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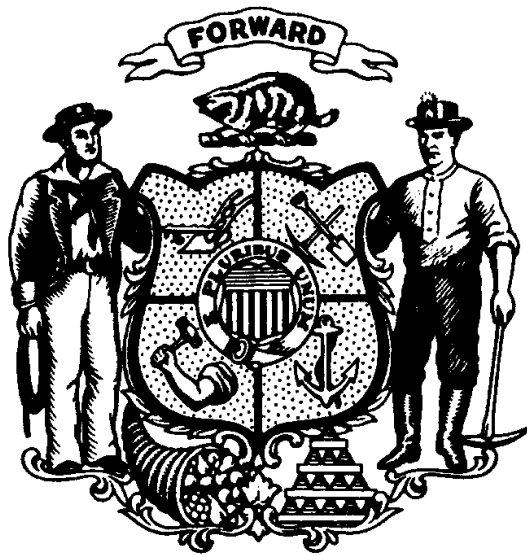
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WISCONSIN ADMINISTRATIVE REGISTER

No. 491



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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Department of Agriculture, Trade & Consumer Protection

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

Finding of Emergency

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

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

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

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

(4) Permanent rules implementing 1995 Wis. Act 79 will not take effect until on or about January 1, 1997. This emergency rule establishes an interim procedure for registering herds of farm-raised deer, pending the effective date of the permanent rules. Without this emergency rule, no person would be able to start a farm-raised deer herd in Wisconsin between June 1, 1996, and the effective date of the permanent rules, because there would be no way to register that herd.

(5) 1995 Wis. Act 79 also requires animal owners to provide a means of testing those animals for tuberculosis without endangering the animal or the person performing the test. In addition, a

non-statutory provision of that Act requires all keepers of farm-raised deer to have the deer tested for tuberculosis between December 8, 1995, and June 30, 1997.

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

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

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

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

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

Publication Date: June 3, 1996
Effective Date: June 3, 1996
Expiration Date: October 31, 1996
Extension Through: December 29, 1996

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

Finding of Emergency

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

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

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

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

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

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

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

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

(c) Hydrocarbon refrigerants are flammable at low concentrations.

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

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

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

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

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

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

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

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

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

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

Publication Date: October 9, 1996
Effective Date: October 9, 1996
Expiration Date: March 8, 1997
Hearing Date: November 15, 1996

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules adopted creating s. DOC 309.05 (2)(d), relating to inmate mail.

Finding of Emergency

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

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

Publication Date: August 15, 1996
Effective Date: August 15, 1996
Expiration Date: January 12, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Health and Social Services

(Community Services, Chs. HSS 30--)

1. Rules were adopted revising ss. HSS 55.70 to 55.76, relating to administration of child care funds.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take

effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance–related rules. They are for administration of health care funds. They will take effect on July 1, 1996.

Analysis

The Department's rules for county agency, tribal agency and other child care administrative agency administration of funds for child day care under s. 46.98, Stats., are revised by this order to bring the rules into compliance with statute changes made by 1995 Wis. Acts 27 and 289 and changes in federal regulations, including federal regulations for child care and development block grant funding, 45 CFR Parts 98 and 99, and at–risk child care, 45 CFR Part 257, since the rules were last revised in late 1991; to made policies relating to eligibility for low–income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

1. Income Eligibility

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

2. Costs Charged to Parents

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

3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to received low–income child care funds when the parents are in training or educational programs is modified so that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

4. Loss of Eligibility

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

5. Recovery of Funds

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

6. Reimbursement

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

7. Authorized Child Care Providers

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

- a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.
- b. When child care is on–site and short–term for parents in training or education programs.
- c. When short–term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

8. Higher Rates for Higher Quality Care

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

9. Reimbursement Rate Categories

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

10. Elimination of Rules for Respite Child Care

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

Publication Date: June 29, 1996

Effective Date: July 1, 1996

Expiration Date: November 28, 1996

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

Exemption From Finding of Emergency

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

Analysis

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

Key changes include:

1. Provisional Certification

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

2. Limited Certification

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

3. Training for Regular Certification

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

4. Criminal Records Check

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

5. Certification Fee

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

6. Acceptance of Certification

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

7. Certification Exemption

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

8. Sanction Authority

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

9. School–Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

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

10. Parochial and Private Schools

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

11. Parent Checklist

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

12. Other New or Changed Rules

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

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

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

Finding of Emergency

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Health and Social Services

(Medical Assistance, Chs. HSS 100–)

