI 53707-7931

Agency Analysis

Statutory authority: s. 40.03 (2) (q)

General Summary of Rule

The City of Milwaukee is one of only two separate retirement systems which has invested its funds in the Public Employee Trust Fund, as permitted under s. 40.03 (1) (n) and (2) (q), Stats., and s. ETF 10.12 (4), Wis. Adm. Code. The City of Milwaukee retirement system desires to withdraw its funds and has begun doing so. The proposed rule would permit the City of Milwaukee to withdraw its funds more rapidly from the Public Employee Trust Fund than is currently permitted, provided the Secretary of the Department of Employee Trust Funds (DETF) determines that no harm would result. The proposed rule is not limited in its application to the City of Milwaukee and would apply to any separate retirement system investing in the Public Employee Trust Fund as permitted under s. 40.03 (1) (n) and (2) (q), Stats.

The present policy is set out in s. ETF 10.12 (4) (c), Wis. Adm. Code, which limits withdrawals as follows:

Withdrawals by a separate retirement system shall be limited in any calendar month to the greater of 5% of the system's balance on deposit or \$2 million.

This means that if an account balance exceeds \$40 million, the maximum withdrawal is 5% of the balance. As each withdrawal is made, the balance falls and the 5% limit decreases, too. Once the balance on deposit reaches \$40 million, withdrawals at a steady \$2,000,000 per month may be made. Thus, under the present rule, it would take over five years for a separate retirement system with \$374 million on deposit (as the City of Milwaukee had in December 1995 when it began making withdrawals) to fully withdraw its investment from the Trust Fund if it acts as quickly as possible. This time estimate is actually overly optimistic, since it ignores interest earned on the remaining balance which would be credited to the account during the five years, thereby prolonging the time needed to close the account.

Protection against extraordinarily large withdrawals is necessary, to avoid imprudently draining the Trust Fund's cash on hand or interfering with long-range investment plans by forcing the premature sale of investments. However, there is no reason to enforce the present 5% or \$2 million limit if larger withdrawals could safely be made without harm to the Public Employee Trust Fund.

The proposed rule allows the DETF Secretary to permit more money to be withdrawn by a separate retirement system each month, provided the Secretary consults prior to each monthly withdrawal with the Executive Director of the State of Wisconsin Investment Board and is satisfied that no harm would result to the Public Employee Trust Fund (i.e., no imprudent reduction of cash on hand and no premature liquidation of investments) and/or to Wisconsin Retirement System participants who have a beneficial interest in the Trust Fund and its earnings.

The proposed rule also establishes the minimum period of advance notice required for any withdrawal at 21 days (instead of the current requirement for 60 days notice of withdrawals in excess of \$10 million). Withdrawals are expressly limited to one per month, paid on the first working day of a month, which codifies present practices.

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this rulemaking upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, technical college 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 Robert Weber, Chief Legal Counsel, (608) 266-5804.

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.26, Stats., and s. 167.31 (4) (a) 4., Stats., as created by 1995 Wis. Act 122, and interpreting s. 167.31 (4) (a) 4., Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal and recreate

s. RL 30.02 (7); and to create s. RL 30.02 (4m), relating to a private security person or a private detective carrying a loaded firearm in a vehicle while on duty as a private security person.

Hearing Information

September 27, 1996 Room 133
Friday 1400 E. Washington Ave.
11:00 a.m. MADISON, WI

Written Comments

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

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

Written comments must be received by **October 11, 1996** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 227.11 (2) and 440.26, Stats., and s. 167.31 (4) (a) 4., Stats., as created by 1995 Wis. Act 122.

Statute interpreted: s. 167.31 (4) (a) 4.

Section 1 creates a definition of “in plain view,” as the Department of Regulation and Licensing is 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.

Section 2 repeals and recreates the current definition of “on duty” 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 Section 1 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.

Text of Rule

SECTION 1. RL 30.02 (4m) is created to read:

RL 30.02 (4m) “In plain view,” as used in s. 167.31 (4) (a) 4., Stats., means a firearm which includes the following:

(a) Is not covered by any part of the uniform of a person acting as a private security person.

(b) Is or is not in a holster and 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.

Note: A firearm located in a glove compartment, in a briefcase or under a seat of a vehicle is not “in plain view,” as defined in this section.

SECTION 2. RL 30.02 (7) is repealed and recreated to read:

RL 30.02 (7) (a) “On duty,” except as provided in par. (b), means that time for which or during which a private detective or private security person:

1. Receives or is entitled to receive fees or other compensation for services as a private detective or a private security person; or

2. Acts or purports to be acting as a private detective or private security person.

(b) Notwithstanding subd. 1., “on duty” does not include that time during which a private security person drives in a vehicle to or from his or her place of employment or a facility at which the private security person receives or intends to receive training to act as a private security person.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to s. 348.27(9r) and (12), Stats., interpreting s. 348.27(9r) and (12), Stats., the Department of Transportation will hold a public hearing on **Wednesday, October 30, 1996 at the Hill Farms State Transportation Building, Room 813, 4802 Sheboygan Avenue, Madison, WI, at 1:00 PM**, to consider the amendment of ch. Trans 269, Wis. Adm. Code, relating to transportation of garbage or refuse permits.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by at least 10 days prior to the hearing.

