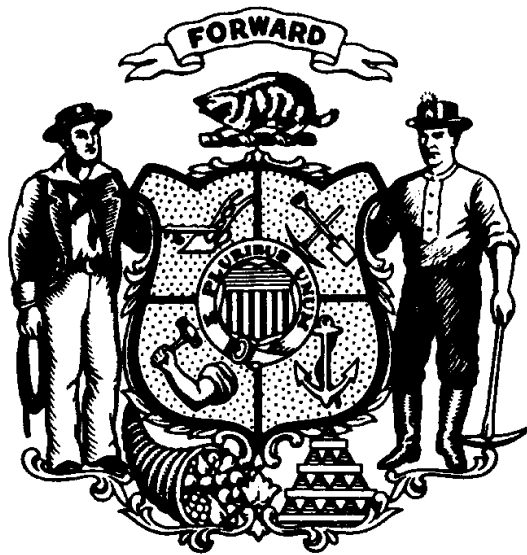


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 491**



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SUITE 800, 131 WEST WILSON STREET  
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**State of Wisconsin**  
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## EMERGENCY RULES NOW IN EFFECT

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

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

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

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

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### EMERGENCY RULES NOW IN EFFECT (2)

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

1. Rules 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  
**Extension Through:** December 29, 1996

2. Rule adopted creating **s. ATCP 139.04 (11)**, relating to prohibiting the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

#### Finding of Emergency

(1) On June 2, 1995, the United States Environmental Protection Agency ("EPA") issued a final rule prohibiting the use of HC-12a, a hydrocarbon-based refrigerant containing liquified petroleum gas, as a refrigerant in mobile air conditioning systems. EPA prohibited HC-12a, and a predecessor product called OZ-12, because of safety risks associated with the use of flammable refrigerants in mobile air conditioning systems. According to EPA, the manufacturer of HC-12a did not provide adequate information to demonstrate that the product was safe when used in a mobile air conditioning system.

(2) Despite the current EPA rule, at least one company is currently engaged in manufacturing and distributing HC-12a for

use in motor vehicle air conditioning systems. The Idaho manufacturer argues that EPA lacks jurisdiction to regulate the sale of its product. HC-12a is currently being offered, distributed or promoted for sale at wholesale and retail outlets in Wisconsin and surrounding states, for use as a refrigerant in mobile air conditioning systems.

(3) HC-12a is a highly flammable substance, as defined by the American Society of Testing and Materials (ASTM) standard test procedure for refrigerants, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of HC-12a or its predecessor, OZ-12, in mobile air conditioning systems is inconsistent with standards adopted by the Society of Automotive Engineers. According to those standards, refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

(4) At least 13 states have enacted legislation prohibiting the sale of refrigerants for use in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

(5) HC-12a and other hydrocarbon-based refrigerants, when sold for use in motor vehicle air conditioning systems, present a serious risk to public health and safety for the following reasons:

(a) Motor vehicles and mobile air conditioning systems are not currently designed to use flammable refrigerants, or to prevent hazards associated with flammable refrigerants.

(b) Refrigerants in mobile air conditioning systems commonly leak into the engine compartments or passenger compartments of motor vehicles. Leaking refrigerant is often routed into the passenger compartment through the air distribution system from the evaporator. Hydrocarbon refrigerants, which are heavier than air, will tend to accumulate in low or confined spaces of a motor vehicle.

(c) Hydrocarbon refrigerants are flammable at low concentrations.

(d) Internal components of a motor vehicle provide many potential sources of ignition for flammable refrigerants. Passenger activities, such as smoking, may also create ignition sources.

(e) Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers. Automotive technicians who test for leaks, or who repair or service mobile air conditioning systems containing flammable refrigerants, are also at risk.

(6) The risk to public health and safety cannot be adequately addressed by product packaging or labeling, for the following reasons:

(a) The use of flammable hydrocarbon-based products in motor vehicle air conditioning systems is inherently hazardous. That hazard will not be materially altered by mere packaging or labeling.

(b) Use is hazardous to persons who are not aware that the refrigerant is present, and have not have seen or read the product label.

(c) Current product labels for HC-12a already contain a warning statement that the contents are under pressure and are extremely flammable. Current labels direct use by qualified personnel only, and list other cautions and instructions when recharging a mobile air conditioning system with this substitute refrigerant. These label statements do not materially alter the hazard inherent in the use for which the product is sold. There are few if any protective actions which a customer or technician could take to reduce the hazards associated with use of the product.

(d) There are no automotive industry standards which would allow a flammable refrigerant to be used in a motor vehicle air conditioning system as currently designed.

(7) Flammable hydrocarbon-based refrigerants, including HC-12a, OZ-12, and other refrigerants containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons, pose a serious risk to public health and safety when sold for use as refrigerants in mobile air conditioners. At this time, the public health and safety can only be protected by keeping these products

out of the channels of commerce in this state. The department can and should adopt rules, under ss. 93.07(1) and 100.37(2), Stats., prohibiting the sale of such products in this state.

(8) Pending the adoption of rules according normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats., to protect the public health, safety and welfare.

**Publication Date:** October 9, 1996  
**Effective Date:** October 9, 1996  
**Expiration Date:** March 8, 1997  
**Hearing Date:** November 15, 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 the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for certified child care. They will take effect on July 1, 1996.

## Analysis

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

Key changes include:

### 1. Provisional Certification

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

### 2. Limited Certification

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

### 3. Training for Regular Certification

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

### 4. Criminal Records Check

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

### 5. Certification Fee

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

### 6. Acceptance of Certification

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

### 7. Certification Exemption

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

### 8. Sanction Authority

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

### 9. School-Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

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

#### 10. Parochial and Private Schools

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

#### 11. Parent Checklist

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

#### 12. Other New or Changed Rules

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

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

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

### Finding of Emergency

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

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

and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

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

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## EMERGENCY RULES NOW IN EFFECT

### Health and Family 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  
**Hearing Dates:** June 26, 27, 1996  
**Extension Through:** January 10, 1997

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## EMERGENCY RULES NOW IN EFFECT (3)

### Health and Family Services

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

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

### Finding of Emergency

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

The Department and agent local government health departments regulate campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations, under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The

Department's rules are in chs. HSS 172, 175, 178, 195, 196, 197 and 198, Wis. Adm. Code. None of these facilities may operate without receiving a permit from the Department or an agent local government health department. A permit is evidence that a facility complies with the Department's rules on the date of issuance of the permit. All permits except those for bed and breakfast establishments are one-year permits. A facility is charged a permit fee. Permit fee revenues support the regulatory program.