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

Exemption From Finding of Emergency

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

Analysis

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

Publication Date: June 15, 1996
Effective Date: June 15, 1996
Expiration Date: November 12, 1996
Hearing Dates: June 26, 27, 1996
Extension Through: January 10, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Health and Social Services

(Health, Chs. HSS 110–)

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

Finding of Emergency

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

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

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

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

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

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

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

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

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

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

Finding of Emergency

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

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

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

Section 254.47 (1), Stats., directs the Department to define "public swimming pool," in rule, for purposes of the regulatory program. The current rule definition has not been changes for many years and has some resulting ambiguity, one reason being that some types of facilities are called by new names.

The requirements under s. HSS 172.05 (2) (a)3. for lifeguard certification have to be modified due to changes in American Red Cross and the American Heart Association courses. The rules changes will ensure that all lifeguards are qualified to fulfill their duties as specified in ch. HSS 172. The exception under s. HSS 172.05 (2) (c) to lifeguard certification for persons holding a current American Red Cross Water Safety Instructor certificate is removed. This is because the American Red Cross Water Safety Instructor

certification course no longer includes course work in lifesaving methods. The change, however, will allow persons currently certified under the old program to the use of that certification until it expires.

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

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

Publication Date: June 22, 1996
Effective Date: June 22, 1996
Expiration Date: November 19, 1996
Hearing Date: August 28, 1996
Extension Through: January 17, 1997

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

Finding of Emergency

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

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

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

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

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

Included in this order, in addition to fees for consolidated plan review, are amendments to the Department's rules for hospitals,

nursing homes and FDDs that incorporate by reference the State Building Code and make clear that it is now the Department that reviews hospital, nursing home and FDD construction plans for compliance with the State Building Code.

Publication Date: June 29, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Hearing Date: August 30, 1996
Extension Through: December 31, 1996

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Economic Support, Chs. HSS 200–)

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

Exemption From Finding of Emergency

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

Analysis Prepared by the Department of Workforce Development

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

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

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

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

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

Publication Date: September 30, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 19, 1996

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Uniform Dwellings, Chs. ILHR 20–25)

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

Finding of Emergency

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

The Federal Emergency Management Agency (FEMA) has informed some municipalities that it will no longer allow variances to a local ordinance that prohibits the construction of homes in flood fringe areas where the foundation extends below the base flood elevation. FEMA regulations allow this type of construction in some locations but require the construction to meet a suitable building code. The Uniform Dwelling Code, which regulates new home construction in Wisconsin, has never addressed this issue. FEMA's actions have halted some residential projects, causing serious financial hardship for those affected Wisconsin builders and residents.

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

Publication Date: May 8, 1996
Effective Date: May 8, 1996
Expiration Date: October 5, 1996
Hearing Date: July 17, 1996
Extension Through: December 3, 1996

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

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

(Multi–Family Dwellings, Ch. ILHR 66)

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

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

Finding of Emergency

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

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

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

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

Emergency Rule Analysis

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

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

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

[Workforce Development]

(Labor Standards, Chs. ILHR 270–279)

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

Finding of Emergency

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

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers

many but not all of the employers and employees in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employees would be subjected to confusion and uncertainty in the calculation and payment of wages.

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

EMERGENCY RULES NOW IN EFFECT

Commissioner of Insurance

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

Exemption From Finding of Emergency

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

1996–97 Premium Adjustments

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

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

EMERGENCY RULES NOW IN EFFECT (6)

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

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

Finding of Emergency

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

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

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

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

2. Rules were adopted revising **chs. NR 10 and 11**, relating to the 1996 deer hunting seasons.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and to minimize deer nuisance problems, thereby protecting the public peace, health, safety or welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify our rules will result in the failure to provide hunting opportunity and comply with administrative rules.

Publication Date: May 3, 1996
Effective Date: August 12, 1996
Expiration Date: January 9, 1997
Hearing Date: June 11, 1996

3. Rules adopted amending **ss. NR 20.02 (1) (c) and 25.05 (1) (e)**, relating to sport and commercial fishing for yellow perch in lake Michigan.

