

# *WISCONSIN ADMINISTRATIVE REGISTER*

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## TABLE OF CONTENTS

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**Emergency Rules Now In Effect.****Pages 5 to 11.**

Agriculture, Trade & Consumer Protection:	Rule relating to prohibiting certain gaseous hydrocarbons in mobile air conditioners.
Commerce:	<u>Fee Schedule, Ch. Comm 2</u> <u>Credentials, Ch. Comm 5</u> <u>Elevators, Ch. Comm 18</u> Rules adopted revising chs. Comm 2, 5 and 18, relating to inspection of elevators. [FIRST APPEARANCE]
Development (Commerce):	Rules relating to annual allocation of volume cap.
Health & Family Services:	<u>Management, Policy &amp; Budget, Chs. HFS 1--</u> Rules relating to parental liability for the cost of care for children in court-ordered substitute care.
Health & Family Services:	<u>Health, Chs. HSS 110--</u> Rules relating to do-not-resuscitate orders. Rules relating to lead abatement.
Health & Social Services (Workforce Development):	<u>Economic Support, Chs. HSS 200--</u> Rules relating to time limits on benefits for AFDC recipients in the Job Opportunities and Basic Skills (JOBS) program.
Insurance, Commissioner of:	Rule relating to requirements for tax deductible long-term care insurance policies.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1-</u> Rule relating to notice of receipt of an application to incidentally take an endangered or threatened species. Rules relating to the Lake Superior fisheries management plan.
Public Instruction:	Rules relating to private school choice program.
Transportation:	Rules relating to occupational driver's license.
Veterans Affairs:	Rule relating to the health care aid grant program.
Workforce Development:	<u>Economic Support, Chs. DWD 11-59</u> Rules relating to administration of child care funds and required parent copayments. Rules relating to Wisconsin Works program.
Workforce Development:	<u>Wage Rates, Chs. ILHR 290-294</u> Rules relating to prevailing wage rates for state or local public works projects. [FIRST APPEARANCE]

**Scope Statements.****Pages 12 to 15.**

Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board:	Chs. A-E 1 to 10 – Relating to the professional practice of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors.
Commerce:	Chs. ILHR 20 to 25 – Relating to the Uniform Dwelling Code.
Commerce:	Chs. Comm 2,5 and 18 – Relating to inspection of elevators and mechanical lifting devices.
Corrections:	Ch. DOC 350 – Relating to classification systems for jails and houses of correction.
Higher Educational Aids Board:	Ch. HEA 9 – Relating to the administration of the academic excellence scholarship.

Natural Resources:	<del>Fish, Game, etc., Chs. NR 1--</del> Ch. NR 20 – Relating to revising Wis. Adm. Code pertaining to fishing regulations on Delavan Lake, Walworth County.
Natural Resources:	<del>Fish, Game, etc., Chs. NR 1--</del> Ch. NR 24 – Relating to the commercial clam harvest.
Regulation and Licensing:	Chs. RL 80 to 87 – Relating to changes and clarification of administrative rules relating to the practice of real estate appraisers.
Revenue:	SS. Tax 11.05 and 11.86 – Relating to landscaping services performed by or for governmental units and utilities and recordkeeping requirements for sales to governmental units.

**Notices of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse.**

**Page 16.**

Insurance, Commissioner of:	S. Ins 18.07 (5) (bg) – Relating to Health Insurance Risk-Sharing Plan (HIRSP) rate increase for fiscal year 1997–1998.
Natural Resources:	S. NR 101.13 (2) – Relating to repealing general permit fees.
Natural Resources:	Ch. NR 110 – Relating to sewerage systems.
Revenue:	S. Tax 11.14 – Relating to the use of exemption certificates.

**Notices of Hearings or of Proposed Rules.**

**Pages 17 to 29.**

Accounting Examining Board:	Hearing to consider s. Accy 7.035, relating to the education requirements for licensure candidates.
Credit Unions (Financial Institutions):	Hearing to consider revision of ch. CU 54, relating to real estate mortgage loans. Hearing to consider repeal of ch. CU 55, relating to check cashing, money orders and traveler's checks. Hearing to consider revision to ch. CU 57, relating to retention of credit union books and records. Hearing to consider revision to ch. CU 70, relating to participation loan authority parity with federal credit unions.
Dietitians Affiliated Credentialing Board:	Hearing to consider revision to chs. DI 2 to 4, relating to certification as dietitians.
Employe Trust Funds:	Hearing to consider definition of termination of employment for purposes of eligibility for benefits.
Insurance, Commissioner of:	Hearing to consider revision of s. Ins 18.07 (5) (bg), relating to Health Insurance Risk-Sharing Plan (HIRSP) rate increase for 1997–1998.
Natural Resources:	<del>Environmental Protection--General, Chs. NR 100--</del> Hearing to consider revision to s. NR 101.13 (2), relating to the general permit fee. Hearing to consider revision to ch. NR 110, relating to technical standards for wastewater treatment facilities.
Revenue:	Proposed revision to ch. Tax 11, relating to registering for and reporting Wisconsin sales and use taxes.
Workforce Development:	<del>Wage Rates, Chs. ILHR 290–294</del> Hearing to consider revision of ch. ILHR 290 [DWD 290], relating to subjourney person prevailing wage rates.

**Notices of Submission of Proposed Rules to the Presiding Officer of Each House of the Legislature, Under S. 227.19, Stats.**

Natural Resources:

**Page 30.**

(CR 96-187) – S. NR 728.11

Natural Resources:

(CR 97-3) – Chs. NR 400, 406, 407, 439, 460 and 463

**Administrative Rules Filed with the Revisor of Statutes Bureau.**

Agriculture, Trade & Consumer Protection:

(CR 96-191) – S. ATCP 139.04 (11)

Employment Relations:

(CR 97-5) – SS. ER 18.01, 18.04 and 18.15

Health & Family Services:

(CR 96-81) – Ch. HSS 144

Natural Resources:

(CR 96-41) – S. NR 25.04 (2) (b)

Natural Resources:

(CR 96-42) – S. NR 25.08 (3) (b)

Natural Resources:

(CR 96-174) – SS. NR 25.06, 25.09, 25.10 and 26.23

Natural Resources:

(CR 96-177) – S. NR 5.21 (2)

Transportation:

(CR 96-168) – Ch. Trans 117

**Page 31.**

**Rules Published in this Wis. Adm. Register.**

Barbering & Cosmetology Examining Board:

(CR 95-217) – S. BC 2.03 (7)

Chiropractic Examining Board:

(CR 96-95) – SS. Chir 6.015 and 6.02 and ch. Chir 11

Emergency Response Board:

(CR 96-129) – Ch. ERB 6

Employe Trust Funds:

(CR 96-167) – S. ETF 60.53

Labor & Industry Review Commission:

(CR 96-136) – Chs. LIRC 1 to 4

Medical Examining Board:

(CR 96-158) – Ch. Med 13

Public Defender:

(CR 97-12) – S. PD 3.02

Transportation:

(CR 96-44) – Ch. Trans 139

Transportation:

(CR 96-170) – Ch. Trans 55

Transportation:

(CR 96-171) – Ch. Trans 152

Transportation:

(CR 96-179) – Ch. Trans 76

Workforce Development:

(CR 96-156) – Chs. HSS 201 and DWD 11

Workforce Development:

(CR 96-181) – Chs. ILHR 272 and DWD 272

**Page 32.**

**Final Regulatory Flexibility Analyses.**

1. Barbering & Cosmetology Examining Board:

(CR 95-217) – S. BC 2.03 (7)

2. Chiropractic Examining Board:

(CR 96-95) – Ch. Chir 11

3. Emergency Response Board:

(CR 96-129) – Ch. ERB 6

4. Employe Trust Funds:

(CR 96-167) – S. ETF 60.53

5. Labor & Industry Review Commission:

(CR 96-136) – Chs. LIRC 1 to 4

6. Medical Examining Board:

(CR 96-158) – Ch. Med 13

7. Public Defender:

(CR 97-12) – S. PD 3.02

8. Transportation:

(CR 96-44) – Ch. Trans 139

9. Transportation:

(CR 96-171) – Ch. Trans 152

10. Transportation:

(CR 96-170) – Ch. Trans 55

11. Transportation:

(CR 96-179) – Ch. Trans 76

12. Workforce Development:

(CR 96-156) – S. DWD 11.135

13. Workforce Development:

(CR 96-181) – Ch. DWD 272

**Pages 33 to 34.**

***Executive Orders.***

Executive Order 310:

Executive Order 311:

***Page 35.***

Relating to a Proclamation Amending Executive Order #300.

Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Peace Officers Who Have Given Their Lives in the Line of Duty.

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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

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

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  
**Extension Through:** July 5, 1997

## **EMERGENCY RULES NOW IN EFFECT**

*Department of Commerce*  
**(Fee Schedule, Ch. Comm 2)**  
**(Credentials, Ch. Comm 5)**  
**(Elevators, Ch. Comm 18)**

Rules adopted revising **chs. Comm 2, 5 and 18**, relating to inspection of elevators and mechanical lifting devices.

### **Finding of Emergency**

The Department of Commerce 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 Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

**Publication Date:** May 4, 1997  
**Effective Date:** June 1, 1997  
**Expiration Date:** October 30, 1997

## **EMERGENCY RULES NOW IN EFFECT**

*Department of Commerce*

Rules adopted repealing **ch. DOD 13** and creating **ch. Comm 113**, relating to the annual allocation of volume cap.

### **Finding of Emergency**

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

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately \$260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

**Publication Date:** December 30, 1996  
**Effective Date:** December 30, 1996  
**Expiration Date:** May 29, 1997  
**Hearing Date:** February 13, 1997

## **EMERGENCY RULES NOW IN EFFECT**

*Health & Family Services*  
**(Management, Policy and Budget, Chs. HSS 1—)**

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court-ordered substitute care.

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

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., 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**

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court-ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court-ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court-ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court-ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

**Publication Date:** January 22, 1997  
**Effective Date:** January 22, 1997  
**Expiration Date:** June 21, 1997  
**Hearing Date:** April 8, 1997



## EMERGENCY RULES NOW IN EFFECT (2)

### Health and Family Services

(Health, Chs. HSS 110--)

1. Rules adopted creating **ch. HFS 125**, relating to do-not-resuscitate bracelets to alert emergency health care personnel.

#### Finding of Emergency

The Department of Health and Family 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:

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do-not-resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do-not-resuscitate order in effect if the patient has on his or her wrist a do-not-resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do-not-resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., created by Wis. Act 200, permits the Department to establish procedures by rule for emergency health care personnel to use in following do-not-resuscitate orders, and s. 154.27, Stats., as created by Wis. Act 200, requires the Department to establish by rule a uniform standard for the size, color and design of do-not-resuscitate bracelets.

These rules are being published by emergency order because while most Wis. Act 200 provisions have taken effect and do-not-resuscitate orders are being written for patients who are qualified, as defined in s. 154.17 (4), Stats., as created by Wis. Act 200, and request the order, without rules that establish a uniform standard for the bracelets the Department cannot approve bracelets. If the bracelet is not approved by the Department, it cannot be affixed. In the absence of a DNR bracelet on the wrist of a person in cardiac or respiratory arrest, emergency health care personnel ordinarily cannot know that a DNR order is in effect, and so must initiate cardiopulmonary resuscitation which in some cases will contravene a DNR order.

The rules establish a uniform standard for do-not-resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do-not-resuscitate orders.

**Publication Date:** January 18, 1997  
**Effective Date:** January 18, 1997  
**Expiration Date:** June 17, 1997  
**Hearing Date:** March 19, 1997

2. Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

#### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and rules are necessary for the immediate

preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead-safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead-based paint and lead-contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a \$6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employees who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state-accredited training courses and state-certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection,

a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead-based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over \$6.5 million. The grants require that money be disbursed only for lead-based paint activities performed by state-certified persons who have completed state-accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD-funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

**Publication Date:** February 18, 1997  
**Effective Date:** February 18, 1997  
**Expiration Date:** July 18, 1997  
**Hearing Date:** March 18, 1997

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## 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  
**Extension Through:** June 27, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Commissioner of Insurance*

A rule adopted creating s. **Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

### **Finding of Emergency**

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal "Kassebaum-Kennedy" law, P.L. 104-191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax

deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

**Publication Date:** December 20, 1996  
**Effective Date:** January 1, 1997  
**Expiration Date:** May 31, 1997  
**Hearing Date:** February 19, 1997

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Natural Resources*

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

1. 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  
**Hearing Date:** January 14, 1997

2. 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  
**Extension Through:** June 25, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Public Instruction*

Rules adopted revising ch. PI 35, relating to the Milwaukee private school choice program.

### Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996-97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the 1996-97 school year. Permanent rules will be developed when judicial review is finalized.

**Publication Date:** February 19, 1997  
**Effective Date:** February 19, 1997  
**Expiration Date:** July 19, 1997  
**Hearing Date:** April 1, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Transportation*

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  
**Extension Through:** May 29, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Veterans Affairs*

Rule adopted creating **s. VA 2.01 (2)(b)18.**, relating to the health care aid grant program.

### Finding of Emergency

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

The department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2)(b)2., Wis. Adm. Code, the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

**Publication Date:** April 7, 1997  
**Effective Date:** April 7, 1997  
**Expiration Date:** September 5, 1997  
**Hearing Date:** April 18, 1997

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Workforce Development*

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

### 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 Governor has directed the 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. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

**Publication Date:** December 30, 1996  
**Effective Date:** December 30, 1996  
**Expiration Date:** May 29, 1997

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

## Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

### Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W-2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W-2 offers participants the opportunity to move into the work world and become self-sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W-2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W-2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W-2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W-2 no sooner than July 1, 1996 and must fully implement the W-2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV-A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self-sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104-193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W-2 health plan. Therefore, W-2 participants who meet the July 16, 1996, AFDC eligibility requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101-108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W-2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self-sufficient through employment. The W-2 program provides cash benefits only for those individuals who participate in W-2 employment and training activities. W-2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W-2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self-sufficiency plan and determine their place on the W-2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary

to move into unsubsidized employment; and transitional placement for those unable to perform independent, self-sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of \$555 and individuals placed in a transitional placement will receive a monthly benefit of \$518. W-2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W-2 employment position. The W-2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W-2 employment position or child care, time-limited benefits for participants in W-2 employment positions, good cause for failure or refusal to participate in W-2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W-2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W-2 employment position participants.

**Publication Date:** March 1, 1997  
**Effective Date:** March 1, 1997  
**Expiration Date:** July 29, 1997  
**Hearing Dates:** May 21 & 28, 1997

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## **EMERGENCY RULES NOW IN EFFECT**

### ***Workforce Development*** **(Wage Rates, Chs. ILHR 290-294)**

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

### **Finding of Emergency**

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

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former ch. ILHR 290, Wis. Adm. Code, in accordance with 1995 Act 215, which enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

**Publication Date:** May 10, 1997  
**Effective Date:** May 10, 1997  
**Expiration Date:** October 8, 1997  
**Hearing Date:** June 19, 1997

[See Notice this Register]

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### ***Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board***

#### **Subject:**

Chs. A-E 1 to 10 – Rules relating to the professional practice of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors.

#### **Description of policy issues:**

##### *Objective of the rule:*

Clarify and update administrative rules.

- 1) Update architect application and experience provisions.
- 2) Recreate section on reexamination procedures which was dropped from the professional engineer rules in 1984.
- 3) Modify application deadline for landscape architect examination candidates.
- 4) Define time period for experience submitted for licensure as a professional geologist.
- 5) Expand qualification for professional references for comity applicants.

#### **Policy analysis:**

Existing policies are in chs. A-E 1-10, Wis. Adm. Code. The proposal would change these policies to:

- 1) Remove the Intern Development Program (IDP) table of required training and directs interns to contact the Department for most current requirements in order that the Board can keep the IDP program up-to-date without the delay of constant rule changes.
- 2) Eliminate the requirement that applicants for the national architect examination has filed an application two months prior to the examination to reflect the fact that the examination is available by computer and individually scheduled for each applicant.
- 3) Require that materials verifying qualifications of examination applicants be filed no later than 90 days before the date of the examination to allow time to process materials and communicate with applicants.
- 4) Add reexamination procedures that were inadvertently left out of the procedures for professional engineers.
- 5) Clarify that the professional engineer section permits the section to deny applications of individuals who have been out of practice for many years by required experience to be from within the previous 10 years.
- 6) Professional geologist applicants who apply by comity may use references from the state in which the applicant is currently licensed.

#### **Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2), 440.05 and ch. 443, Stats.

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

20 hours.

### ***Commerce***

#### **Subject:**

Chs. ILHR 20 to 25 – Uniform Dwelling Code

#### **Description of policy issues:**

##### *Part 1. Description of the objective of the rule:*

The Uniform Dwelling Code establishes statewide uniform construction and inspection rules for 1-2 family dwellings.

The statutes require the Department to review the rules of the Uniform Dwelling Code every two years. The Department is required to revise the rules after consultation with the Uniform Dwelling Code Council, which is appointed by the Governor. The code was last updated in December, 1995. This code update series is scheduled for implementation around December 1997.

##### *Part 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

The following issues were identified by the Department and the Uniform Dwelling Code Council to be in need of review and clarification so as to facilitate application of the rules by homeowners, builders and inspectors.

1. Bedroom definition – Clarify application of bedroom egress, light and ventilation requirements for habitable rooms and basement rooms likely to be used as bedrooms.
2. Safety glazing – Consider adopting Federal Safety Glazing Act standards to make Wisconsin's code more uniform with other neighboring states to facilitate application of these codes by builders and inspectors.
3. Fire Separation – Clarify or establish fire separation requirements between condominiums, 1-2 family dwellings and other buildings/structures on adjacent properties.
4. Egress Hardware – Clarify prohibition of keyed deadbolts in egress doors.
5. Ch. 22 Energy Conservation – Complete work started in 1994 pursuant to directives from the U.S. Department of Energy for states to review their energy standards for compliance with the CABO Model Energy Code 1992.
6. Sump Pumps – Clarify and/or establish new requirements for sump pumps where drainage systems are not required, but systems are fully or partially installed.
7. Draftstopping – Clarify contradictions or conflicts in the existing code with respect to spread of fire through or between firewalls, partitions and floors.
8. Floor stiffness – Clarify definitions of live and dead load requirements related to design of floors supporting kitchens and bathroom cabinets, appliances and fixtures.
9. Inspector Training – Consider increasing inspector training requirements to improve understanding and application of construction codes.
10. Truss support and attachments – Consider adopting updated Truss Plate Institute Standards for attachments of trusses at both load bearing and non-load bearing walls.
11. Smoke detector location – Consider upgrading smoke detector required locations to improve detection and notification and to become more consistent with adjoining states and national code trends.
12. Notching and boring – Add notching and boring standards to top/bottom plates to improve construction practices.
13. Egress windows – Clarify inconsistency in minimum width requirements by eliminating special consideration for casement type windows.
14. Interior circulation – Clarify width of doors within bathrooms to allow access to fixtures. Also clarify text relating to bedroom door width.

15. Plumbing rules affecting Uniform Dwellings. – Review, adopt and clarify in the Uniform Dwelling code, any rule implemented in the Plumbing Codes that applies to 1–2 Family Dwellings.

Policy alternatives will be discussed during the council meetings. One alternative would be to leave the code as written; however, all of the above items scheduled for review have been identified by inspectors, builders and/or the Department as needing clarification or change to facilitate the understanding and application of the rules for construction and inspection of 1–2 family dwellings. In addition to the topics listed above, there are a number of code interpretations that must be incorporated, as well as a number of corrections and miscellaneous administrative and topical changes. Additional changes may be identified and proposed as a result of public hearing input.

**Statutory authority for the rule:**

Applicable sections of Wisconsin Statutes:

101.60 Establishes statewide construction standards for 1–2 family dwellings.

101.63 Requires Department to establish standards for construction and inspection.

101.63 (5) Requires Department to biennially review rules adopted.

101.64 (3) Permits Department to revise rules after consultation with dwelling code council.

**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 following is the estimated work time between 10/96 and 11/97 that staff will be involved in these code change issues:

Dwelling code council meetings –	
Average of 40 hr. x 8 meetings =	320 hr.
Code topics research, language drafts –	
Average of 30 hr. x 15 topics =	450 hr.
Hearings, responses, revisions, etc. –	
Average of 25 hr. x 15 topics =	375 hr.
<u>Environmental assessment =</u>	<u>100 hr.</u>
Total =	1,245 hr.

## Commerce

**Subject:**

Chs. Comm 2, 5 and 18 – Relating to inspection of elevators and mechanical lifting devices.

**Description of policy issues:**

*Description of the objective of the rule:*

The rules are being changed to allow the Department to utilize additional inspectors to reduce the current backlog of elevator inspections.

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

a) Existing policies. The Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. Currently, the Department has a backlog of elevator inspections. To ensure the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections. On May 4, 1997, the Department published an emergency rule to change the fee code and to permit people holding a national certification as an elevator inspector to obtain an elevator inspector credential without taking another examination. The emergency rule is effective on June 1, 1997.

b) New policies. The following permanent rule changes and policies are proposed:

● Chapter Comm 5, Credential Code, will be modified to permit people who are certified by a national organization as an elevator inspector to obtain an elevator inspector credential without taking another examination.

● Chapter Comm 2, Fee Code, will be modified to increase the inspection fee and decrease the fee for plan review and for certificates of operation.

● Chapter Comm 18, Elevator Code, will be modified to be consistent with ch. Comm 5.

● Additional administrative changes may be identified and proposed as a result of public hearing testimony.

c) Analysis of policy alternatives. The Department has identified three policy alternatives:

1. The Department could utilize additional inspectors to reduce the current backlog of elevator inspections. This is the proposed alternative. The Department believes inspections must be performed annually by qualified inspectors.

2. The Department could continue to inspect as many elevators as possible with the current staffing levels; however, this method would still result in a backlog of elevators not being inspected.

3. The Department could change the frequency of inspections to a longer period of time between inspections; however, this alternative would not be consistent with the industry practice and as specified in the National Safety Code for Elevators and Escalators.

**Statutory authority for the rule:**

The statutory authority for the rules is found under ss. 101.02, 101.12 and 101.17, 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 Department estimates it will take approximately 120 hours to develop this rule. This time includes drafting the rule, preparing related documents, and processing the rule through public hearings to adoption of the rules. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

## Corrections

**Subject:**

Ch. DOC 350 (Jails) – Relating to classification systems for jails and houses of correction.

**Description of policy issues:**

*Description of the objectives of the rule:*

The objective of the rule is the development of minimum standards for classification systems in jails and houses of correction, including development of written policies and procedures. Most jails and houses of corrections use classification systems. This rule will require that those systems be included in the written policy and procedure manual under s. DOC 350.17 and meet minimum standards.

The alternative to the proposed policy would be to not require the development of written policies and procedures relating to classification systems in jails and houses of correction.

**Statutory authority for the rule:**

SS. 301.36 and 301.37, Stats.

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

The Department estimates that it will take approximately 20 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

## Higher Educational Aids Board

**Subject:**

Ch. HEA 9 – Relating to the administration of the academic excellence scholarship.

**Description of policy issues:**

*Action:*

Chapter HEA 9 to be repealed and recreated.

*Description of objective:*

Mandated by s. 39.41 (8), Stats., and required for proper administration of the program.

*Description of policies:*

At its inception in 1989, this program was jointly administered by the Department of Public Instruction (DPI) and the Higher Educational Aids Board (HEAB). Currently, DPI is no longer involved with the program; HEAB is now responsible for the administration of the entire program. Section 39.41 (8), Stats., directs HEAB to promulgate standards and procedures for the selection of scholarship recipients from high schools with enrollments of less than 80. HEAB will also, at the same time, write additional rules as needed to efficiently administer the program. New policies will specify qualifications to be a scholar, dates for enrollment figures to be used in determining the number of scholarships, deadlines that must be met in the naming of scholars, some characteristics of the GPA to be used in selecting scholars, and responsibilities of the high school in selecting scholars.

**Statutory authority for rule-making:**

SS. 39.41 (8) and 227.11 (2), Stats.

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

Estimated hours of staff time – 150 hours.

An advisory group consisting of superintendents, principals, and high school guidance counselors will be selected (using the CESA structure in Wisconsin) to advise HEAB on drafts of ch. HEA 9.

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

Ch. NR 20 – Relating to revising Wis. Adm. Code pertaining to fishing regulations on Delavan Lake, Walworth County – Increase the minimum length limit for largemouth and smallmouth bass from 14” to 18” and reduce the daily bag limit from 5 to 1; establish a protected slot length limit for walleye, sauger, and their hybrids until 2000, with a 28” minimum length limit, 1 daily bag limit thereafter.

