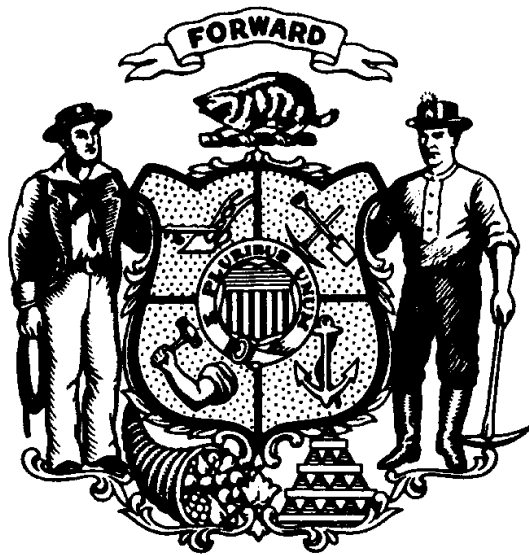


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 477**



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## NOTICE SECTION

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### **Notice of Hearings** **Agriculture, Trade &** **Consumer Protection** **(Reprinted from 09-15-95** **Wis. Adm. Register)**

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The State of Wisconsin Department of Agriculture, Trade and Consumer Protection will hold public hearings on a proposed Department rule relating to the regulation of work recruitment schemes (proposed ch. ATCP 116, Wis. Adm. Code).

#### **Written Comments and Copies of Rule**

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **November 3, 1995** for additional written comments.

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

Division of Trade & Consumer Protection, (608) 224-4947  
Wis. Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53708-8911

Copies will also be available at the public hearings.

#### **Hearing Information**

Four hearings are scheduled:

<b>October 16, 1995</b> <b>Monday</b> <b>Commencing at</b> <b>9:30 a.m.</b>	<b>Board Room SR-106</b> <b>Prairie Oak State Office Bldg.</b> <b>2811 Agriculture Dr.</b> <b>Madison, WI</b>
<b>October 17, 1995</b> <b>Tuesday</b> <b>Commencing at</b> <b>9:30 a.m.</b>	<b>2nd Floor Conference Room</b> <b>The Forum Building</b> <b>3333 N. Mayfair Road</b> <b>Milwaukee, WI</b>
<b>October 18, 1995</b> <b>Wednesday</b> <b>Commencing at</b> <b>9:30 a.m.</b>	<b>Room 152 A</b> <b>Wis. District Office Bldg.</b> <b>200 N. Jefferson Street</b> <b>Green Bay, WI</b>
<b>October 19, 1995</b> <b>Thursday</b> <b>Commencing at 1:00 p.m.</b>	<b>Room 105</b> <b>Eau Claire State Office Bldg.</b> <b>718 W. Clairemont Avenue</b> <b>Eau Claire, WI</b>

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **October 6, 1995** either by writing to Judy Jung, P.O. Box 8911, Madison, WI 53708-8911 or by calling (608) 224-4972 or via the Division's TDD telephone (608) 224-5058. *Handicap access is available at the hearings.*

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

*Statutory authority:* s. 100.20 (2)

*Statute interpreted:* s. 100.20

Currently, under ch. ATCP 116, Wis. Adm. Code, the Department of Agriculture, Trade and Consumer Protection ("Department") regulates work

recruitment schemes that are aimed at getting money from job applicants, not just recruiting them as workers. This rule strengthens and clarifies the Department's current rules, which have not been updated since 1962.

#### **CURRENT RULES**

The current rules apply when a business recruits workers to sell "products," but requires them to make a "purchase or investment" in order to get the job. The current rules prohibit a recruiter from doing any of the following:

- Requiring recruits to make a "purchase or investment" unless the recruitment ads disclose the purchase or investment requirement.
- Misrepresenting the nature of the work or the amount that a worker will earn.
- Selling sales kits, inventory or other "goods" to a recruited worker, unless all of the following apply:
  - The contract for the sale of goods is in writing, and a copy is furnished to the sales worker. The sale contract must state whether it is assignable.
  - The sale contract discloses the total price of the goods, including interest and other charges.
  - The sale contract describes the terms and conditions of the sales work for which the worker was recruited, including the nature of the work, the worker's rate of pay, the usual hours of work and any minimum work commitment.
  - The sale contract describes the "territory," if any, which is assigned to the sales worker, and states whether the territory is exclusive.

#### **PROPOSED RULE**

This rule strengthens and clarifies the Department's current rules. Like the current rules, this rule regulates recruitment schemes that are aimed at getting money from job applicants, not just recruiting them as workers. This rule does not affect other businesses that recruit and hire workers.

#### Coverage

This rule expands the coverage of the current rules. The current rules apply when a business requires a "purchase or investment" from prospective employees, agents or independent contractors whom the business recruits to sell "products."

This rule applies, more broadly, when a businesses requires or solicits a "purchase or investment" from either of the following:

- Prospective employees, regardless of the work for which they are recruited.
- Prospective sales workers, regardless of whether they are recruited as employees, agents or independent contractors. "Sales work" means any work that involves soliciting persons to purchase or lease goods, services or contract rights (not just "products") which the recruiter is in the business of selling or leasing.

#### "Purchase or Investment" Defined

The current rules do not define what is meant by a "purchase or investment." This rule clarifies that a "purchase or investment" means a direct or indirect payment to the recruiter. This definition is consistent with the Wisconsin Court of Appeals decision in Schinker v. Farmers Insurance Exchange et al., Case No. 89-0959, which held that an insurance agent required to establish his own office was not required to make a "purchase or investment" within the meaning of the current rules. (To establish his own office, the agent was not required to make any payment to the insurance company that recruited him.)

#### Required "Purchase or Investment;" Disclosure

This rule requires a recruiter to disclose, in every work advertisement or solicitation, the nature and amount of every "required purchase or investment." A "required purchase or investment" means any "purchase or investment" that a recruit must make in order to obtain a work offer, or to have a reasonable prospect of achieving the potential earnings claimed by the recruiter.

“Purchase or Investment” Documented

Under this rule, a recruiter must document every “purchase or investment” in writing, and must provide a copy of that document to the recruit before the recruit agrees to make the “purchase or investment.” The document must include all of the following:

- The name of the recruit.
- The name and permanent address of the recruiter.
- The nature of the “purchase or investment,” and the terms under which it is made.
- The amount of the “purchase or investment,” including any interest or other charges that may apply.
- The consideration given by the recruiter in return for the “purchase or investment.”
- If the “purchase or investment” involves any separate contract or note, a copy of that contract or note. Each contract and each note must state whether it is subject to assignment.
- The terms and conditions of any work offer to which the “purchase or investment” is related. The terms and conditions must include all of the following:

- The nature of the work offered.
- The source from which the recruit will receive his or her earnings, if other than the recruiter.
- The form, such as wages, salaries, commissions, or direct profits from sales, in which the recruit will receive his or her earnings.
- The agreed rate of pay if applicable, or the agreed method by which earnings will be determined.
- Fringe benefits if any.
- Applicable work terms and conditions, including work hours and location. If a recruit is offered sales work in a specific territory, the work offer must describe that territory and state whether it is exclusive.

Earnings Claims

Under this rule, if a recruiter makes any statement of potential earnings to recruits from whom the recruiter solicits any purchase or investment, the recruiter must disclose all of the following in connection with that statement:

- The source from which the worker would receive the earnings, if other than the recruiter.
- The form, such as wages, salaries, commissions, or direct profits from sales, in which the recruit would receive the earnings.
- The basis on which the earnings would be paid or received, such as per unit of time worked, per unit of work completed, or per volume of sales. The basis must be stated so that a recruit can readily understand, compare and evaluate the stated earnings.
- Requirements which the recruit must meet in order to qualify for the stated earnings, including any training or probationary service requirement.
- The nature and amount of every purchase or investment which the recruit must make in order to have a reasonable prospect of achieving the stated earnings.

Prohibited Practices

Under this rule, no recruiter who solicits a “purchase or investment” from any recruit may do any of the following:

- Make any false, deceptive or misleading representation to that recruit.
- Misrepresent the nature of the work which the recruiter offers or may offer to that recruit.
- Misrepresent the nature or amount of earnings which the recruit may make.
- Misrepresent that an offer to engage that recruit as an independent contractor is an offer to engage that recruit as an employee.
- Engage in a “bait and switch” scheme whose purpose is not to recruit workers to perform work.
- Misrepresent the recruiter’s identity.

Employment Services

This rule prohibits any person from misrepresenting an advertisement or offer of employment service as an advertisement or offer of work. An “employment service” is a service designed to help individuals obtain work,

other than work offered by the provider of the employment service. For example, “employment service” includes assistance with any of the following:

- Finding work announcements or obtaining work offers.
- Preparing resumes or portfolios.
- Obtaining or completing work application forms.

**Fiscal Estimate**

The adoption of the proposed rule revisions will have no state or local fiscal effect.

**Initial Regulatory Flexibility Analysis**

See 09–15–95 Wis. Adm. Register, page 5.

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## **Notice of Hearings**

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

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The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 70, Wis. Adm. Code, relating to food processors. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until **October 27, 1995** for additional written comments.

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

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **October 6, 1995** either by writing to Margaret Maly, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708–8911, (608/224–5023) or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearings.

**Hearing Information**

Testimony at all four hearings will be taken from **10:00 AM to 2:00 PM** or until all parties have been heard.

**Eau Claire Area:**

**October 11, 1995  
Wednesday**

**Chippewa Valley Technical College  
620 W. Clairemont Ave.  
Eau Claire, WI 54701  
1st Floor Auditorium**

**Green Bay Area:**

**October 12, 1995  
Thursday**

**State Office Bldg.  
200 N. Jefferson St.  
Green Bay, WI 54301  
1st Floor Conf. Room**

**Milwaukee Area:**

**October 13, 1995  
Friday**

**Northwest Health Center  
7630 W. Mill Road  
Milwaukee, WI 55218  
Basement Conf. Room**

**Madison Area:**

**October 17, 1995  
Tuesday**

**Prairie Oaks State Office Bldg.  
DATCP  
2811 Agriculture Dr.  
Madison, WI 53704–6777  
Board Room**



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

Statutory authority: ss. 93.07(1), 97.29(5) and 97.34(2)(a) and (c)

Statutes interpreted: ss. 97.02, 97.03, 97.10, 97.29 and 97.34

### ***General Overview***

The department of agriculture, trade and consumer protection currently licenses and regulates food processing plants under s. 97.29, Stats. This rule amends the department's current rules under ch. ATCP 70, Wis. Adm. Code, related to food processing plants. Among other things, this rule does the following:

- Authorizes the department to grant a variance from a food processing plant construction standard if the variance is reasonable and necessary, and will not compromise the purpose served by the construction standard.

- Updates current water supply standards for food processing plants, including bottling establishments.

- Modifies current standards for handling distressed and salvaged food (e.g. food affected by a fire, flood or other casualty).

- Requires a food processor to report any lab tests showing that ready-to-eat food contains pathogenic organisms or toxins, unless the food is identified by production lot and the processor still owns and controls the entire affected lot.

- Gives fish processors greater flexibility to package and sell fish in reduced oxygen packages if the fish are processed to eliminate botulism risks.

- Requires fish processors to prepare and follow a HACCP ("hazard analysis and critical control point") plan. Under a HACCP plan, a processor prevents food safety hazards by monitoring and controlling critical control points to ensure that critical limits are met.

- Updates current food safety standards related to:

- Raw fish processing.

- Smoked fish processing and labeling.

- Caviar processing.

#### "Potentially Hazardous" Foods; Safe Temperatures

Under current rules, potentially hazardous foods must be held at safe temperatures. A "potentially hazardous food" means a food such milk, eggs, meat, poultry or fish, which is in a form capable of supporting rapid and progressive growth of pathogenic or toxigenic microorganisms.

This rule clarifies the current definition of "potentially hazardous food." For example, it includes certain foods of plant origin which are capable of supporting botulism growth, and excludes hard boiled eggs with intact shells. It excludes foods in hermetically sealed packages that are processed to remain commercially sterile without refrigeration.

Current rules specify the following "safe temperatures" for potentially hazardous foods:

- 150°F. (65°C.) or above for potentially hazardous heated foods.

- 40°F. (5°C.) or below for potentially hazardous refrigerated foods.

- 0° F. (-17°C.) or below for potentially hazardous frozen foods.

- This rule establishes new "safe temperatures" as follows:

- 140°F. (60°C.) or above for potentially hazardous heated foods.

- 41°F. (5°C.) or below for potentially hazardous refrigerated foods, other than fish or fish products.

- 38°F. (3.4°C.) or below for refrigerated fish or fish products.

- 0° F. (-17°C.) or below for potentially hazardous frozen foods.

#### Facilities and Equipment

Current rules establish ventilation standards for food processing plants. This rule eliminates the current requirement that ventilation systems comply with standards under s. ILHR 64.67, but adds a new standard for intake filters.

This rule authorizes the department to grant a written variance from a food processing plant construction standard if the variance is reasonable and necessary, and will not compromise the purpose served by the construction standard. The administrator of the department's division of food safety may issue a waiver on behalf of the department. The department must keep a copy of the waiver on file for the duration of the waiver.

#### Personnel Sanitation

Current rules spell out sanitation standards for personnel in food processing plants. Under the current rules, if a person is infected with a disease that is communicable by food handling, that person may not work in a food processing plant in any capacity which may result in food contamination.

This rule expands and clarifies the current rules. This rule prohibits a person from working in any capacity which may result in the contamination of food, equipment or utensils if that person has any of the following:

- A communicable disease.

- Flu or flu-like symptoms.

- A sore or lesion on the hands, arms or other exposed portion of the body.

#### Water Supply

Current rules spell out standards for "operations water" (e.g., wash water) and "ingredient water" used in food processing. This rule makes non-substantive organizational and drafting changes to the current standards.

This rule also adds new provisions related to reclaimed water. Under this rule:

- Reclaimed water may not be used as operations water or ingredient water unless all of the following apply:

- The reclaimed water meets all normal standards for operations or ingredient water.

- The operator tests the reclaimed water for bacterial and organic content according to this rule.

- The distribution system for the reclaimed water has no cross-connections to any municipal or private water supply system, and is effectively designed and labeled to prevent misuse of reclaimed water.

- Reclaimed water may not be used as ingredient water unless it is reclaimed by condensation (or by another reclamation process which the department approves), and is used within 24 hours after it is reclaimed.

- Reclaimed water may not be used as an ingredient in bottled water or in any soda water beverage.

Under this rule, chemicals used to suppress bacterial growth in water, or to prevent off-tastes or off-odors in water, must be approved for that purpose by the federal food and drug administration. Chemicals must be used according to label directions, and may not contribute to the adulteration of food.

#### Distressed and Salvaged Food

Under current rules, a food processing plant operator must notify the department whenever food is subjected to possible contamination in a fire, flood or other casualty.

This rule eliminates the current notification, inspection and approval requirements, but spells out standards for the sale and handling of distressed food. Under this rule, an operator:

- Must separate distressed food from other food.

- May not reprocess unwholesome or adulterated food for sale as human food.

- May not sell or distribute food in packages which are not fully labeled, or which have been damaged to the point that food may be exposed to contamination.

- Must keep records showing the source and disposition of distressed food.

- May not sell reprocessed or reconditioned distressed food without notifying the purchaser, in writing, that the food is reprocessed or reconditioned. Notice must include the name and address of the reprocessor or reconditioner and the date on which the food was reprocessed or reconditioned.

#### Ready-to-Eat Foods; Reporting Pathogens and Toxins

Under this rule, a food processing plant operator must report to the department any lab test results showing that ready-to-eat food produced by that operator contains pathogenic organisms or toxins. However, the operator need not report the lab test results if the food is identified by a lot number and the operator retains ownership and control over that entire lot.

#### Fish Processing Plants; HACCP Plan

Under this rule, every fish processing plant must have and follow a written HACCP ("hazard analysis critical control point") plan by January 1, 1997. A plant processing fish for sale in reduced oxygen packages must have

and follow a HACCP plan not later than the effective date of this rule. Under a HACCP plan, an operator prevents food safety hazards by monitoring and controlling food safety variables at critical control points in the production process.

For each fish product, a HACCP plan must identify all of the following:

- Potential food safety hazards.
- Critical control points in the production process at which the operator will monitor critical variables, such as time, temperature, pH or water activity, to ensure that critical limits are met.
- The critical limits which must be met at each critical control point to prevent unacceptable food safety hazards.
- Procedures which the operator will use to monitor critical variables at each critical control point to ensure that critical limits are met.
- Effective corrective actions which the operator will take whenever a critical limit is violated. Corrective actions must do all of the following:
  - Correct the process to restore compliance with critical limits.
  - Evaluate the safety of food processed while the critical limit was violated.
  - Prevent the sale or distribution of any food which presents an unacceptable food safety hazard.
- The methods which the operator will use to ensure that HACCP procedures are followed.
- HACCP records, including food safety monitoring records, which the operator will keep. The operator must retain HACCP records for at least 6 months.