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

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

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

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

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

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

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

### Finding of Emergency

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

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

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

Section 254.47 (1), Stats., directs the Department to define "public swimming pool," in rule, for purposes of the regulatory program. The current rule definition has not been 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  
**Extension Through:** January 17, 1997

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  
**Extension Through:** December 31, 1996

## **EMERGENCY RULES NOW IN EFFECT**

### *Health & Social Services*

**(Economic Support, Chs. HSS 200-)**

Rules adopted creating s. **HSS 201.135**, relating to time limits on benefits for AFDC recipients participating in the JOBS program.

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

The Legislature in s. 275 (3) of 1995 Wis. Act 289 directed the Department to promulgate the rule required under s. 49.145 (2) (n), stats., as created by Wis. Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency. The rule will take effect on October 1, 1996.

### **Analysis Prepared by the Department of Workforce Development**

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wis. Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145 (2) (n), Stats., as created by 1995 Wis. Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141 (2) (b), Stats., as created by 1995 Wis. Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to count toward the 60-month limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which proves that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the Federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively

participating in the Job Opportunities and Basic Skills (JOBS) Training Program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria county or tribal economic support agency would use to determine whether an extension of the 60 month time limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

**Publication Date:** September 30, 1996  
**Effective Date:** October 1, 1996  
**Expiration Date:** February 28, 1997  
**Hearing Date:** November 19, 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  
**Extension Through:** December 3, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations*

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

**(Multi-Family Dwellings, Ch. ILHR 66)**

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

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

### Finding of Emergency

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

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

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

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

### Emergency Rule Analysis

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

**Publication Date:** April 6, 1996  
**Effective Date:** April 6, 1996  
**Expiration Date:** September 3, 1996  
**Hearing Date:** May 28, 1996  
**Extension Through:** December 31, 1996

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## 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 employees 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 employees 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

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## EMERGENCY RULES NOW IN EFFECT

### *Commissioner of Insurance*

Rule adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in 1996–97 premium rates for the health insurance risk-sharing plan.

### Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e), Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

#### 1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (“HIRSP”) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP’s operating and administrative costs. This rule adjusts the premium rates for the period of October 1, 1996 through June 30, 1997, based upon a recalculation of costs and subsidy payments for the 1996–1997 fiscal year. This adjustment represents a 12% reduction in premium payments for the both the non-subsidized major medical and medicare plans for person under age 65. The rates for low-income persons entitled to a premium reduction under s. Ins 18.07 (5) (b) are not affected.

**Publication Date:** September 4, 1996  
**Effective Date:** October 1, 1996  
**Expiration Date:** February 28, 1997  
**Hearing Date:** November 8, 1996

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## EMERGENCY RULES NOW IN EFFECT (8)

### *Natural Resources*

**(Fish, Game, etc., Chs. NR 1–)**

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

### Finding of Emergency

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

The department has recently come to an interim agreement with the Lac du Flambeau band regarding their off-reservation harvest goals. This rule change is needed for the 1996 fishing season in order to meet our obligation in the agreement, thus, an Emergency Order is required. This agreement will promote preservation and protection of public peace, safety, and welfare in the ceded territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters. Pursuant to litigation arising from

*Lac Courte Oreilles v. Voight*, 70 F. 2d 341 (7th Cir. 1983), the Chippewa bands of Wisconsin, which includes the Lac du Flambeau, have the right to take walleye from off-reservation waters using efficient methods such as spearing and netting. The Lac du Flambeau have made initial 1996 harvest declarations for off-reservation lakes that are sufficiently high to require the department to reduce the daily bag limit to 0 on several lakes, consistent with the formula of s. NR 20.037. The Lac du Flambeau have agreed to reduce harvest declarations to a level commensurate with a daily bag limit of 2 walleye this year and a daily bag limit of 3 in future years, provided that the state reduces its daily bag limits for walleye to 3, with a minimum length limit of 18" and increase the muskellunge minimum length limit to 40" on waters within the Lac du Flambeau reservation. The state has agreed to do so in order to provide more socially acceptable sports fishing opportunity on off-reservation waters. This will lessen tensions caused by severely reduced bag limits and will assist local businesses dependent on the sport fishery.

**Publication Date:** May 3, 1996  
**Effective Date:** May 3, 1996  
**Expiration Date:** September 30, 1996  
**Hearing Date:** June 12, 1996  
**Extension Through:** November 28, 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

6. Rules adopted amending **s. NR 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 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. 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:** October 1, 1996  
**Effective Date:** October 1, 1996  
**Expiration Date:** February 28, 1997  
**Hearing Date:** November 11, 1996

7. Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

### Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity.

Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

**Publication Date:** November 18, 1996  
**Effective Date:** November 18, 1996  
**Expiration Date:** See section 12m, 1996 Wis. Act 296

8. Rules adopted revising **chs. NR 25 and 26**, relating to the Lake Superior fisheries management plan.

### Finding of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

**Publication Date:** November 18, 1996  
**Effective Date:** November 28, 1996  
**Expiration Date:** April 27, 1997  
**Hearing Date:** December 17, 1996  
 [See Notice this Register]

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## 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

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## EMERGENCY RULES NOW IN EFFECT (3)

### Transportation

1. 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

2. Rules adopted revising **ch. Trans 76**, relating to general transportation aids.

### Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles*, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make

aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

**Publication Date:** October 25, 1996  
**Effective Date:** October 25, 1996  
**Expiration Date:** March 24, 1997  
**Hearing Date:** December 16, 1996

3. Rules adopted revising **ch. Trans 117**, relating to occupational driver's license.

### Finding of Emergency

1995 Wis. Act 269 rewrote state law regarding the issuance of occupational licenses. That Act goes into effect on November 1, 1996. Absent this emergency rule making, the Department will lack rule authority necessary to administer the new law. This emergency rule will permit the Department to issue occupational licenses until the permanent rule establishing procedures for issuing occupational licenses are in place. Therefore, the Department of Transportation finds that an emergency exists and that the rule is necessary.

**Publication Date:** November 1, 1996  
**Effective Date:** November 1, 1996  
**Expiration Date:** March 31, 1997  
**Hearing Date:** November 26, 1996



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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Employe Trust Funds*

**Subject:**

ETF Code – Relating to procedures by which participating employes may reestablish forfeited service and purchase other types of service in the Wisconsin Retirement System (WRS), as authorized under chapter 40 of the Wisconsin Statutes.