**Description of policy issues:**

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

In the case of the fishing regulations for walleye, sauger and hybrids thereof, these are interim measures to improve the growth rate of the walleye population, with the ultimate goal to maintain a relatively stable, mature population that contributes to a diverse, balanced fish community, maintains water quality, and provides a trophy fishing opportunity. This proposal will impact:

- ▶ The Delavan Lake Committee;
- ▶ Local anglers;
- ▶ Recreational users of the lake; and
- ▶ Fishing-related businesses in the area.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

The goals of the Delavan Lake project are to improve water quality and replace the dominant rough fish community with a balanced, diverse sport fishery. As such, Delavan lake was chemically rehabilitated in 1989, with subsequent stocking of gamefish. To prevent re-establishment of rough fish as the dominant fish, restrictive size and bag limits were established to protect predatory gamefish, while still providing a quality fishery. Currently, the fish community is dominated by one extremely abundant, slow-growing walleye year-class (28 adults/acre and 7 years of age) that is suppressing recruitment of walleye and other gamefish. This condition prevents attainment of one of our goals (i.e., the establishment of a balanced, diverse fishery). Under the current

fishing regulations (18” minimum length limit), 99% of this walleye population is protected from harvest because they are less than 18” in length; however, as the year-class approaches the 18” size range, harvest is expected to increase dramatically, resulting in a drop in the walleye population of at least 50% in a very short time period. This anticipated instability in the community will not be conducive to maintaining water quality or establishing a balanced, diverse fishery and may result in re-establishment of rough fish.

We feel it would be prudent to manage the anticipated decline of walleye more gradually while preserving the reproductive potential of the population. To do this, we recommend a protected slot length limit to allow harvest of the smaller fish in the year-class while protecting the reproductive potential of the population. This approach provides for walleye harvest opportunities, improved walleye growth rates and thus better potential for trophy-sized walleyes, improved walleye recruitment, and maintenance of existing water quality. As walleye density declines, a length and bag limit that maintains the population, encourages natural reproduction, and provides a trophy fishing opportunity will be instituted (28” length limit, 1 daily bag).

Fish survey data also indicates overharvest of bass larger than 14’, with little natural recruitment of bass. To aid in establishment of a balanced, diverse gamefish community, improve abundance and size structure of bass, encourage predation on rough fish, provide a trophy fishing opportunity, and maintain water quality, we recommend that the minimum length limit for bass be increased from 14” to 18” and that the daily bag limit for bass be decreased from 5 to 1.

**Statutory authority for rule-making:**

S. 29.174, Stats.

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

The anticipated time commitment is 166 hours. A public hearing is proposed to be held in August in the Delavan area.

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

Ch. NR 24 – Relating to the commercial clam harvest.

**Description of policy issues:**

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

This proposal would prohibit the commercial harvest of washboard mussels from the Mississippi River. It will be a contentious issue with the commercial shellers and buyers on the Mississippi River being vehemently opposed to any closure, but an action that the Department believes must be taken to ensure the future existence of washboard mussel populations.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Although historically a mainstay in the cultured pearl industry, washboard mussel harvest has declined dramatically over the past decade. Consequently, more restrictive harvest regulations were incrementally implemented to preserve broodstock while still maintaining an appreciable level of commercial harvest. Despite the more restrictive harvest regulations, washboard mussel populations continued to decline. A prohibition on commercial harvest should provide the opportunity for remaining washboard populations to recover from an overharvested state and sustain their existence in the Upper Mississippi River system.

**Statutory authority for rule-making:**

S. 29.38 and 227.11 (2) (a), Stats.

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

The anticipated time commitment is 58 hours. Two public hearings are proposed to be held in August in Prairie du Chien and La Crosse.



***Regulation and Licensing  
(Real Estate Appraisers)***

**Subject:**

Chs. RL 80 to 87 – Relating to changes and clarification of administrative rules relating to the practice of real estate appraisers. Revisions of education, experience and continuing education requirements required by changes made by the Appraiser Qualifications Board of the Appraisal Foundation.

**Description of policy issues:**

*Objective of the rule:*

Clarify and update administrative rules. Recommended changes relate to:

- 1) Clarity, grammar, punctuation, use of plain language.
- 2) Changes in the 1997 edition of Uniform Standards of Professional Appraisal Practice to comply with federal law.
- 3) Changes made by the Appraiser Qualifications Board to comply with federal law.

*Policy analysis:*

Existing policies are in chapters RL 80 to 87. The proposal would do the following:

- 1) Clarify definitions, application requirements, continuing education, experience, scope of practice, and rules of professional conduct.
- 2) Revise hours of entry level education, hours of experience, length of time within which experience is to be completed, and minor technical, grammatical and punctuation changes.
- 3) Adopt revisions contained in the 1997 edition of the Uniform Standards of Professional Appraisal Practice.

**Statutory authority:**

Sections 227.11 (2), 458.03, 458.05, 458.085 and 458.24, Stats.

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

20 hours.

***Revenue***

**Subject:**

Sections Tax 11.05 and 11.86 – Relating to landscaping services performed by or for governmental units and utilities and recordkeeping requirements for sales to governmental units.

**Description of policy issues:**

*Preliminary objectives:*

The objective of the rule order is to:

1. Correct s. Tax 11.05 for a change in Department policy relating to recordkeeping requirements for retailers selling to governmental units.
2. Correct ss. Tax 11.05 and 11.86 to reflect the Wisconsin Tax Appeals Commission decision in the case of *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue*, (Docket # 93-S-569, Partial Summary Judgement 8/28/96 and Settlement Stipulation 4/4/97).

*Description of existing or new policies:*

This rule order reflects the Department of Revenue's existing policy of providing accurate information to taxpayers, practitioners, and Department employes regarding sales and use taxes as they apply to landscaping services and governmental units.

*Policy alternatives:*

● Do nothing. The rule will be incorrect in that it does not reflect a Wisconsin Tax Appeals Commission decision relating to landscaping, law changes, and changes in Department policy relating to exemption certificate requirements for sales to governmental units.

**Statutory authority:**

S. 227.11 (2) (a), Stats.

**Staff time required:**

The Department estimates it will take approximately 25 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.*

#### **Insurance, Commissioner of**

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

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 12, 1997.

##### **Analysis**

These changes will affect section Ins 18.07 (5) (bg), Wis. Adm. Code, relating to HIRSP rate increase for fiscal year 1997-1998. An emergency rule will take effect July 1, 1997.

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

The date for the public hearing is June 30, 1997.

##### **Contact People**

To obtain a copy of the proposed rule, contact:

Meg Gunderson  
OCI Central Files  
Telephone (608) 266-0110

For additional information, please contact:

Stephen Mueller, OCI Legal Unit  
Telephone (608) 267-2833  
e-mail at [smueller@mail.state.wi.us](mailto:smueller@mail.state.wi.us)

#### **Natural Resources**

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

On May 14, 1997, the Department of Natural Resources submitted a proposed rule [SS-22-97] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule affects s. NR 101.13 (2), repealing general permit fees.

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

The date for the public hearing is July 10, 1997.

##### **Contact Person**

Tom Aten  
Bureau of Integrated Science Services  
Telephone (608) 267-7638

#### **Natural Resources**

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

On May 14, 1997, the Department of Natural Resources submitted a proposed rule [WW-46-96] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule affects ch. NR 110, relating to sewerage systems.

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

The dates for the public hearings are June 18, July 9, 10 and 11, 1997.

##### **Contact Person**

Tom Gilbert  
Bureau of Watershed Management  
Telephone (608) 267-7628

#### **Revenue**

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

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on May 5, 1997, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule order amends s. Tax 11.14, relating to the use of exemption certificates.

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

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Mark Wipperfurth  
Income, Sales, and Excise Tax Division  
Telephone (608) 266-8253

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## NOTICE SECTION

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### Notice of Hearing

#### *Accounting Examining Board*

Notice is hereby given that pursuant to authority vested in the Accounting Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 442.04 (4) (bm) and (c), Stats., the Accounting Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Accy 7.035, relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after December 31, 2000.

#### Hearing Information

June 20, 1997  
Friday  
9:30 a.m.

Room 291  
1400 E. Washington Ave.  
MADISON, WI

#### Written Comments

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

Office of Administrative Rules  
Dept. of Regulation and Licensing  
P.O. Box 8935  
Madison, Wisconsin 53708

Written comments must be received by **July 7, 1997** to be included in the record of rule-making proceedings.

#### **Analysis Prepared by the Dept. of Regulation & Licensing**

*Statutes authorizing promulgation:* ss. 15.08 (5) (b) and 227.11 (2)

*Statute interpreted:* s. 442.04 (4) (bm) and (c)

This proposed rule-making order of the Accounting Examining Board addresses the requirement in s. 442.04 (4), Stats., that after December 31, 2000, a person may not take the examination leading to the certificate to practice as a certified public accountant unless the person has completed at least 150 semester hours of education with an accounting concentration at a recognized institution, and has received a bachelor's or higher degree with an accounting concentration. If a person has a bachelor's or higher degree from an institution, but the degree does not consist of an accounting concentration, the law authorizes the Board to review the person's educational experience to determine whether the education constitutes the "reasonable equivalence" of an accounting concentration, thereby permitting the person to take the examination.

Accordingly, it is necessary for the Board to promulgate rules defining the educational prerequisites for taking the examination, which will be deemed to constitute an "accounting concentration" and its "reasonable equivalence."

In fashioning the rules, the Board has three primary goals.

[1] First, to structure the rules in a fashion assuring that currently accepted programs provided by state educational institutions continue to be accepted once they have implemented coursework meeting the 150 hour requirement.

[2] Second, to set forth the generally accepted minimal coursework recognized within the profession as needed to prepare an individual to provide competent CPA services, while retaining flexibility for the schools to present courses serving the needs of CPA candidates as the requirements of the profession evolve.

[3] Third, to develop criteria which will enable and assure capability of movement of CPAs to and from this state through reciprocity.

These goals are addressed through the adoption of rule provisions substantially based upon model language developed jointly by the American Institute of Certified Public Accountants (AICPA), which is the national professional association of CPAs, and the National Association of State Boards of Accountancy (NASBA), which is an organization of the 54 licensing and regulatory boards of accountancy in each state and U.S. territory. The AICPA and NASBA developed the model in light of the fact that several states, including Wisconsin, have now enacted laws establishing the 150 hours of education requirement. Several neighboring states have already adopted 150 hour provisions substantially based upon the AICPA/NASBA model.

The specific proposals set forth accepted minimum core content for educational programs leading to becoming a CPA. They include coursework in financial accounting, auditing, taxation, and management accounting. The rule recognizes that it is the content of the coursework completed by an examination candidate that is primarily determinative of educational qualification, rather than the name or nature of the actual degree conferred. Accordingly, the proposed rule recognizes programs that confer graduate degrees in accounting and from business schools, baccalaureate degrees with majors in accounting from business schools, and other non-accounting or non-business baccalaureate or higher degrees as meeting the educational prerequisite, as long as they provide a 150 hour program containing the core course content.

#### **Text of Rule**

**SECTION 1.** Accy 7.035 is created to read:

**Accy 7.035 Education requirement effective January 1, 2001.** Pursuant to s. 442.04 (4), Stats., after December 31, 2000, a person may not take the examination leading to the certificate to practice as a certified public accountant unless the person has, as part of the 150 hours education, met one of the following four conditions:

(1) Earned a graduate degree with a concentration in accounting from an accounting program or department that is accredited by an accrediting agency recognized by the board.

(2) Earned a graduate degree from a business school or college of business that is accredited by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting at the undergraduate level or 15 semester hours at the graduate level, or an equivalent combination, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting.

(3) Earned a baccalaureate degree with a major in accounting from a business school or college of business that is accredited by an accrediting agency recognized by the board including:

(a) At least 24 semester hours in accounting at the undergraduate or graduate level, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting. In accounting, this would normally be all courses taken beyond the introductory level; and,

(b) At least 24 semester hours in business courses, other than accounting courses, at the undergraduate or graduate level.

(4) Earned a baccalaureate or higher degree from an accredited educational institution including:

(a) At least 24 semester hours of accounting, including courses covering the subjects of financial accounting, auditing, taxation, and

management accounting. In accounting, this would normally be all courses taken beyond the introductory level; and,

(b) At least 24 semester hours in business courses, other than accounting courses, at the undergraduate or graduate level.

