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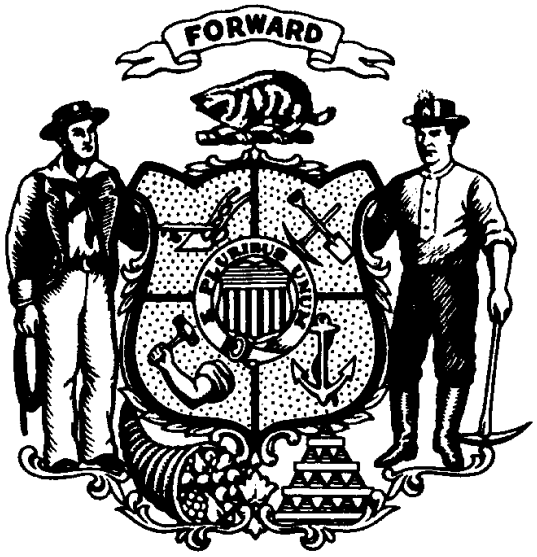

Publication Date: September 30, 1996
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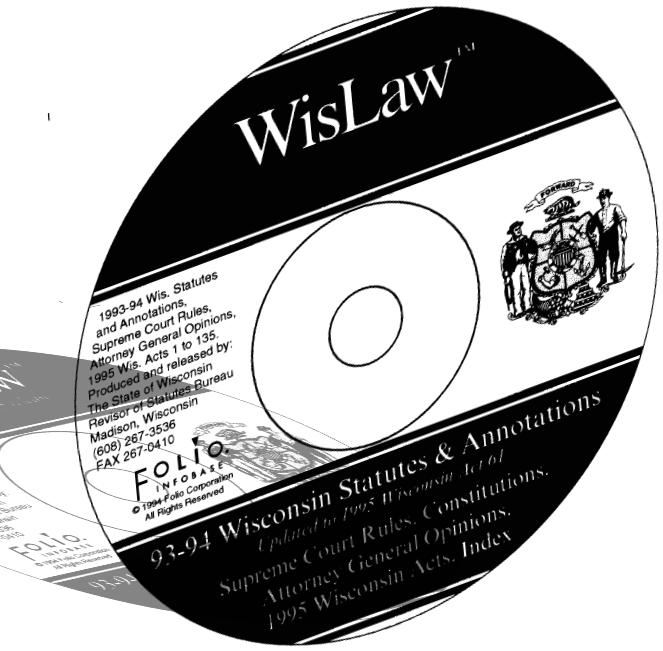

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EMERGENCY RULES NOW IN EFFECT

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 made policies relating to eligibility for low–income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

1. Income Eligibility

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

2. Costs Charged to Parents

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

3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to received low–income child care funds when the parents are in training or educational programs is modified so

that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

4. Loss of Eligibility

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

5. Recovery of Funds

Rules are added in compliance with 1995 Wis. Act 27 to provide for recovery of funds from a parent if the parent was not eligible for child care funds, and for recovery of an overpayment made to a provider when the provider is responsible for the overpayment.

6. Reimbursement

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

7. Authorized Child Care Providers

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

a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.

b. When child care is on−site and short−term for parents in training or education programs.

c. When short−term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

8. Higher Rates for Higher Quality Care

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

9. Reimbursement Rate Categories

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

10. Elimination of Rules for Respite Child Care

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

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

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

Exemption From Finding of Emergency

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

Analysis

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

Key changes include:

1. Provisional Certification

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

2. Limited Certification

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

3. Training for Regular Certification

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

4. Criminal Records Check

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

5. Certification Fee

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

6. Acceptance of Certification

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

7. Certification Exemption

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

8. Sanction Authority

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

9. School−Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

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

b. 75 square feet of outdoor space per child.

c. Daily outdoor activities.

d. A place for rest or relaxation.

e. Ongoing communication with the child's parent.

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

10. Parochial and Private Schools

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

11. Parent Checklist

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

12. Other New or Changed Rules

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

b. Requiring TB tests for all certified providers.

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

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

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

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

g. Prohibiting discrimination.

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

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

Finding of Emergency

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

Congress has just enacted welfare reform legislation which makes major changes to the federal welfare system, in many cases replacing federal entitlements with block grants to the states. The Governor has directed the creation of a Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. Under these circumstances, it is necessary to withdraw the schedule for child care co–payments and the phase–in co–payment formula which were implemented by emergency rule on July 1 of this year. This will avoid the administrative problems and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

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

EMERGENCY RULES NOW IN EFFECT

Health and Social Services
(Medical Assistance, Chs. HSS 100–)

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

Exemption From Finding of Emergency

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

Analysis

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

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

EMERGENCY RULES NOW IN EFFECT (3)

Health and Social Services
(Health, Chs. HSS 110––)

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

Finding of Emergency

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

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

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

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

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

The rules are being promulgated as emergency rules to protect public health and safety. The fee increases will take effect on July 1, 1996, which is the beginning of a new permit period. Raising the fees as provided in this order will enable the Department to avoid running a deficit in program revenue and so avoid having to reduce inspections of food–serving, lodging and recreational facilities and taking longer to respond to foodborne and waterborne disease outbreaks.

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

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

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

Finding of Emergency

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

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

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

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

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

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

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

Publication Date: **June 22, 1996**
Effective Date: **June 22, 1996**
Expiration Date: **November 19, 1996**
Hearing Date: **August 28, 1996**

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

Finding of Emergency

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

Until the enactment of the State Budget for 1995–97, 1995 Wis. Act 27, construction plans for nursing homes, hospitals and facilities for the developmentally disabled (FDDs) were subject to review and approval by two state agencies. The Department of Industry, Labor and Human Relations (DILHR) reviewed the plans for conformance to the State Building Code, chs. ILHR 50–64. The Department of Health and Social Services (DHSS), the licensing agency, reviewed the plans for conformance to the Life Safety Code as adopted by reference in chs. HSS 124, 132 and 134. Act 27 provided for consolidation of plan review and approval responsibility in the Department of Health and Social Services effective October 1, 1995. On that date, DILHR's nursing home and hospital facilities construction plan review responsibility and functions were transferred to DHSS. The State Building Code, however, remained a DILHR responsibility because it applies to other buildings in addition in addition to those health care facilities.

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

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

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

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

Publication Date: **June 29, 1996**
Effective Date: **July 1, 1996**
Expiration Date: **November 28, 1996**
Hearing Date: **August 30, 1996**

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

[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 (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 form *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**
Hearing Date: **October 14, 1996**
[See Notice this Register]

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 development 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**
Hearing Dates: **September 9 & 10, 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 where identified by the auditor groups, and with respect to each of the two areas, although the auditors could include unaudited information regarding such component units in the governmental issuers' general purpose financial statements, the auditor's opinion would have to be qualified, thus precluding use of the s. 551.22 (1) (a) exemption on a self–executing basis for offers and sales of the governmental issuers' securities to the public.

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

B. Recent Accounting Developments Warranting Present Emergency rule Treatment.

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

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

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

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

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

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

The emergency rule created in s. SEC 2.01 (1) (c)5 designates as a permitted alternative accounting guideline for purposes of use of

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

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

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted revising **ch. Trans 269**, relating to transportation of garbage or refuse permits.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is: Interstate status of this portion of I–39 that had been USH 51 became effective upon completion of signage. Signage was completed on August 23, 1996. Without this emergency rule in place, overweight movement of garbage, which had been allowed, will no longer be allowed on this highway segment, while overweight movement of scrap will be allowed. This will force garbage trucks to move on surface streets, creating safety hazards for other traffic and creating economic hardship for garbage haulers (and municipalities which pay for garbage and refuse hauling), as there are no nearby detours paralleling this stretch of highway.

Publication Date: **September 9, 1996**
Effective Date: **September 9, 1996**
Expiration Date: **February 6, 1997**
Hearing Date: **October 30, 1996**

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade & Consumer Protection

Subject:

S. ATCP 139.04 (11) – Designating gaseous hydrocarbons as banned hazardous substances when intended for use as refrigerants in mobile air conditioners.

Description of policy issues:

Preliminary objectives:

Prohibit the sale, distribution and use of HC–12a, a highly flammable, hydrocarbon–based substance, that is marketed as a replacement refrigerant for motor vehicle air conditioning systems. This rule will continue to allow refrigerant substitutes which are properly labeled and intended for specific end uses approved by the U.S. Environmental Protection Agency and which meet recognized industry standards related to flammability for that specific end use. Indirectly, this rule will also implement refund requirements under s. 100.37 (7), Stats., for automotive retail businesses and others who unknowingly purchase any banned product inventory.

Preliminary policy analysis:

Under s. 100.45, Stats., the Department administers and enforces regulations governing the repair and servicing of mobile air conditioners and trailer refrigeration equipment, and the safe and proper usage, recovery and recycling of ozone–depleting refrigerants and their substitutes.

As part of its investigative authority, the Department identified a distribution network in Illinois that solicited Wisconsin businesses to sell and market HC–12a in this state. In addition, the Department has found a Wisconsin car sales business with a large inventory of this product.

HC–12a is packaged and sold by an Idaho–based corporation. The product is labeled as containing liquefied petroleum gas, and is being marketed and sold as an "ozone safe", "natural organic refrigerant" for use in motor vehicle air conditioning and refrigeration systems.

In June, 1995, the U.S. Environmental Protection Agency through its authority under the 1990 Clean Air Act Amendments issued a final rule prohibiting the use of HC–12a as a substitute for R–12, an ozone–depleting refrigerant commonly used in motor vehicle air conditioning and other systems. The federal rule prohibited this and a previously–marketed product, called OZ–12, as refrigerant substitutes in all end uses other than industrial process refrigeration due to insufficient product safety data provided by the manufacturer. This federal decision was based, in part, on public safety concerns expressed by the automotive industry, various trade associations and state regulators on the use of flammable refrigerants in currently designed motor vehicle air conditioning systems.

The Idaho company has continued to market and distribute these products in many states, arguing that the U.S. Environmental Protection Agency only has authority under the Federal Clean Air Act Amendments to regulate ozone–depleting refrigerants and substitutes to these refrigerants. The Idaho company contends that HC–12a is being distributed and sold as a "second generation" refrigerant substitute, or as a substitute for a substitute refrigerant.

HC–12a is an extremely flammable substance, as determined by the American Society of Testing and Materials (ASTM), the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of these hydrocarbon–based refrigerants in mobile air conditioning systems also contradicts standards developed by the Society of Automotive Engineering that refrigerants in these systems "must be of low toxicity, nonflammable and nonexplosive."

Because of public safety concerns posed by the use of flammable refrigerants in motor vehicle air conditioning and other systems, at least 13 states have enacted specific legislation prohibiting sale and use of products as refrigerants in motor vehicle air conditioning, residential, commercial or industrial air conditioning or refrigeration systems unless approved for that use or unless it meets appropriate industry standards related to flammability.

Section 100.45, Stats., and current rules under ch. ATCP 136, Wis. Adm. Code, do not provide authority to the Department to prohibit the sale and distribution, or to limit the use of highly flammable and potentially dangerous refrigerant substitutes. However, the Hazardous Substances Act under s. 100.37, Stats., administered by the Department, provides authority to declare by rule certain substances as hazardous, and to impose additional requirements to protect public health and safety "in view of the special hazards presented by a particular hazardous substance." Included in this authority is the ability to prohibit by rule the sale of a hazardous substance, to prescribe by rule methods of sale, and to limit or ban the use of any ingredient if the Department finds such action necessary to protect the public health and safety.