**Description of policy issues:**

*Objectives of the rule:*

The objectives of the rule are to amend existing rules and create new provisions as necessary to provide detailed and consistent guidance to WRS participating employes who wish to purchase certain forms of creditable service as permitted under chapter 40 of the Wisconsin Statutes.

*Policy analysis:*

Effective January 1, 1997, the Department of Employe Trust Funds will promulgate a rule specifying the amount that a participating employe may contribute in one calendar year to purchase creditable service under the WRS and repealing the current rule which limits employes to one purchase of forfeited and qualifying service. This rule was necessary to conform service purchases with the limits on contributions to qualified retirement plans found in Section 415 (c) of the Internal Revenue Code and incorporated in Wisconsin Statutes by 1995 Wis. Act 302.

In order to ensure that the new rule could be effective on January 1, 1997, the Department included only those provisions deemed absolutely necessary to permit service purchases without potential violations of the Section 415 (c) limits. Full details on service purchase procedures were not included in the new rule. The Department now proposes to expand upon the new rule by adding provisions concerning eligibility requirements, application deadlines, methods of calculating the cost of the service, treatment of overpayments, conditions under which the Department may reject an application, and similar procedural matters. Portions of ss. ETF 20.15, 20.16, and 20.18, Wis. Adm. Code, will be obsolete or incorrect after January 1, 1997, and will be repealed or amended.

*Policy alternatives to the proposed rule:*

Although the Department could administer service purchases without promulgating the proposed rule, this would not be desirable. A purchase of service can significantly affect an employe's retirement benefit. Detailed and up-to-date rules on service purchases are needed by employes and by Department staff to ensure consistent administration and to resolve disputes.

**Statutory authority:**

Sections 40.03 (2) (i) and (t) and 40.25 (6), Stats.

**Estimate of staff time required:**

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

### *Health and Family Services*

**Subject:**

Ch. HSS 148 – Relating to rural counties participating in the Wisconsin breast cancer screening program.

**Description of policy issues:**

*Description of objective(s):*

The directive in s. 255.06 (3), Stats., that the Department specify by rule the 12 rural counties in Wisconsin having the highest incidence of late-stage breast cancer was repealed by 1995 Wis. Act 27; therefore, the Department will repeal its rules that specify those counties.

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

A breast cancer screening program, consisting of project grants awarded to service providers, was established in 1990 by s. 146.0275, Stats., as created by 1989 Wis. Act 336, to ensure that women age 40 and over living in the 12 rural counties in the state with the highest incidence of late-stage breast cancer would have access to breast cancer screening services. The 12 rural counties were named in the program statute. But in 1992, the statute was amended to instead require the Department to specify the 12 counties by rule. The rules were published as emergency rules effective July 1, 1992, and the emergency rules were replaced by permanent rules on January 1, 1993.

The breast cancer screening program was changed in 1995 by amendments to s. 255.06, Stats., made by 1995 Wis. Act 27. Among the changes were:

♀ Deletion of a reference to the 12 rural counties specified by the Department by rule as having the highest incidence in the state of late-stage breast cancer; and

♀ Repeal of the requirement that the Department promulgate rules that specify those counties.

The funds appropriated under s. 255.06, Stats., as affected by 1995 Wis. Act 27, are now combined with federal funds for breast and cervical cancer screening for low-income, older women and distributed on a statewide basis, in accordance with a population-based formula for allocating the funds.

**Statutory authority:**

Sections 255.06 (2) (a) and (3), Stats., as affected by 1995 Wis. Act 27, and s. 227.11 (2), Stats.

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

Estimated hours of staff time = 5 hours.

### *Natural Resources*

**Subject:**

NR Code – Relating to the Sturgeon Management Assessment Team and to the evaluation of current sturgeon management goals.

**Description of policy issues:**

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

The Department proposes the creation of a Sturgeon Management Assessment Team to review, evaluate and update sturgeon management goals statewide, and to propose management actions to achieve those goals. The Team will include representatives from fisheries and law enforcement, state universities, sport organizations, and the Great Lakes Indian Fish and Wildlife Commission. Public input will occur throughout the process.

*Explain the facts that necessitate the proposed change:*

This action does not represent a change from past policy.

**Statutory authority for the rule:**

Section 29.174, Stats.

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

The anticipated time commitment is unknown. Public hearings are recommended to be held in the affected area.

### *Natural Resources*

**Subject:**

s. NR 27.03 (3) – Relating to a revision to list the timber rattlesnake as a threatened species.

**Description of policy issues:**

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

The Department proposes to designate the timber rattlesnake as a threatened species under s. NR 27.03 (3), Wis. Adm. Code.

A petition under s. NR 27.04, Wis. Adm. Code, to list the timber rattlesnake as a threatened species was received on or about September 29, 1996 from Gary Casper, Milwaukee Public Museum, and others. The petition and information accompanying it, based upon a review of the Bureau of Endangered Resources, presents substantial evidence to warrant a review. That rule requires that the Department proceed with rulemaking, at least public hearings, to review the listing proposal.

Any rule would include a self-defense provision.

Private landowners and others may express concern over protection that may result in an increase in the number of rattlesnakes on their properties. Human-snake encounters are fairly infrequent. We expect that the takings provision should address most landowner concerns.

*Explain the facts that necessitate the proposed change:*

Best available data on this species, as presented in the petition, indicates declining populations and very low recruitment. This has resulted from declining habitat, a bounty, and intentional take of timber rattlesnakes especially for sale.

It has been listed as endangered or threatened in Illinois and, just recently, in Minnesota. In addition, the U.S. Fish and Wildlife Service is considering adding it to species protected under the Convention on International Trade in Endangered Species (CITES).

The Department has submitted a Rule Agenda Checklist to designate the timber rattlesnake as "protected" under s. NR 10.02, Wis. Adm. Code, to provide protection. It is anticipated that the protected status proposal, as well as the petitioned listing to threatened status proposal, be taken to the public at the same time for review and comment, if the Natural Resources Board authorizes the Department to take the rule proposing protected status out for hearings.

**Statutory authority:**

Section 29.415, Stats.

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

The anticipated time commitment is 43 hours. Public information process is recommended, in addition to two public hearings to be held in February, 1997 at LaCrosse and Spring Green.

### *Natural Resources*

**Subject:**

Ch. NR 702 – Relating to contingency planning for hazardous substance discharge response by state agencies; and

Ch. NR 704 – Relating to contingency planning for abandoned container response.