### **Fiscal Estimate**

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

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

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

### **Initial Regulatory Flexibility Analysis**

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

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

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

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

## **Notice of Hearing**

### **Financial Institutions**

#### **(Credit Unions)**

Notice is hereby given that pursuant to s. 186.235 (2) and (8), Stats., and interpreting s. 186.098 (10), Stats., the Office of Credit Unions will hold a public hearing at the time and place indicated below, to consider the amendment, repeal, creation, and renumbering of ch. CU 54 (ch. DFI-CU 54), relating to real estate mortgage loans in credit unions.

### **Hearing Information**

June 16, 1997  
Monday  
1:30 p.m.

Room 531, 5th Floor  
101 E. Wilson St.  
MADISON, WI

### **Analysis Prepared by the Office of Credit Unions**

*Statutory authority:* s. 186.235 (2) and (8)

*Statute interpreted:* s. 186.098 (10)

Chapter DFI-CU 54 establishes policy and documentation requirements for real estate lending. It exempts loans of \$25,000 or less, or loans less than 20% of the regular reserve, whichever amount is smaller, from the requirements of this chapter. It also limits the aggregate of real estate secured loans to 50% of the total assets of the credit union. The rule also prevents credit unions from granting real estate equity loans in excess of 80% loan-to-value.

The proposed changes to the rule will provide guidance for real estate lending, but will allow credit unions to adopt written policies to direct the real estate lending activities that will be more specific to their individual operations. The loan policies of the individual credit unions will contain limitations directly applicable to the credit union.

### **Text of Rule**

**SECTION 1.** Section DFI-CU 54.01 is amended to read:

DFI-CU 54.01 It is the purpose of this chapter to permit Wisconsin credit unions to make loans to their members secured by real estate in accordance with applicable state or federal rules,

regulations, and statutes.—This chapter establishes the minimum requirements. The circumstances of individual loans may demand adherence to more stringent standards than these minimum requirements prescribe. Compliance with the requirements of this chapter is not to be considered a substitute for safe and sound business judgment. The commissioner may require corrective actions be taken if it is determined lending practices are imprudent, even though individual loans may comply with the minimum requirements. Loans of \$25,000 or less, or loans less than 20% of the regular reserve, whichever amount is smaller, are exempt from the requirements of this chapter. This chapter is intended to assist institutions in the formation and maintenance of a real estate lending policy that is appropriate to the size of the institution and the nature and scope of its individual operations. Loans for which a lien on real estate is taken through an abundance of caution where the terms of the loan as a consequence have not been made more favorable than they would have been in the absence of the lien are exempt from the requirements of this chapter. The director may limit, restrict or prohibit a credit union from making any type, category, or classification of loan governed by this chapter if examination results indicate the credit union is conducting its business in an unauthorized or unsafe manner or is violating the provisions of this chapter.

**SECTION 2.** DFI-CU 54.02 (1) is amended to read:

(1) "Borrower's equity" means the net market value of the subject real estate determined by multiplying the market value by 80%, minus outstanding indebtedness.

**SECTION 3.** DFI-CU 54.02 (7) is repealed.

**SECTION 4.** DFI-CU 54.02 (2), (3), (4), (5), and (6) are renumbered DFI-CU 54.02 (3), (4), (5), (6), and (7), respectively.

**SECTION 5.** DFI-CU 54.02 (2) is created to read:

(2) "Conditions requisite to a fair sale" means the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(a) Buyer and seller are typically motivated;

(b) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(c) A reasonable time is allowed for exposure in the open market;

(d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**SECTION 6.** DFI-CU 54.02 (3), as renumbered, is amended to read:

(3) "Commissioner" "Director" means the commissioner director of credit unions or an authorized representative of the commissioner director.

**SECTION 7.** DFI-CU 54.02 (6), as renumbered, is amended to read:

(6) "Market value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and not acting under duress which a property should bring in a competitive and open market under all conditions requisite to a fair sale.

**SECTION 8.** DFI-CU 54.03 (1) is repealed.

**SECTION 9.** DFI-CU 54.03 (2), (3), and (4) are renumbered DFI-CU 54.03 (1), (2), and (3) respectively.

**SECTION 10.** DFI-CU 54.03 (1) (intro.), as renumbered, is amended to read:

(1) Purchase money loans, excluding amounts financed for accident, health and credit life insurance premiums, may not exceed 80% of the market value or purchase price of the subject real estate, whichever is less, except if:

**SECTION 11.** DFI-CU 54.03 (1) (c) is amended to read:

(c) The loan is to facilitate the sale of real estate owned by the credit union or real estate in foreclosure; or

**SECTION 12.** DFI-CU 54.03 (1) (d) is created to read:

(d) The loan, excluding accident, health and credit life insurance premiums, does not exceed \$25,000.

**SECTION 13.** DFI-CU 54.03 (2), as renumbered, is amended to read:

(2) Equity loans, excluding amounts financed for accident, health and credit life insurance premiums, may not exceed the borrower's equity in the subject real estate, except to the extent the excess is secured by other ~~property~~, collateral, the value of which can be supported by authoritative evidence.

**SECTION 14.** DFI-CU 54.03 (3) (b), as renumbered, is amended to read:

(b) The date of the first contractual ~~monthly payment~~ principal and interest payment;

**SECTION 15.** DFI-CU 54.04 (2), (4), and (5) are amended to read:

(2) Percentage of assets to be invested in real estate loans by category, ~~type and in total~~.

(4) ~~Interest rates and maturities~~. Maturities of real estate mortgage loans.

(5) ~~Standards~~. Appropriate limits and standards of creditworthiness applicable to real estate loan approvals.

**SECTION 16.** DFI-CU 54.04 (7), (8), and (9) are created to read:

(7) Appraisal and valuation standards.

(8) Loan to value limitations on equity loans.

(9) Asset liability/funds management issues.

**SECTION 17.** DFI-CU 54.05 (2) (intro.), 54.05 (2) (b) 1., 2. and 3. are amended to read:

(2) ~~Reasonable documentation~~. Documentation establishing the quality and validity of the credit union's lien position by one of the following:

1. An abstract of title and a signed report of title opinion by an attorney;

2. A title insurance policy;

3. A ~~short form title search~~; or title letter report.

**SECTION 18.** DFI-CU 54.05 (2) (b) 4. is repealed.

**SECTION 19.** DFI-CU 54.05 (3), (4), and (5) are amended to read:

(3) An appraisal ~~indicating separately the market value of the land and improvements securing each real estate mortgage loan or a valuation if required under NCUA rules and regulations 12 CFR Part 722~~.

(4) A copy of insurance policies, with a mortgage clause payable to the credit union, indicating all improvements on the real estate are insured against fire and casualty loss. The required insurance coverage shall be the lesser of the full ~~insurable~~ replacement value of the improvements or the outstanding balance of the loan.

(5) ~~A copy of written evidence~~. Evidence of the status of the payment of real estate taxes acceptable to the board of directors as defined by policy.

**SECTION 20.** DFI-CU 54.06 and 54.07 are repealed.

### **Initial Regulatory Flexibility Analysis**

This rule will not have any effect on small business.

### **Fiscal Estimate**

The proposed rule has no fiscal effect.

### **Contact Person**

Ginger Larson, Director  
Office of Credit Unions  
101 E. Wilson Street  
P. O. Box 14137  
Madison, WI 53714-0137

### **Notice of Hearing**

#### *Financial Institutions (Credit Unions)*

Notice is hereby given that pursuant to s. 186.235 (2) and (8), Stats., and interpreting s. 186.113 (9) and (22), Stats., the Office of Credit Unions will hold a public hearing at the time and place indicated below to consider the repeal of ch. CU 55 (ch. DFI-CU 55), relating to check cashing, money orders, and traveler's checks.

### **Hearing Information**

June 16, 1997  
Monday  
1:30 p.m.

Room 531  
101 E. Wilson St.  
MADISON, WI

### **Analysis Prepared by the Office of Credit Unions**

*Statutory authority:* s. 186.235 (2) and (8)

*Statute interpreted:* s. 186.113 (9) and (22)

Chapter DFI-CU 55 granted authorization to the Commissioner of Credit Unions to issue a certificate of authority for credit unions to issue and sell money orders and traveler's checks and to cash checks for a fee or service charge.

1995 Wis. Act 151 (the Act) was enacted on March 6, 1996 and became effective March 20, 1996. The Act repealed and recreated ch. 186 of the statutes. This represents a total modernization and streamlining of Wisconsin's credit union statutes. Certain provisions of the existing Administrative Code are incorporated into the new provisions of ch. 186, Stats. The provisions of existing ch. CU 55 are incorporated into s. 186.113 (9) and (22), Stats., which are created by the Act.

### **Text of Rule**

**SECTION 1.** Chapter CU 55 (DFI-CU 55) is repealed.

### **Initial Regulatory Flexibility Analysis**

This rule will not have any effect on small business.

### **Fiscal Estimate**

The proposed rule has no fiscal effect.

### **Contact Person**

Ginger Larson, Director  
Office of Credit Unions  
101 E. Wilson Street  
P. O. Box 14137  
Madison, WI 53714-0137

### **Notice of Hearing**

#### *Financial Institutions (Credit Unions)*

Notice is hereby given that pursuant to s. 186.235 (2) and (8), Stats., and interpreting s. 186.113 (10), Stats., the Office of Credit Unions will hold a public hearing at the time and place indicated below to consider the repeal and recreation of ch. CU 57 (ch. DFI-CU 57), relating to retention of credit union books and records.

## Hearing Information

June 16, 1997  
Monday  
1:30 p.m.

Room 531  
101 E. Wilson St.  
MADISON, WI

## Analysis Prepared by the Office of Credit Unions

*Statutory authority:* s. 186.235 (2) and (8)

*Statute interpreted:* s. 186.113 (10)

Chapter DFI-CU 57 sets forth the minimum retention periods for credit union accounting and other records, requires credit unions to maintain equipment for viewing or reproducing records maintained on film, and identifies the methods by which credit union records may be destroyed.

It is proposed to change the rule to eliminate the schedule for the preservation of credit union records and require credit unions to retain records for at least the minimum period specified in the technical publications of the Financial Managers Society, Inc. of Chicago, Illinois, titled, "*Financial Institutions Record Retention Manual.*"

## Text of Rule

**SECTION 1.** Chapter CU 57 is repealed and recreated to read:

**DFI-CU 57.01 Retention of records.** Each credit union shall retain its records in a manner consistent with prudent business practices and in accordance with this chapter and other state or federal laws, rules, and regulations. The record retention system utilized must be able to produce accurate and verifiable records and include an index to the retained forms. Each credit union shall retain its records for at least the minimum period specified in the January 1996 edition of the technical publication of the Financial Managers Society, Inc. of Chicago, Illinois, titled "*Financial Institutions Record Retention Manual.*"

**Note:** The material incorporated in this rule may be obtained from the Financial Managers Society, Inc., 230 West Monroe Street, Suite 2205, Chicago, IL 60606 (phone: (312) 578-1300). A copy is on file at the office of credit unions, the secretary of state, and the revisor of statutes.

**DFI-CU 57.02 Records management.** (1) DESIGNATION OF RECORDS MANAGER. The board of directors of each credit union shall by resolution designate one employe as its "records manager," responsible for the supervision and management of the credit union's program for the preservation, retention and destruction of records under this chapter and the applicable requirements of the internal revenue service and other government agencies.

(2) RECORDS MANAGEMENT. If a credit union utilizes a records storage center or records management service, the center or service shall agree in writing to comply with the requirements of this chapter and to produce the credit union's records promptly for inspection by the office of credit unions.

**DFI-CU 57.03 Destruction of records.** Except where a longer retention period is required by other state or federal laws, rules, and regulations, a credit union may destroy its records at the end of the applicable minimum retention period determined under s. DFI-CU 57.01. In the destruction of records, the credit union shall take reasonable precautions to assure the confidentiality of information in the records.

**DFI-CU 57.04 Availability.** The credit union shall provide, at its expense, any facilities, equipment or services necessary to enable the office of credit unions to conveniently examine and reproduce individual records.

## Initial Regulatory Flexibility Analysis

This rule will not have any effect on small business.

## Fiscal Estimate

The proposed rule has no fiscal effect.

## Contact Person

Ginger Larson, Director  
Office of Credit Unions  
101 E. Wilson Street  
P.O. Box 14137  
Madison, WI 53714-0137

## Notice of Hearing Financial Institutions (Credit Unions)

Notice is hereby given that pursuant to s. 186.235 (2) and (8), Stats., and interpreting s. 186.098 (9m), Stats., the Office of Credit Unions will hold a public hearing at the time and place indicated below to consider the amendment, repeal, creation, and renumbering of ch. CU 70 (ch. DFI-CU 70), relating to participation loan authority parity with federal credit unions.