#### Processing Raw Fish

Current rules spell out standards for handling raw fish. Fish must be inspected, eviscerated and washed before they are processed. (Small fish such as anchovies and herring sprats need not be eviscerated if processed in certain ways.) Fish must be frozen or treated for parasites unless they are cooked during processing or by the consumer. This rule makes minor changes to clarify the current rules.

#### Packaging Fish in Reduced Oxygen Packages

Under current rules, fish may not be packaged in a hermetically sealed package unless one of the following applies:

- The package is heat processed after sealing to destroy botulism bacteria and spores.
  - The packaged fish product is frozen and labeled as a frozen food according to current rules.
- This rule gives fish processors greater flexibility to package and sell fish in reduced oxygen packages if the fish are processed to eliminate botulism risks. Under this rule, fish products may be packaged in reduced oxygen packages if one of the following applies:
- The package is heat processed after sealing to destroy botulism bacteria and spores.
  - The packaged fish product is frozen and labeled as a frozen food under this rule.
  - The fish product is processed (e.g., acidified) so that it is no longer a "potentially hazardous food."
  - The fish product is smoked according to standards specified in this rule.

#### Repackaging Fish

This rule prohibits a retailer or distributor from repackaging fish products that were packaged in consumer size packages at a fish processing plant. A retailer or distributor who repackages fish from containers other than consumer size packages must label the repackaged fish according to this rule.

#### Smoked Fish Processing

Under current rules, smoked fish must be processed according to the following standards:

- Fish must be dry salted or brined before it is smoked so that the finished smoked fish contains at least 3.5 percent water-phase salt.
- All smoked fish must be heated to a temperature of at least 160°F. for at least 30 minutes unless the fish is clearly labeled to indicate that the consumer must cook it.

This rule modifies current salt and temperature requirements for smoked fish. Under this rule:

•Hot-process smoked fish packaged in air permeable packages must be processed as follows:

- It must be brined so that the finished smoked fish contains at least 2.5 percent water-phase salt.
- It must be heated to at least 145° F. (63° C.) for at least 30 minutes.

•Hot-process smoked fish in reduced oxygen packages must be processed as follows:

- It must be brined so that the finished smoked fish contains at least 3.5 percent water-phase salt, except that fish brined with a sodium nitrite solution may be brined to contain 3.0 percent water-phase salt.
- It must be heated to at least 145° F. (63° C.) for at least 30 minutes.

•Cold-process smoked fish must be processed as follows:

- It must be dry salted or brined so that the finished smoked fish contains at least 3.5 percent water-phase salt, except that fish brined in sodium nitrite may be brined to contain 3.0 percent water-phase salt and frozen fish may be brined to contain 2.5 percent water-phase salt.
- It must be smoked at a temperature of not more than 90° F. (32° C.) for not more than 20 hours, or at a temperature of not more than 50° F. (10° C.) for not more than 24 hours.

This rule authorizes the department to approve alternative smoking procedures which are equally effective in preventing food safety hazards. The department secretary or the administrator of the division of food safety must authorize the alternative procedures in writing.

Under this rule, smoke flavorings used in processing smoked fish must be approved by the United States department of agriculture or by the federal food and drug administration.

#### Labeling and Selling Smoked Fish

Current rules spell out standards for the labeling and sale of smoked fish. This rule makes the following changes to the current rules:

- Required labeling must appear on the principal display panel of the smoked fish package.
- Cold-process smoked fish must be labeled with the statement "NOT FULLY COOKED."
- Smoked fish products must be removed from sale if, at any time prior to retail sale, they are held at a temperature above 38° F. (3.4° C.).
- Cold-process smoked fish may not be used as an ingredient in any other perishable, ready-to-eat food.

#### Caviar Processing

This rule creates new standards for caviar processing. Under this rule:

- Fish roe and fish by-products containing roe must be held at a temperature of 38° F. (3.4° C.) or below during storage, transportation and processing.
- Fish roe and fish by-products containing roe must be harvested, stored and transported in covered, food grade containers.
- Containers of fish roe must be labeled with the dates and times when the roe was harvested and dressed. Roe must be separated from fish entrails within 48 hours after it is harvested from the fish, and must be separated from roe sacks within 72 hours.
- No fish processing plant may accept any fish roe which is not properly refrigerated, contained and labeled according to this rule.
- Finished caviar must be free of pathogens, and must contain at least 2.5 percent salt. No person may have direct hand contact with finished, ready-to-eat caviar.

#### Standards Incorporated By Reference

The department has asked the attorney general and the revisor of statutes for permission to incorporate standards by reference in this rule.

### **Fiscal Estimate**

#### Assumptions Used in Arriving at Fiscal Estimate

Currently, food processing plants are licensed and inspected under s. 97.29, Stats and ch. ATPC 70, Wis. Adm. Code. This revised rule will not change the number of food processing plants subject to this rule. The revised rule, ch. ATPC 70, maintains requirements related to construction and sanitary operation of food processing plants. The revised rule, ATPC 70, has no effect on GPR or PRO funds.

The revised rule creates requirements for Hazard Analysis Critical Point (HACCP) Plans in fish processing plants and allows the department flexibility in determining the construction requirements in food processing

establishments. These changes in the rule have no effect on GPR or PRO funds.

### **Initial Regulatory Flexibility Analysis**

The modification of ch. ATCP 70, Wis. Adm. Code, Food Processing Plants will have a fiscal impact on "small business" as defined in s. 227.114 (1)(a), Stats. The approximately 1,125 food processing plants currently licensed range from small single product plants to large multi-product production facilities.

The proposed food processing plant rule updates existing requirements and provides guidance for safe food handling and processing practices. Standards are based on established food industry guidelines and are designed to be consistent with other federal, state and local requirements.

The proposed changes are as follows:

- re-defines "safe temperature" and "potentially hazardous foods"
- requires food processing plants to notify the department when a pathogen is detected in a ready-to-eat food
- allows regulatory flexibility by allowing waivers from construction standards
- requires food processing plants to label and maintain records of salvaged and reconditioned food
- requires food processing plants to create Hazard Analysis Critical Control Point Plans at fish processing plants
  - modifies cooking requirements for smoked fish
- allows flexibility in types of smoked fish processes permitted under rule such as vacuum packaging and cold smoking
  - provides specific requirements for caviar processing plants
  - provides specific requirements for reclaimed water used at food processing plants

The proposed rule would require additional record keeping requirements to facilitate tracking of salvaged food at all licensed food processing plants. The records would include:

- a description of the salvaged food received, including the source of the distressed food and the salvage food reconditioning process
- dates and amount of food received into the food processing plant
- name of the purchaser

The impact of these requirements would be minimal in that most food processing plants currently maintain this information in their record keeping systems.

The proposed rule would require additional record keeping requirements to facilitate the required hazard analysis critical control point (HACCP) plans at approximately 80 licensed fish processing plants. The proposed HACCP plan requirement for processors of fish and fish products is consistent with the language in the proposed federal rule, 21 CFR 123 and 1240, published in the federal register on January 28, 1994. The additional required records would include:

- a description of, and a monitoring system, for critical control points
- a description of, and a monitoring system, for critical limits
- a description of, and a monitoring system, for corrective actions

Small businesses may incur the following significant costs to comply with the HACCP requirements for processing fish:

- Initial cost per plant to develop a HACCP plan, including the training of employees is approximately \$2,000

Total cost for 80 licensed fish processing plants to comply with the proposed rule's HACCP requirements is approximately \$160,000.

- Annual cost per plant to monitor, document and verify the operation of the HACCP plan is approximately \$1,500

Total annual cost for the fish processing industry to monitor, document and verify the operation of their HACCP plans is approximately \$120,000.

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

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## **Notice of Hearings**

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

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The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chs. ATCP 74 and ATCP 75, Wis. Adm. Code, relating to retail food establishments, and retail food establishments; local government regulation. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until **October 27, 1995** for additional written comments.

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

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **October 6, 1995** either by writing to Margaret Maly, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708-8911, (608/224-5023) or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearings.

### **Hearing Information**

Testimony at all four hearings will be taken from **10:00 AM to 2:00 PM** or until all parties have been heard.

#### **Eau Claire Area:**

**October 11, 1995  
Wednesday**

**Chippewa Valley Tech. College  
620 W. Clairemont Ave.  
Eau Claire, WI 54701  
1st Floor Auditorium**

#### **Green Bay Area:**

**October 12, 1995  
Thursday**

**State Office Bldg.  
200 N. Jefferson St.  
Green Bay, WI 54301  
1st Flr. Conf. Room**

#### **Milwaukee Area:**

**October 13, 1995  
Friday**

**Northwest Health Center  
7630 W. Mill Road  
Milwaukee, WI 55218  
Basement Conf. Room**

#### **Madison Area:**

**October 17, 1995  
Tuesday**

**Prairie Oaks State Office Bldg.  
DATCP  
2811 Agriculture Dr.  
Madison, WI 53704-6777  
Board Room**

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

Statutory authority: ss. 93.07(1) and 97.30(3m) and (5)

Statute interpreted: s. 97.30

The department of agriculture, trade and consumer protection currently licenses and regulates retail food establishments under s. 97.30, Stats. In many of the state's metropolitan areas, agent cities regulate retail food establishments on behalf of the department.

This rule is intended to protect public health, and ensure safe handling of food at retail food establishments. This rule modifies the department's current rules under ch. ATCP 75, Wis. Adm. Code. This rule is based, in substantial part, on the model food code published by the United States food and drug administration.

## Licensing and Fees

Current rules spell out license and fee requirements for retail food establishments. This rule updates current license and fee provisions to be consistent with s. 97.30, Stats. This rule does not change the current fees provided under s. 97.30, Stats. This rule exempts a retail food establishment operated by Native Americans on Indian lands from licensing as a retail food establishment.

### Variances

This rule authorizes the department to grant a written variance from a retail food establishment construction standard if the variance is reasonable and necessary, and will not compromise the purpose served by the construction standard. The department must keep a copy of the written variance.

### Personnel Sanitation

Current rules spell out sanitation standards for personnel in retail food establishments. This rule expands and clarifies the current rules. This rule prohibits a person from working in any capacity which may result in the contamination of food, equipment or utensils if that person has a communicable disease, flu or flu-like symptoms, or a sore or lesion on the hands, arms or other exposed portion of the body.

### Food Sources

Under this rule, no retail food establishment may acquire food from an unlicensed, unapproved or uninspected source if state or federal law requires that source to be licensed approved or inspected.

### Shellfish and Crustaceans

Because of potentially serious food safety hazards associated with shellfish and crustaceans, the United States food and drug administration (FDA) has adopted a national shellfish safety program. This rule regulates the receipt and handling of Molluscan shellfish based on the federal program.

Under this rule, a retail food establishment must obtain Molluscan shellfish from a source approved by FDA. Molluscan shellfish must be harvested in compliance with national sanitation standards published by FDA.

Under this rule, a retail food establishment must obtain shucked Molluscan shellfish in nonreturnable containers labeled with the packer's name and FDA certification number, a "sell by" date (for containers smaller than 1/2 gallon) and a shucking date (for containers of 1/2 gallon or more).

Under this rule, a retail food establishment must obtain unshucked Molluscan shellfish in containers identifying the harvester and all dealers that shipped or reshipped the shellfish. The retail food establishment must keep the label tags for at least 90 days.

### Sulfites and Other Food Additives

Because of concerns related to allergic reactions, this rule prohibits a retail food establishment from applying any sulfiting agent to fresh fruits or vegetables. It also prohibits the sale of any foods, other than grapes, which are treated with sulfiting agents before they arrive at the retail food establishment.

### Adulterated, Misbranded or Suspect Food

Under this rule, a retail food establishment must separate the following food from other food in that establishment, and must handle it to prevent contamination of other food:

- Returned or recalled food, pending a decision on the disposition of that food.
- "Distressed food" (e.g., food affected by a fire, flood, transportation accident, refrigeration breakdown or other casualty), pending a decision on the disposition of that food.
- Food which is to be discarded, reprocessed, reconditioned, relabeled or returned to a supplier.
- Food which the operator, the department or the department's agent finds to be unwholesome, adulterated or misbranded.
- Food which the operator suspects or should reasonably suspect as being unwholesome, adulterated or misbranded, pending evaluation by the operator to determine whether the food is actually unwholesome, adulterated or misbranded.

Under this rule, no retail food establishment may do any of the following:

- Sell, or offer for sale, any unwholesome, adulterated or misbranded food.
- Reprocess for sale any unwholesome or adulterated food.

- Sell, or offer for sale, food in packages that are damaged to such an extent that the food may have been exposed or subjected to possible contamination.

### Distressed and Salvaged Food

Under current rules, a retail food establishment operator must notify the department whenever food is subjected to possible contamination in a fire, flood or other casualty.

This rule eliminates the current notification, inspection and approval requirements, but spells out standards for the handling and sale of distressed food. Under this rule, an operator must separate distressed food from other food. An operator may not do any of the following:

- Reprocess, for sale, any distressed food that is unwholesome or adulterated.
- Sell any distressed food in containers damaged to the point that their contents may be contaminated.
- Sell distressed food in containers that are not fully labeled.

Under this rule, whenever a retail food establishment operator sells reprocessed or reconditioned distressed food, the operator must notify the purchaser in writing (e.g., on the food label or on a display placard) that the food is processed or reconditioned. Notice must include the name and address of the reprocessor or reconditioner and the date on which the food was reprocessed or reconditioned. Packages of reprocessed and reconditioned food must be labeled with all of the label information normally required for that food.

Under this rule, a retail food establishment operator must keep records related to the source and disposition of distressed, reprocessed and reconditioned food.

### Protecting Food from Cross-Contamination

Under this rule, a retail food establishment operator must protect food from cross-contamination. Among other things, an operator must:

- Keep meat, fish, poultry, shellfish, crustaceans, and other raw foods of animal origin separate from every kind of ready-to-eat food, whether raw or cooked.
- Keep different types of raw foods of animal origin such as beef, fish, lamb, pork, and poultry, separate from each other, except when combining them as ingredients.
- Keep unwashed fruits and vegetables separate from every kind of ready-to-eat food, whether raw or cooked.

### Serving Ready-to-Eat Foods

Careless use of serving utensils is an important source of microorganism contamination in ready-to-eat foods. Under this rule, serving utensils must be handled so that:

- Utensils do not contaminate or cross-contaminate food.
- There is no rapid or progressive growth of pathogenic or toxigenic organisms on food adhering to utensils.

### Food Display Facilities

Under this rule, food display and dispensing facilities must be kept clean and in good repair. Refrigerated and frozen food display cases may not be filled in excess of the maximum capacity specified by the display case manufacturer.

### Displaying Unpackaged Food

Under current rules, unpackaged displayed food must be covered or protected to protect it against contamination and customer handling. There are exemptions for raw agricultural, commodities, fully wrapped foods that are not potentially hazardous, salad bars and food sold from approved self-service dispensers. This rule expands the current salad bar exemption to include buffets, and clarifies the current exemption for self-service dispensers.

### Buffets and Salad Bars

Under this rule, if a retail food establishment operator provides a buffet or salad bar from which customers serve themselves food for consumption on the retail premises, the buffet or salad bar must meet all of the following conditions:

- The buffet or salad bar must be designed, equipped and managed to prevent contamination and cross-contamination of food.
- One or more employees trained in safe food handling procedures must monitor the buffet or salad bar whenever food is displayed there.
- The buffet or salad bar may not include any potentially hazardous foods, other than salad garnishes or condiments such as shredded cheese, cottage

cheese, or sliced or crumbled hard boiled eggs, which are kept at 41° F. (5° C.) or below.

#### Self-Service Dispensers

Under this rule, the department or its agent may approve self-service food dispensers which adequately protect against food contamination. This rule spells out standards for approving dispensers.

#### Deceptive Food Displays

This rule prohibits deceptive food displays. A retail food establishment may not use any food additive, color additive, color overwrap or light to misrepresent the true appearance, color or quality of food.

#### Food Storage

This rule supplements and clarifies the department's current rules related to food storage, which are designed to prevent contamination of stored food.

Under this rule, food must be stored in packages, containers or wrappings that protect the food from contamination. This requirement does not apply to whole raw fruits and vegetables; unshelled nuts; certain meats stored on clean and sanitized meat hooks or racks; and food that is in the process of being cooled.

This rule generally prohibits a retail food establishment from storing food in water or ice, other than drained ice. There are exceptions for certain foods such as whole raw fruits and vegetables, cut raw vegetables such as carrots or potatoes, tofu, live fish and crustaceans kept in aquariums, and raw chicken or fish held in unopened shipping containers.

#### "Potentially Hazardous" Foods; Safe Temperatures

Under current rules, potentially hazardous foods must be held at safe temperatures. A "potentially hazardous food" means a food such as milk, eggs, meat, poultry or fish, which is in a form capable of supporting rapid and progressive growth of pathogenic or toxigenic microorganisms.