**Description of policy issues:**

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

Chapter 144.76, Stats., requires the Department to establish by rule criteria and procedures for the development, establishment and amendment of a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances. To that end, the DNR promulgated chapter NR 702, "Contingency Planning for Hazardous Substance Discharge Response by State Agencies" and chapter NR 704, "Contingency Planning for Abandoned Container Response", as part of the overall development of the ch. NR 700 Investigation and Remediation of Environmental Contamination rule series in 1994. These rules will be the basis for this plan.

The State Contingency Plan will focus on how the Department responds to hazardous substance discharges that pose an imminent threat to public health, safety or welfare or the environment, and how the Department works with other federal, state and local agencies in conducting emergency response activities. The plan will also identify the criteria to be used by the Department in determining the appropriate response to abandoned containers of hazardous or unknown substances. The plan shall be developed to be consistent with the overall state emergency operations plan maintained by the Division of Emergency Management. Key groups that will assist with the development of this plan will be other state agencies (Department of Military Affairs, Department of Administration, Department of Health and Human Resources, the Department of Agriculture, Trade and Consumer Protection), local government response agencies (fire departments, hazmat teams, local emergency planning committees), and federal agencies (US-EPA, FEMA, Coast Guard), and outside groups, such as environmental groups and some businesses and industry representatives.

*Explain the facts that necessitate the proposed change:*

There currently is no contingency plan for the Department for hazardous substance discharge response. A contingency plan for responding to abandoned containers was prepared in 1983, but needs to be revised. Policies and mechanisms have been established for providing emergency responses. Those policies need to be reviewed and, if appropriate, incorporated into the formal plan, as mandated by the spill law.

**Statutory authority for the rule:**

Section 144.76, Stats.

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

The anticipated time commitment is 574 hours. Hearings are not required and are not being proposed. Instead, it is proposed that the plan be developed with small group participation, followed by four informational sessions for the general public, to be held in May, 1997 at Madison, Eau Claire, Stevens Point and Milwaukee.

### *Revenue*

**Subject:**

S. Tax 12.065 – Relating to assessor continuing education.

**Description of policy issues:**

*Objective of the rules:*

The objective of this rule order is to assure that requirements for the continuing education of assessment personnel be administered fairly for all individuals, without placing extraneous, arbitrary filing restrictions on some individuals. Specifically, this change allows our customers more time to meet continuing education requirements within their five-year certification period by relaxing standards in two areas:

- First, by removing the requirements that recertification be applied for two months prior to expiration of certification; and
- Second, by removing the thirty day requirement for notifying the Department upon completion of a credit program.

Progress in computerization and administration has eliminated any necessity that may have previously existed for these specific requirements. In addition, the revision reflects changes contained in 1991 Wis. Act 39, relating to the creation of more than one certification expiration date per year. (The first such expirations are effective August 31, 1996).

*Policy issues:*

Existing policies:

This rule order reflects the Department's existing policy of accepting, for assessor continuing education purposes, approved programs that an individual completes before the end of his or her certification period.

Policy alternatives:

● **Do nothing.** The rule will be incorrect in that it does not reflect current policy in place to deal with the quarterly expirations caused by 1991 Wis. Act 39. It also places an unnecessary, arbitrary filing timeline on individuals who complete an accredited course during their certification period.

**Statutory authority for the rule:**

Section 73.09 (1), Stats.

**Estimate of staff time required:**

The Department estimates it will take approximately 40 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The Department will assign existing staff to develop this rule order.



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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

#### **Corrections**

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

Notice is hereby given that, on November 11, 1996, the Wisconsin Department of Corrections submitted proposed ch. DOC 308, Wis. Adm. Code, to the Wisconsin Legislative Council Staff.

##### **Analysis**

The subject matter of the proposed rule relates to administrative confinement.

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

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of these rules is the Division of Adult Institutions.

##### **Contact Person**

If you have any questions, you may contact Deborah Rychlowski at (608) 266-8426.

#### **Corrections**

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

Notice is hereby given that, on November 8, 1996, the Wisconsin Department of Corrections submitted proposed s. DOC 309.05 (2) (b), Wis. Adm. Code, to the Wisconsin Legislative Council Staff.

##### **Analysis**

The subject matter of the proposed rule relates to the stamping of outgoing inmate mail.

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

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of these rules is the Division of Adult Institutions.

##### **Contact Person**

If you have any questions, you may contact Deborah Rychlowski at (608) 266-8426.

#### **Corrections**

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

Notice is hereby given that, on November 8, 1996, the Wisconsin Department of Corrections submitted proposed ch. DOC 324, Wis. Adm. Code, to the Wisconsin Legislative Council Staff.

##### **Analysis**

The subject matter of the proposed rule relates to the release of inmates under work and study program.

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

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The agency unit responsible for the promulgation of the proposed rule is the Division of Adult Institutions.

##### **Contact Person**

If you have any questions, you may contact Deborah Rychlowski at (608) 266-8426.

#### **Natural Resources**

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

Notice is hereby given that on November 8, 1996, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse proposed rule [LE-7-97] affecting s. NR 5.21 (2).

##### **Analysis**

The subject matter of the proposed rule relates to the slow-no-wake (SNW) speed restriction waiver on the Wild Rose Mill Pond.

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

A public hearing is scheduled for December 12, 1996.

##### **Contact Person**

If you have any questions, you may contact Bill Engfer, Bureau of Law Enforcement at (608) 266-0859.

#### **Natural Resources**

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

Notice is hereby given that on October 30, 1996, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse proposed rule [FM-51-96] affecting ss. NR 25.09, 25.10 and 26.23.

##### **Analysis**

The subject matter of the proposed rule relates to the Lake Superior fisheries management plan.

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

A public hearing is scheduled for December 17, 1996.

##### **Contact Person**

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

#### **Natural Resources**

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

Notice is hereby given that on October 29, 1996, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse proposed rule [ER-54-96] affecting s. NR 27.07.

##### **Analysis**

The subject matter of the proposed rule relates to notice of an application to incidentally take an endangered or threatened species.

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

A public hearing is planned to be held in January, 1997.

##### **Contact Person**

If you have any questions, you may contact Chuck Pils, Bureau of Endangered Resources at (608) 266-2625.

**Natural Resources****Rule Submittal Date**

Notice is hereby given that on November 8, 1996, the Wisconsin Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse proposed rule [SW-56-96] affecting chs. NR 502, 503, 506, 512, 514, 516 and 520.