## Hearing Information

June 16, 1997  
Monday  
1:30 p.m.

Room 531  
101 E. Wilson St.  
MADISON, WI

## Analysis Prepared by the Office of Credit Unions

*Statutory authority:* s. 186.235 (2) and (8)

*Statute interpreted:* s. 186.098 (9m)

Chapter DFI-CU 70 provides participation loan authority parity with federal credit unions. The interpretation of rules in this chapter shall be coordinated with and parallel to the interpretation of federal laws, regulations, and interpretations from which these rules are derived.

The federal rule on participation loans, 12 CFR Part 701.22, was revised effective January 26, 1996. The requirement that the participation agreement be executed prior to the final disbursement of the loan was eliminated. The proposed changes to ch. DFI-CU 70 will provide state-chartered credit unions parity with federal credit unions.

## Text of Rule

**SECTION 1.** DFI-CU 70.02 is amended to read:

DFI-CU 70.02 The interpretation of rules in this chapter shall be coordinated with and parallel to the interpretation of federal laws, regulations, and interpretations from which ~~these rules are~~ this chapter is derived.

**Note:** This rule parallels 12 CFR Part 701.22, *Loan Participation*, effective ~~February 1985~~ January 26, 1996.

**SECTION 2.** DFI-CU 70.03 (2) is amended to read:

(2) "Credit union organization" means any organization as determined by the ~~commissioner~~ director established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.

**SECTION 3.** DFI-CU 70.03 (3), (4), (5), and (6) are renumbered to read DFI-CU 70.03 (4), (5), (6), and (7) respectively.

**SECTION 4.** DFI-CU 70.03 (3) is created to read:

(3) "Director" means the director of credit unions or an authorized representative of the director.

**SECTION 5.** DFI-CU 70.03 (7), as renumbered, is amended to read:

(7) "Participation loan" means a loan ~~made in participation with~~ which one or more eligible organizations, where the written commitment to participate in the loan precedes final disbursement

participate pursuant to a written agreement with the originating lender.

**SECTION 6.** DFI-CU 70.04 (intro.) is amended to read:

DFI-CU 70.04 Subject to the provisions of this chapter, any credit union may participate in ~~loan contracts~~making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, if all of the following conditions are met:

**SECTION 7.** DFI-CU 70.04 (2) is repealed and recreated to read:

(2) A written master participation agreement has been properly executed, acted upon by the credit union's board of directors, or if the board has so delegated in its policy, senior management official and retained in the credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale.

**SECTION 8.** DFI-CU 70.05 (intro.), (1), (2) and (3) are amended to read:

DFI-CU 70.05 An originating lender which is a credit union subject to this chapter shall do all of the following:

(1) Originate loans only to its members;

(2) Retain an interest of at least 10% of the ~~balance~~face amount of each loan;

(3) Retain the original or copies of all relevant loan documents; and.

**SECTION 9.** DFI-CU 70.05 (4) is repealed and recreated to read:

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

**SECTION 10.** DFI-CU 70.06 (intro.) and (1) are amended to read:

DFI-CU 70.06 A participant credit union that is not the originating lender shall do all of the following:

(1) Participate only in loans it is empowered to grant;

**SECTION 11.** DFI-CU 70.06 (2), (3), and (4) are renumbered DFI-CU 70.06 (3), (4), and (5) respectively.

**SECTION 12.** DFI-CU 70.06 (2) is created to read:

(2) Have a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement.

**SECTION 13.** DFI-CU 70.06 (3) and (4), as renumbered, are amended to read:

(3) Participate in participation loans only if made to its own members or members of another participating credit union;

(4) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and.

## Contact Person

Ginger Larson, Director  
Office of Credit Unions  
101 E. Wilson Street  
P.O. Box 14137  
Madison, WI 53714-0137

## Fiscal Estimate

The proposed revision of ch. DFI-CU 70 is an update of the existing rule. It does not require any additional regulatory activity by our office. This rule has no fiscal effect on government expenditures at any level.

## Initial Regulatory Flexibility Analysis

This rule will not have any effect on small business.

## Notice of Hearing

### Dietitians Affiliated Credentialing Board

Notice is hereby given that pursuant to authority vested in the Dietitians Affiliated Credentialing Board in ss. 15.08 (5) (b), 227.11 (2) and 448.74, Stats., and interpreting ss. 448.78, 448.82, 448.84 and 448.86, Stats., the Dietitians Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. DI 2.02, 2.03 and 4.01 (3); and to amend ss. DI 2.01 (2), (3) (b), (5) and Note, 2.04 (1) (intro.), (a) 1. and 2. and (b) 3. a., 2.05, 3.01 (1) and 4.01 (1) and (2), relating to certification as dietitians.

## Hearing Information

June 27, 1997  
Friday  
9:15 a.m.

Room 182  
1400 E. Washington Ave.  
MADISON, WI

## Written Comments

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

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

Written comments must be received by **July 11, 1997** to be included in the record of rule-making proceedings.

## Analysis Prepared by the Dept. of Regulation & Licensing

*Statutes authorizing promulgation:* ss. 15.08 (5) (b), 227.11 (2) and 448.74

*Statutes interpreted:* ss. 448.78, 448.82, 448.84 and 448.86

In this proposed rule-making order, the Dietitians Affiliated Credentialing Board is making changes relating to technical matters such as amending form, style and clarity. Section DI 2.02, relating to applications for certification without examination on or before July 31, 1996, and s. DI 2.03, relating to applications for certification without examination by persons registered as a dietitian on or before July 31, 1996, are being repealed as the "grandfathering provision" has passed. Also, the Note after s. DI 2.01 (6) is being amended to address the Americans With Disabilities Act.

## Text of Rule

**SECTION 1.** DI 2.01 (2), (3) (b), (5) and Note are amended to read:

DI 2.01 (2) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.

(3) (b) Received a bachelor's, master's or doctoral degree in human nutrition, nutrition education, food and nutrition, dietetics or food systems management from a program at a college or university that is not located in a state or territory or the United States if the board determines that the program is substantially equivalent to a program under par. (a). The board ~~will~~ shall use an approved foreign graduate evaluation service to assist it in determining substantial equivalencies. An applicant under this section shall submit a verified copy of transcripts from the schools in which secondary education was obtained; a verified copy of the diploma from the school at which professional dietetics training was obtained; and a record of the number of class hours spent in each subject, for both preprofessional and professional courses. Information shall include whether the subjects have been taken at basic entry or advanced levels.

(5) Passes Official verification of having passed the registration examination for dietitians established by the commission on dietetic registration of the American dietetic association, or passes an equivalent examination approved by the board, and held under s. 448.84, Stats., to determine fitness to practice dietetics.

**Note:** Application forms are available upon request to the Dietitians Affiliated Credentialing Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

**SECTION 2.** DI 2.02 and 2.03 are repealed.

**SECTION 3.** DI 2.04 (1) (intro.), (a) 1. and 2. and (b) 3. a. are amended to read:

DI 2.04 (1) Upon application and payment of the fees ~~specified in authorized by~~ s. 440.05 (6), Stats., the board may grant a temporary dietitian certificate to an individual who satisfies the following:

(a) 1. Received a bachelor's, master's or doctoral degree in human nutrition, nutrition education, food and nutrition, dietetics or food systems management from a regionally accredited college or university ~~and that~~ is located in a state or territory of the United States.

2. Received a bachelor's, master's or doctoral degree in human nutrition, nutrition education, food and nutrition, dietetics or food systems management from a program at a college or university that is not located in a state or territory of the United States if the board determines that the program is substantially equivalent to a program under par. (a). The board ~~will~~ shall use an approved foreign graduate evaluation service to assist it in determining substantial equivalencies. An applicant under this section shall submit a verified copy of transcripts from the schools in which secondary education was obtained; a verified copy of the diploma from the school at which professional dietetics training was obtained; and a record of the number of class hours spent in each subject, for both preprofessional and professional courses. Information must include whether the subjects have been taken at basic entry or advanced levels.

(b) 3. a. A program at a regionally accredited college or university ~~and that~~ is located in a state or territory of the United States.

**SECTION 4.** DI 2.05 is amended to read:

**DI 2.05 Reciprocal certificates.** Upon application and payment of the fees ~~specified in authorized by~~ s. 440.05 (6), Stats., the board shall grant a dietitian certificate to an individual who holds a similar certificate or license in another state or territory of the United States if the board determines that the requirements for receiving the certificate in the other state or territory at the time of application are substantially equivalent to the requirements under s. 448.78, Stats.

**SECTION 5.** DI 3.01 (1) is amended to read:

DI 3.01 (1) An applicant for examination for a certificate as a dietitian shall file an application on a form prescribed by the board at least 120 days prior to the date of the next scheduled examination and shall submit the fee ~~specified in authorized by~~ s. 440.05, Stats.

**SECTION 6.** DI 4.01 (1) and (2) are amended to read:

DI 4.01 (1) Each person granted a certificate under subchapter IV of ch. 448, Stats., is certified for the current certification period only. To renew certification a certificate holder shall, by November 1 of the even-numbered year following initial certification and every 2 years thereafter, file with the board an application for renewal on a form prescribed by the board, and submit the fee required under s. 440.08, Stats. A certificate holder who fails to renew certification shall cease and desist from using the title.

(2) A Except as provided in sub. (4), a dietitian who files an application for renewal of a certificate less than 30 days after the expiration of the applicant's last certificate, after the renewal date may renew the certificate by payment of the fees under s. 440.08 (2) (a) 27m. and (3)-(a) 1., Stats., by payment of a late renewal fee of \$25.

**SECTION 7.** DI 4.01 (3) is repealed.

### **Fiscal Estimate**

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

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

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

### **Initial Regulatory Flexibility Analysis**

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

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

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

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

### **Notice of Hearing** *Employe Trust Funds*

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule, which creates ss. ETF 10.08, Wisconsin Administrative Code, relating to defining termination of employment for purposes of eligibility for benefits administered by the Department of Employee Trust Funds in accordance with the provisions of s. 227.16 (1), Wisconsin Statutes. The public hearing will be held on **Wednesday, June 11, 1997 at 1:00 PM in Room 042, 801 West Badger Road, Madison, Wisconsin**. The public record on this proposed rule making will be held open until 2:00 p.m. on June 12, 1997 to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

### **Analysis Prepared by the Wisconsin Department of Employee Trust Funds**

Statutory Authority: ss. 40.02 (26) and 40.22

Statutes Interpreted: ss. 40.02 (26) and 40.22

To qualify for a separation benefit, lump sum payment or retirement annuity under ss. 40.23, 40.24 and 40.25 a participant must terminate from all Wisconsin Retirement System (WRS) participating employment as specified in ss. 40.22. Many individuals who retire and begin receiving WRS benefits subsequently return to work for a WRS employer. They frequently return to the same WRS employer from which they retired, sometimes doing the same type of work, and this often occurs within a short period of time after the termination date. In some cases there may be question as to whether a valid termination of employment actually occurred, particularly in cases where the employer made have made a commitment of future employment before the "termination" occurred.

The purpose of this rule is to define the conditions which a termination must meet to be considered a valid termination of employment that would qualify a participant to receive WRS benefits, and the other benefits administered by the Department that are associated with termination of employment.

### **General Summary of Rule**

The rule applies to terminations of participating Wisconsin Retirement System employment that occur on or after the effective date of this rule. ETF 10.08 defines the conditions which a termination of employment must meet to be considered a valid termination for benefit eligibility purposes.

As of the termination date the participant cannot have rights to any future employment that meets the WRS participation standards in s.



40.22. The employe must have ceased to render services to the employer, and the employer from which the participant is terminating must treat the employe in all respects in a manner consistent with other employes with whom the employer-employe relationship has been permanently severed. This includes payout or expiration of all accrued leave, such as sick leave, vacation, leave of absence or other accrued benefits normally payable to terminated employes. As of the termination date the participant has not been elected to a term of office beginning after the termination date which would meet the participation standards in s. 40.22.

The termination date shall be the earliest of the dates on which certain conditions are met, including the date on which the employe last renders services to the employer, the date a leave of absence expires, the effective date of an employer's discharge for cause or of the employe's date of resignation, or the employe's date of death. The date of termination is subject to review by the Department, and the Department may determine a termination date in accord with ETF 10.08 and s. 40.02(26) upon evidence satisfactory to the Department.

### **Fiscal Estimate**

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

### **Initial Regulatory Flexibility Analysis**

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

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

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule making, please call Linda Owen, Benefit Plan Policy Analyst, (608) 261-8164.