Finding of Emergency

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

The yellow perch population in Lake Michigan is rapidly declining. This decline reflects six consecutive years of extremely poor reproduction. Sport and commercial harvests of adult yellow perch must be limited immediately in order to maximize the probability of good reproduction in the near future.

Publication Date: July 1, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Hearing Dates: August 14 & 15, 1996

4. Rules adopted revising emergency rules relating to the 1996 deer hunting seasons

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and to minimize deer nuisance problems, thereby protecting the public peace, health, safety or welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify our rules will result in the failure to provide hunting opportunity and comply with administrative rules.

Publication Date: August 9, 1996
Effective Date: August 12, 1996
Expiration Date: January 9, 1997
Hearing Date: September 12, 1996

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

Finding of Emergency

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

Publication Date: September 3, 1996
Effective Date: September 3, 1996
Expiration Date: January 31, 1997
Hearing Date: October 14, 1996

6. Rules adopted amending **s. NR 25.05 (1) (e)**, relating to sport and commercial fishing for yellow perch in Lake Michigan.

Finding of Emergency

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

The yellow perch population in Lake Michigan is rapidly declining. This decline reflects six consecutive years of extremely poor reproduction. Commercial harvests of adult yellow perch must be limited immediately in order to maximize the probability of good reproduction in the near future.

Publication Date: October 1, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 11, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 11**, relating to dispute resolution concerning children with exceptional educational needs between school boards and parents.

Finding of Emergency

Wisconsin is required under state and federal law to provide a due process hearing system for the resolution of special education disputes between parents and school districts. 1996 Wis. Act 431 will significantly revise that process and will require the department rather than school districts to conduct the due process hearings. Although the Act outlines the process, it does not fully describe the manner in which hearings are to be initiated, the manner in which hearing officers will be appointed, their qualifications and duties. The current rules addressing those issues will not apply under the new statutory process. It is, therefore, necessary to adopt an emergency rule addressing these issues so that the due process hearing system will remain available to parents and districts when the Act becomes effective.

Publication Date: June 25, 1996
Effective Date: June 25, 1996
Expiration Date: November 22, 1996
Hearing Dates: September 9 & 10, 1996

2. Rules were adopted revising **ch. PI 11**, relating to the handicapping condition of significant developmental delay.

Finding of Emergency

1995 Wis. Act 298 adds an alternative category of significant developmental delay for the identification of disabled preschoolers when the diagnosis is not clear. The Act becomes effective July 1 and requires the department to conduct inservice training for early childhood special education teachers and directors and pupil services personnel in identifying children with significant developmental delay to ensure that only children meeting the criteria established by the department by rule are so identified.

In order to establish identification criteria under the significant developmental delay category and in order to conduct the required training sessions prior to the 1996–97 school year, rules must be in place as soon as possible.

Publication Date: July 31, 1996
Effective Date: July 31, 1996
Expiration Date: December 28, 1996
Hearing Dates: September 9 & 10, 1996

EMERGENCY RULES NOW IN EFFECT

Securities

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

Finding of Emergency

The Office of the Commissioner of Securities for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health,

safety or welfare. A statement of the facts constituting the emergency follows:

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

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

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

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

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

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

The parties who informed the Commissioner's Office regarding GASB Statement No. 14 stated that GASB Statement No. 14 would have an immediate, negative impact on the availability or use of the registration exemption in s. 551.22 (1) (a), Stats., by those

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

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

B. Recent Accounting Developments Warranting Present Emergency rule Treatment.

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

The specific accounting issue involves interpretation of the current accounting standard for property tax recognition established by the National Council on Governmental Accounting ("NCGA") Interpretation 3 "Revenue Recognition—Property Taxes." The accounting interpretation issue is presented as a result of the interplay of the following two factors: (1) most public school and

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

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

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (3)**Transportation**

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

Finding of Emergency

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

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

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

Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of*

Motor Vehicles, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

Publication Date: October 25, 1996
Effective Date: October 25, 1996
Expiration Date: March 24, 1997
Hearing Date: December 16, 1996
 [See Notice this Register]

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

Finding of Emergency

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

Publication Date: November 1, 1996
Effective Date: November 1, 1996
Expiration Date: March 31, 1997
Hearing Date: November 26, 1996
 [See Notice this Register]

STATEMENTS OF SCOPE OF PROPOSED RULES

Accounting Examining Board

Subject:

Accy Code – Relating to the clarification of administrative rules relating to certified public accountants.