**Analysis**

The subject matter of the proposed rule relates to solid waste management.

**Agency Procedure for Promulgation**

Public hearings are scheduled to be held December 11, 13 and 19, 1996.

**Contact Person**

If you have any questions, you may contact Dennis Mack, Bureau of Waste Management at (608) 267-9386.

**Transportation****Rule Submittal Date**

On November 14, 1996, the Wisconsin Department of Transportation submitted a proposed rule to the Joint Legislative Council Staff.

**Analysis**

The subject matter of the proposed rule relates to general transportation aids.

**Agency Procedure for Promulgation**

A public hearing is scheduled to be held December 16, 1996. The organizational unit responsible for promulgation of the proposed rule is the Division of Transportation Investment Management, General Transportation Aids Program.

**Contact Person**

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

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## NOTICE SECTION

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### Notice of Hearing

*Industry, Labor & Human Relations*  
*[Workforce Development]*  
*(Labor Standards, Chs. 270 – 279)*

Notice is given that pursuant to ss. 103.005 (1) and 104.04, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the revision of chs. DWD 272 and 274, Wis. Adm. Code, relating to minimum wage.

#### Hearing Information

**December 17, 1996**  
**Tuesday**  
**9:00 a.m.**

**Madison, WI**  
**201 E. Washington Ave.**  
**Room 400X, GEF #1**

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Division of Equal Rights, 201 E. Washington Ave., P.O. Box 8928, Madison, WI 53708, by calling (608) 266-7560 or at the appointed time and place the hearing is held.

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing may be submitted no later than **December 30, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to James L. Stelsel at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

The hearing is being held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-7560 or Telecommunication Device for the Deaf (TDD) at (608) 264-8752 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 makes the following changes to Wisconsin's permanent administrative rules relating to minimum wage rates:

- The basic minimum wages rate for all employees is set at \$4.75 per hour effective October 1, 1996, and \$5.15 per hour effective September 1, 1997. This matches the rates set by the federal Fair Labor Standards Act. A proportional adjustment is made to the minimum wage rate for adult agricultural employees. The rate for agricultural employees who are minors is set at \$4.20 per hour effective October 1, 1996.

- The rule defines an "opportunity employee" as an employee who is under 20 years of age and in his or her first 90 days of employment. The minimum wage for an opportunity employee is \$4.25 per hour. This provision is similar to the provision on probationary employees in the federal Fair Labor Standards Act.

- The rules which set separate categories for minor employees (at \$0.35 per hour less than the basic minimum wage rate) and probationary employees (at \$0.30 per hour less than the basic minimum wage rate) are repealed.

- The rules which set the rates at which the department values board and lodging for regular and opportunity employees have been amended to reflect the new minimum wage rates.

- The proposed rule contains a corrective amendment to the provisions on subminimum wage licenses, relating to changing the term "sheltered workshops" to "rehabilitation facilities."

- The proposed rule includes a provision similar to a recent amendment to the federal Fair Labor Standards Act which creates an exemption from the general requirement to pay overtime to "computer professionals" who are paid at least \$27.63 per hour.

#### Initial Regulatory Flexibility Analysis

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

This proposed rule changes the minimum wage rates paid by any business with employees who receive the minimum wage, but it does not impose any new requirements upon employers.

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

The proposed rules does not create any new reporting or bookkeeping procedures.

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

No professional or specialized skills are needed for compliance with the proposed rule.

#### Fiscal Estimate

The state and local governments will incur increased salary costs in some programs due to the increase in the minimum wage. However, this is caused by the federal legislation amending the Fair Labor Standards Act, and not by this proposed rule, which affects private sector employers that are not covered by the FLSA. The Department will incur some one-time costs, estimated at \$5,000.00, due to reprinting posters and pamphlets and taking other steps to publicize the new minimum wage rate.

### Notice of Hearing

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

Notice is hereby given that pursuant to ss. 30.635 and 227.11 (2) (a), Stats., interpreting s. 30.635, Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 5.21 (2), Wis. Adm. Code, relating to a waiver of the slow-no-wake speed restriction on the Wild Rose Mill Pond. The Village of Wild Rose has petitioned the Department for a waiver of the slow-no-wake speed restriction on the last full weekend in June of each year. The waiver will allow the village to sponsor a special fundraising event.

#### Initial Regulatory Flexibility Analysis

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

#### Environmental Assessment

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

## Hearing Information

December 12, 1996  
Thursday  
11:00 am.

Room #266  
Waushara County Courthouse  
209 S. St. Marie  
WAUTOMA, WI

*Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Engfer at (608) 266-0859 with specific information on your request at least 10 days before the date of the scheduled hearing.*

## Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. William Engfer  
Bureau of Law Enforcement  
P.O. Box 7921  
Madison, WI 53707

Written comments received no later than **December 20, 1996**, will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE-7-97] and fiscal estimate may be obtained from Mr. Engfer.

## Fiscal Estimate

This proposal would neither increase nor decrease enforcement on the mill pond. The Department can carry out this rule within its current appropriation.

## Notice of Hearing

### Natural Resources

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

Notice is hereby given that pursuant to ss. 29.174 (3) and 277.11 (2) (a), Stats., interpreting ss. 29.174 (2) (a), 29.30 and 29.33, Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 25.06, 25.09, 25.10 and 26.23, Wis. Adm. Code, relating to the Lake Superior Fisheries Management Plan.

## Analysis

The new changes are necessary to implement the terms of the 1995 State-Tribal Lake Superior Agreement between the Red Cliff and Bad River Bands and the Department.

To the extent possible, the regulations affecting state-licensed commercial fishers are made similar to those that will apply to tribal fishers under the new agreement. The changes include new quota allocations between the State and the Bands, refuge and restricted-use area modifications and an allowance for increased fishing effort (feet of net) during periods 1 and 2 in exchange for a requirement that live lake trout be returned to the water.

## Initial Regulatory Flexibility Analysis

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

*a. Types of small businesses affected:*

Licensed commercial fishers on Lake Superior.

*b. Description of reporting and bookkeeping procedures required:*

No new requirements

*c. Description of professional skills required:*

No new skills required.

## Environmental Assessment

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

## Emergency Order

Notice is hereby further given that pursuant to ss. 29.174 (3), 227.11 (2) (a) and 227.24, Stats., interpreting ss. 29.174 (2) (a), 29.30 and 29.33, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FM-52-96(E) relating to the Lake Superior fisheries management plan. This emergency order will take effect on **November 28, 1996**. This emergency order implements the terms of the fisheries management plan for Lake Superior agreed to by the State and the Red Cliff and Bad River Bands of Chippewa. The changes include new quota allocations between the State and the Bands and refuge modifications.