This rule clarifies the current definition of "potentially hazardous food." For example, it includes certain foods of plant origin which are capable of supporting botulism growth, and excludes hard boiled eggs with intact shells. It excludes foods in hermetically sealed packages that are processed to remain commercially sterile without refrigeration.

This rule establishes new "safe temperatures" for food held at a retail food establishment, as follows:

- 140°F. (60°C.) or above for potentially hazardous heated foods.
- 41°F. (5°C.) or below for potentially hazardous refrigerated foods, other than fish or fish products.
- 38°F. (3.4°C.) or below for refrigerated fish or fish products.
- 0° F. (-17°C.) or below for potentially hazardous frozen foods.

#### Food Temperatures Upon Receipt

Under this rule, potentially hazardous refrigerated food must be at a temperature of 41° F. (5° C.) or less when received at a retail food establishment, except that:

- Fluid milk and milk products and shell eggs may be received at a temperature of not more than 45° F. (7° C.).
- Molluscan shell fish may be received at a temperature of not more than 50° F. (10° C.)
- Fish and fish products may be received at a temperature of not more than 38° F. (3.4° C.)

Under this rule:

- Potentially hazardous heated food must be at a temperature of 140°F. (60°C.) when received at a retail food establishment.
- Potentially hazardous frozen food must be at a temperature of 0° F. (-17°C.) or below when received at a retail food establishment.

Under this rule, a retail food establishment must reject the delivery of food if that food does not comply with applicable temperature requirements at the time of delivery, or if it bears evidence of having been kept at unsafe temperatures prior to delivery.

#### Cooling Potentially Hazardous Food

This rule spells out standards for cooling potentially hazardous foods received, prepared or cooked at a retail food establishment. Under this rule:

- Fluid milk and milk products, shell eggs, and molluscan shellfish must be cooled to 41° F. (5° C.) or lower within 4 hours after they are received at a retail food establishment.

- Potentially hazardous food prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna, must be cooled to 41° F. (5° C.) or lower within 4 hours.

- Potentially hazardous food which is cooled after cooking must be cooled from 140° F. (60° C.) to 70° F. (21° C.) within 2 hours, and from 70° F. (21° C.) to 41° F. (5° C.) or lower within 4 hours, so that the overall cooling time does not exceed 6 hours.

#### Cooking Potentially Hazardous Food

This rule modifies current cooking temperature requirements for potentially hazardous cooked food. Under this rule, all parts of the food must be heated to a temperature of at least 145° F. for 15 seconds, except that the rule spells out different cooking temperature requirements for certain foods. Cooking temperature requirements are spelled out in tables, for convenient reference. This rule also incorporates, without change, current rules for thawing frozen food.

#### Reheating Potentially Hazardous Food

Under this rule, if a potentially hazardous food is reheated after being cooked and refrigerated, all parts of that food must be reheated rapidly to at least 165° F. (74° C.), for at least 15 seconds, before that food is served or placed in a hot food holding facility. The time period needed to reach 165° F. (74° C.) may not exceed 2 hours.

Hot food holding facilities such as steam tables, bainmaries or warmers may not be used for the rapid reheating of a potentially hazardous food. If a microwave oven is used to reheat food under par. (a), the operator must cover the food, rotate or stir it, and heat it to a temperature of at least 190° F. (88° C.), and allow it to stand covered for 2 minutes.

#### Reduced Oxygen Packaging

To avoid botulism risks, this rule prohibits a retail food establishment operator from thermally processing hermetically sealed packages of low acid foods. This rule also prohibits a retail food establishment from using reduced oxygen packaging methods unless all of the following conditions are met:

- The department or its agent authorizes that operator to package that food using that method.
- The operator packages that food according to a HACCP plan (see below) which the operator has filed with the department or its agent.
- The packaged food does not include any fish or fish products.
- The food is frozen or has characteristics which prevent the growth of botulism organisms.
  - The food is kept at a temperature of 41° F. (5° C.) or lower.
  - The food package is labeled according to this rule.
- The food is removed from sale within the time period specified under this rule.
  - No person at the retail food establishment contacts the food with his or her bare hands.
- The food is protected from contamination, and processed with sanitary equipment.

- Persons processing or packaging the food are properly trained.

#### HACCP Plans

Under this rule, a retail food establishment operator must have and follow a written HACCP ("hazard analysis and critical control point") plan when using reduced oxygen packaging methods. The HACCP plan must identify all of the following:

- Potential food safety hazards.
- Critical control points in the processing and packaging of that food at which the retail food establishment operator will monitor critical safety variables, such as time, temperature or pH to ensure that critical limits are met.
  - The critical limits which must be met at each critical control point to prevent unacceptable food safety hazards.
  - Procedures which the operator will use to monitor critical variables at each critical control point.
  - Corrective actions which the operator will take whenever a critical limit is violated. Corrective actions must correct the process, evaluate the safety of food processed while the critical limit was violated, and prevent the sale of any food which is unwholesome or adulterated, or which presents an unacceptable food safety hazard.
  - Methods which the operator will use to verify compliance with HACCP procedures.

- HACCP records which the operator will keep.

#### Cleaning and Sanitizing Equipment and Utensils

This rule reorganizes and clarifies current rules related to cleaning and sanitizing equipment and utensils, but does not significantly alter those rules.

#### Mobile Retail Food Establishments

This rule clarifies current rules related to mobile retail food establishments, including water supply requirements for mobile food processors.

#### Reporting Pathogens

Under this rule, a retail food establishment operator must report any lab tests showing that ready-to-eat food contains pathogenic organisms or toxins, unless the food is identified by production lot and the operator has not yet sold any food from that same production lot.

#### Agent Cities: Program Review

Under current rules, the department must inspect a representative sample of retail food establishments licensed by an agent city to determine whether the agent city is effectively administering applicable food safety laws and rules. Under current rules, the department must conduct this audit at least once every 3 years. This rule would require the department to audit at least once every 4 years.

#### Standards Incorporated By Reference

The department has asked the attorney general and the revisor of statutes for permission to incorporate standards by reference in this rule.

### ***Fiscal Estimate***

Currently, retail food establishments are licensed and inspected under s. 97.30, Stats. and ch. ATPC 74 & 75, Wis. Adm. Code.

The revised rule, ch. ATPC 74, Retail Food Establishment: Local Government Regulation, modifies requirements related to local government regulation of retail food establishments. The revised rule, ch. ATPC 74, has no effect on GPR or PRO funds.

The revised rule, ch. ATPC 75, Retail Food Establishments, modifies requirements related to construction and sanitary operation of retail food establishments. The revised rule has no effect on GPR or PRO funds.

The revised rule also clarifies requirements for Hazard Analysis Critical Point Plans and allows the department regulatory flexibility by providing for waivers from construction standards in retail food establishments. These changes in the rule have no effect on GPR or PRO funds.

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

The modifications and additions to ch. ATPC 74, Wis. Adm. Code, Retail Food Establishment: Local Government Regulation and ch. ATPC 75, Retail Food Establishments will not have a fiscal impact on small businesses as defined in s. 227.114 (1)(a), Stats. Approximately 7,100 retail food establishments are currently licensed and inspected by either the department or a local city/county health department that is an agent of the department. The retail food establishments range from small establishments that only sell food, to large, multi-product production and sales establishments which process as well as sell large volumes of food.

The proposed retail food establishment rules update existing requirements and provides guidance for safe food handling and processing practices. Standards are based on established food industry guidelines and are designed to be consistent with other federal, state and local requirements.

The proposed change to ch. ATPC 74 modifies the time frame in which the department must conduct a full survey evaluation of local city/county health departments retail food establishment program.

The impact of this modification would not affect retail food establishments.

Among proposed changes to ATPC 75 changes are:

- re-defines "safe temperature" and "potentially hazardous foods"
- allows regulatory flexibility by providing for waivers from construction standards when the variance is reasonable, necessary and does not compromise the intent of the standard
- requires retail food establishments to label and maintain records about the amount and source of each lot of reprocessed and reconditioned food

- requires that retail food establishments provide thermometers for monitoring temperatures of potentially hazardous foods and of equipment wash water

- requires that consumer self service operations in retail food establishments such as salad bars, be monitored by employees trained in safe food handling procedures.

- clarifies requirements for HACCP ("hazard analysis critical control point") plans for retailers that vacuum package foods

- modifies cooking requirements by listing minimum cooking times

- requires retail food establishments to notify the department when a pathogen or toxin is detected in a ready-to-eat food which they have processed and sold to consumers.

- provides flexibility in requirements for alternate water supplies used at mobile retail food establishments.

The impact of the required additional record keeping to facilitate tracking of reprocessed and reconditioned foods at licensed retail food establishments would be minimal in that most retail food establishments currently maintain this information in their record keeping systems. The records would include:

- a description of the salvaged food received, including source of distressed food and the reprocessing or reconditioning process

- dates and amount of food received into the retail food establishment

The proposed rule would clarify and define record keeping requirements for the required hazard analysis critical control point plans at the approximately 150 licensed retail food establishments that conduct vacuum packaging operations. The records would include:

- a description of, and monitoring system for critical control points

- a description of, and monitoring system for critical limits

- a description of, and monitoring system for corrective actions.

The impact of these requirements would be minimal because retail food establishments must currently maintain this information in their record keeping systems.

The proposed rule would require retail food establishments to retain receipt records of molluscan shellfish for 90 days.

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

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

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Notice is hereby given that pursuant to s. 560.032, Stats., the Department of Development will hold a hearing to consider the repeal and recreation of Ch. DOD 13 Wis. Adm. Code, which provides for a volume cap on private activity bonds at the following place and time: **Department of Development, Room 908, 123 West Washington Avenue, Madison, WI, on October 12, 1995 at 10:00 a.m.**

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

Section 560.032, Stats., requires the Department of Development to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This order complies with this statutory mandate by establishing a volume cap allocation system for calendar year 1996.

Without this order, the availability of the annual volume cap for Wisconsin would be uncertain.

The private activity bonding available under the volume cap in Wisconsin during 1995 is approximately \$254 million. The volume cap for 1996 is based upon Wisconsin's 1995 population and should be slightly more than the cap available in 1995. Of the total, the rules provide under this order that \$105 million will be allocated to the Wisconsin Housing and Economic Development Authority (WHEDA), \$10 million will be allocated to the State Building Commission, \$25 million will be allocated to the Department of Development to be distributed to local issuers for multi-family housing and the remainder, approximately \$114 million, will be allocated to the Department of Development to be distributed to local issuers for a variety of economic development projects.

On September 1, any unused volume cap gets put into one category in the Department of Development and may be used for any of the purposes described.

This order is substantially the same as the rule currently in effect for 1995 with the following exceptions:

1. The allocation for multi-family housing is reduced from \$45 million to \$25 million.

2. The Department will charge a fee to each issuer equal to three one hundredths of one percent of the amount of bonds sold by that issuer during the calendar year to recover the cost of the Department's service.

3. The language in s. DOD 13.03, is changed from the 1995 version to make it clear that any WHEDA or Building Commission allocation for which bonds have not been issued by September 1 shall be transferred to the Department of Development.

Since the allocation was created for multi-family housing, there has been an average of \$20 million requested each year for multi-family housing. After September 1 in each year, under either the proposed or current rules, all of the remaining allocation goes into one general allocation administered by the Department of Development and is available for all eligible projects including WHEDA and multi-family housing projects.

Since any unused allocation for multi-family housing is not transferred to the Department allocation until September 1, for many potential users there is insufficient time remaining to actually sell bonds prior to the close of the calendar year as required by the applicable federal law and Department administrative rule. The changes will make it more likely that Wisconsin takes advantage of the entire allocation made available to it during each calendar year.

The provision for the fee will have the businesses which make use of volume cap pay the state's cost for administration of the volume cap program.

Like the 1995 rule, the proposed rule provides for an allocation formula that will address the bonding needs of the state and local issuing authorities. It will also provide for the efficient and effective use of the state's annual volume cap allocation, and thus, will provide all eligible issuers with the opportunity to obtain an allocation. Finally, it provides for flexibility in making adjustments to the formula as needed.

### **Initial Regulatory Flexibility Analysis**

Notice is hereby given that pursuant to s. 227.114, Stats., the proposed rules should have a minimal, if any, impact on small business. The initial regulatory flexibility analysis required by s. 227.17(3)(f), Stats., is as follows:

a. Types of businesses affected: The proposed rule does not alter the ability of small businesses to make use of private activity bonding.

b. Description of reporting and bookkeeping procedures required: The proposed rule produces no changes to reporting or bookkeeping requirements.

c. Description of professional skills required: The proposed rule produces no changes to the professional skills required.

### **Fiscal Estimate**

There is not likely to be any change in the workload of either the Department of Development or local governments. The fee to be charged under the proposed rule will produce approximately \$40,000 for the Department which approximates its cost of administering the volume cap program. The fees are likely to be paid primarily by the businesses that are the beneficiaries of the bond allocations and rarely by the local governments that issue the resolutions to authorize the bonding, so there should be minimal fiscal effect upon local government.

### **Contact Person**

Dennis Fay, General Counsel, 608/266-6747.

### **Text of Rule**

Pursuant to the authority vested in the Department of Development by ss. 560.02 (4) and 560.032, Stats., the Department of Development hereby repeals and recreates rules interpreting s. 560.032, Stats., as follows:

**SECTION 1.** Chapter DOD 13 is repealed and re-created to read:

## **Chapter DOD 13 ALLOCATION OF VOLUME CAP ON PRIVATE ACTIVITY BONDS**

**DOD 13.01 PURPOSE.** The purpose of this chapter is to set forth a procedure for the annual allocation, pursuant to s. 560.032, Stats., of the amount of tax-exempt "private activity bonds" that may be issued by Wisconsin issuers pursuant to the internal revenue code of 1986, 26 USC s. 146.

**DOD 13.02 DEFINITIONS.** In this chapter:

(1) "Carryforward purpose" has the meaning assigned to that term in 26 U.S.C. s. 146 (f) (5).

(2) "Code" means the internal revenue code of 1986, as amended.

(3) "Department" means the department of development.

(4) "Issuer" means any county, city, town, village or other public body described in s. 67.01 (5), Stats., or agency, authority or political sub-division of the state of Wisconsin, including any public corporation or commission established by or on behalf of any of these entities, that is empowered to borrow money.

(5) "Issuer-owned project bonds" means bonds issued for a facility that is owned by an issuer, would be treated as owned by the issuer pursuant to 26 USC s. 142 (b) (1) (B) and is described in 26 USC s. 142 (a) (1) to (11). It does not include single-family housing bonds but does include multi-family housing bonds.

(6) "Multi-family housing bonds" means bonds issued for a qualified residential rental project, as defined in 26 USC s. 142 (d) (1).

(7) "Other private activity bonds" means private activity bonds other than those certified to the department as issuer-owned project bonds, multi-family housing bonds or single-family housing bonds.

(8) "Private activity bonds" has the meaning assigned to that term in 26 USC s. 141 (a).

(9) "Qualified redevelopment bonds" has the meaning assigned to that term in 26 USC s. 144 (c).

(10) "Single-family housing bonds" means qualified mortgage bonds as defined in 26 USC s. 143 (a).

(11) "Unified volume cap" means the annual state ceiling for the issuance of private activity bonds applicable to the state of Wisconsin.

NOTE: The "unified volume cap" is determined according to 26 U.S.C. s. 146 (d) (1) and (2). It is an amount equal to the prior year census estimate of the resident population of the state of Wisconsin released by the bureau of census multiplied by \$50 per person.

**DOD 13.03 INITIAL ALLOCATION TO THE WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY.** There is allocated annually to the Wisconsin Housing and economic development authority \$105 million of the unified volume cap to be utilized for those purposes that the authority in its discretion shall determine are needed. The authority shall certify to the department promptly after issuance of any private activity bonds the amount of the bonds issued pursuant to this allocation. Any amount of the allocation for which bonds have not been issued by September 1 shall be automatically transferred to the department, to be further allocated as provided in s. DOD 13.06. The authority shall certify to the department, on September 1, the amount of allocation for which bonds have not been issued.

**DOD 13.04 ALLOCATION TO THE WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY.** Any application by the Wisconsin housing and economic development authority for an allocation under s. DOD 13.06 may be made no earlier than September 1 and shall contain a certification by the issuer that the allocation under s. DOD 13.03 and any unused allocation from a prior year carried forward and available to the issuer for that purpose has been or, as part of the bond issuance, will be fully utilized. If the allocation is for single-family housing bonds, the application shall contain a separate certification from the secretary of the department approving the bond issue. The secretary of the department shall provide the certification only after being advised of the current status of the allocation to the department made under s. DOD 13.06 (1) (a) and after giving due consideration to alternative uses of the allocation. The certification shall state that the secretary of the department has decided that the utilization of the allocation for the issue of single-family housing bonds is in the best interests of the people of the state of Wisconsin.