The proposed rule to list hydrocarbon–based refrigerants as banned hazardous substances in certain circumstances will address a product viewed by both the public and private sectors as presenting an unreasonable risk of injury or imminent hazard to the public health, welfare and safety.

Policy alternatives:

❇ Do nothing. This alternative assumes that further federal action may be directed toward the Idaho company to prohibit or restrict the sale and distribution of HC–12a. However, this alternative does not address the imminent hazard to motor vehicle operators and technicians who repair and service mobile air conditioning systems that may have been replaced with these highly flammable refrigerant substitutes. This alternative also does not address the current product refund requirements under s. 100.37(7), Stats., which would benefit businesses in the state that may unknowingly purchase these unsafe refrigerant substitutes. Using its authority under s. 100.45, Stats., the Department has been able to get compliance from two distributors to remove small containers of HC–12a from sale in this state. However, HC–12a is also being distributed in 22–lb. pressurized cylinders. Due to substantial risks involved in allowing further distribution of this product within the channels of commerce of this state, the Department intends to adopt an emergency rule prohibiting the sale and distribution of hydrocarbon–based refrigerants intended for use in motor vehicle air conditioning systems.

❇ The Department could implement an information and education effort to inform registered businesses and technicians engaged in repairs and servicing of mobile air conditioning systems. This alternative has already been implemented by the U.S. Environmental Protection Agency via its own distribution channels. The Department is cooperating in the dissemination of information regarding the regulatory status and public safety risks associated with HC–12a. Various elements of the automotive trades industry are also helping to disseminate information on these products. Again, this alternative does not address the imminent risk to public safety posed by the use of flammable refrigerants in motor vehicle air conditioning systems.

Statutory authority:

The Department proposes to revise s. ATCP 139.04 under authority of ss. 93.07 and 100.37 (2), Stats.

Staff time required:

The Department estimates that it will use approximately .2 FTE (Full Time Equivalent) staff to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and interest groups. The Department will use existing staff to develop this rule.

Corrections

Subject:

S. DOC 313.02 (2) (d)

Description of policy issues:

Description of the objective of proposed s. DOC 313.02 (2) (d):

Ch. DOC 313 does not define what an "industry" is. The objective of the proposed rule is to clarify the meaning of "industry" and thereby distinguish between new industries and established industries.

Description of existing policies relevant to proposed s. DOC 313.02 (2) (d) and of new policies proposed to be included in the rule and an analysis of policy alternatives:

New policies:

The proposed rule will not create new policy.

Existing policies:

Section 303.01 (1), Stats., provides the procedure for establishing an industry.

Chapter DOC 313 of the Wisconsin Administrative Code does not define "industry".

The Department has an existing policy statement interpreting the meaning of "industry", which will be incorporated in the definition. The Department has interpreted "industry" to mean the production of related products or services. Relocation of an industry, expansion of an industry or the acquisition of new customers for the product or service does not create a new industry.

The Department believes this interpretation is consistent with the common meaning of "industry", as used in the private sector.

Analysis of policy alternatives:

The alternative to the interpretation referred to above is to define "industry" in a way which limits an industry to a single product or service at one location for one customer.

This definition is inconsistent with the common meaning of "industry" and would require approval of the Prison Industries Board, notification to the Joint Committee on Finance and a hearing as required by s. 303.01 (1), Stats., if the industry had a new customer, relocated to another prison, expanded to another prison or produced a related product.

A second alternative is to make no changes, which means there will be no definition of "industry" and no certainty about the Department's responsibilities under s. 303.01 (1), Stats.

Statutory authority for rule:

Section 227.11 (2), Stats.

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

The Department estimates that approximately fifteen (15) hours of employe time within the Department will be required to develop the proposed rule.

Health & Family Services (Community Services, Chs. HSS 30––)

Subject:

Ch. HSS 70 – Relating to group homes for recovering substance abusers.

Description of policy issues:

Description of objective(s):

To implement amendment to s. 46.976 (2), Stats., made by Wis. Act 27.

Description of policies –– Relevant existing policies, proposed new policies and policy alternatives considered:

Since December, 1990, the Department has had to implement s. 46.976, Stats., which provides a revolving fund to make 2–year loans of up to $4,000 each to applying non–profit organizations to help with the costs of establishing programs to provide housing for individuals recovering from alcohol or other drug abuse. 1995 Wis. Act 27 amended s. 46.976 (2), Stats., to provide that the loans would be to help with housing for 6 or more individuals rather than 4 or more individuals. The rules, which are necessary for implementation of the statute, are being amended to conform to the statutory change.

Statutory authority:

s. 46.976 (4), Stats.

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

5 hours of staff time

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

Subject:

Ch. HSS 133 – Relating to licensing of home health agencies.

Description of policy issues:

Description of objective(s):

The Department is proposing these rule modifications for two basic reasons. First, the Department proposes changing several administrative practices to make the home health licensure program's workload more manageable. Second, the Department proposes to clarify desirable home health agency practices. One amendment is designed to clarify appropriate agency patient discharge practices and conditions under which agencies may discharge patients. A second amendment clarifies that responsibility for supervisory oversight extends to personal care workers. Similarly, two proposed new sections also address personal care workers and agency discharge procedures. One will identify appropriate tasks and services that may be performed by personal care workers. The other is directed at promoting patient care continuity in the event of an agency closure by specifying required agency practices.

Description of policies –– relevant existing policies, proposed new policies and policy alternatives considered:

Specifically, the Department will modify the rules to do the following:

1. Change the process by which it issues annual licenses to home health agencies. Currently, the Department batch processes the license applications of all home health agencies simultaneously once a year. To more evenly distribute the workload of processing the license applications, the Department proposes to stagger the annual licensure periods of agencies throughout the year. To permit this change, s. HSS 133.03 (5) needs to be modified to delete reference to a particular day of the year (June 1st) that all home health agency annual license periods must commence from.

2. Change provisions relating to license renewal. The existing administrative rules pertaining to the renewal of an agency's license, s. HSS 133.03 (6), do the following:

a. Mandate that agency licenses must be valid for a period of one full year;

b. Require that license applications be received by the Department at least 7 days before expiration of the current license;

c. Set a licensure fee equal to 3.00% of an agency's annual net income;

d. Require a variety of agency descriptive information with each license application; and

e. Provide that license renewal is contingent on an agency maintaining good standing vis–a–vis its compliance with the provisions of ch. HSS 133.

The Department proposes to modify subsection (6) to do the following:

a. Allow the Department to issue a license for a period of less than a year (transitioning to staggered agency annual licensure periods throughout the year requires this);

b. Provide the Department additional time to process applications by specifying a longer 30–day lead time between license application submission and license expiration;

c. Allow the Department to prorate license fees in those circumstances where the Department issues a license for less than a one−year period;

d. Specify that the Department may verify agency self−reported annual net income data against Medicare cost reports;

e. Drop the requirement that agencies submit a variety of agency descriptive information with each license application;

f. Institute the policy that an agency's ceasing provision of home health services to patients constitutes the agency's relinquishment of its license;

g. Institute the policy that continued issuance of a home health agency license is predicated on an agency providing skilled nursing and other therapeutic services to at least 51% of the patients served in the previous licensure period; and

h. Authorize the Department to issue conditional (less than full) licenses to license holders deemed not to meet the Department's criteria for being "fit and qualified" to continue to provide home health services.

3. Modify provisions relating to patient discharge. Current rules address both an agency's acceptance and discharge of patients. The proposed rules no longer address patient acceptance, but expand the requirements regarding the conditions under which an agency may discharge patients, extend an appeal right to patients involuntarily discharged by an agency, and require agencies to prepare discharge summaries within 30 days for all patients discharged.

4. Add rules that address the appropriate use of personal care workers in home health agencies.

5. Add rules that address the appropriate protocol in the event an agency ceases operations.

Statutory authority:

Section 50.49 (2), Stats.

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

Bureau of Quality Assurance = (BQA)

(BQA) Director's Office	3 hours
BQA Health Services Section	10 hours
BQA Provider Regulation and Quality Improvement Section	25 hours

Insurance, Commissioner of

Subject:

SS. Ins 3.39 and 3.46 − Relating to changes required by the Kassebaum−Kennedy bill to Medicare supplement and long term care policies.

Description of policy issues:

A statement of the objective of the proposed rule:

Federal legislation known as the Kassebaum−Kennedy bill requires states to modify certain aspects of the rules regulating the sale of Medicare Supplement insurance and long term care insurance. Some changes needed may include revisions to the disclosure statements required in Appendix 8 of Ins 3.39 and benefit triggers, rate increase restrictions, and non−forfeiture benefit requirements in s. Ins 3.46.

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:

Unless Wisconsin wishes to have regulation of these areas taken over by the federal government, certain changes must be made.

A statement of the statutory authority for the rule:

Sections 628.34 (12), 628.38, 631.20, 632.72, 632.76 and 632.81, Stats.

An estimate of the amount of time that state employes will spend to develop the rule and a description of other resources necessary to develop the rule:

Depending on how much work the NAIC does in changing the model laws in this area, OCI (Office of the Commissioner of Insurance) time could vary from 100 to 400 hours.

Natural Resources

Subject:

Ch. NR 27 − Relating to endangered and threatened species.

Description of policy issues:

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

1995 Wis. Act 296 modifies the state endangered and threatened species law to authorize the Department to issue permits for the incidental take of endangered and threatened species and initiate a state agency consultation process to protect endangered and threatened species. The Act requires that the Department adopt a rule establishing a notification process upon receipt of an application to incidentally take an endangered or threatened species. The rule identifies organizations, or individuals, to be notified of receipt of an application. The rule will list organizations, and academic institutions known to be interested in endangered and threatened species, and, further, provide that notice will be provided to others requesting it.

Explain the facts that necessitate the proposed change:

The incidental take authorization for endangered and threatened species is a new authority, and requires the Department to notify organizations of receipt of an application under the law. As a result, the Department will prepare a news release or notice, similar to that provided under our environmental impact rules to provide to news media and others requesting it. Generally, however, under the public records law, written information regarding this application process or others must be provided to persons requesting it, so there appears to be no change in policy.

Statutory authority:

Section 29.415 (6m), Stats.

Estimate of staff time required:

The estimated time commitment is 90 hours. One public hearing is proposed to be held in Madison.

Regulation & Licensing

Subject:

RL Code − Relating to the regulation of auctioneers and auction companies.

Description of policy issues:

Objective of the rule:

The changes being recommended relate to such issues as amending the form, style, grammar and punctuation of certain provisions and by creating provisions relating to cheating on examinations and ADA standards.

Policy analysis:

This proposal would create provisions which require the Department to grant reasonable accommodations to applicants with disabilities. The proposal would expand the policy relating to cheating on an examination so that other forms of cheating, in addition to providing unauthorized assistance on an examination, would be cause for the Department to refuse to release an examination score or to refuse to issue a credential to an applicant. Other changes would entail creating definitions and moving a definition from one chapter to another.

Statutory authority:

Sections 227.11 (2), 480.06 and 480.10, Stats.

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

5 hours

Regulation & Licensing

Subject:

RL Code – Relating to the regulation of cemetery authorities, cemetery salespeople and preneed sellers of cemetery merchandise.