## Hearing Information

December 17, 1996  
Tuesday  
1:00 p.m.

County Board Room  
Ashland Co. Courthouse  
201 W. Main St.  
ASHLAND, WI

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

## Written Comments and Contact Person

Written comments on the proposed and emergency rules may be submitted to:

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

Written comments must be received no later than **December 20, 1996**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [FM-52-96(E)], proposed rule [FM-51-96] and fiscal estimate may be obtained from Mr. Horns.

## Fiscal Estimate

These rule changes will have no fiscal impact on either state or local units of government. The following assumptions were used in arriving at the fiscal estimate for these rule changes:

1. The proposed rules do not affect relations with local units of government or other state agencies.
2. No additional liability or revenue fluctuations are envisioned.
3. No additional staffing is required by state or local units of government.
4. State DNR law enforcement officers will enforce the rules in their normal course of duty.
5. No fee collection is involved in these rule changes.



## Notice of Hearings

### Natural Resources

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

Notice is hereby further given that pursuant to ss. 144.431 (1) (a), 144.435 (1), 144.44 (2), (3) and (10) and 227.11 (2) (a), Stats., interpreting s. 144.44 (2), (3) and (10), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 502, 503, 506, 512, 514, 516 and 520, Wis. Adm. Code, relating to solid waste management.

### Agency Analysis

The proposed rule will:

- 1) Increase fees;
- 2) Allow landfill owners greater latitude to change noncritical aspects of their approved operational plans without waiting for written Department approval; and
- 3) Correct editorial and typographical errors in the rules.

The proposed fees would increase license fees for landfills and collection and transportation services and increase plan review and license fees on non-landfill solid waste facilities. Another provision of the fee proposal is an expedited plan review fee system for applicants desiring a quick turnaround of their plans.

The current rules allow landfill owners to proceed with specific types of modifications to their approved plans if the Department did not object within 30 days of receipt of the proposal by the Department. The Department is proposing to expand this expedited plan modification process to include all noncritical modifications.

### Initial Regulatory Flexibility Analysis

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

### Environmental Assessment

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

### Notice Information

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

**December 11, 1996**  
**Wednesday**  
**At 10:30 a.m.**

**Room 2550**  
**Eau Claire Co. Courthouse**  
**721 Oxford Ave.**  
**EAU CLAIRE, WI**

**December 13, 1996**  
**Friday**  
**At 10:00 a.m.**

**Room 223**  
**Dept. of Transportation**  
**141 NW Barstow St.**  
**WAUKESHA, WI**

**December 19, 1996**  
**Thursday**  
**At 10:30 a.m.**

**Room 203**  
**Green Bay City Hall**  
**100 Jefferson St.**  
**GREEN BAY, WI**

*Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.*

*Please call Vera Starch at (608) 267-7564 with specific information on your request at least 10 days before the date of the scheduled hearing.*

### Written Comments and Contact Person

Written comments on the proposed rule and fiscal estimate may be submitted to:

Dennis Mack  
Bureau of Waste Management  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **December 20, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [SW-56-96] and fiscal estimate may be obtained from Mr. Mack.

### Fiscal Estimate

Approximately 7.7 million tons of solid waste were landfilled in Wisconsin in 1995. During August of 1995, a federal court of appeals decision overturned Wisconsin laws which previously had the effect of reducing flows of waste from neighboring states to Wisconsin landfills. Had this decision come prior to calendar year 1995, we estimate that total tonnages landfilled in Wisconsin for 1995 would have been approximately 7.9 million tons. We also believe that ongoing recycling efforts and increases in the amounts of beneficially reused industrial waste will reduce the amount of waste landfilled in coming years.

Considering these factors, the Department believes that revenue generated by the 10 cent per ton license fee surcharge will run between \$680,000 and \$790,000 per year. We also estimate that the changes in plan review and license fees for non-landfill solid waste facilities and collection and transportation services will generate approximately \$150,000 per year.

As would be the case for the private sector, the increased fees would affect counties, cities and towns that own and operate landfills or other solid waste facilities, as well as those which collect solid waste. Currently, there are 21 licensed county landfills, 7 city landfills and 1 town landfill. Based on the annual landfilled tonnage range listed above, we estimate that the license fee surcharge would result in a county landfill paying, on average, between \$1,500 and \$1,650 per quarter. A city-owned landfill would pay, on average, between \$290 and \$320 per quarter, and the town landfill would pay approximately \$.50 per quarter.

\*County-owned Landfills: Total Annual Cost

21 landfills x  $\frac{\$1,500 \text{ to } \$1,650}{\text{quarter}} \times 4 \text{ quarters}$  = \$126,000 to  
\$138,600

\*City-owned Landfills:

7 landfills x  $\frac{\$290 \text{ to } \$320}{\text{quarter}} \times 4 \text{ quarters}$  = \$8,120 to  
\$8,960

\*Town-owned Landfills:

1 landfill x  $\frac{\$.50}{\text{quarter}} \times 4 \text{ quarters}$  = \$2  
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Total Annual Impact = \$134,120 to  
\$147,600

### Notice of Hearing

#### Transportation

Notice is hereby given that pursuant to s. 85.16, Stats., and interpreting s. 86.303 (5) (f) (intro.) and (i) (intro.), Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the repeal and recreation of ch. Trans 76, Wis. Adm. Code, relating to general transportation aids.

## Hearing Information

December 16, 1996  
Monday  
9:30 am.

Room 901A  
Hill Farms State Trans. Bldg.  
4802 Sheboygan Ave.  
MADISON, WI

*Parking for people with disabilities and an accessible entrance are available on the north side of the Hill Farms State Transportation Building.*

*An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter no later than 10 days prior to the hearing.*

## Written Comments and Contact Person

The public record on this proposed rulemaking will be held open until close of business **December 16, 1996**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Marcia Traska  
Local Transportation Aids, Room 951  
Department of Transportation  
P. O. Box 7913  
Madison, WI 53707-7913

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

*Statutory authority:* s. 85.16

*Statute interpreted:* s. 86.303 (5) (f) (intro.) and (i) (intro.)