**DOD 13.05 BUILDING COMMISSION ALLOCATION.** There is allocated annually to the building commission \$10 million of the unified volume cap to be further allocated by the building commission and utilized

for any private activity bonds as the building commission in its discretion shall determine are needed. Any amount of the allocation for which bonds have not been issued by September 1 shall be automatically transferred to the department to be further allocated as provided in s. DOD 13.06. The building commission shall promptly certify to the department, on September 1, the amount of unused allocation.

**DOD 13.06 DEPARTMENT ALLOCATION AND ALLOCATION PROCESS.** There is allocated to the department on behalf of the issuers the remainder of the annual unified volume cap, to be further allocated as follows:

(1) (a) Prior to September 1, the allocation to the department shall be set aside and accounted for in 2 categories, as follows:

1. Twenty-five million dollars for multi-family housing bonds. An allocation made out of this subdivision may not be for more than \$6 million and shall meet the following requirements:

a. At least 10% of the housing units shall be barrier free as defined by United States department of housing and urban development rules.

b. Any firm involved in construction of a project for which an allocation is requested shall meet applicable affirmative action plan requirements.

c. A project for which an allocation is requested prior to September 1 shall either be new construction or an adaptive reuse of an existing building unless at least 95 percent of the completed project units are to be occupied or held for occupancy during the qualified project period as defined in 26 USC Section 142 (d) (2) by individuals or families whose income is 50 percent or less of county median gross income, determined in a manner consistent with Section 8 of the United States Housing Act of 1937, with adjustments for family size.

2. The remainder, including any amount that has been surrendered or terminated pursuant to subs. (7) and (8), for issuer-owned project bonds, qualified redevelopment bonds and other private activity bonds, but not for single-family housing bonds.

(b) On and after September 1, the allocation to the department shall be aggregated into a single category and available for issuer-owned project bonds, qualified redevelopment bonds, multi-family housing bonds, single-family housing bonds issued by the Wisconsin housing and economic development authority and other private activity bonds.

(2) (a) Any issuer, or any person acting on its behalf, may make an application to the department for an allocation of the unified volume cap. Each application shall provide:

1. Evidence that official action has been taken by the issuer with respect to the issuance of the obligation which, for obligations issued pursuant to s. 66.521, Stats., shall be the initial resolution previously filed with the department with respect to the obligation, and

2. A written, signed opinion of the issuer's legal counsel, or of bond counsel, to the effect that a reasonable basis exists to conclude that the obligations would be private activity bonds subject to the unified volume cap and indicating whether the bonds would be issuer-owned project bonds, qualified redevelopment bonds, multi-family housing bonds or other private activity bonds.

(b) Any application with respect to a federally-assisted project shall also contain a statement that the application is for a federally-assisted project and shall include a copy of:

1. The application, on the form prescribed by the United States department of housing and urban development, for an urban development action grant pursuant to 42. USC s. 5318 with respect to the project, or

2. An application, on the form prescribed by the respective federal agency, for insurance or guarantee in connection with the bonds issued by the federal housing administration, the government national mortgage association of the department of housing and urban development pursuant to the national housing act, as amended, or the United States housing act of 1937, as amended.

(c) Any application for other private activity bonding shall also contain the number of jobs created by the project for which other private activity bonding is being requested, the total dollar investment in the project, the taxable real property created by the project, the unemployment rate in the county in which the project is located and the average income of persons residing in the county in which the project is located in such form as the department shall prescribe.

(3) Upon receipt of any application, the department shall record it by date and time of receipt. The department shall promptly certify the portion of the

relevant category of its allocation of the unified volume cap that has not been allocated to an issuer and shall allocate the available portion of the amount requested to the issuer. The allocation shall be valid for a period equal to the lesser of 90 calendar days or, in the case of an application for a federally-assisted project, 120 calendar days or the remainder of the calendar year. The amount of the allocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain allocations are subject to earlier termination pursuant to sub. (8). Any allocation received under this section shall be valid only with respect to bonds issued in the same calendar year. Any allocations for a carryforward purpose shall be obtained under the provisions of s. DOD 13.07.

(4) (a) In making an allocation, except allocations made for multi-family housing bonds, allocations for other private activity bonds after one-half of the initial sub. (1) (a) 2. allocation has been allocated and allocations of \$5 million or more made under sub. (10), the department shall only consider compliance with the requirements of sub. (2), the dollar amount of the request and the portion of the relevant category of its allocation of the unified volume cap that has not been allocated to an issuer. When making an allocation for a multi-family housing bond, the department shall also consider the requirements in sub. (1) (a) 1. a., b., and c. When making allocation for other private activity bonds after one-half of the initial sub. (1) (a) 2. allocation has been allocated, the department shall determine that a project proposed for other private activity bonding receives a score of a least 12 based upon standards contained in pars. (b) to (f).

(b) A project that is expected to create a net increase of jobs within the state shall receive up to 5 points under this paragraph as follows:

1. For 2 or fewer jobs for each \$500,000 allocation requested, one point.
2. For 3 to 6 jobs for each \$500,000 of allocation requested, 2 points.
3. For 7 to 10 jobs for each \$500,000 of allocation requested, 3 points.
4. For 11 to 14 jobs for each \$500,000 of allocation requested, 4 points.
5. For 15 or more jobs for each \$500,000 of allocation requested, 5 points.

(c) A project in which there is expected to be a total investment equal to or greater than the allocation requested shall receive up to 5 points under this paragraph as follows:

1. For a total investment of 100% or less of the allocation request, one point.
2. For a total investment of 101 to 105% of the allocation request, 2 points.
3. For a total investment of 106 to 110% of the allocation request, 3 points.
4. For a total investment of 111 to 115% of the allocation request, 4 points.
5. For a total investment of 116% or more of the allocation request, 5 points.

(d) A project in which there is expected to be taxable real or personal property shall receive up to 5 points under this paragraph as follows:

1. For a project which creates taxable property equal to 25% or less of the allocation request, one point.
2. For a project which creates taxable property of 26 to 50% of the allocation request, 2 points.
3. For a project which creates taxable property of 51 to 75% of the allocation request, 3 points.
4. For a project which creates taxable property of 76 to 100% of the allocation request, 4 points.
5. For a project that creates taxable property in excess of 100% of the allocation request, 5 points.

(e) A project that is located in a county with significant unemployment shall receive up to 5 point under this paragraph as follows:

1. If in a county with an unemployment rate of 2 percentage points or more below the statewide average, one point.
2. If in a county with an unemployment rate of less than 2 percentage points and not less than one percentage point below the statewide average, 2 points.
3. If in a county with an unemployment rate of less than 1 percentage point below and not more than the statewide average, 3 points.
4. If located in a county with an unemployment rate above the statewide average and not more than 1 percentage point above the statewide average, 4 points.



5. If located in a county with an unemployment rate greater than one percentage point above the statewide average, 5 points.

(f) A project that is located in a county with modest average per capita income shall receive up to 5 points under this paragraph as follows:

1. If in a county with average per capita income that is 5% or more above the statewide average per capita income, one point.

2. If in a county with average per capita income of not more than 5 and not less than 2% above the statewide average, 2 points.

3. If in a county with average per capita income that is less than 2 percentage points above and greater than the statewide average per capita income, 3 points.

4. If in a county with average per capita income of not more than the statewide average and not more than one percentage point below the statewide average, 4 points.

5. If in a county with average per capita income of more than one percentage point below the statewide average per capita, 5 points.

(g) The information required under sub. (2)(c) to respond to pars. (b) to (f) shall be provided in such form as the department shall require.

(5) (a) Each issuer, or a person acting on its behalf, shall notify the department in writing as to the amount of obligations issued pursuant to the allocation on or before 5 business days after the issuance of the bonds and as part of the notification, make a payment by cash or cashier's check to the department equal to 3—one hundredths of one percent of the amount of the obligations issued pursuant to the allocation. In the case of a federally-assisted project, the notification shall include evidence of the award of:

1. An urban development action grant, or

2. Insurance, guarantee or a grant in connection with the bonds issued by the federal housing administration, the government national mortgage association or the department of housing and urban development pursuant to the national housing act, as amended, or the United States housing act of 1937, as amended, with respect to the project.

(b) Upon notification and payment under par. (a), the allocation in the amount issued shall, subject to par. (c), become permanent and irrevocable.

(c) The department shall treat any notice received pursuant to this subsection more than 5 business days after the issuance of the bonds as a reapplication pursuant to sub. (6). If an allocation is certified to the issuer pursuant to a reapplication, this subsection shall be deemed to have been complied with as though the notice of issuance had been timely received.

(6) All applications shall be processed in the order received by the department. An application shall be made only within 90 calendar days or, for a federally-assisted project, 120 calendar days, prior to the planned issuance of the bond. Any reapplication shall be effective only upon the day on which the previous allocation expires, except that a notice of issuance which is treated as a reapplication pursuant to sub. (5)(c) shall be effective upon receipt by the department.

(7) An issuer, or a person acting on its behalf, may surrender all or any part of its rights to a particular allocation, in whole or in part, under any section of this chapter prior to its expiration. If this event occurs, the allocation shall expire. An issuer that has received an allocation for a federally-assisted project, or a person acting on its behalf, may alternatively surrender only its right to an extended allocation period of 30 days, whereupon the allocation shall be treated as if it were not for a federally-assisted project.

(8) (a) Unless the department has received notice of the issuance of bonds pursuant to sub. (5) or a deposit of cash or a certified or cashier's check in an amount equal to .5 percent of the allocation requested, if prior to October 1, and one percent if requested on October 1 or thereafter, any allocation shall terminate on the earlier of 30 days after the allocation is made or December 1. Unless the department has received a deposit of cash or certified cashier's check in the required amount, no allocation may be made after December 1. No additional deposit may be required with respect to an allocation made upon reapplication if the required deposit has already been made, and not refunded, with respect to the project.

(b) 1. Subject to subd. 2., the deposit shall be refunded, without interest, if prior to January 1 of the succeeding year bonds are issued by the issuer pursuant to the allocation or to an allocation made upon reapplication.

2. A ratable portion of the deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds issued may not be refunded.

3. Any deposits, or portions of the deposits, which have not become refundable pursuant to subds. 1 and 2 as of the fifth working day of the

succeeding year shall vest in the state of Wisconsin to be used as provided by law.

4. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonable require, is furnished to the department.

(9) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be \$1,000 for each \$5 million of allocation or portion of \$5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(10) Any allocation pursuant to this section in excess of \$5 million other than an allocation for single-family or multi-family housing bonds shall be provisional, and may not be used until approved by the secretary of the department. Any application by an issuer for an allocation shall contain a certification by the issuer that any allocation under s. DOD 13.03 or 13.05 available to the issuer for the bond issue has been, or as part of the bond issuance, will fully utilized. The secretary's approval shall not be effective unless prior notice has been given and opportunity to comment in writing and at a public hearing has been provided. Notice shall be given by publication in the official state newspaper and by mail to any person who has made a request of the department to receive the notice. The approval shall state that, after consideration of any comments received and after being advised of the current status of the allocation to the department made under sub. (1) and after giving due consideration to alternative uses of such allocation, the secretary has decided that the utilization of the allocation for the bond issue is in the best interests of the people of the state of Wisconsin. The allocation shall be revoked, and any deposit refunded, unless the secretary approves in writing the allocation within 14 calendar days after the public hearing.

**DOD 13.07 CARRYFORWARD ALLOCATION PROCESS.** (1) (a) On the department's next to last working day of the year the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers and shall then make allocations only for carryforward purposes. No allocation for carryforward purposes may be made pursuant to this subsection prior to that date. Any requests shall be considered by the department in the order received, and a request shall be deemed not to be received if an allocation has been made and not surrendered with respect to the same project or portion of the project. An allocation shall be made to any issuer that has:

1. Requested an allocation for a carryforward purpose,

2. Provided the department with information as is requested by the department and approved by the department as showing that an effective election can be made by the issuer under the federal tax reform act of 1986 and any applicable income tax regulations promulgated pursuant to 26 USC s. 146, and

3. Paid to the order of the department a deposit of immediately available funds or a certified or cashier's check in an amount equal to one percent of the amount of the allocation requested.

(b) The deposit paid under par. (a) 3. shall be refunded, without interest, if bonds are issued by the issuer on or before December 31 of the third succeeding year, for the carryforward purpose indicated in the application for the allocation, provided that an amount of a deposit equal to one percent of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonable require, is furnished to the department.

(c) Any deposits, under s. DOD 13.06 (8) shall not be credited toward the deposit under this subsection.

(d) Any deposits or portions of the deposits which have not become refundable pursuant to par. (b) as of January 1 of the fourth succeeding year shall vest in the state of Wisconsin to be used as provided by law.

(e) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be \$1,000 for each \$5 million of allocation or portion of \$5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(2) On the department's last working day of the year, the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers and for which it has not received requests for carryforward purposes. The department shall assign that portion to the Wisconsin housing and economic development authority with direction to

the authority to make an election, pursuant to any applicable income tax regulations promulgated pursuant to 26 USC s. 146, to carry forward the portion for any carryforward purpose.

**DOD 13.08 DEPARTMENT CERTIFICATION.** At the request of an issuer that has complied with all of the provisions of this chapter and that received an allocation, or of any person acting on its behalf, the secretary of the department, or designee, shall certify that the bond issue meets the requirements of 26 USC s. 146.

**DOD 13.09 DESIGNATION OF INTEREST EARNED.** Any interest earned upon investment of amounts deposited under this chapter shall inure to the state of Wisconsin for the benefit of the people of the state of Wisconsin, to be used as provided by law.

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## **Notice of Hearings**

### **Health & Social Services**

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

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Notice is hereby given that pursuant to s. 146.50(6m), (8m) and (13)(b) and (c), Stats., the Department of Health and Social Services will hold public hearings to consider the repeal and recreation of ss. HSS 110.01 to 110.10, Wis. Adm. Code, relating to the licensing of ambulance service providers, licensing of emergency medical technicians—basic, and certification of emergency medical technicians—basic to perform defibrillation and, by separate order, the creation of S. HSS 110.045, Wis. Adm. Code, relating to qualifications of medical directors of ambulance services that provide services beyond life support and the emergency rules now in effect on the same subject.

### **Hearing Information**

<b>October 16, 1995</b> <b>Monday</b> <b>From 10:00 a.m. to noon</b>	<b>Training Room</b> <b>Dept. of Justice Crime Lab</b> <b>7100 Steward Ave.</b> <b>Wausau, WI</b>
<b>October 18, 1995</b> <b>Wednesday</b> <b>From 9:00 a.m. to noon</b>	<b>Room 291</b> <b>1414 E. Washington Ave.</b> <b>Madison, WI</b>

### **Analysis Prepared by the Department of Health & Social Services**

Actions that emergency medical technicians (EMTs) are authorized to carry out in providing emergency medical care in prehospital and interfacility settings are specified in s. 146.50 (6m), Stats. A recent session law, 1993 Wis. Act 251, repealed that statute effective January 1, 1996 and directed the Department to replace it with rules that specify what those actions are. The Department has separate chapters of rules for licensing EMTs basic, EMTs—intermediate and EMTs paramedic. This order amends ch. HSS 110, which includes rules for licensing EMTs—basic, to specify the actions that EMTs—basic may carry out.

This order also generally updates ss. HSS 110.01 to 110.10, rules for licensing ambulance service providers and certifying EMTs—basic to perform defibrillation, as well as for licensing EMTs—basic. The updating is being done on recommendation of the new Emergency Medical Services (EMS) Board under s. 146.58, Stats., which is advisory to the Department. The rules are amended to incorporate current medical practices and training requirements and to clarify, correct and improve rule language on the basis of experience with the rules that went into effect in 1988 and 1990.

The updating has involved modifying some current definitions and creating new definitions to reflect current practice, and merging defibrillation—related definitions with the other definitions in s. HSS 110.03; modifying staffing requirements to ensure that individuals providing patient care are always properly trained; eliminating specific references to organizations, curricula, equipment, and skills at some places in the rules to permit quick adjustments when there are changes in medical practice; deleting or modifying some language based on experience in implementing the current rules; and renumbering some of the rules to accommodate the

changes and to bring this chapter into greater consistency with the other chapters of Emergency Medical Services Program rules.

#### HSS 110.045 — Qualifications of Ambulance Service Medical Directors

Ambulance service providers are required under rules of the Department to have medical directors if they use emergency medical technicians (EMTs)—intermediate or EMTs paramedic for the delivery of emergency care or if they use EMTs—basic qualified under s. HSS 110.10 to administer defibrillation or under s. HSS 110.11 to use advanced airways.

There are about 450 ambulance service providers in Wisconsin. About 400 of them have medical directors.

Section 146.50(8m), Stats., provides that beginning July 1, 1995 no ambulance service provider offering services beyond basic life support may employ, contract with or use the services of a physician to act as medical director unless the physician is qualified under rules promulgated by the Department. These are the permanent rules to replace emergency rules that went into effect on July 1, 1995.