### **Text of Rule**

SECTION 1. ETF 10.08 is hereby created to read:

**ETF 10.08 SEPARATION FROM EMPLOYMENT** (1) SCOPE. (a) This section defines separation of employment under s. 40.23 (1) (a) 1, Stats., for purposes of establishing eligibility to receive benefits from the Wisconsin retirement system, including separation benefits, lump sum benefits and retirement annuity benefits as provided by ss. 40.23, 40.24 and 40.25. For purposes of the Wisconsin retirement system, the terms "separation from employment" and "termination" are used interchangeably. Nothing in this section shall be construed to supersede s. 40.71 (1).

(b) The effective date of disability annuity benefits shall be determined as provided by ss. 40.23 (1) (b) and 40.63 (8) (intro.) and (f).

(2) **TERMINATION OF EMPLOYMENT.** (a) No person is entitled to receive any retirement annuity, separation benefit or lump-sum payment from the Wisconsin retirement system without first terminating from his or her current participating employment with all participating employers. Whether the termination is a voluntary termination by the employe or an involuntary termination by the employer, the employer and employe shall act with the good-faith intent of permanently ending the employe-employer relationship.

(b) A good-faith termination from participating employment meets all of the following conditions: 1. The employe ceases to render personal services to or on behalf of the employer and the employer has no further rights to any future services from the participant. This paragraph shall not apply to services rendered as a part-time elected official after the effective date of a participant's waiver of part-time elected service under s. 40.23 (1) (am).

2. If the employe's termination is voluntary, the employe and employer comply with the employer's policies for voluntary termination, including the filing of a letter of resignation if applicable.

3. As of the end of the day on which participating employment terminates the employe has no rights to any future employment that meets the qualifications for inclusion under the Wisconsin retirement system provided under s. 40.22. A right to future employment includes, but is not limited to, a verbal or written agreement for future employment with any participating employer, or having already been elected as of the termination date to a term of public office meeting the qualifications for participating employment, which term commences on or after the date of termination of employment.

4. Immediately upon termination of employment the participant is treated consistent with the status of a former employe, including but not limited to the terminated employe no longer being on the employer's payroll and having no right to the benefits of active employes, including employe insurance, worker's compensation coverage, internal grievance, promotion or transfer rights, or any current or continuing rights under a collective bargaining agreement or other contract or compensation plan that applies to the position from which the employe has terminated. Access to benefits generally available to other retired or terminated employes, including insurance benefits under s. 40.02 (40), or insurance continuation or conversion rights, is not incompatible with this subdivision. This subd. shall not apply if the employe is either reinstated in accordance with s. 40.25 (5) and ETF 10.01 (3t) or payment is considered earnings under ETF 20.12.

5. Immediately upon termination of employment, the participant has no authority to act as a representative of the employer in any capacity or to exercise any authority or control over other employes of the employer, and the employer has no responsibility or liability for any actions of the terminated employe.

6. Upon termination of employment the employer pays to the employe any accumulated benefits that similarly situated employes of that employer customarily receive upon termination of employment, including but not limited to accumulated vacation, compensatory time and sick leave.

(c) In addition, to meet entitlement criteria, any person terminated from participating employment since July 1, 1996, must thereafter remain terminated from all employment meeting the qualifications for inclusion under s. 40.22 throughout a period beginning with the date of termination from all participating employment and including as an end date the latest of the following dates: 1. The date which would be the effective date of the annuity as determined in accord with s. 40.23 (1) (b), (bm), as applicable to the annuity in question.

2. The date 30 days after the benefit application is received by the department as provided in s. ETF 10.82.

3. The date 30 days after termination of employment in accordance with this section.

(d) For purposes of determining whether employment meeting the qualifications under s. 40.22, the exclusion of s. 40.22 (2) (L) does not apply unless the person has met all qualifications for entitlement to an annuity including termination from participating employment. Payment of an annuity or other benefits in error does not qualify a person as an annuitant for purposes of s. 40.22 (2) (L).

NOTE: Refer to ETF 20.02 (2).

(3) **REQUIRED REPORTING.** (a) The employer shall make the initial determination that an employe has terminated from employment under this section. Except as provided under pars. (b), (c) or (d) the date of termination shall be the earliest of the dates determined under all the following applicable subdivisions: 1. The date the leave of absence expires, if the employer-employe relationship is terminated because the employe fails to return to work following a leave of absence granted by the employer.

2. The date 3 years after a leave of absence began, in accordance with s. 40.02 (40). This subdivision does not apply to a military leave or union service leave.

3. The effective date as of which the employer discharges the employe for cause, other than as provided in subd. 1.

4. The effective date as of which the employer determines that the employer-employe relationship terminated.

5. The last date for which the employe receives earnings for personal services rendered to or on behalf of the employer. If the employer has granted a leave of absence for a period of time after this date, this subdivision does not apply.

6. The date on which the employe's voluntary resignation is effective as accepted by the employer or, if later, the date on which the employer receives the employe's notice of resignation.

7. The date of the employe's death.

(b) Any report of a termination is subject to review by the department. Notwithstanding par. (a), the department is not bound by an employer's report and may determine a termination date in accord with this section and s. 40.02 (26), upon evidence satisfactory to the department.

(c) Except as expressly provided by law, no termination action may be effective retroactive to a date earlier than the date on which the action is taken.

NOTE: See ss. ER 18.14 (4) and 21.03 (2) concerning termination retroactive to the date the leave of absence expired.

(d) No termination date may predate the last date for which the employe receives earnings for personal services rendered to or on behalf of the employer, except as provided in subs. (2) para. (a), and except that operation of s. 40.29, shall not preclude termination of an employe prior to the expiration of a period for which the employe receives temporary disability compensation under s. 102.43.

## Notice of Hearing

### Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a rulemaking order affecting Section Ins 18.07 (5) (bg), Wis. Adm. Code, relating to HIRSP rate increase for fiscal year 1997-1998. This rule follows an emergency rule effective July 1, 1997.

### Hearing Information

**June 30, 1997**                      **Room 23, OCI**  
**Monday**                              **121 E. Wilson St.**  
**10:00 a.m.,**                          **Madison, WI**  
**or as soon as the matter may be reached.**

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Stephen Mueller, OCI, PO Box 7873, Madison WI 53707

### Analysis

Statutory authority: ss. 601.41 (3), 619.11, 619.14 (5) (a) and (e) and 619.15 (5)

Statutes Interpreted: ss. 619.14 (5) (a), 619.165 (1) and 619.17 (1) and (2)

#### 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 July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. Ins. 18.07 (5) (bg). The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This adjustment represents an average 5.8% increase in premium payments over the most recent rates.

## Text of Rule

**SECTION 1.** Section Ins 18.07 (5) (bg) is repealed and recreated to read:

Ins 18.07 (5) (bg) 1. The annual rates applicable to standard risks under individual policies providing substantially the same coverage and deductible as the plan's major medical plan for the period from July 1, 1997 to June 30, 1998, are as follows:

MAJOR MEDICAL PLAN – Males (Base for Reduced Rates)			
Age Group	Zone 1	Zone 2	Zone 3
0-18	\$948	\$852	\$756
19-24	948	852	756
25-29	972	876	780
30-34	1,092	984	876
35-39	1,224	1,104	972
40-44	1,488	1,332	1,188
45-49	1,836	1,656	1,476
50-54	2,376	2,148	1,908
55-59	3,108	2,796	2,484
60-64	3,804	3,432	3,048

MAJOR MEDICAL PLAN – Females (Base for Reduced Rates)			
Age Group	Zone 1	Zone 2	Zone 3
0-18	\$948	\$852	\$756
19-24	1,320	1,188	1,056
25-29	1,380	1,248	1,104
30-34	1,524	1,368	1,212
35-39	1,644	1,476	1,320
40-44	1,800	1,620	1,440
45-49	2,076	1,872	1,656
50-54	2,364	2,124	1,884
55-59	2,688	2,424	2,148
60-64	3,180	2,856	2,544

2. The annual rates applicable to standard risks under individual policies providing substantially the same coverage and deductibles as the plan's medicare plan for the period from July 1, 1997 to June 30, 1998 are as follows:

MEDICARE PLAN – Males (Base for Reduced Rates)			
Age Group	Zone 1	Zone 2	Zone 3
0-18	\$480	\$432	\$384
19-24	480	432	384
25-29	480	432	384
30-34	552	492	444
35-39	612	552	492
40-44	744	672	600
45-49	924	828	732
50-54	1,188	1,068	948

55-59	1,560	1,404	1,248
60-64	1,908	1,716	1,524

MEDICARE PLAN – Females (Base for Reduced Rates)			
Age Group	Zone 1	Zone 2	Zone 3
0-18	\$480	\$432	\$384
19-24	660	600	528
25-29	696	624	552
30-34	756	684	612
35-39	816	744	660
40-44	900	804	720
45-49	1,044	936	828
50-54	1,176	1,068	948
55-59	1,344	1,212	1,080
60-64	1,584	1,428	1,272

### Fiscal Estimate

There will be no state or local government fiscal effect.

### Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

### Contact Person

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Meg Gunderson, Services Section, Office of the Commissioner of Insurance, at (608) 266-0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707-7873.

## Notice of Hearing

### Natural Resources (Environmental Protection—General Chs. NR 100—)

Notice is hereby given that pursuant to s. 299.15, Stats., and interpreting s. 299.15, Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 101.13(2), Wis. Adm. Code, relating to the general permit fee. The proposed rule will repeal the general permit base fee of \$100.

### 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.

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

July 10, 1997  
Thursday  
at 1:00 p.m.

Room 027, GEF#2  
101 S. Webster St.  
Madison, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tom Aten at (608) 267-7638 with specific information on your request at least 10 days before the date of the scheduled hearing.

### Written Comments

Written comments on the proposed rule may be submitted to Mr. Tom Aten, Bureau of Integrated Science Services, P.O. Box 7921, Madison, WI 53707 no later than **July 10, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [SS-22-97] and fiscal estimate may be obtained from Mr. Aten.

### Fiscal Estimate

*Summary Of Order.* Chapter NR 101, Wis. Adm. Code, establishes the Wastewater Fees program. The rule was last modified in 1992-'93 in response to statutory changes that increased the amount to be collected and authorized a new approach to the fee structure. These changes allowed us to develop the Wastewater Fee Program based on our Wisconsin Pollutant Discharge Elimination System (WPDES) permitting and monitoring program. The Wastewater Fees Program has two types of fees and assess the larger amount. The discharge fees are calculated by multiplying the amount of pollutants discharged during the year by a rate based on the WPDES limit for each pollutant. Base fees are \$500 for major permittees, \$250 for minor permittees, and \$100 for general permittees— although implementation of the general permit fees was delayed until calendar year 1996. This delay was to allow us to establish a quality assurance process for our general permit database. General Permits cover the discharges from non-municipal entities. We've identified significant impediments to implementing the general permit base fee category and are proposing to eliminate the general permit base fee category.

*Fiscal Impact.* The proposed revisions to ch. NR 101, Wis. Adm. Code, would have no fiscal impact under the requirements of s. 299.15, Stats., (formerly s. 144.96, Stats.) which sets the fiscal target for the Wastewater Fee program. The fiscal target is capped at the FY93 level of \$7,451,700, and is assessed one-half to municipal dischargers and one half to industrial dischargers (including other non-municipal dischargers). Within the industrial portion, this action preserves the current assessment structure. The alternative action, that of assessing general permit base fees to all or selected general permit types, would shift a small portion of the fees from the current dischargers to hose dischargers covered under the applicable general permit(s).

## Notice of Hearings

### Natural Resources (Environmental Protection—General Chs. NR 100—)

Notice is hereby given that pursuant to ss. 281.11, 281.12(1), 281.19(1), 281.41 and 227.11(2)(a), Stats., interpreting s. 281.41, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 110, Wis. Adm. Code, relating to revision of technical standards for wastewater treatment facilities. Changes to the proposed rule include:

1. Separation distance requirements – The purpose of the treatment plant isolation distance changes are to maximize site use, clarify requirements and responsibilities, to protect public health and to eliminate the existing waiver provisions. Except for spray irrigation sites, all the proposed separation distances will be less than

currently required. The intent of the change is to ensure a minimum separation distance to protect public health, but to effectively transfer responsibilities for any additional separation for nuisance abatement and aesthetic considerations to the local government. The proposed rule will also allow "appropriately zoned commercial uses" within the required separation distances.