Description of policy issues:

Objective of the rule:

The changes being recommended relate to such issues as form and style, clarity, grammar and punctuation, and the repeal of obsolete provisions.

Policy analysis:

1989 Wis. Act 307 initially required the Department of Regulation and Licensing to establish by rule fees for the registration of cemeteries, cemetery salespeople and preneed sellers of cemetery merchandise. The Act also stated and continues to state that the Department may establish by rule a report filing fee. Chapter RL 50 initially established such fees; however, the Biennial Budget Bill, 1991 Wis. Act 39, created statutory fees for registering cemetery authorities, cemetery salespeople and preneed sellers. Therefore, chapter RL 50 was revised to remove the registration fees. It still requires a $40 report filing fee, with some exceptions.

The Department proposes removing the report filing fee from the rules, because the registration renewal fees in s. 440.08 (2) (a) 21, 22 and 23, Stats., are based on a formula which includes the costs of regulation and enforcement. This formula is used to determine the renewal fees of all professions and occupations regulated by the Department. Costs associated with reviewing annual reports and conducting financial audits of care accounts and preneed trust accounts should be included in the registration renewal fee. There is no need for a separate report filing fee in the rule; therefore, the Department proposes repealing it.

Other technical changes include:

∞ Removing the requirement that certain applications and requests for approval which are filed by cemetery authorities or preneed sellers be sworn to before a notary public.

∞ Clarification of requirements relating to bonds obtained by warehouses for cemetery merchandise.

∞ Other minor technical changes.

Statutory authority:

Sections 157.62 (2) and (7), 227.11 (2), 440.01 and 440.92 (6) and (7), Stats.

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

5 hours

Regulation & Licensing

Subject:

RL Code – Relating to contents of prelicense education programs and courses for real estate licensure.

Description of policy issues:

Objective of the rule:

To specify the number of classroom hours of prelicense education which a nonresident applicant must complete; and to review and describe the prescribed contents of courses.

Policy analysis:

1. An applicant for a salesperson's license must complete 72 classroom hours of education, except that the applicant obtains a waiver of the specific 72 hour course by having successfully completed 10 semester–hours of credit courses at an institution of higher learning. A person who has held an active real estate license in another licensing jurisdiction within the 2–year period prior to filing an application in Wisconsin may satisfy the 72 classroom hour requirement by completing all but 23 hours of comparable education at a school in another licensing jurisdiction [see s. RL 25.03 (4)]. The contents of the 23 hours are specified in the rules, as are the contents of the complete 72 hour course.

2. An applicant for a broker's license must complete an additional 36 classroom hours of education, except that the applicant may obtain a waiver of the specific 36 hour course by having successfully completed 20 semester hours of credit courses in an institution of higher learning or by being licensed to practice law in Wisconsin. A person who has held an active real estate broker's license in another licensing jurisdiction within the 2–year period prior to filing an application in Wisconsin may satisfy the 36 classroom hour requirement by completing all but 20 hours of comparable education at a school in another licensing jurisdiction [see s. RL 25.02 (3)]. The contents of the 20 hours are specified in the rules, as are the contents of the complete 36 hour course.

3. Currently a person licensed in another licensing jurisdiction within the 2–year period prior to filing an application in Wisconsin, must complete the prelicense education, described above, and pass the licensing examination. An applicant for a salesperson's license is required to pass the 40 question state portion of the licensing examination and is exempt from the 100 question national portion of the examination. An applicant for a broker's license must pass the state portion of the salesperson's examination and must pass the 100 question broker's examination. The broker's examination does not contain two portions.

4. It has been proposed that the 23 classroom hours of education which a nonresident applicant for a salesperson's license must complete at a Wisconsin–approved school be reduced to 13 hours and that the 20 classroom hours of education which a nonresident applicant for a broker's license must complete at a Wisconsin–approved school be reduced to 3 hours. The new rules would specify the course contents which would relate to laws and real estate practice requirements which are specific to the state of Wisconsin.

5. An alternative proposal would amend the education requirements so that an applicant who has held a license in another jurisdiction with the 2 years prior to filing an application in Wisconsin would not be required to obtain any of the education at a Wisconsin–approved school and course, but could satisfy the full education requirement by attending comparable education in another licensing jurisdiction. The applicant would, however, be required to pass the prelicense examination, as described above, in order to demonstrate his or her knowledge of Wisconsin's laws which relate to the practice of real estate.

6. Another alternative is to change the rules to simply require an applicant who has held a license in another jurisdiction within the 2 years prior to filing an application to certify that the applicant has read the real estate laws of the state of Wisconsin and will abide by them when practicing under a Wisconsin real estate license.

Statutory authority:

Sections 227.11 (2), 452.05, 452.07, 452.09 (2) and (3) and 452.11, Stats.

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

10 hours

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

The rules would simplify licensing requirements and reduce the time required to explain the requirements to applicants. If the contents of courses are revised, the Department would have to send additional correspondence to approved schools and the schools would have to amend their curricula accordingly. Depending on whether new contents are added or removed, new questions would have to be written for the prelicense examination and old questions removed.

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.

Natural Resources

Rule Submittal Date

On September 13, 1996, the Wisconsin Department of Natural Resources submitted a proposed rule [WT–50–96] to the Legislative Council Clearinghouse.

Analysis

The proposed rule amends chs. NR 102, 105, 106 and 207, Wis. Adm. Code, relating to surface water quality standards, criteria and their implementation procedures (Great Lakes Initiative).

Agency Procedure for Promulgation

Public hearings are required and will be held October 15, 16, 17 and 22, 1996.

Contact Person

If you have questions regarding this rule, you may contact Beth Goodman, Bureau of Watershed Management, at (608) 266–3219.

Transportation

Rule Submittal Date

On September 12, 1996, the Wisconsin Department ofTransportation submitted a proposed rule to the Joint Legislative Council Staff.

Analysis

The proposed rule amends ch. Trans 102, Wis. Adm. Code, relating to driver license issuance.

Agency Procedure for Promulgation

A public hearing is required and will be held October 15, 1996. The Division of Motor Vehicles, Bureau of Driver Services is the organizational unit responsible for promulgation of the proposed rule.

Contact Person

If you have questions regarding this rule, you may contact Julie A. Johnson, Paralegal, at (608) 266–8810.

Workforce Development

Rule Submittal Date

On September 16, 1996, the Wisconsin Department of Workforce Development submitted a proposed rule for Legislative Council Review.

Analysis

The proposed rule affects ch. DWD [ILHR] 301, Wis. Adm. Code, relating to migrant labor.

Agency Procedure for Promulgation

Public hearings are scheduled for October 21, 1996 and November 5, 1996.

Contact

If you have questions regarding this rule, you may contact the Department of Workforce Development at (608) 266–7552 .

NOTICE SECTION

Notice of Hearing

Agriculture, Trade & Consumer Protection

▶ **(Reprinted from September 15, 1996 *Wis. Adm. Register*)**

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:

October 8, 1996	**Conference Room B (lower level)**
Tuesday	**UW–Extension City–County Bldg.**
7:00 p.m. to	**1516 Church St.**
9:00 p.m.	**STEVENS POINT, WI**
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

▶ **(Reprinted from September 15, 1996 *Wis. Adm. Register*)**

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	**Ramada Inn**
Monday	**3431 Milton Ave.**
1:00 to 4:00 p.m.	**JANESVILLE, WI**
evening session	
6:00 to 8:00 p.m.	
October 1, 1996	**Timberland Room**
Tuesday	**Best Western Arrowhead Lodge**
1:00 to 4:00 p.m.	**600 Oasis Rd.**
evening session	**BLACK RIVER FALLS, WI**
6:00 to 8:00 p.m.	
October 2, 1996	**Best Western Royale**
Wednesday	**5110 Main Street**
1:00 to 4:00 p.m.	**STEVENS POINT, WI**
evening session	
6:00 to 8:00 p.m.	
October 3, 1996	**Room A**
Thursday	**Brillion Community Center**
1:00 to 4:00 p.m.	**120 Center Street**
evening session	**BRILLION, WI**
6:00 to 8:00 p.m.	

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

See September 15, 1996 *Wisconsin Administrative Register*, page 22.

Initial Regulatory Flexibility Analysis

See September 15, 1996 *Wisconsin Administrative Register*, page 23.

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 a proposed rule (proposed ch. ATCP 77, Wis. Adm. Code) relating to laboratory certification fees. The hearing will be held at the time and

place shown below. The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until **October 16, 1996** for additional written comments.

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

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

Hearing Information

October 11, 1996
Friday
10:00 a.m. – 12:00 noon

WI Dept. of Agriculture
Trade & Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53704

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

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

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

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

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

Current rules governing the public health lab certification program are contained in ch. HSS 165, Wis. Adm. Code. The current rules remain in effect until the department amends or repeals them. This rule repeals portions of HSS 165 related to lab certification and fees, and creates new certification and fee requirements under ch. ATCP 77, Wis. Adm. Code. The department expects to propose additional rules related to the lab certification program later this year.

This rule does all of the following:

•Identifies the laboratories which must be certified by the department

•Establishes a procedure by which a laboratory may obtain and annually renew its certification.

•Establishes certification fees.

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

•A basic annual certification fee of $400, except that the basic fee is $200 for a dairy plant laboratory which is solely engaged in performing antibiotic drug residue screening tests on bulk milk tanker loads of milk received at that dairy plant.

•A supplementary annual fee of $120 for each different type of milk test performed by the laboratory, if the laboratory is engaged in milk testing. This supplementary fee finances proficiency testing of milk analysts, which is currently required under state and federal law. If a milk testing laboratory applies for certification in mid–year, this supplementary fee is prorated by the number of months remaining in the calendar year for which the applicant seeks certification.

Fiscal Estimate

Laboratories were previously certified and inspected by the Wisconsin Department of Health & Social Services (HSS) under s. 252.22, Stats and ch. HSS 165, Wis. Adm. Code. 1995 Wis. Act 27 transferred laboratory certification and inspection to the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) under s. 93.12, Stats., effective July 1, 1996. DATCP is required to promulgate rules establishing a fee schedule to offset the cost of certification of laboratories.

Creation of ch. ATCP 77, (Laboratory Certification Fees) and repeal of s. HSS 165.21 has no effect on GPR funds, but will increase PRO funds.

The rule will increase revenues due to increased fees. Fees have been increased for existing laboratories. Portions of this program are mandatory and have been under–funded in the past. The Federal Pasteurized Milk Ordinance (PMO) requires laboratories examining milk and water for the grade A dairy industry to be certified. In order for grade A dairy plants to ship fluid milk and milk products out–of–state, the milk they process and the water they use must be examined at a laboratory certified under this program. Recently, the PMO mandated a new category of laboratories be certified for the testing of raw bulk milk for drug residue. Many of these laboratories will now be required to pay certification fees. About 85% of milk produced in Wisconsin is shipped out–of–state.

Previously, H&SS exempted many local public health laboratories from paying fees. This rule will continue that exemption.

Approximately 45 local water laboratories are also certified under this program. Based on current data, local costs will increase approximately $4500 under the proposed rule.

As stated above, this program has been underfunded;

a. During the current fiscal year HSS collected $72,000 in laboratory certification fees.

b. The program is authorized 2.5 FTE's requiring $175,000 annual funding.

c. Proposed fees will likely generate $180,000 annually, which should support the program for four (4) years without any additional fee increases.