The rules require that a physician serving as medical director be licensed under ch. 448, Stats., as a physician to practice medicine and surgery, and have read and have acknowledged, in writing, having read a manual for medical directors developed by the Department.

These qualifications for ambulance service medical directors are intentionally minimal. In some areas of the state there are few physicians which has meant that some ambulance service providers have appointed a general practitioner or a family practitioner to be medical director. If the Department through this order were to establish additional qualifications for medical directors at this time, some local ambulance service providers would not be able to find a physician to serve as medical director and could be forced out of business, leaving those areas of the state without emergency medical services beyond basic life support services. This is what the Department has been told by several physicians, with confirmation by the emergency Medical Services (EMS) program's Physicians' Advisory Committee and the new Emergency Medical Services Board (the EMS Advisory Board) under s. 146.58, Stats.

### **Contact Person**

To find out more about the hearings or to request a copy of the rules, write or phone:

Marilyn Rhode  
EMS Section  
Bureau of Public Health  
P.O. Box 309  
Madison, WI 53707-0309  
(608) 266-1568 or,  
if you are hearing impaired,  
(608) 266-1511 (TDD)

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

Written comments on the proposed rules received at the above address no later than **October 20, 1995** will receive the same consideration as testimony presented at the hearings.

### **Fiscal Estimate**

The revision of ch. HSS 110 will not affect the expenditures or revenues of state government or local governments. It will not add to the costs of Department administration of licensing and certification activities nor will it add to the costs of the 81 local government ambulance service providers or the one state government ambulance service provider. The rule making order adds to ch. HSS 110 the list of actions that EMTs—basic are authorized to carry out, which until January 1, 1996 is in s. 146.50(6m), Stats., and generally updates ch. HSS 110.

The creation of s. HSS 110.045 will not affect the expenditures or revenues of state government or local governments. The only qualifications for a medical director that are required by the rules is that the person be licensed as a physician and have read the manual for medical directors developed by the Department. Eighty-one of the ambulance services are

operated by local governments and one by state government. All medical directors already meet the qualification of being a Wisconsin-licensed physician. The manual is being developed by the Department with current resources and the help of physician advisers.

### **Initial Regulatory Flexibility Analysis**

These rules will directly affect ambulance service providers, the medical directors of ambulance services that provide services beyond basic life support, persons licensed as emergency medical technicians-basic (EMTs-basic) or applying for EMT-basic licensure and EMTs-basic certified to perform defibrillation or applying for certification to perform defibrillation.

There are some 450 ambulance service providers in Wisconsin. Only about 25 of them are small businesses as "small business" is defined in s. 227.114(1)(a), Stats.

The rule changes involve moving authorized actions of EMTs-basic from s. 146.50, Stats., to the rules and generally updating the rules, and adding minimal qualifications for medical directors of ambulance services that provide services beyond basic life support. There are no new reporting or bookkeeping requirements for ambulance service providers, and no new professional skills are required of ambulance service providers in order to comply with the revised rules.

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## **Notice of Hearing**

### **Health and Social Services** **(Economic Assistance,** **Chs. HSS 200--)**

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Notice is hereby given that, pursuant to ss. 49.19 (11) (b) and 49.50 (2), Stats., the Department of Health and Social Services will hold a public hearing to consider the repeal and recreation of s. HSS 201.055 (7), an emergency rule now in effect relating to operation of a program of emergency assistance for low-income families under the Aid to Families with Dependent Children (AFDC) program.

### **Hearing Information**

The public hearing will be held:  
**October 13, 1995**                     **Conference room within Rm. 218**  
**Friday**                                 **State Office Building**  
**Beginning at 10 a.m.**               **1 W. Wilson St.**  
  **Madison, WI**

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

### **Analysis Prepared by the Dept. of Health & Social Services**

The Department, on April 4, 1995, published emergency rules for operation of a program of emergency financial assistance under s. 49.19 (11) (b), Stats. That program is for families receiving Aid to Families with Dependent Children (AFDC) and other low-income families with a child or children that have emergency needs due to fire, flood, a natural disaster, homelessness or an energy crisis.

Although s. 49.19 (11) (b), Stats., at the time specified that the emergency assistance payment amount per family member was not to exceed \$150 except when the emergency was due to an energy crisis, the Department's emergency rules established the maximum at \$96 per family member because only enough funding was available in the sum certain appropriation to provide grants at that level to all eligible families.

The State Budget for 1995-97, 1995 Wis. Act 27 set the appropriation for this program at a level that enables the Department to increase the benefit to \$150 per family member. Act 27 also amended s. 49.19 (11) (b) (intro.), Stats., to delete the maximum payment amount specified in the statute and to direct the Department to establish that amount on the basis of available funds by publishing notice of it in the *Wisconsin Administrative Register*.

The new order amended the Department's emergency rules for the program, effective September 1, 1995, to delete the reference to a specific maximum payment amount per family member and to refer the reader to the *Wisconsin Administrative Register* for that amount. The Department published a notice in the August 31, 1995, issue of the *Wisconsin*

*Administrative Register* that, effective September 1, 1995, the maximum emergency assistance payment amount per family member would be \$150 except in cases of energy crisis.

The Department published this rule change by emergency order so that its rules for operation of the emergency assistance program would not be in conflict with recent legislative action that amended s. 49.19 (11) (b) (intro.), Stats., and to increase the financial assistance made available to needy families experiencing an emergency due to lack of housing or to fire, flood or other natural disaster.

### **Copies of Rules and Contact Person**

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

Mike McKenzie, (608) 261-6971 or,  
if you are hearing impaired, (608) 267-9880 (TDD)  
Division of Economic Support  
P.O. Box 7935  
Madison, WI 53707

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

### **Written Comments**

Written comments on the proposed rules received by Mike McKenzie at the above address no later than **October 20, 1995** will receive the same consideration as testimony presented at the hearing.

### **Fiscal Estimate**

Costs for the AFDC emergency assistance program were included in the 1995-1997 biennial Budget Act, 1995 Wis. Act 27. There are no additional costs for state government or local governments from promulgation of these rules.

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## **Notice of Hearing**

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

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Notice is hereby given that pursuant to ss. 29.085, 29.174 (3), 227.11 (2) (a) and 227.24, Stats., interpreting ss. 29.085, 29.102, 29.174 (1) and (2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-26-95 (E), relating to the 1995 migratory game bird season.

### **Analysis**

This emergency order took effect on September 1, 1995. The significant regulations are:

**Ducks.** The state is divided into two zones each with 50-day seasons. The season south of U.S. Highway 10 begins at noon September 30 and continues through October 8 and, following an 8-day closed period, reopens October 17 and continues through November 26. The season north of U.S. Highway 10 begins at noon September 30 and continues through October 8 and following a 5-day closed period, reopens October 14 and continues through November 23. The daily bag in both zones is 5 ducks, including four mallards and one canvasback for the entire 50 days in both zones.

**Canada Geese.** The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, New Auburn, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone - 65 days; Horicon Zone - 80 days; Exterior Zone - 86 days; and Mississippi River Subzone - 70 and 71 days. The Burnett County and New Auburn subzones are closed to Canada goose hunting.

Bismuth-tin shot is legalized for migratory bird hunting. Permits telephone reporting for Canada goose hunting.

### **Hearing Information**

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

October 16, 1995  
Monday  
At 1:00 p.m.

Room 317, GEF #2  
101 South Webster St.  
Madison, WI

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

### **Written Comments & Contact Person**

Written comments on the emergency rule may be submitted to:

Mr. Jon Bergquist  
Bureau of Wildlife Management  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **October 16, 1995**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [WM-26-95 (E)] may be obtained from Mr. Bergquist.

### **Fiscal Estimate**

This rule package establishes the seasons and bag limits for waterfowl hunting. The daily duck bag limit is modified. Bismuth shot is made legal for migratory bird hunting. The proposed changes will not result in any significant changes in spending or revenue.

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## **Notice of Hearing**

### **Natural Resources**

### **(Environmental Protection--**

### **WPDES, Chs. NR 200--)**

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Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., interpreting ss. 147.04 (5) and 147.25, Stats., the Department of Natural Resources will hold a public hearing on the repeal and recreation of s. NR 212.40 table 1-c and the creation of s. NR 212.40 (4) (d), Wis. Adm. Code, relating to water quality standards for the Fox River in Green Bay, Wisconsin.

### **Analysis**

The proposed rule will reduce the assimilative capacity of the Fox River by 2,500 pounds of BOD<sub>5</sub> and remove that capacity from Procter and Gamble's baseline load. This will allow the McDonald Lumber Company to build a marina in Green Bay on the east shore of the mouth of the Fox River. Procter and Gamble has volunteered to give up the baseline allocation.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

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

October 16, 1995  
Monday  
At 10:30 a.m.

Room 203  
Green Bay City Hall  
100 North Jefferson St.  
Green Bay, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bonnie Zitske at (608) 266-5228 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments & Contact People**

Written comments on the proposed rule may be submitted to:

Mr. Dale Patterson  
Bureau of Water Resources  
P.O. Box 7921  
MADISON, WI 53707

Written comments must be received no later than **October 25, 1995**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WR-44-95] and fiscal estimate may be obtained from:

Ms. Bonnie Zitske  
Bureau of Water Resources  
P.O. Box 7921  
MADISON, WI 53707

### **Fiscal Estimate**

There are no fiscal impacts to state or local government from this proposal.

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## **Notice of Hearings**

### **Natural Resources**

### **(Environmental Protection--**

### **Air Pollution Control, Chs. NR 400--)**

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Notice is hereby given that pursuant to ss. 144.31 (1) (e), (f) and (r), 144.393 (2) (a) and 144.399 (7), Stats., interpreting ss. 144.30 (12) (c), 144.31 (1) (f), (q) and (r), 144.393 (2) (a) and 144.399 (7), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 408 and the creation of s. NR 410.06, Wis. Adm. Code, relating to emissions offsets in nonattainment area major source permits.

### **Analysis**

The proposed rule represents a revision of a proposed rule on which the Department held public hearings in June, 1994. Changes have been made to the earlier version to reflect public comments received on that proposed rule as well as recent legislation authorizing the Department to assess a fee for holding certified emission reductions. The current proposed rule will:

1. Provide an incentive for sources to certify emission reductions with the Department. A source may use emissions data from the 60 months prior to requesting certification from the Department to calculate total emission reduction credits. Failure to certify emissions reductions in a timely fashion will give the source fewer high emission months in the calculations and may reduce the emission reduction credits that can be certified to the Department.

2. Provide that anyone may hold certified emission reductions, but an escalating annual fee on certified emission reductions not generated by changes in production methods or through other pollution prevention activities. The fee is waived for certified emission reductions that were generated by a positive action on the part of the source. This supports the Department's efforts to encourage voluntary pollution prevention activities. This addresses two concerns raised on the earlier draft of this rule: hoarding and inadvertently creating an incentive to shutdown a facility just to generate emission reduction credits. The fee is assessed at the rate of \$35 per ton in the first calendar year; in each subsequent year, the rate is double the previous year's rate.

3. Provide that the Department waive the fee for the first two years for all certified emission reductions and waive the fee permanently for certified emission reductions generated by a pollution prevention activity.

4. Provide that certified emission reductions may be returned to the Department to avoid paying fees. Those certified emission reductions that revert to the Department shall be distributed on a first-come, first-served matching basis to sources seeking offsets. The matching ratio is one state credit to one privately secured credit if the new source is locating in an existing industrial or commercial site and one state credit to three privately secured credits in all other areas.

5. Provide that the Department maintain a registry of certified emission reductions and make it available to the public.

6. Provide clear rules for determining how proposed and adopted state and federal regulations affect the quantity of certified emission reductions and the amount that may be used as offsets in construction permits. This is required to ensure that the reductions are surplus.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

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

**October 17, 1995**  
**Tuesday**  
**At 11:00 a.m.**

**Auditorium**  
**Public Ives Grove Complex**  
**14200 Washington Ave.**  
**Sturtevant, WI**

**October 17, 1995**  
**Tuesday**  
**At 2:30 p.m.**

**Auditorium**  
**Havenwoods State Forest**  
**6141 N. Hopkins**  
**Milwaukee, 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 Dennis Koepke at (608) 264-8868 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

Written comments on the proposed rule may be submitted to:

Mr. Dennis Koepke  
Bureau of Air Management  
P.O. Box 7921  
MADISON, WI 53707

Written comments must be received no later than **October 23, 1995**, and will have the same weight and effect as oral statements presented at the hearings.

### **Copies of Rule and Fiscal Estimate**

A copy of proposed rule [AM-9-94] and its fiscal estimate may be obtained from:

Proposed Rules, (608) 266-7718  
FAX: (608) 267-0560  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707

### **Fiscal Estimate**

The proposed revisions to ch. NR 408, Wis. Adm. Code, titled, "Nonattainment Area Major Source Permits," will establish a formal policy for the certification, use, and trading of emission reduction credits for use as offsets for new and modified major source permits in nonattainment areas. While the use of offsets is already required, the revisions will create a fee on certain certified emission reductions that are held for long periods of time. The fee escalates over time. This fee has the potential to generate small amounts of revenue for the Department; however, the Department assumes that no certified emission reductions will be held for the required number of years to trip the fee. Therefore, the Department assumes that no fee revenue will be collected. The objective of the fee is to discourage hoarding of certified emission reduction credits. The objective is met when emission reduction credits are used to facilitate economic change in nonattainment areas. Once used, no fees are assessed for holding these shutdown-generated emission reduction credits. In addition, the proposed rule waives the fee for the first two years to accommodate normal marketing considerations.

The Department estimates that the fiscal impact to local governments will be zero, unless local governments choose to voluntarily participate in the market for certified emission reductions and fail to sell or transfer emission reduction credits within the specified time limits.

Staffing needs for this action are not expected to exceed current efforts.

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## **Notice of Hearing**

### **Natural Resources**

### **(Environmental Protection--**

### **Water Supply, Chs. NR 800--)**

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Notice is hereby further given that pursuant to s. 162.01 (1), Stats., interpreting ch. 162, Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 812.31 (2) (b), Wis. Adm. Code, relating to pitless adapters for use in private wells.

### **Analysis**

The proposed rule will clearly prohibit the intrusion of any part of a pitless adapter into the inside of a well casing, thereby allowing well reconstruction without the need to remove the adapter.

### **Initial Regulatory Flexibility Analysis**

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

### **Environmental Assessment**

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

### **Hearing Information**

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

October 19, 1995  
Thursday  
At 10:30 a.m.

Conference Room B  
Portage Co. Cthse.  
1516 Church St.  
Stevens Point, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Rock at (608) 267-7649 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

Written comments on the proposed rule may be submitted to:

Mr. Bill Rock, Chief  
Private Water Supply Section  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **October 30, 1995**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WS-38-95] and fiscal estimate may be obtained from Mr. Rock.

### **Fiscal Estimate**

The proposed amendments to ch. NR 812 will impose no additional requirements on state or local government.

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## **Notice of Hearing**

### **Veterans Affairs**

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Notice is hereby given that pursuant to ss.45.35(3) and 45.397(2), Stats., and interpreting ss.45.351(1) and 45.397(2)(c), Stats., the Department of Veterans Affairs will hold a public hearing at the **Wisconsin Veterans Home, Marden Center, in the City of King, Wisconsin, on Friday, the 20th day of October, 1995 at 9:45 a.m.**

### **Analysis and Summary Prepared by the Department of Veterans Affairs**

The proposed rules relating to the health care aid grant program incorporate several changes recommended by the department's program development plan committee. The amendment to s. VA 2.01(1)(d) excludes coverage for outpatient medications, thereby permitting the department to pay for more costly health care received by the veteran during the 30 days currently covered by the program. The amendment to s. VA 2.01(2)(b)13 codifies a shorter period within which contact must be made so that a grant application could be processed in a more timely manner. The amendment also codifies a good cause provision for delayed contact. The amendment to s. VA 2.01(2)(b)14 will provide the department the flexibility to accept documentation other than itemized bills and represents another attempt to streamline the application process. The creation of s. VA 2.01(2)(b)15 will permit low income veterans to qualify for the grant without undergoing any further analysis of the availability of income for health care expenses. Finally, the creation of s. VA 2.01(2)(b)16 and 17 will exempt veterans who obviously do not qualify for a secured economic assistance loan and full time student veterans who may desire to use an economic assistance loan for school expenses from applying for the loan.

With respect to the retraining grant program, the code changes are intended to implement the statutory revision of s.45.397(2)(c), Stats. included in the recently enacted budget bill. The program was extended to underemployed veterans. The proposed definition utilizes the federal poverty guidelines to identify underemployed veterans.

### **Initial Regulatory Flexibility Analysis**

This rule is not expected to have an adverse impact on small businesses.