Isolation distances are currently specified as a distance from the treatment unit structures to the residential or commercial dwellings. The proposed rule will define a facility "site" and specify that the separation is from the site boundary, instead of the treatment unit structures. The proposed separation distances would have to be met by all new facilities, but the proposed rule would grandfather existing nonconforming development encroaching on existing facilities, or facilities that have awarded contracts for construction before December 31, 1997.

2. Lift station design – Many general code requirements will be clarified. The most significant changes relate to electrical system requirements and to individual grinder pump installations. To help ensure compliance with the National Electrical Code requirements and to improve safety, the proposed code revisions will require that new or upgraded lift stations be designed to allow removal of all equipment without entering the wet well or confined space. A new subsection for simplex and duplex grinder pump requirements is added.

3. Flow monitoring – The proposed revisions will emphasize the need to address flow measurement equipment in design reports submitted with plans and specifications, and will require that both treatment plant influent and effluent flow be measured. The revision will apply to all treatment plants, including lagoon systems, and will codify the existing Department practice of requiring both influent and effluent flow measurement at lagoon systems due to the potential for significant lagoon leakage.

4. Revision of miscellaneous technical design requirements – A major portion of the current design requirements is based on the "Recommended Standards for Wastewater Facilities" (also known as the "Ten State Standards"). Minor revisions relating to design of settling tanks and extended aeration processes are proposed to make the code consistent with the most recent changes to the Ten State Standards.

5. Miscellaneous updates and clarifications – Section NR 110.05 which establishes the authority to deny sewer extensions will be revised to delete the numerous references to correction programs providing compliance by July 1, 1983. This change will not affect the current authorities or implementation of this rule in any way. A new definition of "design flow" is proposed to clarify the basis of various ch. NR 110 design criteria or methods. This revision will not affect the design flow used in the calculation of effluent limits which is established under other separate rules.

### **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.

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**

**June 18, 1997**  
**Wednesday**  
**at 10:00 a.m.**

**Room 137B**  
**Transportation Office Bldg.**  
**141 NW Barstow St.**  
**Waukesha, WI**

**July 9, 1997**  
**Wednesday**  
**at 9:30 a.m.**

**Room 149**  
**Marathon Co. Courthouse**  
**500 Forest Street**  
**Wausau, WI**

**July 10, 1997**  
**Thursday**  
**at 9:30 a.m.**

**Osprey Room, Student Center**  
**UW Center**  
**1800 College Drive**  
**Rice Lake, WI**

**July 11, 1997**  
**Friday**  
**at 10:00 a.m.**

**Room 611A, GEF #2**  
**101 S. Webster Street**  
**Madison, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Roger Larson at (608) 266-2666 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the proposed rule may be submitted to Mr. Tom Gilbert, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than **July 18, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WW-46-96] and fiscal estimate may be obtained from Mr. Gilbert.

### **Fiscal Estimate**

There is no financial impact to state or local government.

### **Notice of Proposed Rule Revenue**

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 66.75(1m)(f)5., 73.03(50), 77.52(9) and (12), 77.59(9) and (9m), 77.54(7m), 77.705, 77.982(4) and 77.991(4), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **June 1, 1997**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### **Contact Person**

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

### **Analysis by the Department of Revenue**

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

Statutes interpreted: ss. 66.75(1m)(f)5., 73.03(50), 77.52(9) and (12), 77.53(9) and (9m), 77.54(7m), 77.705, 77.982(4) and 77.991(4)

SECTIONS 1, 2 AND 3. Tax 11.001(intro.) is amended to add a reference to the stadium tax which was created effective January 1, 1996, by 1995 Wis. Act 56.

Tax 11.001(4) is renumbered Tax 11.001(5) and new Tax 11.001(4) is created to set forth that the common use of the term stadium tax means the Local Professional Baseball Park District Tax created effective January 1, 1996, by 1995 Wis. Act 56.

SECTIONS 4 AND 5. Tax 11.001(5) is repealed and Tax 11.001(6) is created to reflect the insertion of the definition of stadium tax and improve language and style per Legislative Council Rules Clearinghouse standards. Note that Tax 11.001(6) as created is similar to what was provided by sub. (5) prior to its repeal.

SECTION 6. Tax 11.002(title), relating to registration for Wisconsin sales and use and local exposition district taxes, is amended to make clear the subject of this section.

Tax 11.002(1) and (2)(c) are amended to reflect correct punctuation.

SECTION 7. Tax 11.002(2)(d), relating to registering for local exposition district taxes, is created due to the creation of ss. 66.75(1m)(f)5., 77.982(4) and 77.991(4), Stats., by 1993 Wis. Act 263.

SECTION 8. Tax 11.002(3), relating to application for permits or certificates, is amended to reflect the change in title to Form A-101.

Tax 11.002(4)(a) and (b) are amended to conform style to Legislative Council Rules Clearinghouse standards.

The note at the end of Tax 11.002 is revised for the following reasons:

a. To reflect the repeal of s. 77.52(7) and (8), Stats., by 1995 Wis. Act 27.

b. To give the statutory reference for use tax registration not previously mentioned.

c. To reflect the creation of ss. 66.75(1m)(f)5., 77.982(4) and 77.991(4), Stats., by 1993 Wis. Act 263.

SECTION 9. Tax 11.01(1)(b), relating to forms for reporting sales and use taxes, is amended to reflect stadium taxes pursuant to 1995 Wis. Act 56.

SECTION 10. Tax 11.01(1)(i), (j) and (k), relating to forms for reporting sales and use taxes, are created to describe Department of Natural Resources forms that are used for reporting sales or use tax on the sales of boats, snowmobiles and all-terrain vehicles.

SECTION 11. Tax 11.35(title), relating to the occasional sales for nonprofit organizations, is amended to remove reference to an effective date. Since this date is prior to any period open to adjustment under the statute of limitations, it is no longer necessary to mention it in the title.

SECTION 12. Tax 11.35(1) and (2) are renumbered Tax 11.35(2) and (1) to conform to Legislative Council Rules Clearinghouse standards, and Tax 11.35(2)(b), as renumbered, is amended to correct an error regarding the \$300 limit for entertainment as provided in s. 77.54(7m), Stats.

SECTION 13. Tax 11.35(3) and (5)(b) are amended to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.35(6)(a) is amended to clarify that the occasional sales exemption may apply to a nonprofit organization's sales at an admission event where that nonprofit organization is not sponsoring the event.

SECTION 14. Tax 11.97(1) is amended to conform punctuation and style to Legislative Council Rules Clearinghouse standards.

SECTIONS 15 AND 16. Tax 11.97(6)(a), relating to out-of-state companies engaged in business in Wisconsin, is renumbered Tax 11.97(6) to reflect the repeal of Tax 11.97(6)(b), and it is amended to reflect the change in title of Form A-101 and to remove the statement that there is no fee since a fee may apply under the business tax registration provisions that were adopted as part of 1995 Wis. Act 27.

Tax 11.97(6)(b) is repealed and set forth in a Note, since the material is informational rather than substantive.

## Text of Rule

SECTION 1. Tax 11.001(intro.) is amended to read:

Tax 11.001(intro.) Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to the county and stadium sales and use taxes authorized under subch. V of ch. 77, Stats. In this chapter, unless otherwise specified:

SECTION 2. Tax 11.001(4) is renumbered Tax 11.001(5).

SECTION 3. Tax 11.001(4) is created to read:

Tax 11.001(4) "Stadium tax" means the local professional baseball park district sales or use tax authorized under subch. V of ch. 77, Stats.

SECTION 4. Tax 11.001(5) is repealed.

SECTION 5. Tax 11.001(6) is created to read:

Tax 11.001(6) "Taxable" and similar terms including "subject to the tax" and "tax applies" mean either of the following:

(a) The sales tax applies to a sale of tangible personal property or services, measured by the gross receipts from the sale.

(b) The use tax applies to the storage, use or other consumption of tangible personal property or services sold, measured by the sales price.

SECTION 6. Tax 11.002(title), (1) and (2)(c) are amended to read:

Tax 11.002 REGISTRATION (1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate or ~~consumers~~ consumer's use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department will act on the application.

(2)(c) Consumer's use tax registration certificate. Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a ~~consumers~~ consumer's use tax registration certificate.

SECTION 7. Tax 11.002(2)(d) is created to read:

Tax 11.002(2)(d) Local exposition registration. Every person selling lodging, food, beverages and other items described in s. 77.54(20)(c)2. or renting automobiles subject to local exposition district taxes shall register with the department. Upon registration for local exposition district taxes, a separate seller's permit or use tax registration certificate only for local exposition district taxes will not be issued. The seller's permit or use tax registration certificate, as described in pars. (a) and (b), issued for sales and use tax purposes will apply for local exposition district tax purposes.

SECTION 8. Tax 11.002(3) and (4)(a) and (b) are amended to read:

Tax 11.002(3) APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES. A person required to have a seller's permit or one of the use tax certificates described in sub. (2) or required to register for local exposition district taxes shall file an "Application for Permit ~~or Certificate~~," form A-101, with the department at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required.

Note to Revisor: Revise the note after sub. (3) to read as follows:

Note: Form A-101 may be obtained from any department of revenue office, or by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

(4)(a) The approved permit is mailed by the department to the applicant~~, or~~.

(b) The department mails notification to the applicant that security is required or that the application is incomplete~~, or~~ incorrect, or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department~~, or~~.

Note to Revisor: Revise the note at the end of Tax 11.002 to read as follows:

Note: Section Tax 11.002 interprets ss. 66.75(1m)(f)5., 77.52(9) and (12), 77.53(9) and (9m), 77.61(2), 77.982(4), 77.991(4) and 227.116, Stats.

**SECTION 9.** Tax 11.01(1)(b) is amended to read:

Tax 11.01(1)(b) Form S-012. Also called form ST-12. The monthly, quarterly or annual return for each person used to report state, county and stadium taxes by persons holding a Wisconsin seller's permit, use tax registration certificate or consumer's use tax registration certificate.

**SECTION 10.** Tax 11.01(1)(i), (j) and (k) are created to read:

Tax 11.01(1)(i) Form 9400-193. A department of natural resources form for occasional and dealer sales of boats.

(j) Form 9400-210. A department of natural resources form for occasional and dealer sales of snowmobiles.

(k) Form 9400-376. A department of natural resources form for occasional and dealer sales of all-terrain vehicles.

Note to Revisor: Revise the first note at the end of Tax 11.01 to read as follows:

Note: Forms may be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

**SECTION 11.** Tax 11.35(title) is amended to read:

Tax 11.35 OCCASIONAL SALES BY NONPROFIT ORGANIZATIONS.

**SECTION 12.** Tax 11.35(1) and (2) are renumbered Tax 11.35(2) and (1) and, as renumbered, Tax 11.35(2)(b) is amended to read:

Tax 11.35(2)(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than \$300 or ~~more~~ per event by all persons for performing, for reimbursement of expenses or for prize money.

**SECTION 13.** Tax 11.35(3), (5)(b) and (6)(a) are amended to read:

Tax 11.35(3) GENERAL. A nonprofit organization is required to shall charge Wisconsin sales tax on sales of tangible personal property and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to gross receipts from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(5)(b) Its taxable gross receipts for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur. Nontaxable gross receipts shall may not be included for purposes of the \$15,000 gross receipts test.

(6)(a) ~~To~~ For a nonprofit organization's sales to qualify as an exempt occasional sale sales, entertainment shall may not be involved at an event for which charges by that nonprofit organization constitute admissions.

Note to Revisor: Add the following Example 5) to the examples that follow sub. (6)(a):

5) Nonprofit Organization A sponsors an admission event at which a band is hired to perform. The band is paid more than \$300. Nonprofit Organization A allows Nonprofit Organization B, a separate entity, to sell soft drinks and food at the event for consumption on the premises of the event. Although Nonprofit Organization A's sales at the event do not qualify for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

Note to Revisor: Delete the third note at the end of Tax 11.35 because it is obsolete, and replace the first and second notes with the following:

Note: To obtain a seller's permit, a nonprofit organization shall file Wisconsin form A-101, Application for Permit/Certificate, with the department. Form A-101 may be obtained from any department of revenue office, or by writing or calling Wisconsin Department of

Revenue, P.O. box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

Note: The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to 1989 Wis. Act 399.

**SECTION 14.** Tax 11.97(1) is amended to read:

Tax 11.97(1) GENERAL. (a) Out-of-state retailers ~~are required to~~ shall register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14th Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus," is established, the out-of-state seller is ~~required to~~ shall register and collect the state's use tax.

(b) Some United States supreme court decisions concerning nexus include:

1. Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941).
2. Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941).
3. General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944).
4. Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954).
5. Scripto, Inc. vs. Carson, 362 U.S. 207 (1960).
6. National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967).
7. National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977).