Description of policy issues:

Objective of the rule:

The objective of the rule is to clarify and update administrative rules. Recommended changes relate to:

- ✓ form, style, grammar and placement in the administrative code;
- ✓ issues of identifying statutory authority;
- ✓ references used to adopt standards of other organizations; and
- ✓ constitutionality and enforceability issues.

Policy analysis:

Existing policies are in chs. Accy 1 to 9. The proposal would do the following:

- ① Clarify statutory authority regarding chs. Accy 1, 4, 5 and 7;
- ② Delete references to “public accountant,” as the statute is no longer in effect;
- ③ Repeal s. Accy 5.11 as it is in conflict with the Open Records Law;
- ④ Modify instances of incorrect form, style, grammar and punctuation.
- ⑤ Reorganize chapters and information for consistency; and
- ⑥ Review references regarding authority for adoption of competence and technical standards set by professional organizations.

Statutory authority:

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

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

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

Subject:

A–E Code – Relating to clarification of administrative rules relating to professional practice of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors.

Description of policy issues:

Objective of the rule:

The objective of the rule is to clarify and update administrative rules. Recommended changes relate to:

- ☐ form, style, grammar and placement in the administrative code;
- ☐ consistency with the Americans with Disabilities Act of 1990;
- ☐ examination passing scores, cheating policy; and
- ☐ adequacy of references to related statutes and rules.

Policy analysis:

Existing policies are in chs. A–E 1–10, Wis. Adm. Code. The proposal would do the following:

- ① create provisions which would require the Board to grant reasonable accommodations to applicants with disabilities;
- ② include penalties for cheating on the examination, as well as updating language regarding passing scores; and
- ③ improve clarity, grammar and punctuation.

Statutory authority for the rule:

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

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

Natural Resources

Subject:

S. NR 5.20 – Relating to a waiver of slow–no–wake (SNW) requirement for the Wild Rose Mill Pond for two days each year.

Description of policy issues:

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

A public hearing will be held to determine if the request by the Village of Wild Rose to modify the slow–no–wake requirement is justified. If it is justified, the Department will proceed with the rulemaking process. If the request is not justified, the Department will deny the request.

Explain the facts that necessitate the proposed change:

Pursuant to s. NR 5.20, the Department is required to hold a public hearing to determine if a rule change is necessary in this situation.

Statutory authority for the rule:

Section 30.635, Stats.

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

The anticipated time commitment is 21 hours. One hearing will be held in Wautoma in March, 1997.

Natural Resources**Subject:**

Ch. NR 20 – Relating to fishing: inland waters; outlying waters.

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

Description of policy issues:

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

This rule change will reduce sport and commercial harvests of yellow perch from Green Bay. It may include reductions in annual total allowable commercial harvests by commercial fishers, reductions in the daily sport fishing bag limit, and a closure of sport fishing during the spawning season. It will affect sport and commercial fishers, and related businesses.

Explain the facts that necessitate the proposed change:

Although the Green Bay yellow perch population has not experienced the severe problems found in southern Lake Michigan, reproduction has declined in recent years, resulting in a markedly reduced adult population. Protective measures are needed to maximize the likelihood of a recovery, and to assure equitable allocation of the harvest between sport and commercial fishers.

Statutory authority for the rule:

Sections 29.085, 29.174 (3) and (4a) and 29.33, Stats.

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

The anticipated time commitment is 38 hours. One hearing will be held in Green Bay in January, 1997.

Natural Resources**Subject:**

Section NR 728.11 – Relating to language authorizing the Department to record affidavits in the County Register of Deeds office for properties where contamination exists which is not being adequately addressed by the responsible party (RP).

Description of policy issues:

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

The current language allows the Department to record affidavits in the County Register of Deeds office for properties where contamination is known to exist, but is not being properly addressed by the RP. These sites are oftentimes ones where the RP, who usually is also the owner of the property, has claimed an inability to proceed with the environmental cleanup, due to a lack of financial resources to do so. The current language was adopted by the Natural Resources Board, with a one year sunset date. In order to continue with this rule language, the entire rule–making process must proceed.