### **Fiscal Estimate and Contact Person**

A copy of the proposed rules and the full fiscal estimate may be obtained by writing to:

John Rosinski  
Wisconsin Department of Veterans Affairs  
P.O. Box 7843  
Madison WI 53707-7843  
(608) 266-7916

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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 Milwaukee Sentinel. 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

#### *Emergency Response Board*

A rule was adopted amending **s. ERB 4.03 (3)**, relating to fees for transporting hazardous materials.

#### FINDING OF EMERGENCY

The state emergency response board 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 state emergency response board has been working for well over a year, with the department of transportation, in order to develop a fee structure which more equitably reflects hazards presented. This rule has completed the agency public hearing process, but will not be in effect by the effective date specified in s. ERB 4.03 (3).

The fee and hazardous materials transportation registration program for persons that are required to register under ch. ERB 4 must be in effect at all times. It was the intent of the legislature that funds must continue to be available to facilitate operation of the regional emergency response teams and to assure the protection of first responders and the general public in the event of a level A hazardous material incident.

Funds also need to be available in order to operate the grant program which assists counties with the purchase of level B hazardous material response equipment.

It is expected that the new fee structure will be in effect by September 30, 1995. The emergency rule will extend the effective date in order to assure continuity of the hazardous material transportation registration program and protect the health, safety and welfare of the citizens of the state of Wisconsin.

**Publication Date:** June 30, 1995  
**Effective Date:** June 30, 1995  
**Expiration Date:** November 27, 1995  
**Hearing Date:** August 25, 1995

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### EMERGENCY RULES NOW IN EFFECT

#### *Employment Relations-Merit Recruitment & Selection*

Rules adopted revising **ch. ER-MRS 22**, relating to layoff procedures for employes in the permanent classified civil service not covered by a collective bargaining agreement.

#### FINDING OF EMERGENCY

The Division of Merit Recruitment and Selection in the Department of Employment Relations finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The Division of Merit Recruitment and Selection is responsible for promulgating rules relating to layoffs and alternative procedures in lieu of layoff. The layoff procedures in the administrative rules are meant to be fair and understandable to all affected employes. However, the Department has recently learned that the current administrative rules are deficient, because an important alternative procedure in lieu of layoff that was granted to affected employes by the State Legislature was omitted when the layoff procedures were initially promulgated as rules in 1983.

Layoff procedures and alternative procedures in lieu of layoff are integral parts of the classified civil service personnel system as applied to nonrepresented employes. The primary purpose of the layoff procedures and alternative procedures in lieu of layoff is to ensure that when a reduction in force is necessary, the State retains the most well-qualified and experienced employes within the classified civil service. The current layoff procedures do not allow an affected employe to exercise the statutory right of displacing laterally (to a comparable position) as an alternative to layoff. By omitting this right in the administrative rules the State inadvertently may be laying off employes who might otherwise be retained by the State as being the most qualified employes, but for this lack of alternative to displace laterally.

The problem is urgent because numerous permanent positions in the classified civil service are being eliminated because of a reduction in force due to a lack of work or funds or owing to material changes in duties or organization. Incumbents of those targeted positions will soon face critical career decisions and alternatives to termination from state service as outlined in the administrative rules.

The Department believes that the State Legislature intended to provide permanent classified civil service employes with certain employment alternatives to layoff when the State found itself in a position to reduce its work force. The current administrative rules are deficient and omit an important right that employes are entitled to by law.

Because employe layoffs are occurring and will continue to occur before the Department could promulgate these changes under regular rulemaking procedures, the Department believes a finding of emergency is warranted to preserve the welfare of individual employes and the civil service system.

**Publication Date:** June 12, 1995  
**Effective Date:** June 12, 1995  
**Expiration Date:** November 9, 1995  
**Hearing Date:** July 26, 1995

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## EMERGENCY RULES NOW IN EFFECT

### Wisconsin Gaming Commission

Rules were adopted revising **chs. WGC 9 and 24**, relating to twin trifecta, superfecta and tri-superfecta pools, deduction approvals, animal drug testing, and intertrack and simulcast wagering.

### FINDING OF EMERGENCY

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

For FY 1995-96, projected program revenues (breakage, outs, licensee fees, general program operations deductions and forfeitures) other than the pari-mutuel tax will barely exceed the Racing Division's budgeted operating expenses. (NOTE: FY 1994-95 pari-mutuel tax revenues are projected at \$5,200,000; however, this money is deposited directly into the general fund.)

As a result of the increased competition for the gambling dollar, pari-mutuel revenues attributed to greyhound racing in Wisconsin, both to the associations and the state, have been adversely affected. Since the 1990-91 inaugural season and projecting through the end of the 1995 season for each of the four racetracks, the average daily handle has decreased as follows: Wisconsin Dells Greyhound Park - down 58%; Geneva Lakes Kennel Club - down 59%; St. Croix Meadows - down 60%; and Dairyland Greyhound Park - down 44%. (NOTE: Fox Valley Greyhound Park filed bankruptcy and ceased operations on August 12, 1993.)

In conjunction with the decrease in handle, the revenue generated for the state per race performance has also decreased at each of the previously cited facilities.

In an attempt to fund operating expenditures and reduce the revenue shortfall, the Racing Division proposed to implement a variety of measures to increase revenues and decrease expenditures in FY 1995-96.

The pari-mutuel rules being submitted for emergency rule promulgation adopt rules relating to twin trifecta, superfecta, and tri-superfecta pools, deduction approvals, animal drug testing, and intertrack and simulcast wagering.

The current rules for the twin trifecta and the tri-superfecta do not allow the racetracks to cap the jackpot level and form a secondary jackpot for a subsequent payout. The cap and seed feature may generate an additional \$25,000 in handle which will result in approximately \$670.00 in general fund money and \$185.00 in program revenues.

The new superfecta rules are created to establish the progression of payouts regarding the order of finish in superfecta pools. The three proposed rules were inadvertently omitted from orders of finish provided for under current WGC 9.12 (4), Wis. Adm. Code. There will be no increase in revenues as a result of this rule.

WGC 9.17 is created to form a regulatory framework that would require the racetracks to seek approval from the Commission prior to implementing any deduction rate changes in accordance with Wisconsin Statutes.

WGC 14.11 currently requires that the winning greyhound plus a random greyhound be subject to drug testing after each race. The amended rule will require that one greyhound (as determined by the Commission) shall be subject to drug testing.

Current Wis. Adm. Code ch. WGC 24 pertains mainly to intertrack wagering. With the passage of 1995 Assembly Bill 150, unlimited simulcasting is available to Wisconsin greyhound racetracks. Wisconsin greyhound racetracks will now be allowed to accept greyhound and horse races from out-of-state racetracks and offer wagering on these races to Wisconsin patrons. Chapter WGC 24, Wis. Adm. Code, created and amends the duties and responsibilities for Wisconsin racetracks when functioning as

either the host or guest track during simulcasting and the commingling of wagering pools.

**Publication Date:** August 25, 1995

**Effective Date:** August 25, 1995

**Expiration Date:** January 22, 1996

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## EMERGENCY RULES NOW IN EFFECT (2)

### Health and Social Services

(Community Services, Chs. HSS 30--)

1. Rules were adopted creating **ch. HSS 38**, relating to treatment foster care for children.

### EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 182 (1) of 1993 Wis. Act 446 directed the Department to promulgate rules under s. 48.67 (1), Stats., as amended by Act 446, for licensing treatment foster homes, to take effect on September 1, 1994, by using the emergency rule making procedures under s. 227.24, Stats., but without having to make a finding of emergency. They will remain in effect until replaced by permanent rules.

### ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

This rule making order implements s. 48.67 (1), Stats., as amended by 1993 Wis. Act 446, which directs the Department to promulgate rules establishing minimum requirements for issuing licenses to treatment foster homes, including standards for operation of those homes.

Treatment foster care is a family-based and community-based approach to substitute care and treatment for children who are medically needy or emotionally disturbed and for some developmentally disabled children, and could be an alternative to institutionalization for some children. Treatment foster care is provided in a foster home by foster parents who meet education and training requirements which exceed the requirements for regular foster care, and by social service, mental health and other professional staff.

A number of public and private agencies have recently begun providing "treatment foster care," but since there are no standards currently for this type of care, those programs vary considerably in the type and quality of services they provide. These rules establish minimum standards that agencies, professional staff and foster parents would have to meet in order to claim that they are providing treatment foster care.

The rules require treatment foster homes to comply with ch. HSS 56 for regular foster homes except when there is a conflict between a provision of these rules and ch. HSS 56, in which case these rules take precedence.

The rules cover making application to a licensing agency for a treatment foster home licensee, licensee qualifications, licensee responsibilities, respite care for foster parents, responsibilities of the providing agency, the physical environment of a treatment foster home, care of the children and training for treatment foster parents.

**Publication Date:** September 1, 1994

**Effective Date:** September 1, 1994

**Expiration Date:** 1993 Wis. Act 446, s. 182

**Hearing Dates:** January 24, 25 & 26, 1995

2. Rules adopted amending **ch. HSS 82** and creating **ch. HSS 88**, relating to licensed adult family homes.

### FINDING OF EMERGENCY

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

A recent session law, 1993 Wis. Act 327, created ss. 50.01 (1) (b) and 50.033, Stats., which establish a new type of adult family home as a regulated



residential placement. Until now the only type of adult family home for 3 or 4 adults was one that was originally licensed under s. 48.62, Stats., as a foster home for 3 or 4 developmentally disabled children prior to the children becoming adults and is now certified under s. 50.032, Stats., and ch. HSS 82. An adult family home covered by s. 50.033, Stats., as created by Act 327, is to be a licensed home providing care, treatment or services above the level of room and board but not including nursing care to 3 or 4 residents.

Licensed adult family homes before November 1, 1994, were regulated as 3- and 4-bed community-based residential facilities (CBRFs). Act 327, effective November 1, 1994; renamed them adult family homes, so that they no longer came under Department rules for CBRFs, ch. HSS 3. For the period November 1, 1994, through May 31, 1995, Act 327 provided that licensed adult family homes were to be regulated under ch. HSS 82, rules for certified adult family homes, and directed the Department to promulgate rules specifically for licensed adult family homes and to have these take effect on June 1, 1995.

These are the rules required under s. 50.02 (2) (am) 2., Stats., for licensed adult family homes. They are being published as emergency rules to protect the health and safety of residents. The rules must be in effect by June 1, 1995. No one may operate this type of adult family home unless licensed under Department rules. Department use of ch. HSS 82 rules may not continue after May 31, 1995. Nearly identical permanent rules were submitted to the Legislative Council on April 21, 1995, but the permanent rule-making process will not be completed until late 1995.

An adult family home under s. 50.033, Stats., must be licensed under the Department rules by an agency of the county in which the home is located or by the Department if no agency in that county has been designated by the county board to license adult family homes. An adult family home will be licensed if it is found to comply with the statute and these rules. The rules establish procedures for applying for licensure, reviewing and approving an application, licensing a home and delicensing a home; list requirements for licensees; include standards and requirements for the home, the agreement for services, the individualized service plan, resident care and termination of placement; and establish resident rights, provide for a grievance procedure for residents and provide for reporting of known or suspected resident abuse or neglect and for investigation of those reports.

This rule-making order also amends ch. HSS 82, the Department's rules for certified adult family homes under s. 50.032, Stats., to clearly distinguish the standards for certified adult family homes from the standards for licensed adult family homes.

**Publication Date:** June 1, 1995  
**Effective Date:** June 1, 1995  
**Expiration Date:** October 29, 1995

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Health and Social Services*

(Health, Chs. HSS 110--)

1. Rules adopted revising **ch. HSS 133**, relating to home health agencies.

### FINDING OF EMERGENCY

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

Section 50.49, Stats., directs the Department to develop, establish and enforce standards for operation of home health agencies, authorizes the Department to license home health agencies, requires the Department to make whatever inspections and investigations of home health agencies it considers necessary in order to administer this regulatory program and requires the Department to establish by rule an annual license fee for home health agencies.

In February, 1995 there were 188 home health agencies operating in Wisconsin.

The Department revised its licensing standards for home health agencies, ch. HSS 133, effective June, 1984. Chapter HSS 133 has not been

significantly updated since then, although a general revision of those rules is under development. One part of the updating will be an increase in the annual license fee to cover increased costs of this regulatory program and basing the fee on annual net income of the home health agency, as required by s. 50.49 (2) (b), Stats., rather than gross annual income of the agency as provided for in the current rules.

Through this emergency rulemaking order the Department is revising its method of computing the annual license fee for home health agencies and generally increasing that fee in order to increase fee revenues. The regulatory program is financed by fee revenues. This change cannot wait on promulgation of revised rules for home health agencies following regular rule making procedures because the paperwork associated with the billing of home health agencies for a license for the June 1, 1995 through May 31, 1996 licensing period must get underway in April 1995. Unless license renewal fees are increased immediately, the Department will not be able to adequately carry out its regulatory activities under s. 50.49, Stats., and ch. HSS 133, which are intended to promote safe and adequate care and treatment of home health agency patients.

**Publication Date:** April 15, 1995  
**Effective Date:** April 15, 1995  
**Expiration Date:** September 12, 1995  
**Hearing Date:** June 16, 1995

2. Rules adopted creating **s. HSS 110.045**, relating to qualifications of ambulance service medical directors.

### FINDING OF EMERGENCY

The Department of Health and Social Services finds that an emergency exists and that 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:

Ambulance service providers are required under rules of the Department to have medical directors if they use emergency medical technicians (EMT's)—intermediate or EMT's—paramedic for the delivery of emergency care or if they use EMT's—basic qualified under s. HSS 110.10 to administer defibrillation or under s. HSS 110.11 to use advanced airways.

There are about 450 ambulance service providers in Wisconsin. About 400 of them have medical directors.

Section 146.50 (8m), Stats., provides that, beginning July 1, 1995, no ambulance service provider offering services beyond basic life support may employ, contract with or use the services of a physician to act as medical director unless the physician is qualified under the rules promulgated by the Department.

This new section of ch. HSS 110 is being published by emergency order to protect public health and safety. The Department's rules for emergency medical technicians require that an ambulance service offering services beyond basic life support have a medical director, and s. 146.50 (8m), Stats., provides that, beginning July 1, 1995, no one may serve as a medical director unless qualified under rules promulgated by the Department. The rules must be in effect by July 1, 1995, so that ambulance service providers will not be forced to stop providing services beyond basic life support pending promulgation of permanent rules. The permanent rules will not likely take effect before March 1, 1996.

These rules require that a person serving as medical director be licensed under ch. 448, Stats., as a physician to practice medicine and surgery.

This qualification for ambulance service medical directors is intentionally minimal. In some areas of the state there are few physicians, which has meant that some ambulance service providers have appointed a general practitioner or a family practitioner to be medical director. If the Department in this order established additional qualifications for medical directors at this time, some local ambulance service providers would not be able to find a physician to serve as medical director and could be forced out of business, leaving those areas of the state without emergency medical services beyond basic life support services. This is what the Department has been told by several physicians, with confirmation by the Emergency Medical Services (EMS) program's Physician Advisory Committee and the new Emergency Medical Services Board (the EMS Advisory Board) under s. 146.58, Stats.

In the permanent rules that will replace these emergency rules in March 1996, the Department will add a qualification that a medical director have completed a course of instruction developed by the Department on the role and responsibilities of the medical director. By then, the Department will

have issued a manual on the role and responsibilities of ambulance service medical directors. The course of instruction will be based on the manual.

**Publication Date:** July 1, 1995  
**Effective Date:** July 1, 1995  
**Expiration Date:** November 28, 1995  
**Hearing Dates:** October 16 & 18, 1995  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT (2)

### Health & Social Services

(Economic Support, Chs. HSS 200--)

1. Rules adopted creating ss. HSS 201.055 and 201.28 (4m), relating to emergency assistance for low-income families.

## FINDING OF EMERGENCY

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

Under s. 406 (e) of the Social Security Act of 1935, as amended, and the implementing federal regulations at 45 CFR 233.120, a state may provide a program of emergency assistance under the Aid to Families with Dependent Children (AFDC) program to a child under age 21 and his or her family when the child is without available resources and the payments, care or services involved are necessary to avoid destitution of the child or are needed to provide living arrangements in a home for the child. The destitution or need for living arrangements may not be the result of the child or his or her caretaker relative refusing without good cause to accept employment or training for employment. AFDC emergency assistance grants are limited to one 30-day period only within 12 consecutive months. Section 49.19 (11) (b), Stats., directs the Department of Health and Social Services to implement this program for families that have emergency needs due to fire, flood, a natural disaster, homelessness or an energy crisis.

Under s. 49.19 (11) (b), Stats., the AFDC emergency payment amount may not exceed \$150 per eligible family member except when the need is the result of an energy crisis. Through this rulemaking order, the Department is establishing a maximum AFDC emergency payment amount of \$96 per eligible family member for emergencies other than energy crisis. The rules provide that the Department may revise this amount if necessary to stay within the funding available for this purpose by publishing a public notice in the Wisconsin Administrative Register and by issuing a revised Emergency Assistance chapter for its Other Programs Eligibility Handbook.