The proposed annual fee schedule is as follows:

a. Laboratory site fees of $400 for fully certified laboratories and $200 for laboratories which only screen bulk milk tankers for drug residue.

b. Individual milk test fee of $120

The current fees charged by H&SS are based on $104 fee for each type of test performed in the laboratory. For example, a laboratory performing standard plate counts, somatic cell counts and a drug residue test would have paid fees totalling $312. Under this proposed rule, the total fees would be $760 ($400 + $360 (3 tests at $120 each) = $760).

Initial Regulatory Flexibility Analysis

Proposed ch. ATCP 77, Wis. Adm. Code

LABORATORY CERTIFICATION FEES

This rule establishes fees for certification of laboratories examining milk, water or food products for the protection of public health. This rule implements the provisions of 1995 Wis. Act 27 which shifts the administration and performance of the evaluation of milk, water and food laboratories from the Wisconsin Department of Health and Social Services, Division of Health, to the Wisconsin Department of Agriculture, Trade and Consumer Protection.

The proposed laboratory certification fee rule establishes fees to offset the costs of certification of laboratories as required in s. 93.12, Stats. These fees are based on recovering 100% of the costs of this program from from the industry affected by the program.

The approximately 250 laboratories currently certified range from small, one person laboratories to large facilities with dozens of

analysts. Chapter ATCP 77, Wis. Adm. Code, (Laboratory Certification Fees) will have a fiscal impact on "small businesses" as defined in s. 227.114 (1)(a), Stats. Annual laboratory fees are increased as compared to the previous $104 per test fee charged by the Wisconsin Department of Health and Social Services, Division of Health. This fee increase is due to the fact that the laboratory certification program has been, and continues to be, inadequately funded

The proposed rule may impose some significant costs for businesses such as dairy plants that receive raw milk in bulk trucks. In order to comply with Interstate Milk Shipment requirements and s. ATCP 60.19(2), Wis. Adm. Code, requirements, these plants must have drug residue testing facilities on site. These facilities may be fully certified laboratories or drug residue screening sites. Average fees for these sites can range from $320 for one test to $760 for three tests.

The proposed rule may increase costs for some full service laboratories. These laboratories currently pay a fee of $104 per test. Average fees under the proposed rule can range from $520 for one test to $1600 for ten tests.

The proposed rule may impact local government water laboratories. These laboratories currently pay fees of $104 per test based on the number of tests they run. Under the proposed rule, these laboratories would pay a $400 site fee and no fees for tests.

The impact of the other proposed rule changes on small business is negligible. It would not be necessary for licensed establishments to retain additional professional services such as accounting or legal services to comply with this rule.

Notice of Hearing

Banking
(Financial Institutions)

Notice is hereby given that pursuant to s. 218.02 (9), Stats., and interpreting s. 218.02, Stats., the Department of Financial Institutions will hold a public hearing at **101 E. Wilson St., Room 531A in the city of Madison, Wisconsin, on the 24th day of October, 1996, at 11:00 a.m.** to consider the amending of s. Bkg. 73.01; relating to adjustment service companies.

Analysis Prepared by the Department of Financial Institutions

Statutory authority: s. 218.02 (9)

Statute interpreted: s. 218.02

Under s. 218.02 (9), Stats., the secretary of the department of financial institutions may make such rules as it shall deem necessary or proper for the effective administration and enforcement of adjustment service companies (ASC). These companies provide debt management and counseling to debtors who are experiencing financial difficulty. The proposed rule will allow ASC's to accept voluntary contributions from creditors as well as charge a fee to debtors to cover operational and administrative costs. Under current law, an ASC may either receive a voluntary contribution from a creditor, or charge the debtor a fee to cover administrative costs, but an ASC cannot do both.

The proposed change will not have an adverse impact on debtors since fee structure for the debtor remains in tact. Under current law, this fee is limited to 10% of the amount of money paid to the licensee to be distributed to a creditor or creditors or $120 in any calendar month, whichever is less.

The proposed change will not have an adverse impact on creditors since all donations or fees received by the ASC from a creditor are strictly voluntary and capped at 15% of the funds disbursed to the individual creditor or creditors.

The proposed change will have an impact on the ASCs because they will now be able to accept funds from two sources (provided the creditor is willing to make a voluntary contribution, and the debtor has demonstrated the ability to pay the administrative fee).

An alternative to implementing this proposed change would be to raise the limit on the amount the ASC can charge a debtor; or either raising the limit a creditor may contribute, or requiring the creditor to contribute to the ASC. These alternatives are not appropriate from a policy or fiscal perspective. Given these considerations, the proposed administrative rule change should be adopted.

Initial Regulatory Flexibility Analysis

This administrative rule change will not have an effect on small business as defined by s. 227.114 (1), Stats.

Fiscal Impact

The proposed administrative rule has no fiscal impact on the operations of the DFI.

Text of Rule

Section 1. Bkg. 73.01 is amended to read:

Bkg. 73.01 Fees of licensees. The fees permitted in this section are the only fees that may be assessed the debtor and include all charges of any kind or nature whatsoever. The fees shall be agreed upon in advance and stated in the contract or agreement established between the licensee and debtor. The fees for distributing funds may not be assessed the debtor until the debtor had made payment to the licensees for distribution to a creditor or creditors.

(1) ~~Only one~~ Both of the 2 alternative fee plans set forth below may be used when contracting services with a debtor.

(a) The maximum monthly fee charged the debtor shall not exceed 10% of the amount of money paid to the licensee to be distributed to a creditor or creditors or $120 in any calendar month, whichever is less.

(b) A~~s an alternative to assessing the fee in par. (a) and provided disbursements are made pursuant to an established budget which equitably treats all past, present and future obligations of the debtor, a~~ licensee may accept voluntary fees or contributions from the creditor or creditors in an amount not to exceed 15% of the funds disbursed to the individual creditor or creditors. The disbursements may not show discrimination based upon the creditors' willingness to make voluntary contributions to the licensee. If the fee is deducted from the disbursement, remittance records shall disclose the total amount credited to the individual accounts of the debtor. This amount must also reflect in the disbursement record furnished the creditor or creditors.

Contact Person

Steven C. Little, Director of Licensed Financial Services, Division of Banking, Department of Financial Institutions, P.O. Box 7876, Madison, Wisconsin, 53707–7876. Business Phone: (608) 264–7873

Notice of Hearing

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

Notice is hereby given that pursuant to ss.157.01 and 250.04(7), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of s. HSS 136.03(1), (2)(a) and Note, Wis. Adm. Code, and the repeal and recreation of s. HSS 136.04, Wis. Adm. Code, relating to embalming standards.

Hearing Information

October 23, 1996
Wednesday
Beginning at 9 a.m.

Room 180
Washington Square Office Bldg.
1400 E. Washington Ave.
Madison, WI

The public hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Family Services

This order updates the Department's standards for embalming dead human bodies to eliminate references to licensed embalmers, to add required compliance with the U.S. Occupational Safety and Health Administration (OSHA) standard for occupational exposure to bloodborne pathogens, and to improve the language used to express requirements relating to preparation of bodies prior to embalming. Licensing of embalmers was discontinued in June 1985 when 1983 Wis. Act 485 went into effect.

The changes to ch. HSS 136 are being made on recommendation of the Funeral Directors Examining Board.

Contact Person

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

Peggy Peterson
Vital Statistics Section
Division of Health
P. O. Box 309
Madison, WI 53701
(608) 267–7812 or, if you are hearing impaired,
(608) 266–1511 (TDD)

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

Written comments on the proposed rules received at the above address no later than **October 29, 1996** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This rulemaking order updates the Department's standards for embalming dead human bodies. The Department is responsible under s. 157.01, Stats., for making the standards in the interests of protecting public health. The Department of Regulation and Licensing's Funeral Directors Examining Board is responsible for enforcing the standards.

The order deletes references to licensing of embalmers because licensing of embalmers was discontinued in 1985; incorporates by reference the U.S. Occupational Health Administration (OSHA) standard for dealing with occupational exposure to bloodborne pathogens; and generally improves language used in the rules.

These rule changes will not affect the expenditures or revenues of state government or local governments. They do not add to the costs of enforcement. Local governments are not involved in standard–setting or enforcement.

Initial Regulatory Flexibility Analysis

These rule changes will apply to the 1185 active licensed funeral directors and 159 apprentice funeral directors in the state. Most of the 605 funeral establishments in the state are small businesses as "small business" is defined in s. 227.114(1)(a), Stats.

The rulemaking order brings the language of ch. HSS 136 into conformance with the statutes in regard to who may do embalming and the name of the professional examining board. The order also reorganizes the section of rules relating to the preparation of bodies prior to embalming, improves language use in that section and adds to that section a provision calling attention to existing requirements of the U.S. Occupational Safety and Health Administration (OSHA) for precautions to be taken to prevent infection when there is occupational exposure to bloodborne and body fluid–borne pathogens.

The rule changes do not add to reporting or bookkeeping requirements.

No new professional skills are required for funeral establishments to comply with the rule changes.

Notice of Hearing

Natural Resources
(Fish, Game, etc., Chs. NR 1––)

Notice is hereby given that pursuant to ss. 29.085, 29.155, 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.085, 29.155 and 29.174(1) and (2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM–27–96(E) relating to the 1996 migratory game bird season. This emergency order took effect on September 3, 1996. The significant regulations are:

Ducks: The state is divided into two zones each with 50–day seasons. The season in the southern duck zone begins at noon September 28 and continues through October 6 and, following a 5–day closed period, reopens October 12 and continues through November 21. The north duck zone season begins at noon September 28 and continues through November 16. The daily bag limit in both zones is 5 ducks, including 4 mallards and one canvasback for the entire 50 days in both zones.

Canada Geese: The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, New Auburn, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 65 days; Horicon Zone – 86 days; Exterior Zone – 79 days; and Mississippi River Subzone – 70 days. The Burnett County and New Auburn Subzones are closed to Canada goose hunting.

Bismuth: Tin shot is legalized for migratory bird hunting.

A special youth duck hunt event is established for September 21.

Hearing Information

October 14, 1996
Monday
at 1:00 p.m.

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

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jon Bergquist at (608) 266–8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Mr. Jon Bergquist, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **October 16, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Mr. Bergquist.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearings

Natural Resources
(Environmental Protection–General, Chs. NR 100––)
(Environmental Protection–WPDES, Chs. NR 200––)

Notice is hereby given that pursuant to ss. 144.025 (1) and (2), 147.01 and 227.11(2)(a), Stats., interpreting ss.144.025(l) and (2), 147.01, 147.02(3) to (6), 147.025(4) to (6), 147.035(5), 147.04(5), 147.08, 147.23 and 147.25, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 102, 105, 106 and 207, Wis. Adm. Code, relating to surface water quality standards, criteria and their implementation procedures.

The Great Lakes Water Quality Initiative (GLI) was developed in 1989 as a unique cooperative agreement between the B Great Lakes States and 2 U.S. Environmental Protection Agency regions to assemble the most up–to–date scientific information on persistent toxic chemicals in the Great Lakes basin. The goal was to develop a consistent set of water quality standards for the entirety of the basin. In 1990, Congress amended the Clean Water Act (22 USC s.1 268) formalizing the process for developing the GLI guidance and requiring the Great Lakes states to adopt provisions consistent with and as protective as the guidance within 2 years of federal publication. The final guidance was published on March 23, 1 995. The proposed changes to Wisconsin's water quality standards in chs. NR 102, 105, 106 and 207 will help ensure consistency with the guidance and consequently with the other states in the Great Lakes basin.