Explain the facts that necessitate the proposed change:

This language has been in place for almost one year now and has been implemented by District staff. This language is similar to that found in s. NR 726.05 (8) (b), which allows the Department to require an RP to record an affidavit, applicable to their property, when the Department determines that complete removal or remediation of the contamination is impossible or impractical. There have also been a number of historical instances where Department staff have recorded affidavits when it was believed a particular piece of contaminated property was being sold or changing hands.

Statutory authority for the rule:

Sections 144.431 (1) (a) and (b), 144.442, 144.76, 144.765 and 144.77, Stats.

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

The anticipated time commitment is 27 hours. Two or three hearings will be held in January, 1997.

Nursing Home Administrator Examining Board**Subject:**

NHA Code – Relating to clarification of administrative rules relating to the practice of nursing home administrators.

Description of policy issues:

Objective of the rule:

The objective of the rule is to clarify and update administrative rules. Recommended changes relate to:

- ✦ form, style, grammar and placement in the administrative code;
- ✦ consistency with the Americans with Disabilities Act of 1990;
- ✦ examination passing scores, cheating policy; and
- ✦ provisional licensure and professional standards.

Policy analysis:

Existing policies are in chapters NHA 1 – 6, Wis. Adm. Code. The proposal would do the following:

Clarify:

- ① authority and definitions;
- ② requirements for education and experience;
- ③ licensure, biennial renewal and reciprocal examination;

create:

- ④ provisions to require the Board to grant reasonable accommodations to applicants with disabilities;
- ⑤ passing score for national examination; and
- ⑥ policy dealing with cheating on the examination;

consider:

⑦ writing administrative rules pertaining to provisional (temporary) licensure and the study of improvement and methods for enforcement of the practice standards of nursing home administrators;

repeal:

- ⑧ chapter NHA 6, pertaining to access to public records; and

make:

- ⑨ minor, technical, grammatical and punctuation changes.

Statutory authority for the rule:

Sections 15.08 (5) (b), 227.11 (2), 440.03 (1m), 440.05, 456.01, 456.02 (6) and 456.10, Stats., and ch. 19, Stats.

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

50 hours.

Optometry Examining Board**Subject:**

Opt Code – Relating to credential application, examination and continuing education requirements and to standards of professional conduct of optometrists.

Description of policy issues:*Objective of the rule:*

The objective of the rule is:

- To clarify definitions.
- Initial credential application procedures.
- Requirements for reciprocal applicants.
- Continuing education reporting requirements.
- Appropriate delegation of tasks to unlicensed individuals.
- Exceptions relating to performance of the minimum visual examination.

Policy analysis:

The Optometry Examining Board strives to ensure that its administrative rules reflect:

- ① Clarity;
- ② Streamlined application and renewal procedures; and
- ③ The current scope of the practice of optometry.

For example, under the current renewal procedures, optometrists certified under ss. 449.17 and 449.18, Stats., are required to submit certificates of attendance, as well as written certifications as proof of completion of the continuing education coursework

The Board proposes to amend various provisions in ch. Opt 6, to reflect that a signed statement certifying that the continuing education coursework has been completed is sufficient for purposes of renewing a credential. Licensees will be required to retain certificates of attendance for a specific period of time and to provide them to the Board upon request.

Statutory authority for the rule:

Sections 15.08 (5) (b), 227.11 (2) and 449.18, Stats.

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

40 hours

Railroads, Commissioner of**Subject:**

OCR Code, ch. RR 1 – Relating to hearing practice and procedure.

Description of policy issues:*Objective of the proposed rule:*

To clarify and update the OCR's rules governing hearing procedure and practice.

Policy analysis:

The primary thrust of the proposed rule will be to codify the OCR's current practices and procedures and delete obsolete provisions. The existing rules do not fully cover some areas of OCR hearing practice. The proposed rule will more fully describe these practices, so that a reader of the rules will better understand the OCR's practices and requirements.