A needy family may apply for AFDC emergency assistance through the local county or tribal economic support agency. The agency must determine if the family's need is the result of fire, flood, natural disaster, homelessness or energy crisis. Assistance is available to either a family currently receiving AFDC or to a family that is not receiving AFDC if the family meets the emergency assistance program eligibility requirements. If the family is eligible, the agency must provide assistance to the family, now called an AFDC emergency assistance group, taking into consideration the group's available income and assets, within 5 working days after the date of application for the assistance.

The Department has been operating this program on the basis of s. 49.19 (11) (b), Stats., which references the federal regulations, a Division of Economic Support Operations memo, and policy handbook material. However, the lack of policy established through administrative rules has caused confusion for applicants, recipients and economic support agencies responsible for administering the program. Section 49.19 (11) (b), Stats., provides that the AFDC emergency assistance payment amount, except when the need is the result of an energy crisis, may not exceed \$150 per eligible family member, but does not provide how a payment less than \$150 is to be determined nor does it establish a lesser amount. Yet sum certain funds appropriated for the program are not sufficient to permit the program to pay out as much \$150 per eligible family member without turning away some

eligible applicants. A recent Dane County Court decision (93-CV-4004) held that rules are needed to set a fixed amount for the AFDC emergency assistance benefit level. The Department is now proceeding to publish the rules by emergency order to ensure that the funds available for the program are used to assist people who are most in need.

**Publication Date:** April 4, 1995  
**Effective Date:** April 4, 1995  
**Expiration Date:** September 1, 1995  
**Hearing Date:** May 19, 1995  
**Extension Through:** October 30, 1995

2. Rule was adopted revising s. HSS 201.055 (7), relating to emergency assistance for AFDC families.

## FINDING OF EMERGENCY

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

The Department on April 4, 1995, published emergency rules for operation of a program of emergency financial assistance under s. 49.19 (11) (b), Stats. That program is for families receiving Aid to Families with Dependent Children (AFDC) and other low-income families with a child or children that have emergency needs due to fire, flood, a natural disaster, homelessness or an energy crisis.

Although s. 49.19 (11) (b), Stats., at the time specified that the emergency assistance amount per family member was not to exceed \$150 except when the emergency was due to an energy crisis, the Department's emergency rules established the maximum at \$96 per family member because only enough funding was available in the sum certain appropriation to provide grants at that level to all eligible families.

The State Budget for 1995-97, 1995 Wis. Act 27, added funds to the appropriation for this program to enable the Department to increase the benefit to \$150 per family member. Act 27 also amended s. 49.19 (11) (b) (intro.), Stats., to delete the maximum payment amount specified in the statute and to direct the Department to establish that amount on the basis of available funds by publishing notice of it in the Wisconsin Administrative Register.

This order amends the Department's emergency rules for the program, effective September 1, 1995, to delete the reference to a specific maximum payment amount per family member and to refer the reader to the Wisconsin Administrative Register for that amount. The Department will publish a notice in the August 31, 1995, number of the Wisconsin Administrative Register that effective September 1, 1995, the maximum emergency assistance payment amount per family member will be \$150 except in cases of energy crisis.

The Department is publishing this rule change by emergency order so that its rules for operation of the emergency assistance programs are not in conflict with recent legislative action that amends s. 49.19 (11) (b) (intro.), Stats., and increases the financial assistance made available to needy families experiencing an emergency due to lack of housing or to fire, flood or other natural disaster.

**Publication Date:** August 30, 1995  
**Effective Date:** September 1, 1995  
**Expiration Date:** January 29, 1996  
**Hearing Date:** October 13, 1995  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT

### Health & Social Services

(Youth Services, Chs. HSS 300--)

- Rules were adopted revising ch. HSS 343, relating to youth aftercare conduct and revocation.

## FINDING OF EMERGENCY

The Department of Health & Social Services finds that an emergency exists and that 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:

Youths released from juvenile correctional institutions are ordinarily released to a status called "aftercare," which means that for a period of time after release they are supervised in the community by agents of the Department or of a county department of social services or human services. About 1,030 youth are on aftercare supervision in Wisconsin at any one time.

Administrative rules relating to the expected conduct of youth on aftercare supervision and to actions that an agent may take in response to a youth's alleged violation of a rule or special condition of aftercare, including initiation of proceedings to revoke the aftercare status of a youth on state after care or to file a petition for change in placement for a youth on county aftercare, and return the youth to the correctional institution, are found in ch. HSS 343, Wis. Adm. Code.

This rulemaking order repeals and recreates ch. HSS 343 to implement changes made effective July 1, 1995 by 1993 Wis. Act 385 in provisions of ch. 48, Stats., relating to the administration of aftercare.

The principal change made by Act 385 in the administration of aftercare is to permit a county department providing aftercare supervision for a youth to revoke the youth's aftercare using the administrative revocation procedure currently used by the Department and set out in ch. HSS 343.

Act 385 also directs the Department to promulgate rules setting standards to be used by a hearing examiner to determine whether to revoke a youth's aftercare. There are already standards in ch. HSS 343. These are updated by this order and made to apply also to county revocation cases.

Rule changes are necessary so that the rules of conduct for youth on either state or county aftercare supervision are the same and so that standards and procedures for dealing with violations of the expected conduct, including procedures to revoke a youth's aftercare status, are also the same.

The rule changes are being made by emergency order on public safety and welfare grounds because beginning July 1, 1995, when the Act 385 changes in ch. 48, Stats., are effective, a county responsible for the aftercare supervision of a youth may no longer petition the court for a change in placement to return the youth to a correctional institution for a violation of a condition of aftercare, but will be expected to seek revocation through the same administrative process that the Department uses. To enable counties to use that administrative process, the Department's administrative rules that establish procedures and criteria for revocation of aftercare must be modified immediately to add county aftercare.

A revocation hearing must be conducted within 30 days after a youth is taken into custody for an alleged violation. However, the time limit may be waived on the agreement of the aftercare provider, that is, the Department or county, the youth and the youth's attorney, if any. The party seeking revocation must prove to a hearing examiner, by a preponderance of the evidence, that the youth violated a condition of his or her aftercare. The hearing examiner determines whether to revoke a youth's aftercare and whether a youth found to have violated a condition of his or her aftercare needs to be confined in order to protect the public or to provide for the youth's rehabilitation.

**Publication Date:** June 21, 1995  
**Effective Date:** July 1, 1995  
**Expiration Date:** November 28, 1995  
**Hearing Date:** July 27, 1995

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations*

(Petroleum Products, Ch. ILHR 48)

Rules were adopted revising **ch. ILHR 48**, relating to labeling of oxygenated fuels.

## FINDING OF EMERGENCY

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

1995 Wis. Act 51 requires reformulated fuels to be labeled with the oxygenate that they contain. The labels are to be constructed and displayed in a manner specified by the department by rule. The act takes effect on the 14th day after the day of publication.

In order to permit compliance with the law, the department must adopt rules using the emergency rule procedure.

**Publication Date:** September 13, 1995  
**Effective Date:** September 13, 1995  
**Expiration Date:** February 10, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations*

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

(Multi-Family Dwellings, Ch. ILHR 66)

Rules were adopted revising **chs. ILHR 57 & 66**, relating to multifamily dwellings.

## FINDING OF EMERGENCY

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

The facts constituting the emergency are as follows. As required by ss. 101.14 (4m) and 101.971 to 101.978, Stats., the Department adopted rules earlier this year establishing uniform construction standards for multifamily dwellings. The rules include some minor technical provisions which have been difficult to apply and which are needlessly disrupting new construction.

The proposed rules essentially reinstate the existing requirements that applied to smaller apartments prior to adoption of the current rules, and clarify and simply other problematic minor technical provisions.

Pursuant to s. 227.24, Stats., these rules are adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** August 14, 1995  
**Effective Date:** August 14, 1995  
**Expiration Date:** January 11, 1996

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## EMERGENCY RULES NOW IN EFFECT

### *Industry, Labor & Human Relations*

(Barrier-Free Design, Ch. ILHR 69)

*Note: On August 17, 1995 the Joint Committee for Review of Administrative Rules suspended this emergency rule.*

A rule was adopted amending **s. ILHR 69.18 (4)**, relating to barrier-free design unisex toilet rooms.

## FINDING OF EMERGENCY

The Department of Industry, Labor and Human Relations finds that an emergency exists within the state of Wisconsin that will affect the peace and welfare of its citizens. A statement of the facts constituting the emergency is:

1. In accordance with s. 101.13, Stats., the Department of Industry, Labor and Human Relations has the responsibility for developing rules ensuring access to and use of public buildings and places of employment by people with disabilities.

2. On December 1, 1994, ch. ILHR 69, Barrier-Free Design, became effective. Section ILHR 69.18 (4) (b) requires that new and remodeled buildings be provided with at least one unisex toilet room in addition to the required number of toilet fixtures in the following occupancies;

- a. All shopping malls or shopping centers;
- b. Rest-area building located off of major highways;

- c. Schools;
- d. Restaurants with a capacity of 100 or more people; or
- e. Large assembly areas such as, but not limited to, stadiums and outdoor or indoor theaters, with a capacity of more than 100 persons.

3. The purpose of the unisex toilet room requirement is to provide a toilet room to accommodate people with disabilities having attendants of the opposite sex and to accommodate families with children.

4. There has been public concern that minimum capacity for requiring a unisex toilet room in restaurants and assembly halls should be increased. There are many chain-type restaurants where the basic design used throughout the nation could not accommodate the installation of a unisex toilet room in addition to the standard toilet rooms. Modifications to include a unisex toilet room would eliminate usable floor areas from either the employment area or the business area.

5. This emergency rule is being created to exempt certain sized restaurants and theaters and assembly halls from making major building design changes to accommodate a unisex toilet room.

**Publication Date:** July 17, 1995  
**Effective Date:** July 17, 1995  
**Expiration Date:** December 14, 1995

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## EMERGENCY RULES NOW IN EFFECT

### Insurance

*Note: On August 17, 1995, the Joint Committee for Review of Administrative Rules suspended a portion of this emergency rule relating to service corporations.*

Rules adopted revising **ch. Ins 17**, relating to the patients compensation fund.

## FINDING OF EMERGENCY

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

The commissioner was unable to promulgate a permanent rule corresponding to this emergency rule in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1995. The amount of the fees established by this rule could not be determined until after the governor signed 1995 Wis. Act 10, which imposes a \$350,000 cap on noneconomic damages in medical malpractice actions and therefore affects the level of funding needed for the fund.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect October 1, 1995. Because this rule first applies on July 1, 1993, it is necessary to promulgate the rule on an emergency basis.

**Publication Date:** June 14, 1995  
**Effective Date:** June 14, 1995  
**Expiration Date:** November 11, 1995  
**Hearing Date:** July 21, 1995

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## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

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

Rules adopted revising **ch. NR 10**, relating to the 1995 migratory game bird season.

## FINDING OF EMERGENCY

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

The foregoing rules are approved and adopted by the Natural Resources Board on August 18, 1995.

**Publication Date:** September 1, 1995  
**Effective Date:** September 1, 1995  
**Expiration Date:** January 29, 1996  
**Hearing Date:** October 16, 1995  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT (4)

### State Public Defender

1. Rules adopted revising **ch. SPD 3**, relating to indigency evaluation and verification.

## FINDING OF EMERGENCY

The State Public Defender Board 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:

It is essential that the Office of the State Public Defender ensure that only eligible applicants receive agency services. The proposed changes are needed to establish authority for the agency to revise its indigency evaluation procedures and to initiate verification of income. Without these changes it will be difficult to access and verify an applicant's eligibility with accuracy; and thus the public interest will not be served.

## ANALYSIS

These proposed rules implement recommendations made by the Legislative Audit Bureau in its recent audit of the Office of the State Public Defender. Specifically, the rules: 1) codify the agency's verification of indigency evaluation procedures; 2) specify the anticipated cost of retaining counsel for involuntary termination of parental rights cases for purposes of the indigency calculation; 3) provides for additional verification for applicants who have equity in real estate; 4) specifies which emergency and essential costs may be calculated in the indigency formula; 5) clarifies under what circumstances an applicant's spouse income must be counted; 6) provides that persons whose sole income is SSI are eligible for the program; 7) prohibits voluntary termination of employment for purposes of qualifying for SPD representation; and 8) clarifies trial court access to agency indigency evaluations during the pendency of a case.

**Publication Date:** May 12, 1995  
**Effective Date:** May 12, 1995  
**Expiration Date:** October 9, 1995  
**Hearing Date:** July 11, 1995

2. Rules adopted revising **ch. SPD 4**, relating to limiting the allowable billable hours for private bar attorneys.

## FINDING OF EMERGENCY

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

The Office of the State Public Defender assigns approximately 40% of its cases annually to private bar attorneys. To ensure that assignments are

made within budgetary expenditures that provide efficient and effective representation of the public, the proposed rule is necessary.

## ANALYSIS

This proposed rule caps private attorney billable hours at 2080 hours per year. This number is equivalent to the hours worked in a full-time job.

Under the proposed rule, any private bar attorney who foresees exceptional circumstances what will cause an excess of 2080 billable hours a year, may petition the state public defender board for advance approval for payment of those excess hours. In addition, any private attorney who is denied payment for hours worked in excess of 2080 per year may appeal the denial of payment to the state public defender board.

**Publication Date:** June 14, 1995  
**Effective Date:** June 16, 1995  
**Expiration Date:** November 13, 1995  
**Hearing Date:** July 11, 1995

3. Rules adopted creating s. PD 3.039, relating to redetermination of indigency.

## FINDING OF EMERGENCY

The State Public Defender Board 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:

It is essential that the Office of the State Public Defender that only eligible persons receive agency services and that persons determined to be eligible remain eligible during the pendency of representation. The proposed rule is needed to establish authority for the agency to redetermine indigency when a person has a change in financial circumstances during the course of representation and to withdraw from representation if a person is determined non-indigent and ineligible for services during the course of representation. Without the proposed rule, persons who become non-indigent during representation could continue to receive agency representation, which would not serve the public interest.

**Publication Date:** August 29, 1995  
**Effective Date:** August 29, 1995  
**Expiration Date:** January 26, 1996  
**Hearing Date:** September 26, 1995

4. Rules adopted revising ch. PD 6, relating to repayment of cost of legal representation.

## FINDING OF EMERGENCY

The State Public Defender Board finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The statement of facts constituting the emergency is as follows:

It is essential that the Office of the State Public Defender collect for the cost of representation from persons who have the present or future ability to reimburse the agency for the cost of providing counsel. The proposed rules are needed for the agency to establish fixed amounts as flat payments for the cost of representation that a person may elect to pay. The rules are also needed to establish authority for the agency to collect for the cost of representation from parents of juveniles who received services, unless the parents have been determined to be indigent. The 1995-97 biennial budget calls upon the agency to collect approximately \$2.9 million from clients in the first year of the biennium and approximately \$3.3 million in the second year of the biennium. Thus, it serves the public interest that the proposed emergency rules be created.

**Publication Date:** August 31, 1995  
**Effective Date:** August 31, 1995  
**Expiration Date:** January 28, 1996  
**Hearing Date:** September 26, 1995

## EMERGENCY RULES NOW IN EFFECT (3)

### Public Instruction

1. Rules adopted revising s. PI 11.07, relating to transfer pupils with exceptional educational needs (EEN).

## FINDING OF EMERGENCY

Currently school districts and Department of Health and Social Services (DHSS) operated facilities are not required by rule to implement an exceptional education needs (EEN) transfer pupil's Individualized Educational Program (IEP) from the sending district or facility nor are they permitted to formally adopt the M-team evaluation and IEP from the sending district. This results in an interruption of special education and related services for such transfer pupils identified as having an EEN. The interruption of services is prohibited by federal law under the Individuals with Disabilities Education Act.

The emergency rules require school districts and facilities implement an EEN transfer pupil's IEP from the sending school or facility. The emergency rules also allow the receiving school district or facility to adopt the sending district or facility's M-team evaluation and IEP.

Therefore, the state superintendent finds that an emergency exists and that promulgation of emergency rules is necessary to preserve the public health and welfare.

**Publication Date:** April 24, 1995  
**Effective Date:** April 24, 1995  
**Expiration Date:** September 21, 1995  
**Hearing Dates:** July 19 & 20, 1995  
**Extension Through:** November 19, 1995

2. Rules adopted revising chs. PI 3 and 4, relating to substitute teacher permits, special education program aide licenses, principal licenses and general education components.

## FINDING OF EMERGENCY

Current rule requirements relating to substitute teacher permits and special education program aide licenses are prescriptive and, in some cases, have caused a shortage of qualified individuals to teach as substitutes or special education aides. The emergency rule provides flexibility in licensing and hiring qualified substitute teachers, special education aides, and principals.