Specifically, some of the changes include:

Chapter NR 102 – Water Quality Standards for Wisconsin Surface Waters. This chapter contains only a few amendments needed to maintain consistency with changes to chs. NR 105 and 207.

Chapter NR 105 –Surface Water Quality Criteria for Toxic Substances. Amendments to this chapter, including the criteria tables, are predominantly due to inclusion of more recent scientific information and improved methodologies that are used in the established procedures. New specific procedures have been added which would allow for the determination of temporary secondary values for toxic substances until database requirements are fulfilled to calculate water quality criteria.

Chapter NR 106 – Procedures for Calculating Water Quality Based Effluent Limitations for Toxic and Organoleptic Substances Discharged to Surface Waters. Proposed amendments include:

a. Elimination of mixing zones for highly bioaccumulative substances when they are for new or increased discharges within the Great Lakes basin.

b. Provisions for including new permit limits based on temporary, secondary values for substances with reasonable potential to impact water quality.

c. Allowing for implementation of pollution minimization programs as alternatives to attaining effluent limitations in circumstances where data are lacking or where measurement of compliance is not possible.

d. Modification of the default receiving water design flows.

e. Inclusion of both a mass and a concentration water quality based limit in permits.

f. Refinement of whole effluent toxicity data evaluation and permit limitations.

Chapter NR 207 – Water Quality Antidegradation. The proposed amendments include establishing an Outstanding International Lake Superior Waters designation for the Lake Superior basin. This means that no new or increased discharges of the nine pollutants identified in the three state Governors' zero discharge demonstration project would be allowed unless the discharger was employing best technology in process and control. In addition, several modifications are proposed as minor housekeeping additions.

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

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

Hearing Information

October 15, 1996	**Room 041, GEF #3**
Tuesday	**125 S. Webster St.**
at 1:00 p.m.	**Madison**
October 16, 1996	**DNR Eau Claire Office**
Wednesday	**404 S. Barstow St.**
at 12:30 pm.	**Eau Claire**
October 16, 1996	**WI Indianhead Tech. College**
Wednesday	**600 N. 21st Street**
at 6:30 p.m.	**Superior**
October 17, 1996	**Nature Center Auditorium**
Thursday	**Bay Beach Wildlife Sanctuary**
at 12:30 p.m.	**1660 East Shore Drive**
	Green Bay
October 22, 1996	**Havenwoods State Forest**
Tuesday	**6141 N. Hopkins St.**
at 3:30 p.m.	**Milwaukee**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Beth Goodman at (608) 266–3219 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Ms. Beth Goodman, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than **October 31, 1996**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and its fiscal estimate may be obtained from Ms. Goodman.

Fiscal Estimate

Summary Of Rule

The Great Lakes Water Quality Initiative (GLI) is a unique cooperative effort of the Great Lakes states and the U.S. Environmental Protection Agency. The GLI developed Guidance for a consistent set of water quality standards for the entirety of the Great Lakes system. The final FLI Guidance was published in the Federal Register on March 23, 1995 in compliance with a court order; States have until March 1997 with which to comply. Industrial, municipal and environmental representatives have worked with the Department to prepare the rule amendments to NR 102, 105, 106 and 207. The proposed changes to Wisconsin's water quality standards will ensure consistency with the GLI Guidance and consequently with the other states in the Great Lakes Basin. A special designation for Lake Superior is also proposed.

Fiscal Impact

The proposed amendments do not create additional regulatory workload beyond the requirements of the WPDES permit program. Because our current rules are the most comprehensive of all the states in the Great Lakes basin, the additional costs associated with the GLI should be smaller than is the case in other states.

Additional costs of implementing the GLI for point sources in Wisconsin will be small or marginal, even though costs for a small number of individual entities could be substantial. This is based

primarily on the several years of experience implementing the requirements of current rules. Most of the costs to dischargers will be associated with additional monitoring of effluent quality. In some instances, cost will be incurred to implement pollutant minimization programs and other methods to determined the source of specific pollutants and to reduce these sources within production processes. Few expenditures are expected for additional treatment capacity and technology. The Department estimates a representative annualized cost for a minor publically owned treatment works (POTW) is $500, and for a major POTW is $10,000. There are 435 minor POTWs and 80 major POTWs in Wisconsin. Thus, the total estimated annualized cost to local governments is $1, 017,500. These costs are estimates and, due to case–by–case implementation, may be highly variable.

Department costs for implementing these rules are difficult to determine because of the case–by–case implementation, and because there are several provisions which offer options to the dischargers to choose alternative implementation methodologies.

Additional costs to the Department for implementation should also be small. In some instances the costs of obtaining information and data could be significant, but there are default methodologies which are allowed to make implementation more simple and less time consuming, usually at little cost to the regulated community. Again, due to the case–by–case implementation, specific costs cannot be determined.

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and ss. 440.962 (1) (e), 440.964 and 440.966 (2), Stats., as created by 1995 Wis. Act 322, and interpreting ss. 440.962 (1) (e), 440.964 and 440.966 (2), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create ch. RL 130, relating to examinations and continuing education requirements for interior designers.

Hearing Information:

October 14, 1996 **Room 179A**
Monday **1400 East Washington Ave.**
10:30 a.m. **MADISON, WI**

Written Comments

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

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

Written comments must be received by **October 18, 1996** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.962 (1) (e), 440.964 and 440.966 (2), Stats., as created by 1995 Wis. Act 322.

Statutes interpreted: ss. 440.962 (1) (e), 440.964 and 440.966 (2)

In this proposed rule–making order, the Department of Regulation and Licensing creates rules relating to the regulation of interior designers, which was created by 1995 Wis. Act 322. 1995 Wis. Act 322 requires applicants to register and to have taken an examination or, depending on past experience and education, at least the building and barrier–free codes section of the examination administered by the National Council for Interior Design. These proposed rules address the different examinations that may be taken, penalties for cheating on examinations, conditions under which an examination may be retaken after a candidate has failed the examination and procedures for review of a failed examination.

1995 Wis. Act 322 also requires registered interior designers, at the time that they apply for renewal of a certificate of registration, to submit proof of completion of continuing education requirements. The proposed rules specify the number of hours of continuing education which registered interior designers must complete before renewal, course contents, approval of the providers of such education, approval of course instructors and acceptable proof of having completed the education.

Section RL 130.01 provides the authority for ch. RL 130. Section RL 130.02 sets forth the examination requirements that are required before an applicant may become a registered interior designer. Section RL 130.03 designates the continuing education requirements for registered interior designers. Section RL 130.04 sets forth the criteria for approval of continuing education programs and instructors.

Text of Rule

SECTION 1. Chapter RL 130 is created to read:

Chapter RL 130

INTERIOR DESIGNERS

RL 130.01 Authority. The rules in ch. RL 130 are adopted pursuant to s. 227.11 (2), Stats., and ss. 440.962 (1) (e), 440.964, and 440.966 (2), Stats., as created by 1995 Wis. Act 322, and govern registered interior designers.

RL 130.02 Examinations. (1) EXAMINATIONS RECOGNIZED BY THE DEPARTMENT UNDER S. 440.964 (1) (a), STATS. An applicant for registration as an interior designer shall pass one of the following:

(a) The interior design examination of the national council for interior design qualification administered in 1990 or later.

(b) The building and barrier free codes section of the interior design examination of the national council for interior design qualification administered in 1990 or later, if an applicant has passed the examination of the national council for interior design qualification prior to 1990.

(c) The building and barrier free codes section of the interior design examination of the national council for interior design qualification administered in 1990 or later, if an applicant has passed the interior design examination of the council for qualification of residential interior designers.

(2) EXAMINATION REVIEW. An applicant who fails an examination may request a review of the examination as permitted by the examination provider. If a review is permitted, the following conditions apply:

(a) The applicant shall file a written request to the department within 30 days of the date on which examination results were mailed and pay the fee under s. RL 4.05.

(b) Examination reviews are by appointment only and shall be limited to the time permitted by the examination provider.

(c) An applicant may not be accompanied during the review by any person other than the proctors.

(d) Applicants may not remove any notes from the examination area.

(3) PASSING SCORE. Each applicant shall receive a score determined by the department to represent minimum competence to practice. The department may adopt the passing score recommended by the examination provider.

(4) CHEATING. The department may deny release of scores or issuance of registration if the department determines that the applicant violated rules of conduct of the examination or otherwise acted dishonestly.

(5) REEXAMINATION. No restrictions shall be placed on the number of times an applicant may be reexamined.

RL 130.03 Continuing education requirements. (1) Every registered interior designer shall complete at least 9 hours of an educational program prior to each renewal date except that an interior designer who is initially registered less than 6 months prior to the first renewal date shall complete the educational program prior to the second renewal date.

(2) An hour consists of a 50 minute period of actual classroom instruction.

(3) A registered interior designer shall attend approved courses in order to complete the required educational hours.

(4) A registered interior designer who acts as an instructor of an approved educational program or course shall receive credit toward satisfaction of the educational requirement. A registered interior designer may not receive credit for teaching a specific course more than one time.

(5) The department may grant an extension of time for completion of the educational requirements for one of the following reasons:

(a) Health reasons which prevented attendance at the educational program or course.

(b) Active duty in the military service with assignment to a duty station outside Wisconsin.

(6) A registered interior designer shall certify that he or she has met the educational requirements when applying for renewal of the registration. The department shall withhold issuance of the renewal registration until the certification is provided.

(7) Registered interior designers shall obtain an individual certificate of completion from a program provider upon satisfactory completion of the program. Registered interior designers shall retain evidence of completion for at least 5 years from the date of completion. The department may require any registered interior designer to submit evidence of having completed the required hours of continuing education for the period specified in sub. (1).

RL 130.04 Approval of educational programs and instructors. (1) A program and its instructors shall be approved by the American society of interior designers, the interior design continuing education council, the international interior design association, the interior design education council, the interior designers of Canada, or other bodies recognized by the department. Each program shall relate to the general subject of interior design.

(2) The department shall accept continuing education credits from registrants who successfully complete programs that are approved under sub. (1).

(3) An instructor whose registration as an interior designer has been limited, suspended, or revoked may not instruct in approved courses or programs while the disciplinary action is in effect.

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 Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11(2) (a), Stats., and interpreting ss. 77.53 (1), (1m) and (17), 77.54 (5) (a), 77.56 (2) and 77.71 (2), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **October 1, 1996**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

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

Analysis by the Dept. of Revenue

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

Statutes interpreted: ss. 77.53 (1), (1m) and (17), 77.54 (5) (a), 77.56 (2) and 77.71 (2), Stats., as affected by 1995 Wis. Act 27.

SECTION 1. Tax 11.83 (1), relating to definitions, is amended to correct language as required by Legislative Council Rules Clearinghouse standards.

Tax 11.83 (2), (3) (d) and (4) (b), relating to taxable gross receipts and occasional sales, are amended to improve language as required by Legislative Council Rules Clearinghouse standards.

Tax 11.83 (5), relating to the temporary use of motor vehicles in Wisconsin, is amended to clarify the language in s. 77.53 (17), Stats.