### General Summary of Proposed Rule.

The General Transportation Aids (GTA) Program is a program provided to defray a portion of the costs incurred with constructing and maintaining roads under local jurisdiction. The GTA program is a reimbursement program based on each local government's spending patterns. GTA funds are distributed to all Wisconsin counties and municipalities in amounts determined using a formula which is based on local "eligible costs." Generally, all road or street construction and maintenance expenditures within the right-of-way are considered eligible costs. A percentage of other expenditures are also considered eligible costs, including law enforcement, street lighting maintenance and construction, and storm sewer construction.

The share of cost rate is determined by the available funding and the six-year average costs reported by each county and municipality. Distribution of GTA payments to local governments are computed and paid on a calendar year basis. Quarterly payments are made on the first Monday of January, April, July and October. The Department

obtains cost data from Financial Reports which all local units of government must file annually with the Department of Revenue. The reports are based upon calendar year expenditures and revenues and are submitted each spring and summer.

Late filing of Financial Report forms will result in a reduction of the local government's GTA received in 1996. Failure to submit the Financial Report with the Department of Revenue by the deadline will result in a reduction in GTA payments the following year. The reduction will be equal to 1% for each day late, to a maximum of 10%, as provided in s. 86.303 (5) (f) and (i), Stats.

As provided in s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., the Department proposes this rulemaking to administratively interpret the phrase "each day" to exclude Saturday, Sundays and legal holidays. The Department's long-standing and consistent interpretation of the phrases "within 30 days" and "each day" has been calendar days. The Department has concluded that it would be fairer and more reasonable to continue to interpret the phrase "within 30 days" as calendar days, but to exclude Saturdays, Sundays and legal holidays from the interpretation of the phrase "each day" for the purposes of the one percent reduction for each day that the report is late. The reason for this revised interpretation is that the 10% penalty cap can still be reached within 30 calendar days. Using this interpretation, timely reports and calculations will still be available for state and local budgeting and planning purposes.

## Fiscal Estimate

Four local governments will be affected for 1997 GTA payments. These four local governments will receive a total of \$18,061.93 more based on less days of penalties. This does slightly affect the distribution of funds, but not the appropriation amounts.

## Initial Regulatory Flexibility Analysis

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

## Copies of Rule

Copies of the rule may be obtained upon request, without cost, by contacting:

Julie Johnson, Paralegal, (608) 267-3703  
Office of General Counsel, Room 115-B  
Department of Transportation  
P. O. Box 7910  
Madison, WI 53707-7910

Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

**Agriculture, Trade & Consumer Protection (CR 96-71):**

An order affecting chs. ATCP 10 to 12, relating to animal health, including farm-raised deer and poultry disease reporting requirements.

Effective 01-01-97.

**Employe Trust Funds (CR 96-125):**

An order repealing and recreating s. ETF 10.75, relating to signatures on Wisconsin Retirement System (WRS) documents by an agent holding the person's power of attorney.

Effective 01-01-97.

**Employe Trust Funds (CR 96-126):**

An order creating ss. ETF 20.04 (4), 20.07 and 60.53, relating to optional forms of annuity and to automatic distributions of Wisconsin Retirement System (WRS) benefits to participants and alternate payees who have attained age 69.5 and to beneficiaries of deceased annuitants.

Effective 01-01-97.

**Employe Trust Funds (CR 96-137):**

An order affecting ss. ETF 10.01, 20.14, 20.15 and 20.16, relating to purchases of service under the Wisconsin Retirement System, including forfeited, qualifying and other governmental service.

Effective 01-01-97.

**Health & Family Services (CR 96-103):**

An order affecting ss. HSS 124.27, 124.29, 124.30, 124.31, 132.812, 132.815 and 134.815, relating to review of plans for constructing or remodeling a hospital, nursing home or facility for the developmentally disabled (FDD), including review for compliance with the State Building Code, and fees for plan review.

Effective 01-01-97.

**Insurance, Commissioner of (CR 96-94):**

An order affecting chs. Ins 14 and 51, relating to financial standards for insurers.

Effective 01-01-97.

**Natural Resources (CR 96-72):**

An order creating s. NR 20.04 (5), relating to sport fishing in urban waters.

Effective 01-01-97.

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

An order repealing and recreating s. NR 10.01 (1) (b) and (g) 1. a. - k., (g) 2., (g) 3., (u) 1. and (u) 2., relating to the 1996 migratory game bird season.

Effective 02-01-97.

**Natural Resources (CR 96-97):**

An order repealing and recreating s. NR 20.038, relating to special size and bag limits for sport fishing on the Lac du Flambeau reservation.

Effective 01-01-97.

**Revenue (CR 96-83):**

An order repealing and recreating s. Tax 11.95, relating to the retailer's discount.

Effective 01-01-97.

**Revenue (CR 96-91):**

An order affecting ss. Tax 11.28, 11.46, 11.51 and 11.87, relating to Wisconsin sales and use taxes.

Effective 01-01-97.

**Securities, Commissioner of (CR 96-143):**

An order affecting chs. SEC 2, 3, 4, 5, 32, 33, 35 and 37 and ss. SEC 7.06, 9.01, 31.01 and 34.01, relating to:

- 1) Securities registration exemptions;
- 2) Securities registration procedures, substantive registration standards and disclosure requirements;
- 3) Securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures;
- 4) Franchise definitions;
- 5) Franchise registration exemptions;
- 6) Franchise registration procedures, substantive registration and disclosure requirements;
- 7) Franchise registration or exemption revocations and fraudulent practices;
- 8) Franchise fee-related provisions; and
- 9) Franchise forms.

Effective 01-01-97.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the November 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.*

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

An order affecting s. ATCP 3.02 and ch. ATCP 50, relating to soil and water resource management.

Effective 12-01-96.

**Financial Institutions-Banking (CR 96-67):**

An order affecting ss. Bkg 76.01, 76.03, 76.04 and 76.14, relating to sales finance companies.

Effective 12-01-96.

**Financial Institutions-Banking (CR 96-68):**

An order repealing s. Bkg 80.25, relating to open end credit; maximum periodic rate; and licensed lenders under s. 138.09, Stats.

Effective 12-01-96.

**Health & Family Services (CR 96-120):**

An order affecting s. HSS 146.03 (9), (10) and (11), relating to vaccine-preventable diseases.

Effective 12-01-96.

**Natural Resources (CR 96-21):**

An order amending ss. NR 149.22 and 219.04, Table A (parameters 9 and 10 and footnotes 8, 9 and 10), relating to whole effluent toxicity testing methods.

Effective 12-01-96.

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

An order affecting ss. NR 200.06, 200.07 and 205.07, relating to electronic submission of WPDES permit applications and monitoring data.