Current rule requirements provide for two levels of school principal licensure, with different requirements for each level. The two levels of licensure are "elementary/middle level" and "middle/secondary level." 1995 Wisconsin Act 27 (the 1995-97 biennial budget bill) provides that a school principal license must authorize the individual to serve as a principal for any grade level. The emergency rule conforms principal licensure rules with statutory language requirements.

Current provisions relating to general education components/professional education program requirements are overly prescriptive for campuses. The UW-System has initiated a requirement that puts a ceiling on the number of credits in an undergraduate program (140) and the department is moving to a performance-based approach to licensing where the knowledge and skills of license candidates will be assessed rather than just counting the credits that they have taken in college. The emergency rule provides flexibility for university systems to offer quality educational programs without prescribing what must or must not be included in their general education component.

In order for teachers to apply for or renew a substitute teacher permit, special education aide license or principal license to be effective for the upcoming school year (licenses are issued July 1 through June 30) and for schools to hire qualified staff from a sufficient pool of applicants, rules must be in place as soon as possible. Also, in order to allow the UW-system more flexibility to offer education programs for the upcoming school year, rules need to be in place as soon as possible.

Therefore, the state superintendent finds that an emergency exists and that promulgation of emergency rules is necessary to preserve the public welfare.

**Publication Date:** August 21, 1995  
**Effective Date:** August 21, 1995  
**Expiration Date:** January 18, 1996

3. Rules adopted creating s. **PI 11.13(4) and (5)**, relating to interim alternative educational settings for children with EEN who bring firearms to school.

### FINDING OF EMERGENCY

In order to apply the new federal "stay-put" exception in Wisconsin, as described in the analysis and relating to children with EEN who bring a firearm to school, the administrative rule regarding placement of children during due process proceedings must be changed and in place before the next school year begins.

Therefore, the state superintendent finds that an emergency exists and that promulgation of emergency rules is necessary to preserve the public welfare.

**Publication Date:** August 21, 1995  
**Effective Date:** August 21, 1995  
**Expiration Date:** January 18, 1996

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### EMERGENCY RULES NOW IN EFFECT

#### *State Fair Park*

Rules were adopted revising **chs. SFP 1 to 7**, relating to the regulation of activities at the state fair park.

### FINDING OF EMERGENCY AND RULE ANALYSIS

The Wisconsin State Fair Park Board finds that an emergency exists and that the adoption of rules is necessary for the immediate preservation of the public peace, health, safety and welfare of its citizens. The facts constituting this emergency are as follows:

During the annual State Fair, which is scheduled to begin on August 3, 1995, the Wisconsin State Fair Park is host to over 100,000 people per day and millions of dollars in merchandise and property. Initially, **chs. SFP 1-7** were designed primarily to protect the property of the State Fair Park.

However, crime patterns at the State Fair Park have changed dramatically since those rules adopted in 1967. With the increases in attendance and number of events in the intervening years, the number and severity of crimes against State Fair visitors, patrons, and property have necessarily increased. Also, a general rise in gang-related activity at Park events and during skating hours at the Pettit National Ice Center has occurred over the last several years. Consequently, there is a greater need for Park Police Department arrest authority on the Park grounds in order to ensure prosecutorial cooperation by Milwaukee County.

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court System are reluctant to

process and charge offenders for relatively minor property-type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee County by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various weapons prohibitions. There is also included provisions to protect the police horses, which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family-oriented environment at this year's State Fair and other Park events.

**Publication Date:** August 2, 1995  
**Effective Date:** August 2, 1995  
**Expiration Date:** December 30, 1995

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### EMERGENCY RULES NOW IN EFFECT

#### *Commissioner of Transportation*

#### *[Commissioner of Railroads]*

Rules adopted revising **ch. OCT 5**, relating to intrastate railroad rate regulation.

### FINDING OF EMERGENCY

The office of the commissioner of railroads (OCR) finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

By state law, the OCR regulates intrastate rail rates. Every five years, the Interstate Commerce Commission (ICC) must certify that the OCR's rules conform to federal law. The OCR's current certification expires on September 23, 1995. These rules conform the rules to changes in federal law. The rule changes need to be in effect so that the OCR can submit them to the ICC for its approval by the certification's expiration date. If the OCR follows the non-emergency procedures to adopt these rule changes, the rules would not be in effect in time for the ICC to recertify the OCRF before expiration.

The OCR did not commence these proceedings earlier because the governor's 1995-1997 budget proposed to eliminate the OCR and repeal the statutes authorizing intrastate rate regulation. While final action on the budget is not complete, the legislature's Joint Committee on Finance has adopted a motion to retain the OCR and its regulatory authority. The OCR intends to adopt these rules as permanent and is commencing that process concurrently with the adoption of these emergency rules.

**Publication Date:** July 6, 1995  
**Effective Date:** July 14, 1995  
**Expiration Date:** December 11, 1995  
**Hearing Date:** October 6, 1995

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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.*

**Development (CR 95-121):**

Ch. DOD 29 – Relating to the economic empowerment grant program.

**Development (CR 95-122):**

Ch. DOD 19 – Relating to the community development planning program.

**Development (CR 95-123):**

Ch. DOD 23 – Relating to the recycling rebate program and to the recycling loan and grant program.

**Development (CR 95-124):**

Ch. DOD 24 – Relating to the hazardous pollution prevention assessment grant program.

**Development (CR 95-125):**

Ch. DOD 10 – Relating to the export development loan program.

**Development (CR 95-134):**

SS. DOD 21.02, 21.03, 21.04 and 21.05 – Relating to the joint effort marketing program.

**Health & Social Services (CR 94-200):**

Chs. HSS 50 and 51 – Relating to Department procedures for placing children with special needs for adoption.

**Insurance, Commissioner of (CR 95-129):**

Chs. Ins 41, 50 and 52 – Relating to changes in rules governing financial regulation of insurers and reinsurers and risk retention and purchasing groups.

**Natural Resources (CR 94-182):**

SS. NR 110.26 & 205.07 and chs. NR 200 & 204 – Relating to municipal wastewater sludge management regulations.

**Natural Resources (CR 95-73):**

SS. NR 484.04, 485.02, 485.04 and 485.07 – Relating to emission limitations and tampering inspections for motor vehicles.

**Natural Resources (CR 95-75):**

S. NR 20.03 (1) (q) 1. – Relating to hook and line sturgeon angling.

**Natural Resources (CR 95-99):**

SS. NR 45.19, 46.16 and 46.30 – Relating to the administration of the forest crop law and the managed forest law.

**Pharmacy Examining Board (CR 95-22):**

SS. Phar 2.01, 3.01, 3.04, 4.02, 6.04, 7.01, 7.02, 7.06 and 8.05 – Relating to:

- a) Licensure of graduates of a foreign pharmacy school or college;
- b) Patient consultation portion of the laboratory practical examination;
- c) Display of pharmacists' licenses in a pharmacy;
- d) Illumination of pharmacy signs;
- e) Patient consultation;
- f) Drug names on prescription labels;
- g) Providing pharmaceutical services; and
- h) Missing information on prescription orders for controlled substances.

**Transportation, Dept. of (CR 95-126):**

S. Trans 325.01 (intro.) – Relating to motor carrier safety regulations.

**Transportation, Dept. of (CR 95-127):**

S. Trans 326.01 (intro.) – Relating to motor carrier safety requirements for transportation of hazardous materials.

**Transportation, Dept. of (CR 95-128):**

S. Trans 328.03 – Relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

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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.*

**State Emergency Response Board (CR 95-52):**

An order amending s. ERB 1.07 (4) and creating s. ERB 1.07 (5), relating to fee exemptions from inventory fees due under s. 166.20, Stats.

Effective 11-01-95.

**Health & Social Services (CR 95-89):**

An order creating s. HSS 133.02 (6g) and amending s. HSS 133.03 (6) (b), relating to the fee paid by a home health agency to renew its license.

Effective 11-01-95.

**Industry, Labor and Human Relations (CR 94-172):**

An order affecting chs. ILHR 20 to 25, relating to the Uniform Dwelling Code.

Effective 12-01-95.

**Natural Resources (CR 95-29):**

An order creating s. NR 10.01 (2) (g), relating to crow hunting.

Effective 04-01-96.

**Revenue (CR 95-83):**

An order amending s. Tax 12.065 (5) (b) 1 and 8, relating to reducing the time frame required for Dept. of Revenue approval of non-credit continuing education courses for assessors and assessment personnel.

Effective 11-01-95.

**Transportation, Dept. of (CR 95-44):**

An order creating ch. Trans 103, relating to habitual traffic offenders (HTO's).

Effective 11-01-95.

**Transportation, Dept. of (CR 95-96):**

An order amending ss. Trans 2.015 (1) and 2.05 (1) (a), relating to elderly and disabled transportation capital assistance program.

Effective 11-01-95.



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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Department of Corrections (CR 94-192)

S. DOC 309.56 – Monitoring and recording of inmate telephone calls.

Summary of Final Regulatory Flexibility Analysis:

These rules do not directly affect small businesses as defined in s. 227.114 (1), Stats.

Summary of Comments:

No comments were reported.

### 2. Health & Social Services (CR 95-8)

Ch. HSS 207 – Operation of the Work Not Welfare demonstration project for recipients of Aid to Families with Dependent Children (AFDC).

Summary of Final Regulatory Flexibility Analysis:

These rules will not directly affect small businesses, as “small business” is defined in s. 227.114 (1) (a), Stats. The rules relate to county and tribal administration of a state and federal program.

Summary of Comments:

No comments were reported.

### 3. Industry, Labor & Human Relations (CR 95-7)

Chs. ILHR 2 & 74 – Contractor registration and certification.

Summary of Final Regulatory Flexibility Analysis:

1993 Wis. Acts 126 and 243 require the department to adopt rules for certifying the financial responsibility of contractors who work on one- and two-family dwellings, and for registering and certifying contractors who install or service heating, ventilating or air conditioning equipment. The proposed rules of Clearinghouse Rule No. 95-7 are minimum requirements to comply with the Acts, and any exception from compliance would be contrary to the Statutory objectives which form the basis for the rules.

Summary of Comments of Legislative Standing Committees

The rules were reviewed by the Assembly Committee on Housing and the Senate Committee on Human Resources, Labor, Tourism and Veterans and Military Affairs.

The Assembly Committee took no action and submitted no comments. The Senate Committee extended the review period an additional 30 days and held a hearing, but did not take any action or submit any comments.

### 4. Industry, Labor & Human Relations (CR 95-036)

Ch. ILHR 100 – Definitions used in unemployment compensation rules.

Summary of Final Regulatory Flexibility Analysis:

All businesses subject to ch. 108, Stats., will be affected by the rules. However actual impact will be minimal, if not non-existent, since this rule packet acts almost exclusively to consolidate definitions into one chapter rather than to make substantive changes to the definitions themselves.

No additional bookkeeping, reporting, or special skills are necessary for compliance with these rules.

Summary of Comments:

No comments were received.

### 5. Natural Resources (CR 94-128)

Ch. NR 114 – Certification requirements for waterworks, wastewater treatment plant and septage servicing operators.

Summary of Final Regulatory Flexibility Analysis:

The proposed changes in subch. 1 will mainly affect municipalities and the proposed changes in subch. 2 will mainly affect small (septage servicing) businesses. Most of the proposed changes in subch. 2 are designed to make it easier for small businesses to comply with the rule.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Environment and Utilities and the Senate Committee on Environment and Energy. On March 28, 1995, the Senate Committee on Environmental and Energy held a public hearing. The committee requested that a temporary surcharge fee will be charged for each certification renewal. The rule was modified to reflect the Committee's request.

### 6. Natural Resources (CR 95-23)

SS. NR 20.02 and 25.06 – Sport fishing for yellow perch on Lake Michigan and commercial fishing for yellow perch in zones 2 and 3 on Lake Michigan and Green Bay.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule changes will directly affect only commercial fishers. Indirect effects will be felt by sport fishers on Lake Michigan, commercial fish wholesalers, restaurants, sport fishing bait and tackle shops and other s. No additional compliance or reporting requirements will be imposed as a result of these proposed changes.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy. On June 12, 1995, the Senate Committee on Environment and Energy held a public hearing. No requests for modifications were received.

### 7. Natural Resources (CR 95-024)

Chs. NR 484 and 489 – General conformity of major federal projects with the state implementation plan.

Summary of Final Regulatory Flexibility Analysis:

The rules affect the federal government. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Review Committees:

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

**8. Natural Resources (CR 95-27)**

S. NR 468.30 – Emission standards for hazardous air pollutants generated from industrial process cooling towers.

Summary of Final Regulatory Flexibility Analysis:

The sources affected by this proposed rule are owners and operators of new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals and are either major sources or are integral parts of facilities that are major sources. The proposed rules will not change the requirements of the federal rule.

Summary of Comments by Legislative Review Committees:

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

**9. Physical Therapists Affiliated Credentialing Board (CR 94-220)**

Chs. PT 1 to 8 – Regulation of physical therapists and physical therapist assistants.

Summary of Final Regulatory Flexibility Analysis:

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

**10. Transportation (Dept.) (CR 95-82)**

Ch. Trans 78 – Transportation system management program.

Summary of Final Regulatory Flexibility Analysis:

This rule will have no adverse effect on small businesses.

Summary of Comments:

No comments were reported.

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## PUBLIC NOTICE

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### **Public Notice**

### **Health & Social Services**

#### ***(Medical Assistance Reimbursement for Unusual High Cost Home Care Cases)***

The State of Wisconsin reimburses home health agencies, personal care agencies and nurses in private practice for providing home health, personal care, respiratory care and private duty nursing services to Medical Assistance recipients. This is done under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Social Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Department is proposing to modify the current rate structure used to reimburse home health agencies, personal care agencies and nurses in private practice to permit negotiated payments for unusual, high-cost cases. This change in reimbursement may be implemented by the Department effective October 1, 1995. The proposed change is:

The Department may negotiate an alternative payment for home health, personal care, private duty nursing and respiratory care services provided to a recipient if the Medical Assistance Program determines that the following requirements are met:

1. Home health, personal care, respiratory care and private duty nursing services are appropriate and cost-effective compared to other available services;
2. All applicable prior authorization requirements are met; and
3. The Department determines, on an individual basis, that the recipient's medical condition, environment or need for care is unusual, which may include one of the following situations:

A. The recipient is subject to the Medicaid average monthly home care payment limit under s. 49.45 (8e), Stats., as created by 1995 Wisconsin Act 27, and, without a negotiated payment, the total monthly Medicaid expenditures for home health, personal care and private duty nursing for the recipient are expected to exceed the Medicaid average monthly cost of nursing home care, as determined by the Department;

B. The total average Medicaid expenditures for home health, personal care, private duty nursing and respiratory care services for the recipient are expected to exceed the Medicaid average monthly cost of nursing home care, as determined by the Department, and, pursuant to s. 49.45 (8e), Stats., as created by 1995 Wisconsin Act 27, the recipient is exempt from Medicaid's home care payment limit under one of the following:

- 1) The recipient is under the age of 22;
- 2) The recipient is ventilator-dependent;
- 3) The Department grants the recipient an exemption based on its determination that the actual nursing home cost for the recipient will exceed the cost of care provided in the community, resulting in higher overall Medicaid costs;
- 4) The Department grants the recipient an exemption based on its determination that no nursing home bed is available for the recipient;

C. The recipient qualifies for high-cost case management services under s. 49.45 (43), Stats., as created by 1995 Wisconsin Act 27;

D. At the sole discretion of the Department, the services required cannot be reasonably provided by any other Wisconsin Medicaid-certified provider.

The estimated net effect of this change in the current rate structure on annual expenditures of the Wisconsin Medical Assistance Program is minimal.

### ***Copies of the Proposed Changes***

Copies of the proposed change will be sent to every county social services or human services department main office where they will be available for public review. For more information, interested people may write to:

State Plan Coordinator  
Bureau of Health Care Financing  
Division of Health  
P.O. Box 309  
Madison, WI 53701-0309

### ***Written Comments***

Written comments on the proposed change are welcome. Comments should be sent to the above address. Comments received on the change will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Bureau of Health Care Financing  
State Office Building, Room 250  
One West Wilson Street  
Madison, Wisconsin

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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 254.** Relating to a Proclamation that the Flags of the United States and the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Three United States Diplomats who Recently Died in Bosnia-Herzegovina.

**Executive Order 255.** Relating to a Special Session of the Legislature.

**Executive Order 256.** Relating to Proclamation of a State of Emergency.

**Executive Order 257.** Relating to a Proclamation that the Flags of the United States and the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Honorable Donald J. Hanaway, Late Judge of the Circuit Court of Brown County.

**Executive Order 258.** Relating to Amending A Special Session of the Legislature.

**Executive Order 259.** Relating to a Proclamation that the Flags of the United State and the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for The Honorable John Plewa, Late Senator of the Seventh Senate District of Wisconsin.



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