Tax 11.83 (6) and (7) (a), relating to tax credits and transfers by inheritance, are amended to improve language as required by Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 11.83 (8), relating to the use of motor vehicles by dealers, is repealed and recreated to reflect the amendment to ss. 77.53 (1), 77.56 (2) and 77.71 (2), Stats., and the creation of s. 77.53 (1m), Stats., by 1995 Wis. Act 27.

SECTION 3. Tax 11.83 (11) (c) and (12), relating to resale certificates and mixing and processing units, are amended to improve language and to reflect proper format, as required by Legislative Council Rules Clearinghouse standards.

Text of Rule

SECTION 1. Tax 11.83 (1), (2), (3) (d) and (4) (b) are amended to read:

Tax 11.83 (1) DEFINITION. In this section, "motor vehicle" means a self–propelled vehicle, such as an automobile, truck, truck–tractor ~~and~~ or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self–propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck ~~and~~ or road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self–propelled, such as a trailer or semitrailer.

(2) RETAILERS' TAXABLE GROSS RECEIPTS. Gross receipts from the following sales in Wisconsin are taxable:

(a) ~~Gross receipts from the~~ The sale of a motor vehicle minus any trade–in allowance, if the sale and trade–in are one transaction. A

separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade−in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value, called a "trade−down~~,~~." unless cash or services are received by the dealer.

Note to Revisor: Insert the following examples after sub. (2) (a):

Examples: 1) Dealer A sells a motor vehicle to Individual B and accepts the trade−in of two motor vehicles owned by Individual B. The selling price of the new vehicle is $20,000. The values of the two motor vehicles traded in by Individual B are $8,000 and $9,000. Gross receipts subject to sales tax are $3,000, the $20,000 selling price less $8,000 and $9,000 trade−ins.

2) Dealer A sells two motor vehicles to Individual C and accepts the trade−in of a motor vehicle owned by Individual C. The selling prices of the new vehicles are $10,000 and $12,000. The value of the motor vehicle traded in is $15,000. Gross receipts subject to sales tax are $7,000, the $22,000 selling price less $15,000 trade−in.

(b) ~~Gross receipts from charges for~~ The delivery, handling~~,~~ and preparation of a motor vehicle being sold and ~~any~~ the sale of a warranty, relating to the sale of a motor vehicle that is taxable.

Note to Revisor: Insert the following note after sub. (2) (b):

Note: See s. Tax 11.27 for information regarding the sales and use tax treatment of warranties.

(c) ~~Gross receipts from~~ The sale of equipment and accessories ~~sold~~ with a motor vehicle. However, adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as defined in s. 27.01 (7) (a) 2, Stats., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting on behalf of the handicapped person or a nonprofit organization.

(d) ~~Gross receipts from charges for all~~ Sales of parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as described in par. (c).

Note to Revisor: Insert the following note after sub. (2) (d):

Note: Under s. 77.51 (14r), Stats., a sale takes place in Wisconsin if possession of the tangible personal property is transferred by the seller or the seller's agent to the buyer or the buyer's agent in Wisconsin. A common carrier or U.S. Postal Service is always an agent of the seller.

(3) (d) When one co−owner transfers an interest in a motor vehicle to the other co−owner, tax shall apply on the transfer of ~~such~~ the interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co−owner's share of the liabilities assumed by the buying co−owner.

(4) (b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body ~~is~~ are subject to ~~the~~ tax.

(5) TEMPORARY USE IN WISCONSIN. Motor vehicles purchased outside Wisconsin, which are not registered or titled or required to be registered or titled in Wisconsin, brought into Wisconsin by a nondomiciliary for that person's own storage, use or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used or otherwise consumed in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(6) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside ~~this state~~ Wisconsin and registered in ~~this state generally~~ Wisconsin is subject to ~~the~~ Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made, sales or use tax paid to the other state or the District of Columbia ~~shall~~ may be applied as a credit against and deducted from the Wisconsin use tax. This credit ~~shall~~ does not apply to taxes paid to another country~~,~~ or to municipalities in other states, or to motor vehicle registration fees.

(7) (a) The distribution of a motor vehicle to the heir or heirs of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser ~~is required to~~ shall pay the tax to the department of transportation at the time of registration.

SECTION 2. Tax 11.83 (8) is repealed and recreated to read:

Tax 11.83 (8) VEHICLES USED BY LICENSED WISCONSIN MOTOR VEHICLE DEALERS. (a) *General.* Motor vehicles purchased without tax for resale by a Wisconsin motor vehicle dealer licensed under s. 218.01, Stats., and used for a purpose in addition to retention, demonstration or display, except motor vehicles loaned to any school or school district for a driver training educational program conducted by the school or school district, are subject to Wisconsin use tax. Motor vehicles used by the dealership solely for retention, demonstration and display, while holding them for sale in the regular course of business, or solely for leasing to others, such as customers and employes, are not subject to Wisconsin use tax.

(b) *Amount subject to use tax.* The amount subject to use tax on a motor vehicle used by a licensed motor vehicle dealer for a purpose in addition to retention, demonstration or display is one of the following:

1. Motor vehicles held for sale which are assigned to a specific dealer employe subject to withholding from federal income tax on wages are subject to Wisconsin use tax on $96 per motor vehicle registration plate per month.

Note: As provided in s. 77.53 (1m), Stats., the department annually, beginning January 1, 1997, will adjust the $96 amount to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the Wisconsin Tax Bulletin prior to the January 1 that the change becomes effective.

2. Motor vehicles held for sale and not assigned to a specific dealer employe subject to federal withholding on wages are subject to Wisconsin use tax on the lease value of the motor vehicle computed on a calendar month basis. If a motor vehicle is used by the dealer for a period of less than one calendar month, the amount subject to use tax is the daily lease value calculated by multiplying the applicable monthly lease value by a fraction, the numerator of which is the number of days used by the dealer for a purpose in addition to retention, demonstration or display and the denominator of which is the number of days in the calendar month. Lease value is computed using the internal revenue service lease value table contained in internal revenue service regulation s. 1.61−21 (d) (2). In the lease value table, the "automobile fair market value" is one of the following:

a. The amount an individual would have to pay in an arm's length transaction to purchase the motor vehicle. The amount includes all amounts attributable to the purchase of the automobile such as sales tax and title fees.

b. The motor vehicle dealer's cost of purchasing the automobile, including all expenses attributable to that purchase, provided the automobile is owned by the dealer and the purchase was made at arm's length.

3. Motor vehicles not held for sale, including motor vehicles properly capitalized for Wisconsin income or franchise tax purposes, are subject to use tax based on the sales price of the motor vehicle as defined in s. 77.51 (15), Stats. However, if the motor vehicles were purchased without tax using a resale or other exemption certificate and the first use, in addition to retention, demonstration or display, occurs more than 6 months after the purchase by the dealer, the dealer may use the fair market value of the motor vehicle at the time of first use as the amount subject to tax.

(c) *Recordkeeping.* It is presumed that all dealer plates issued by the department of transportation to a licensed motor vehicle dealer are used each month on motor vehicles assigned to employes subject to withholding for federal income tax purposes for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par. (b) 1, unless one of the following applies:

1. The motor vehicle dealer keeps adequate records showing that the dealer plates were not used during the month on motor vehicles for a purpose in addition to retention, demonstration or display.

2. The motor vehicle to which the dealer plate is assigned is subject to use tax as computed in par. (b) 2 or 3.

(d) *Transitional provision.* For motor vehicles, not assigned to employes or salespersons subject to federal withholding on wages, that are used by the dealer for a purpose in addition to retention, demonstration and display both prior to September 1, 1995, and on and after September 1, 1995, upon which a sales or use tax was paid on the purchase price of the motor vehicle by the dealer, the imposition of use tax as described in par. (b) 2 does not apply.

SECTION 3. Tax 11.83 (11) (c) and (12) are amended to read:

Tax 11.83 (11) (c) A supplier ~~cannot~~ may not accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, except when the purchaser does all of the following:

1. Inventories the property~~;~~.

2. Certifies that the purchaser sells ~~significant amounts of~~ the property ~~over-the-counter to walk-in trade; and~~ in the regular course of business.

3. ~~The purchaser specifies~~ Specifies on the resale certificate each type of item the purchaser sells ~~over-the-counter~~ in the regular course of business.

(12) EXEMPTION FOR MIXING AND PROCESSING UNITS. Sales, leases and rentals of mobile mixing units used for mixing and processing, and the motor ~~vehicle or trailer~~ vehicles or trailers on which the ~~unit is~~ units are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units, are exempt from ~~the~~ sales and use tax.

Note to Revisor: Replace the notes at the end of s. Tax 11.83 with the following:

Note: Section Tax 11.83 interprets ss. 77.51 (13) (am) and (14) (j), 77.52 (1) and (15), 77.53 (1), (1m), (16), (17) and (18), 77.54 (5) (a), (c) and (d), (7) and (22) (g), 77.56 (2) and (3), 77.61 (1) and 77.71 (2) and (4), Stats.

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except:

(a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981;

(b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426;

(c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29;

(d) The exemption for adaptive equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238;

(e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31;

(f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39;

(g) The exemption for parts and accessories for adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and

(h) The measure of use tax on motor vehicles as described in sub. (8) (b) became effective September 1, 1995, pursuant to 1995 Wis. Act 27.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The proposed rule updates the Administrative Code with respect to the Department of Revenue's sales and use tax treatment of motor vehicles.

Section 7 of the rule repeals and recreates s. Tax 11.83 (8), relating to taxes on motor vehicles used by licensed motor vehicle dealers. It changes the formula for calculating use tax on vehicles operated by an employe of the dealer to:

> Sales and use tax rate (5% for the state, 0.5% for counties with a sales tax) multiplied by $96 per month per dealer license plate held by the dealership.

Further, it changes the formula for calculating use tax on other vehicles operated by the dealer to:

> Sales and use tax rate multiplied by the monthly lease value of the motor vehicle, as shown in the lease value tables compiled by the Internal Revenue Service (IRS).

Section 7 reflects statutory changes made in 1995 Wis. Act 27 and does not have a fiscal effect.

Other rule sections reflect additional statutory changes in Act 27, clarify existing language, reflect a recent decision by the Wisconsin Tax Appeals Commission, and change style and format to conform with Legislative Council Rules Clearinghouse standards. These changes do not have a fiscal effect.

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to ss. 343.02(1), 343.055(5), 343.06(3) and 343.14, Stats., and interpreting ss. 343.055 and 343.14, Stats., the Department of Transportation will hold a public hearing in **Room 421 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 15th day of October, 1996, at 1:30 PM,** to consider the amendment of ch. Trans 102, Wis. Adm. Code, relating to driver license issuance.

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

The public record on this proposed rule making will be held open until close of business, **October 15, 1996**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Karen Schwartz, Department of Transportation, Bureau of Driver Services, Room 301, P. O. Box 7920, Madison, WI 53707-7920.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 343.02(1), 343.055(5), 343.06(3) and 343.14

STATUTES INTERPRETED: ss. 343.055 and 343.14

General Summary of Proposed Rule. The purpose of this proposed rulemaking is threefold: to clarify when the commercial motor vehicle sanctions associated with "excessive speeding" apply to farm service CDL applicants; to permit the Division of Motor Vehicles (DMV) to issue training permits up to 60 days before a student begins behind the wheel training; and to permit additional alternative documents to be used as proof of identification for purposes of obtaining a driver license as suggested by the American Association of Motor Vehicle Administrators.