The proposed rule will:

1. More fully define the “parties” to OCR hearings. The existing rule provides only a limited definition.
2. Set forth form and content requirements for petitions, notices and decisions. The OCR currently follows a specific format for notices and decisions. The rule would simply codify the present practice. The OCR currently does not require any specific form or information when a petition is filed. Consequently, petitioners are sometimes uncertain what they need to file. The rule would set out easily–met, simple requirements, but which also ensure that the OCR receives certain minimum details concerning the petition.
3. Allow the hearing examiner to issue a final decision when the Commissioner recuses himself or herself, when the Commissioner is temporarily unable to carry out the duties of the office due to illness or when Commissioner’s position is vacant. At present, the OCR could not issue a final decision in the event any of these conditions arose.
4. Allows a stipulation of facts by the parties to constitute a “hearing”. This change would allow the OCR to dispense with a hearing where there is no factual dispute and where no other need for a hearing exists.
5. Clarify the procedures needed to fulfill s. RR 1.13 “Environmental review.”;
6. Define the class of hearing for purposes of s. 227.01, Stats. The OCR currently includes this determination in each notice of hearing.
7. Make other minor miscellaneous procedural revisions.

Statutory authority:

Sections 189.02 (1), 195.03 (1), and 227.11 (2), Stats.

Staff time and administrative costs:

60 hours

Railroads, Commissioner of

Subject:

OCR Code, ch. RR 3 – Relating to railroad ratemaking.

Description of policy issues:

Objective of the proposed rule:

The proposed rule would repeal ch. RR 3, which contains rules on intrastate railroad ratemaking.

Policy analysis:

The federal Interstate Commerce Commission Termination Act of 1995 preempts all state authority to regulate railroad ratemaking. 49 USC sec. 10501. The Termination Act granted the new Surface Transportation Board (STB) exclusive authority over ratemaking and other practices covered by ch. RR 3. The Termination Act also extended the STB’s jurisdiction to include rail transportation between points in the same state.

Under the provisions of the former Interstate Commerce Act (ICA), the ICC certified state agencies, including the OCR, to regulate intrastate ratemaking. The Termination Act eliminated this practice. On April 3, 1996, the STB published its conclusion in the federal register that such state certifications were invalidated by the Termination Act. 61 FR 14849. Consequently, the rules in ch. RR 3 should be repealed.

Statutory authority:

Sections 189.02 (1), 195.03 (1), and 227.11 (2), Stats.

Staff time and administrative costs:

2 hours

Revenue

Subject:

Notice is hereby given, pursuant to s. 227.135, Stats., that the Department of Revenue plans to promulgate administrative rules affecting ss. Tax 11.39 and 11.41, relating to the definition of manufacturing, and taxation of items consumed or destroyed in manufacturing for sales and use tax purposes.

Description of policy issues:

Objective of the proposed rule:

The objective of the proposed rule order is to correct ss. Tax 11.39 and 11.41 due to:

- (a) Change in Department policy with respect to dental labs;
- (b) The following decisions by the Wisconsin Tax Appeals Commission and Wisconsin courts (House of Bidwell v. Wisconsin Department of Revenue, Artex Corporation v. Wisconsin Department of Revenue; and
- (c) Standards of the Legislative Council Rules Clearinghouse.

Existing policies:

This proposed rule order reflects the Department of Revenue’s existing policy of providing accurate information to taxpayers, practitioners, and Department employees regarding sales and use taxes as they apply to manufacturers.

Policy alternatives:

Do nothing. The rule will be incorrect in that it does not reflect Wisconsin Tax Appeals Commission and Wisconsin court decisions and changes in Department policy as it relates to dental labs.

Statutory authority:

Section 227.11 (2) (a), Stats.

Estimate of staff time required:

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

Veterinary Examining Board

Subject:

VE Code – Relating to evidence that would be required in order to obtain a veterinary license of a candidate who is a graduate of a school that has not been approved by the Board.

Description of policy issues:

Objective of the rule:

This amendment shall require applicants who have graduated from a school not approved by the Board to complete and obtain certification from the Educational Commission for Foreign Veterinary Association.

Policy analysis:

This amendment will only allow those applicants who have completed and obtained their ECFVG (Educational Commission for Foreign Veterinary Graduates) certification to be eligible for licensure as a veterinarian in Wisconsin.

Statutory authority for the rule:

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

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

1 hour

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Administration

Rule Submittal Date

On October 11, 1996, the Wisconsin Department of Administration submitted three proposed rules to the Wisconsin Legislative Council Clearinghouse.