Effective 12-01-96.

**Public Defender (CR 96-101):**

An order amending s. PD 3.039, relating to the redetermination of indigency during the course of representation.

Effective 12-01-96.

**Public Defender (CR 96-102):**

An order amending s. PD 2.03 (4), (5) and (8), relating to the procedures for assignment of counsel.

Effective 12-01-96.

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

An order amending s. RL 120.02 (intro.) and creating ch. RL 128, relating to education required for registered auctioneers to renew their registration for the biennium commencing on January 1, 1999.

Effective 12-01-96.

**Securities, Commissioner of (CR 96-128):**

An order 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.

Effective 12-01-96.

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

An order amending s. SFC 2.01 (5) and creating s. SFC 3.13, relating to social worker training certificates.

Effective 12-01-96.

**Transportation (CR 96-117):**

An order amending s. Trans 276.07 (4) and (7), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Effective 12-01-96.

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Agriculture, Trade & Consumer Protection (CR 96-2)

Ch. ATCP 50 – Soil and water resource management.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule repeals and recreates ch. ATCP 50, Wis. Adm. Code, interpreting ch. 92, Stats., regarding the state's soil and water resource management program. The proposed rule incorporates changes to ch. 92, Stats., made by 1991 Wis. Act 309. It also incorporates changes being made by the department to reduce application, reporting and other paperwork requirements imposed on county land conservation committees.

The proposed rule for the soil and water resource management program will have a small affect on some small businesses in Wisconsin. The types of businesses affected include: farmers and other landowners and land users who receive notices of discharge through the regulatory animal waste management program under ch. NR 243, Wis. Adm. Code; farmers and other landowners and land users in counties, cities, villages and towns that adopt shoreland management ordinances under ss. ATCP 50.34 and 50.112; farmers and other landowners and land users in counties who participate in the program and receive grants from the department; and agricultural cooperatives and other agribusinesses that select to participate in nutrient management planning and implementation activities under ss. ATCP 50.38 (3) and 50.102.

All farmers, landowners and other land users affected by this rule will be affected in a positive manner. More state funds will be made available to farmers, landowners and land users who meet the economic hardship provisions spelled out in the rule. In addition, the proposed rule adds several new conservation practices to the list of those eligible for funding. Farmers and other landowners and land users in counties who participate in the soil and water resource management program and receive grants from the department are eligible for funding of these new practices, making it easier for them to reach their conservation goals.

Agricultural cooperatives and other agribusinesses that elect to participate in nutrient management planning under s. ATCP 50.102 will be affected by the proposed rule. Their participation, however, is totally voluntary and at their discretion. The proposed rule encourages state and local units of government to work with and through agribusinesses and agricultural cooperatives to provide nutrient management planning and implementation services to farm operations. Funds may be used for soil testing, the nutrient analysis of manure and other organic matter, and for nutrient management planning. If they choose to participate, agricultural cooperatives and other agribusinesses could expand their economic opportunities by providing these services rather than providing only agricultural goods to farmers.

The proposed rule requires no unusual or additional reporting, record-keeping or other procedures of the affected small businesses. Farming operations affected by the rule will have to maintain financial records for all expenditures for which they will claim reimbursement from their grant, or with which they meet their share of the costs. These records will have to be reported to the department or to county land conservation departments on forms provided by the department along with receipts and other proofs of payment. This has been standard procedure for all soil and water resource management grant recipients, including small businesses, under the current rule. To accommodate small business participation, technical assistance is provided at the local level and forms are simplified.

There are no professional skills required of small businesses affected by the general grant provisions of the rule. If agricultural cooperatives and other agribusinesses elect to participate in nutrient management planning activities, their staff will have to be technically capable of preparing nutrient management plans, testing soil and analyzing manure and other organic matter for nutrients.

The requirements and procedural provisions of the proposed rule have minimal impact on small businesses. The rule will help in the state's efforts to improve water quality and prevent soil erosion. The proposed rule impacts small businesses primarily in a beneficial manner by providing more state funds to them to help offset the cost of required activities and to encourage participation in discretionary activities.

Summary of Comments from Legislative Committees:

The rule was referred to the Senate Committee on Agriculture, Transportation, Utilities and Financial Institutions on August 14, 1996 and to the Assembly on Agriculture on August 15, 1996. The department received no comments or requests for hearings from either committee.

### 2. Natural Resources (CR 96-73)

Chs. NR 200 & 205 – Electronic submission of WPDES permit applications and monitoring data.

Summary of Final Regulatory Flexibility Analysis:

The changes proposed by these rule revisions are intended to made data submittal more efficient. These rule revisions do not require electronic data submittal as the only way to provide information; rather these rule revisions are intended to create flexibility in data submission by allowing another option, electronic submittal, for required data.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environmental Resources and Urban Affairs Committee. There were no comments.

### 3. Public Defender (CR 96-101)

S. PD 3.039 – Redetermination of indigency during the course of representation.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**4. Public Defender (CR 96-102)**

S. PD 2.03 – The procedures for assignment of counsel.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**5. Regulation & Licensing (CR 96-33)**

Ch. RL 128 – Continuing education requirements by registered auctioneers.

Summary of Final Regulatory Flexibility Analysis:

The rule draft which was submitted to the Rules Clearinghouse did not contain any flexibility for persons licensed in another licensing jurisdiction. The new draft does provide flexibility by requiring the department to accept education which is acceptable to another jurisdiction in which the person is licensed.

The required education is a one-time 9-hour requirement which is needed to assure that all registered auctioneers understand the laws which pertain to the practice of auctioneers. It is not appropriate to grant exemptions from the education to those who have practiced for many years as an auctioneer or to give credit for real estate courses or appraisal courses. Those practicing as auctioneers in Wisconsin must know and comply with the laws which pertain to auctioneers.

At this time there is insufficient evidence that this education requirement should entail continuing education every 2 years into the distant future.

Summary of Comments:

No comments were reported.

**6. Securities (CR 96-128)**

S. SEC 2.01 – Designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

Summary of Final Regulatory Flexibility Analysis:

No final regulatory is required because the rules relate solely to municipal/governmental securities issuers and do not impact small businesses.

Summary of Comments:

No comments were reported.

**7. Social Workers, Marriage and Family Therapists and Professional Counselors (CR 96-34)**

SS. SFC 2.01 & 3.13 – Social Worker training certificates.

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 comment were reported.

**8. Transportation (CR 96-117)**

S. Trans 276.07 (4) – Allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.



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