Under the Commercial Motor Vehicle Safety Act, accompanying federal regulations, and s. 343.315(2)(f)1., Stats., drivers who are convicted of as exceeding the posted speed limit *in a commercial motor vehicle* by 15 or more miles per hour are disqualified. Under

the federal farm service CDL waiver, drivers who exceed posted limits by 15 or more miles per hour in any class of vehicle are not permitted to obtain seasonal farm service CDLs for a period of 2 years. There has been some confusion regarding the speed at which the "excessive speeding" sanctions apply because for many years the uniform traffic deposit schedule has provided different monetary fines and DOT has assessed more demerit points to drivers who exceeded the speed limit by more than 20 miles per hour. Trans 101.02(1)(j). The proposed amendment to s. Trans 102.20(2)(c) clarifies that the 15 mile per hour standard is used in determining farm service CDL eligibility.

Currently the applicant's signature is required on the application for an operator's license or identification card. The Division of Motor Vehicles is having operational difficulties with members of fringe groups who sign their driver licenses with false names or add "reservations of rights," allegations that the license is obtained under duress, or other extraneous information on the license signature line. DMV's experience with these groups has been that the members tend to provide required information as requested only when some provision of law leaves no possible room for ambiguity. This proposed rulemaking specifies precisely that signatures must be in the format first name, middle initial or name, last name. The purpose of the proposed rulemaking is to attempt to provide counter personnel with a tool to speed up the handling of driver license applications by these people.

Documents that will be accepted by the Department as proof of name, date and place of birth, and identity are expanded and updated. The new documents are recommended in the Uniform Identification Practices materials prepared by the American Association of Motor Vehicle Administrator's Driver Licensing and Control Uniform Identification Working Group, September, 1995.

The rulemaking also proposes to permit out–of–state drivers with driver licenses from their home states to provide any reliable evidence of their place of birth to DMV rather than requiring a certified copy of birth certificate or passport. DMV has never tracked the place of birth information it is required to collect under s. 343.06(1)(j), Stats. Because the birth certificate is less reliable identification than an out–of–state driver license, and requiring immigrants to the state to obtain birth certificates creates an administrative burden for the driver (to obtain the license) and for DMV (to have to explain the requirement to the driver and make arrangements to process the person when he/she obtains the certificate), the Division is proposing to accept any reliable evidence of place of birth rather than requiring the certified birth certificate.

After having several incidents in which people misrepresented their identity to the Department using only a license renewal notice as identification, the Department is repealing the exceptions which permitted people holding renewal notices from being required to provide other forms of ID. People reinstating or renewing a license will now need to provide some sort of photo ID, such as their expired license or a student ID.

Finally, this proposed rulemaking would change the Department's longstanding practice of not issuing an instruction permit to a driver until 30 days prior to the time the student begins behind the wheel training. The proposed rule would permit issuance up to 60 days prior to the start of behind the wheel training. The Division believes changing its practice will reduce some administrative burdens to the Division and license applicants.

Fiscal Effect

The proposed rulemaking will have no material fiscal effect on the Department, but will reduce some administrative burdens on the Division of Motor Vehicles.

Initial Regulatory Flexibility Analysis

The proposed rulemaking will have no effect on small businesses.

Preparation and Copies of Proposed Rule

Preparation of this proposed rule was done by the Division of Motor Vehicles. Copies of the proposed rule may be obtained upon request, without cost, by writing to Karen Schwartz, Department of Transportation, Bureau of Driver Services, Room 301, P. O. Box 7920, Madison, WI 53707–7920, or by calling (608) 266–0054. 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 Proposed Rule

Department of Transportation

Notice is hereby given that pursuant to the authority of ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending chs. Trans 325, 326 and 328 without public hearing unless, within 30 days after publication of this notice, on **October 1, 1996**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rules; a municipality which will be affected by the rules; or an association which is representative of a farm, labor, business or professional group which will be affected by the rules.

Questions about this rule making and any petition for public hearing may be addressed to Lt. Lyle Walheim, Division of State Patrol, Room 551, P. O. Box 7912, Madison, Wisconsin 53707–7912, telephone (608) 266–0305.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.075(6), 194.38(2), 194.43 and 346.45(4)

STATUTES INTERPRETED: ss. 110.07, 110,075, 194.38 and 194.43

General Summary of Proposed Rule. This proposed rule making will amend three existing rules to bring them into compliance with changes to the federal regulations which have gone into effect as of November 1, 1996. These changes are as follows:

Chapter Trans 325 adopted motor carrier safety regulations of the United States Department of Transportation in effect on November 1, 1995. This proposed amendment changes the date from November 1, 1995 to November 1, 1996. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between November 1, 1995 and November 1, 1996.

The Department also proposes to incorporate recent changes to federal regulations that became effective April 3, 1996, that affects the agricultural industry in Wisconsin. The new federal rules provide exceptions to hours of service requirements for drivers transporting agricultural commodities or farm supplies for agricultural purposes within a 100 air mile radius from the source of the commodities or the distribution point of the farm supplies. The exception will apply during the "planting and harvesting season within the state" as determined by the state. The Department will propose the planting and harvesting season to be from March 15 to December 15 each year. The proposal will be consistent with surrounding state declarations.

Chapter Trans 326 adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1995 to November 1, 1996. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate commerce are already subject under federal law to any changes that have been adopted between November 1, 1995 and November 1, 1996.

Chapter Trans 328 adopted motor carrier safety requirements for intrastate transportation of hazardous materials of the United States

Department of Transportation in effect on November 1, 1995. This proposed amendment changes the date from November 1, 1995 to November 1, 1996. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for intrastate transportation of hazardous materials.

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, sewerage district, or any federally–recognized tribes or bands.

Initial Regulatory Flexibility Analysis

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

Copies of Rule

This proposed rule was prepared by Lt. Lyle Walheim, Division of State Patrol. Copies of the rule may be obtained upon request, free of charge, from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707–7912, or by calling (608) 266–6936. 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.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., the department of transportation hereby amends rules interpreting ss. 110.07, 110,075, 194.38 and 194.43, Stats., relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

SECTION 1. Trans 325.01 is renumbered 325.02.

SECTION 2. Trans 325.01 is created to read:

Trans 325.01 DEFINITION. "Planting and harvesting season" means the period of time beginning March 15 through December 15 of each year.

SECTION 3. Trans 325.02(intro.), as renumbered, is amended to read:

Trans 325.02 FEDERAL RULES ADOPTED. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on November 1, ~~1995~~ 1996, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

SECTION 4. Trans 326.01(intro.) is amended to read:

Trans 326.01 FEDERAL RULES ADOPTED. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on November 1, ~~1995~~ 1996, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

SECTION 5. Trans 328.03(intro.) is amended to read:

Trans 328.03 FEDERAL RULES ADOPTED. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on November 1, ~~1995~~ 1996, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

Notice of Hearings

Workforce Development (Migrant labor, Ch. DWD 301)

Notice is given that pursuant to s. 103.905 (1), Stats., the Department of Workforce Development proposes to hold public hearings to consider the revision of ch. ILHR 301 [DWD 301], Wis. Adm. Code, relating to Migrant Labor.

Hearing Information

October 21, 1996	**Job Service Office**
Monday	**349 N. Peters Ave.**
10:00 a.m.	**Fond du Lac**
November 5, 1996	**Cartwright Center**
Tuesday	**1741 State Street**
10:00 a.m.	**La Crosse**

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Division of Workforce Excellence, 201 E. Washington Ave., P.O. Box 7972, Madison, WI 53707, by calling (608) 266–5712 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentations 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 25, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Vidal Rodriquez at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266–5712 or Telecom–Communication Device for the Deaf (TDD) at (608) 267–4077 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

This rule revises the code enforcement system followed by the Bureau of Migrant Services of the Department of Workforce Development. Its goal is to improve enforcement by rewarding code–compliant camp operators with lower fees and fewer inspection visits while increasing the attention, and the penalty fees, directed at camp operators with serious violations.

Under the proposed rule, the department will refund the camp certificate application fee for a timely applicant if the camp is certified on the basis of the first inspection. If a second visit is necessary for certification, there is no refund of the fee. If a third inspection visit is required, the department will charge an additional fee of $500. If four or more visits are required, the department will charge an additional $750 fee for each additional inspection.

For violations found after a post–occupancy inspection, the proposed rule would replace the current citation system with a system that bases the penalty fee on the gravity of the violation, the probability of harm, and mitigating factors like the compliance history of the employer.

The proposed fee changes have resulted from a review of fees caused by the statutory changes made by 1995 Act 27. The fee for migrant labor contractor certification, now $25 for one year, is changed to $250 for two years. The application fee for operating a migrant labor camp is raised from $10 to $100 plus the cost of water sampling and testing, and the late application fee is raised from $25 to $150 plus the cost of water sampling and testing. (As of now, this cost is about $35 per well.)

Other proposed rule changes will make corrections in cross–references, printing errors, and references to other statutes or legal requirements.

The rule is renumbered from ILHR 301 to DWD 301 to reflect the change in the department's name from the Department of Industry, Labor and Human Relations to the Department of Workforce Development.

Initial Regulatory Flexibility Analysis

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

Employers that operate migrant labor camps and provide housing to migrant workers.

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

This rule doesn't add any new requirements.

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

None.

Fiscal Estimate

The 1996 Amendments to DWD 301(Migrant Labor)propose the following: migrant camp registration and labor contractor fee changes, recovery of costs for water sampling and testing, administrative penalty fee assessments that replace the current system of code enforcement based on citations taken to court, and make corrective amendments to the migrant labor code. The proposed fee changes have resulted from a review of fees caused by the statutory changes made by 1995 Act 27.

Migrant Labor Camp Fee Assumptions

125 Migrant labor camps will operate in Wisconsin in 1997; 112(90%) of these will register prior to 4/1/97, and will pay the proposed $100 registration fee; 13 will register after 4/1/97, and will pay the proposed $150 late registration fee; Total Projected Revenues––$13,150; Total Projected Revenues Subject to Refund––$11,200(Due to incentive to register early and be certified on initial visit); Projected Revenue Increase––$1,950; Based on the last 3 years experience, DWD has collected an annual average of $1,748; PROJECTED NET ANNUAL REVENUE INCREASE (GPR)––$202.

Migrant Labor Contractor Fee Assumptions

25 Migrant Labor Contractors will register for permit to operate in Wisconsin in 1997, and will pay the proposed bi–annual fee of $250; Total Projected Annual Revenue––$3,125; Based on the last 3 years experience, DWD has collected an annual average of $261; PROJECTED NET ANNUAL REVENUE INCREASE(GPR)––$2,864.

Private Well Water Sampling and Testing Assumptions

Costs involved with the sampling and testing was previously borne by the DNR, who no longer is able to bear this cost. In 1997, DWD will, thus, sample private wells, at a cost to camp operators of $35 per well, in a projected 125 migrant camps that will result in 300 samples(125 for bacteria, 125 for nitrates and 50 resamplings), and will send them to the state lab of hygiene for testing and results. The state lab of hygiene will then bill DWD for the testing services. Total Projected Revenues––$10,500; Total Projected Expenditures––$10,500; REVENUES WILL EQUAL EXPENDITURES.