Parking for persons with disabilities and accessible entrances are available on the north and south sides of the building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 348.27(9r) and (12)

STATUTE INTERPRETED: s. 348.27(9r) and (12)

General Summary of Emergency Rule. An act of Congress declared a portion of USH 51 and STH 87 to be part of Interstate I-39. By this act, Congress also allowed the continued operation of overweight, divisible loads which are customarily prohibited from movement on Interstate highways. Corresponding changes in state statute were made in the 1995-97 Transportation Biennial Budget. However, for one type of overweight, divisible permit – garbage and refuse – the prohibition on Interstate movement appears only in the administrative rule. In order to allow overweight movement on the portion of I-39 which had been USH 51/STH 78, we need to revise the administrative rule.

An emergency rule is needed to allow immediate implementation of statutory changes and Congressional changes allowing overweight transport of garbage on the portion of I-39 which had been USH 51 from Wausau to the intersection of I-90/94. Interstate status for this

highway segment became effective August 23, 1996, when signage was complete (which was earlier than anticipated), and permits which had been allowed under Trans 269 are no longer allowed. To prevent unsafe rerouting of overweight loads onto surface streets, inconsistent law enforcement among state and local law enforcement authorities, and confusion by the motor carrier industry, an emergency rule is needed while the permanent rule is developed.

The proposed rule change will benefit municipalities and counties by avoiding increased cost for removal of garbage and by avoiding increased travel on local roads by heavy vehicles. It will benefit the public by keeping heavy trucks off surface streets, avoiding traffic hazard. It will benefit the waste hauling industry by continuing most efficient transport routes. It will benefit law enforcement by maintaining status quo usage and keep this permit type parallel with all other similar permits.

Fiscal Impact

The Department estimates that there will be no fiscal impact on the

liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

Initial Regulatory Flexibility Analysis

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

Copies of Emergency Rule and Contact Person

A copy of the emergency rule may be obtained upon request from the Office of General Counsel, Wisconsin Department of Transportation, Room 115-B, P. O. Box 7910, Madison, WI 53707-7910, or by calling (608) 267-3703. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

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

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

Commerce (CR 96–80):

Chs. ILHR 63 and 64 – Relating to ventilation and energy conservation.

Commerce (CR 96–89):

S. ILHR 14.31 (3) (c) 1 – Relating to inspection of fire extinguishing systems.

Insurance, Commissioner of (CR 96–37):

S. Ins 6.20 – Relating to investments by town mutual insurers.

Transportation (CR 96–117):

S. Trans 276.07 (4) and (7) – Relating to allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Agriculture, Trade & Consumer Protection (CR 96-9):

An order affecting ch. ATCP 100, relating to payroll statements to milk producers and price discrimination in milk procurement.
Effective 10-01-96.

Health & Family Services (CR 96-26):

An order affecting chs. HFS 34 and 61, relating to standards for emergency mental health service programs.
Effective 10-01-96.

Medical Examining Board (CR 96-47):

An order affecting ch. Med 8, relating to physician assistants.
Effective 11-01-96.

Physical Therapists Affiliated Credentialing Board (CR 96-52):

An order repealing and recreating s. PT 3.01 (4), relating to temporary licenses to practice physical therapy.
Effective 10-01-96.

Revenue (CR 96-53):

An order affecting s. Tax 11.69, relating to the Wisconsin sales and use tax treatment of sales and purchases by financial institutions.
Effective 11-01-96.

Revenue (CR 96-56):

An order repealing and recreating s. Tax 2.47, relating to the apportionment of net business incomes of interstate motor carriers.
Effective 01-01-97.

Savings Institutions, Division of (Financial Institutions) (CR 96-64):

An order amending s. SB 3.06 (1) (e), relating to increasing the maximum commercial loan aggregate which is authorized for an outside director of a savings bank.
Effective 11-01-96.

Savings Institutions, Division of (Financial Institutions) (CR 96-66):

An order amending s. SB 3.08 (4) (e), relating to the definition of "primary liquid assets" in the liquidity rule for savings banks.
Effective 11-01-96.

State Fair Park Board (CR 94-80):

An order affecting chs. SFP 1 to 7, relating to penalties for violations revising the bond deposit schedule, creating new definitions, and creating new requirements for conduct at the State Fair Park, including personal conduct.
Effective 10-01-96.

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