**SECTION 15.** Tax 11.97(6)(a) is renumbered Tax 11.97(6) and amended to read:

Tax 11.97(6) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Permit", ~~Form/Certificate,~~ form A-101. There is no fee for registration.

**SECTION 16.** Tax 11.97(6)(b) is repealed.

Note to Revisor: Replace the note at the end of Tax 11.97(6) with the following notes:

Note: Form A-101 may be obtained from any department of revenue office, or by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

Note: Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate and the 15-day time period within which the department is required to act on certificate applications.

## **Initial Regulatory Flexibility Analysis**

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

## **Fiscal Estimate**

The rule order updates the Administrative Code with respect to registering and reporting sales and use taxes.

Section 2 creates s. Tax 11.002 (2)(d) to reflect 1993 Wis. Act 263, which requires individuals who sell lodging, food or beverages, or rent automobiles subject to local exposition taxes to register with the Department of Revenue. Section 4 amends Tax 11.01 (1)(b) by requiring stadium taxes to be reported along with state and county sales and use taxes on Form ST-12. Section 5 creates Tax 11.01 (1) (L), (j) and (k) in order to establish forms to be used by the Department of Natural Resources for occasional sales of boats, snowmobiles and all-terrain vehicles.

Other changes create and amend titles, clarify existing language to reflect the Department's current position, modify punctuation, alter style and format to conform to Legislative Council Clearinghouse standards, and renumber rule sections to accommodate other rule changes.

These rule changes do not have a fiscal effect.

## Notice of Hearing

### *Workforce Development (Wage Rates, Chs. ILHR 290–294)*

Notice is given that pursuant to s. 103.005 (1), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the emergency rule revision of ch. DWD 290, Wis. Adm. Code, relating to Subjourneyperson Prevailing Wage Rates for State or Local Public Works Projects.

### Hearing Information

June 19, 1997  
Thursday  
9:30 a.m.

201 E. Washington Ave.  
Room 400X  
Madison, WI

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Division of Equal Rights, 201 East Washington Avenue, P.O. Box 8928, Madison, Wisconsin 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 hearings may be submitted no later than **June 27, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Gary Shealy at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-7560 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

(1) Authority for rule: s.103.005(1), Stats., in conjunction with ss. 66.293, 103.49 and 103.50, Stats.

(2) Project determinations. The department will issue prevailing wage rate determinations for individual projects. A project determination remains in effect until the end of the year (if issued on or before June 30) or for 180 days (if issued after June 30). A local government unit or state agency which receives a project determination may request an administrative review of any portion of a determination if it makes a written request within 30 days, the

request is received before construction contracts are awarded or negotiated, and the request includes wage rate information for the contested trade or occupation from at least 3 similar projects within the city, village or town where the proposed project is located that took place and were reported within the survey period. In conducting administrative reviews, the department will consider other wage rate information on similar projects within the city, village or town where the proposed project is located and will issue a decision as to the prevailing wage rate for the contested trade or occupation in that city, village or town, using the same calculation criteria employed in the survey determinations.

(3) Subjourneypersons. (a) If a majority of the hours reported for a trade in a county are worked at the same rate as a reported collective bargaining agreement, the department will use the subjourneyperson provisions of the collective bargaining agreement to determine subjourneyperson rates for that county.

(b) If the number of hours reported for a trade in a county exceeds 500, and the majority of the total hours reported for that trade in the county were worked under one or more collective bargaining agreements, the department will use the subjourneyperson provisions of the collective bargaining agreement that covers the greatest number of employes in the trade in that county to determine subjourneyperson rates for that county.

(c) If neither par. (a) nor par. (b) applies, the department will determine subjourneyperson rates as follows: an entry-level subjourneyperson rate will be 35% of the journeyperson's hourly basic rate and 35% of the journeyperson's fringe benefit package, and a regular subjourneyperson rate will be 65% of the journeyperson's hourly basic rate and 65% of the journeyperson's fringe benefit package. An employe may not be employed at the entry-level subjourneyperson rate for more than one year of cumulative service in the trade: after that time, the employe must be advanced to the regular subjourneyperson rate, or be enrolled in an apprenticeship program, or the employe may not be employed on prevailing wage projects. An employer may employ one entry-level subjourneyperson for each current apprentice employed in the same trade, or may employ on entry-level subjourneyperson if the employer did employ an apprentice in the same trade within the last five years who completed his or her apprenticeship. Allowable ratios for subjourneypersons in relation to journeypersons are set out in a table in section 5 of the rule.

(4) Minor subcontractors. A contractor or subcontractor that hires a minor subcontractor (defined as a subcontract of less than \$2,000 in cost and less than 3 days of work) must provide, within 7 days of the date that work is first performed by the minor subcontractor, either a copy of the prevailing wage rate determination for the project, or a written notice which states that the work to be performed is subject to a prevailing wage rate determination.

### Fiscal Estimate

The purpose of this rule is to implement the statutory changes made by 1995 Wis. Act 215. The rule does not create any new policies which will have a fiscal effect on state or local government.

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

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

**Natural Resources (CR 96-187):**

S. NR 728.11 – Relating to the sunset of s. NR 728.11.

**Natural Resources (CR 97-3):**

Chs. NR 400, 406, 407, 439, 460 and 463 – Relating to federal emission standards for chromium electroplating and chromium anodizing operations.



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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 96-191):

An order creating s. ATCP 139.04 (11), relating to prohibiting the sale of flammable substances containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Effective 07-01-97.

**Employment Relations** (CR 97-5):

An order affecting ss. ER 18.01, 18.04 and 18.15, relating to the creation of a catastrophic leave program that permits classified nonrepresented employes to donate certain types and amounts of leave credits to other classified nonrepresented employes who have been granted an unpaid leave of absence due to a catastrophic need and removal of the reference to Good Friday as a legal holiday for state employes.

Effective 07-01-97.

**Health & Family Services** (CR 96-81):

An order affecting ch. HSS 144, relating to immunization of students.

Effective 07-01-97.

**Natural Resources** (CR 96-41):

An order repealing and recreating s. NR 25.04 (2) (b), relating to the transfer of Great Lakes commercial fishing licenses upon the death or incapacity of the licensee.

Effective 07-01-97.

**Natural Resources** (CR 96-42):

An order affecting s. NR 25.08 (3) (b), relating to the transfer of individual license catch quotas upon the death or incapacity of the quota holder.

Effective 07-01-97.

**Natural Resources** (CR 96-174):

An order affecting ss. NR 25.06, 25.09, 25.10 and 26.23, relating to the Lake Superior fisheries management plan.

Effective 07-01-97.

**Natural Resources** (CR 96-177):

An order creating s. NR 5.21 (2), relating to waiver of the slow-no-wake speed restriction on the Wild Rose Mill Pond, Waushara County.

Effective 07-01-97.

**Transportation** (CR 96-168):

An order affecting ch. Trans 117, relating to occupational driver's license.

Effective 07-01-97.

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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 **May 31, 1997 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.*

**Barbering & Cosmetology Examining Board (CR 95-217):**

An order creating s. BC 2.03 (7), relating to standards of conduct.

Effective 06-01-97.

**Chiropractic Examining Board (CR 96-95):**

An order affecting ss. Chir 6.015 and 6.02 and creating ch. Chir 11, relating to patient records.

Effective 06-01-97.

**Emergency Response Board (CR 96-129):**

An order creating ch. ERB 6, relating to reimbursement procedures for regional and local hazardous materials emergency response teams when a person responsible cannot be found or when the person responsible is unable or unwilling to pay.

Effective 06-01-97.

**Employe Trust Funds (CR 96-167):**

An order affecting s. ETF 60.53, relating to deadlines to apply for death benefits payable from the Wisconsin Retirement System and timing of automatic distribution of these benefits.

Effective 06-01-97.

**Labor & Industry Review Commission (CR 96-136):**

An order affecting chs. LIRC 1 to 4, relating to procedural rules concerning petition to and handling of cases by the Labor and Industry Review Commission.

Effective 06-01-97.

**Medical Examining Board (CR 96-158):**

An order affecting ch. Med 13, relating to continuing medical education for podiatrists.

Effective 06-01-97.

**Public Defender (CR 97-12):**

An order amending s. PD 3.02, relating to the cost of retained counsel.

Effective 06-01-97.

**Transportation (CR 96-44):**

An order affecting ch. Trans 139, relating to motor vehicle trade practices.

Effective 09-01-97.

**Transportation (CR 96-170):**

An order creating ch. Trans 55, relating to the granting of state aid to airport owners.

Effective 06-01-97.

**Transportation (CR 96-171):**

An order affecting ch. Trans 152, relating to Wisconsin Interstate Fuel Tax and the International Registration Plan.

Effective 06-01-97.

**Transportation (CR 96-179):**

An order repealing and recreating ch. Trans 76, relating to general transportation aids.

Effective 06-01-97.

**Workforce Development (CR 96-156):**

An order renumbering ch. HSS 201 to ch. DWD 11 and creating s. DWD 11.135, relating to circumstances under which the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works (W-2) employment position or a combination thereof may be extended.

Effective 06-01-97.

**Workforce Development (CR 96-181):**

An order affecting chs. ILHR 272 and DWD 272, relating to the minimum wage.

Effective 06-01-97.

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Barbering & Cosmetology Examining Board (CR 95–217)

S. BC 2.03 (7) – Standards of conduct.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

### 2. Chiropractic Examining Board (CR 96–95)

Ch. Chir 11 – Relating to patient records.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

### 3. Emergency Response Board (CR 96–129)

Ch. ERB 6 – Reimbursement procedures for regional and local hazardous materials emergency response teams when a person responsible cannot be found or when the person responsible is unable or unwilling to pay.

Summary of Final Regulatory Flexibility Analysis:

Ch. ERB 6, the administrative rule required under s. 166.20 (2) (bm), Stats., for reimbursement procedures for regional and local hazardous materials emergency response teams will not impact small business. The ERB 6 reimbursement procedures delineate the requirements and process that a regional or local hazardous materials emergency response team must follow when requesting reimbursement under ss. 166.215 (2) and 166.22 (3m), Stats. This rule does not impose any fees or regulations on small business.

Summary of Comments:

No comments were reported.

### 4. Employe Trust Funds (CR 96–167)

S. ETF 60.53 – Deadlines to apply for death benefits payable from the Wisconsin retirement system and timing of automatic distribution of these benefits.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses.

Summary of Comments:

No comments were reported.

### 5. Labor & Industry Review (CR 96–136)

Chs. LIRC 1 to 4 – Procedural rules.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

### 6. Medical Examining Board (CR 96–158)

Ch. Med 13 – Continuing medical education for podiatrists.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

### 7. Public Defender (CR 97–12)

S. PD 3.02 – Cost of retained counsel.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

### 8. Transportation (CR 96–44)

Ch. Trans 139 – Motor vehicle trade practices.

Summary of Final Regulatory Flexibility Analysis:

No regulatory flexibility analysis was prepared since the proposed rule will have no adverse effect on small businesses beyond any effect imposed by the statutes.

Summary of Comments:

No comments were reported.

### 9. Transportation (CR 96–170)

Ch. Trans 55 – Granting of state aid to airport owners.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**10. Transportation (CR 96-171)**

Ch. Trans 152 – Wisconsin Interstate Fuel Tax and the International Registration Plan.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**11. Transportation (CR 96-179)**

Ch. Trans 76 – General transportation aids.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments reported.

**12. Workforce Development (CR 96-156)**

S. DWD 11.135 – The 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works (W-2) employment position or a combination thereof.

Summary of Final Regulatory Flexibility Analysis:

There is no direct impact upon small businesses.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Wisconsin Works Oversight. No comments were received.

The rules were also reviewed by the Senate Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs. Senator Rod Moen, Chairman, requested the word “constant” be deleted from the following phrase in s. DWD 11.135 (2) (a): to remain at home to care for another member of the household whose incapacity is so severe that without constant in-home care provided by the JOBS program participant, the incapacitated AFDC group member’s health and well-being would be significantly affected.

**13. Workforce Development (CR 96-181)**

Ch. DWD 272 – Minimum wage.

Summary of Final Regulatory Flexibility Analysis:

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.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Labor, Transportation and Financial Institutions. The Senate Committee objected to the provisions relating to the opportunity wage.

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## *EXECUTIVE ORDERS*

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

**Executive Order 310.** Relating to a Proclamation Amending Executive Order #300.

**Executive Order 311.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Peace Officers Who Have Given Their Lives in the Line of Duty.

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