Penalty Fee Assessment Assumptions

In 1997, DWD will receive no benefit from the assessment of post–occupancy inspection penalty fees. Any collected fees will go directly to the state treasury. However, DWD is projecting that all violations will be resolved before the penalty fees are assessed. PROJECTED NET ANNUALLY REVENUES INCREASE–$0–.

The projected net total GPR Earned annual revenue increase is $3,066.

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.

Health & Family Services (CR 96–120):
S. HSS 146.03 – Relating to addition of varicella (chicken pox) to list of vaccine–preventable diseases.

Insurance, Commissioner of (CR 96–94):
Chs. Ins 14 and 51 – Relating to financial standards for insurers.

Natural Resources (CR 96–39):
Chs. NR 158, 700, 705, 706, 708, 712, 716, 722, 724 and 726 – Relating to hazardous substance discharge notification requirements and source confirmation.

Natural Resources (CR 96–72):
S. NR 20.04 (5) – Relating to sport fishing in urban waters.

Natural Resources (CR 96–96):
S. NR 10.01 (1) (b), (g) and (u) – Relating to the 1996 migratory game bird season.

Natural Resources (CR 96–97):
S. NR 20.038 – Relating to special size and bag limits for the Lac du Flambeau reservation.

Securities, Division of (Financial Institutions) (CR 96–128):
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.

Transportation (CR 96–69):
Ch. Trans 128 – Relating to a traffic violation and registration program.

Administrative Rules Filed With The Revisor Of Statutes Bureau

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

Agriculture, Trade & Consumer Protection (CR 95–97):
An order affecting chs. ATCP 88 and 89, relating to egg grading, handling and labeling.
Effective 11–01–96.

Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board (CR 96–49):
An order affecting ss. A–E 3.05, 4.08, 5.04, 6.05, 9.05 and 10.05, relating to examination reviews.
Effective 11–01–96.

Barbering and Cosmetology Examining Board (CR 96–1):
An order creating s. BC 3.03 (5), relating to booth rental arrangements.
Effective 11–01–96.

Natural Resources (CR 95–99):
An order repealing and recreating s. NR 46.30 (2) (a) to (c), relating to the administration of the Forest Crop Law and the Managed Forest Law.
Effective 11–01–96.

Natural Resources (CR 96–18):
An order affecting chs. NR 140, 724 and 726 and ss. NR 700.03 and 722.07, relating to the closure of hazardous substance spill cases where the Department has determined that naturally–occurring physical, chemical or biological processes will restore groundwater quality within a reasonable period of time.
Effective 11–01–96.

Transportation (CR 96–110):
An order creating s. Trans 102.22, relating to commercial driver's license (CDL) waivers for snowplow operators employed by local units of government with populations of less than 3000.
Effective 11–01–96.

Workforce Development (CR 96–36):
An order affecting chs. HSS 201 and 206, relating to participation of Aid to Families with Dependent Children (AFDC) applicants and recipients in the Pay for Performance (PFP) demonstration project.
Effective 11–01–96.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the ***September 30, 1996*** *Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

Administration (CR 95–233):
An order creating ch. Adm 25, relating to the Information Technology Investment Fund.
Effective 10–01–96.

Agriculture, Trade & Consumer Protection (CR 95–190):
An order repealing and recreating ch. ATCP 42, relating to commercial feed.
Effective 10–01–97.

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.

Elections Board (CR 96–28):
An order creating s. El Bd 1.655, relating to source identification in polls or other political communications.
Effective 10–01–96.

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.

Insurance, Commissioner of (CR 96–45):
An order affecting ss. Ins 17.01, 17.26 and 17.28, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1996, future medical expense attachment point changing from $25,000 to $100,000.
Effective 10–01–96.

Medical Examining Board (CR 96–27):
An order amending s. Med 10.02 (2) (q), relating to unprofessional conduct.
Effective 10–01–96.

Natural Resources (CR 94–183):
An order repealing and recreating ch. NR 113, relating to servicing septic or holding tanks.
Effective 01–01–97.

Natural Resources (CR 95–107):
An order affecting ss. NR 812.09 and 812.33, relating to fiberglass pressure tank use in private wells.
Effective 10–01–96.

Natural Resources (CR 95–195):
An order creating ch. NR 48, relating to applications to withdraw lands entered as county forest.
Effective 10–01–96.

Natural Resources (CR 95–222):
An order creating subch. VII of ch. NR 51, relating to administration of Heritage State Park and Forest Trust grants.
Effective 10–01–96.

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.

Public Instruction (CR 96–59):
An order affecting ch. PI 19, relating to education for school age parents.
Effective 10–01–96.

Public Instruction (CR 96–60):
An order affecting ch. PI 3, relating to teacher licenses.
Effective 10–01–96.

Public Instruction (CR 96–61):
An order affecting ch. PI 32, relating to AODA programs.
Effective 10–01–96.

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.

Transportation (CR 96–88):
An order affecting ch. Trans 107, relating to driver licensing of persons with chemical abuse or dependency problems.
Effective 10–01–96.

University of Wisconsin System (CR 96–31):
An order affecting ss. UWS 18.02 and 18.06, relating to conduct on university lands.
Effective 10–01–96.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Administration (CR 95–233)

Ch. Adm 25 – Information technology investment fund.

Summary of Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the proposed rules is not expected to impact on small businesses.

Summary of Comments:

No comments were reported.

2. Agriculture, Trade & Consumer Protection (CR 95–190)

Ch. ATCP 42 – Commercial feed.

Summary of Final Regulatory Flexibility Analysis:

The rule is not expected to have a significant economic impact on small business.

Summary of Comments from Legislative Committees:

The rule was referred to the Senate Committee on Agriculture, Transportation, Utilities and Financial Institutions on June 19, 1996 and the Assembly Committee on Agriculture on June 3, 1996. the Department received no comments from either committee.

3. Agriculture, Trade & Consumer Protection (CR 96–9)

Ch. ATCP 100 – Producer payroll statements and price discrimination in milk procurement.

Summary of Final Regulatory Flexibility Analysis:

This rule repeals and creates s. ATCP 100.75, Wis. Adm. Code, so that payroll statement requirements will be consistent with the new "multiple component pricing" methods. Effective January 1, 1996, federal milk marketing orders provide for a new method of payment called "multiple component" pricing, and establish new requirements for reporting pricing information to producers. This rule also spells out alternate payroll statement requirements for dairy plant operators who continue to use the traditional "straight fat" or "3.5% butterfat differential" pricing methods. This rule does not add to current rule requirements, but merely makes technical changes to the requirements to be consistent with the various methods that dairy plant operators may use to pay their milk producers.

The rule also creates s. ATCP 100.76 (3m) and subch. VI of ch. ATCP 100, to interpret the provisions of s. 100.22, Stats., which prohibits price discrimination in milk procurement. These rule sections apply to approximately 180 dairy plants that purchase milk from Wisconsin's approximately 27,000 dairy farmers. Some of the dairy plants and virtually all of the dairy farmers are defined as small businesses under s. 227.114 (1) (a), Stats.

Subchapter VI of this rules prohibits discrimination in the amount paid for milk between milk producers unless the discrimination is based on a difference in milk quality, is justified by a difference in procurement costs, or is justified in order to meet a competitor's price. The rules spells out what the dairy plant operator must do to show that price differences were based on differences in milk quality, cost–justified differences in procurement costs or meeting competition. Justification of price differences between producers is already required by s. 100.22, Stats.

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

Effective enforcement of s. 100.22, Stats., and this rule may result in reduced payments of milk volume premiums to the state's larger dairy farmers, most of whom fall within the definition of small businesses. However, effective enforcement may also result in increased payments to smaller dairy farmers, most of whom are small businesses.

Summary of Comments from Legislative Committees:

The rule was referred to the Senate committee on Transportation, Agriculture and Local Affairs and to the Assembly Committee on Agriculture on July 8, 1996. The department received no comments or request for hearing from either committee.

4. Elections Board (CR 96–28)

S. ElBd 1.655 – Source identification in polls or other communications.

Summary of Final Regulatory Flexibility Analysis:

The creation of this rule does not affect business.

Summary of Comments:

No comments were reported.

5. Health and Family Services (CR 96–026)

Ch. HSS 34 – Standards for emergency mental health services programs.

Summary of Final Regulatory Flexibility Analysis:

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

The rules apply to the Department, to county departments of human services or community programs that request certification or are certified to operate an emergency mental health services program and to county–contracted private service providers that request certification or are certified to operate an emergency mental health services program on behalf of a county.

At most, 7 of the 74 currently certified programs are small businesses.

The rules permit a county to operate or contract for the operation of an emergency mental health services program that either meets a basic set of certification standards, which are the current standards modestly updated, or meets new, alternative standards that are more stringent but qualify the service provider for reimbursement under the Medical Assistance (Medicaid) program.

At the Department's public hearing on the program rule, no suggestions for change were received from persons who identified themselves as representing small businesses.

Summary of Comments of Legislative Standing Committees:

No comments were received.

6. Medical Examining Board (CR 96–027)

S. Med 10.02 (2) (q) – Unprofessional conduct.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

7. Natural Resources (CR 94–183)

Ch. NR 113 – Servicing septic or holding tanks.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule doe snot have a significant economic impact on small businesses because it does not increase monitoring, recordkeeping or reporting over current regulations.

Summary of Comments by Legislative Review Committees:

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

8. Natural Resources (CR 95–107)

Ch. NR 812 – Fiberglass pressure tank use in private wells.

Summary of Final Regulatory Flexibility Analysis:

Small businesses that install pump equipment in Wisconsin must meet the minimum requirements of the rule. It is not necessary to make these requirements less stringent for these businesses. There are no new additional compliance schedules, reporting requirements or deadlines in the proposed rule.

Summary of Comments by Legislative Review Committees:

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

9. Natural Resources (CR 95–195)

Ch. NR 48 – Applications to withdraw lands entered as county forest.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

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

10. Natural Resources (CR 95–222)

Ch. NR 51 – Heritage state park and forest trust grants.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Senate Committee on Environment and Energy and the Assembly Committee on Natural Resources. The Assembly committee met with the Department to discuss concerns regarding language in s. NR 51.91 regarding applicability language that was not covered by the authorizing statutes. The Committee and the Department came to an agreement that s. NR 51.91 would be amended in a rule package being initiated by the Department.

11. Physical Therapists Affiliated Credentialing Board (CR 96–052)

S. PT 3.01 (4) – Temporary licenses to practice physical therapy.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

12. Public Instruction (CR 96–59)

Ch. PI 19 – Education for school age parents.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

13. Public Instruction (CR 96–60)

Ch. PI 3 – Teacher licenses.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

14. Public Instruction (CR 96–61)

Ch. PI 32 – AODA programs.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

15. Transportation (CR 96–88)

Ch. Trans 107 – Driver licensing of persons with chemical abuse or dependency problems.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

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

Executive Order 293. Relating to the Removal of James F. Blask as District Attorney of Lincoln County.

Executive Order 294. Relating to the Amendment of Executive Order #289.

Executive Order 295. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff as a Mark of Respect for the Late Officer Wendolyn Tanner of the Milwaukee Police Department.

Executive Order 296. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff as a Mark of Respect for the Late Corporal Richard G. Parquette of the Bayfield County Sheriff's Department.

Executive Order 297. Relating to Issuance of General Obligation Bonds for the Veterans Home Loan Program and Appointment of Hearing Officer.

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