Analysis

Regulation of mobile home dealers has been transferred from the Department of Transportation to the Department of Administration. Chapters Trans 140, 141 and 144, created by the Department of Transportation for the regulation of mobile home dealers, were adopted by the Department of Administration as policy, pending enactment of the proposed rules. The proposed rules create chs. Adm 66, 67 and 68, relating to manufactured home dealer financial eligibility, manufactured home dealer trade practices, facilities and records, and licensing periods and fees for manufactured home dealers.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rules without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The organizational unit that is primarily responsible for promulgation of these rules is the Division of Housing, Mobile Home Park/Dealer License Section.

Contact Person

If you have any questions, you may contact Donna Sorenson at (608) 266–2887.

Commerce

Rule Submittal Date

On October 28, 1996, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse.

Analysis

The proposed rule affects chs. ILHR 51, 52, 66, 69 and 70, relating to barrier-free design requirements.

Agency Procedure for Promulgation

A public hearing is required. The agency unit responsible for the promulgation of the proposed rule is the Department of Commerce.

Contact Person

If you have any questions, you may contact the Department of Commerce at (608) 266–1018.

Employe Trust Funds

Rule Submittal Date

Notice is hereby given that on October 21, 1996, the Wisconsin Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting s. ETF 60.53.

Analysis

The subject matter of the proposed rule relates to deadlines to apply for death benefits payable from the Wisconsin Retirement System (WRS) and timing of automatic distribution of these benefits.

Agency Procedure for Promulgation

A public hearing is scheduled for November 26, 1996.

Contact Person

If you have any questions, you may contact Mary Anglim, Retirement Services Division at (608) 266–6611.

Hearing and Speech Examining Board

Rule Submittal Date

On November 1, 1996, the Department of Regulation and Licensing submitted to the Legislative Council Rules Clearinghouse a proposed order affecting s. HAS 6.09 (2) (o).

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

In this proposed rule-making order, the Hearing and Speech Examining Board is amending s. HAS 6.09 (2) (o) to eliminate the prohibition of not being able to evaluate patients by correspondence, thus allowing a credential holder to review fax or computer records and make recommendations on treatment. This change is consistent with the advent of more modern and sophisticated types of electronic transmission of data.

Agency Procedure for Promulgation

The date for the public hearing is December 2, 1996.

Contact Person

If you have any questions, you may contact Pamela Haack, Rules Center Coordinator at (608) 266–0495.

Transportation

Rule Submittal Date

On October 29, 1996, the Department of Transportation submitted a proposed rule to the Joint Legislative Council Staff.

Analysis

The proposed rule affects ch. Trans 117, relating to the occupational driver's license.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for November 26, 1996. The organizational unit responsible for the promulgation of the proposed rule is the Division of Motor Vehicles, Bureau of Driver Services.

Contact Person

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

Transportation

Rule Submittal Date

On October 30, 1996, the Department of Transportation submitted a proposed rule to the Joint Legislative Council Staff.

Analysis

The proposed rule affects ch. Trans 55, relating to the granting of state aid to airport owners.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for December 3, 1996. The organizational unit responsible for the promulgation of the proposed rule is the Division of Infrastructure Development, Bureau of Aeronautics.

Contact Person

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

Transportation*Rule Submittal Date*

On October 30, 1996, the Department of Transportation submitted a proposed rule to the Joint Legislative Council Staff.

Analysis

The proposed rule affects ch. Trans 152, relating to the Wisconsin interstate fuel tax and the International Registration Plan (IRP).

Agency Procedure for Promulgation

A public hearing is required and is scheduled for December 6, 1996. The organizational unit responsible for the promulgation of the proposed rule is the Division of Motor Vehicles/Vehicle Services Section.

Contact Person

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

NOTICE SECTION

Notice of Hearing

Agriculture, Trade & Consumer Protection

► (Reprinted from October 31, 1996 *Wis. Adm. Register*)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on its emergency rule (s. ATCP 139.04 (11)), relating to prohibiting the sale of butane, propane, and other flammable refrigerants for use in mobile air conditioning systems.

Hearing Information

The public hearing will be held:

November 15, 1996	Room 266
Friday	Dept. of Agriculture, Trade
1:30 p.m.	& Consumer Protection
	Prairie Oak State Office Bldg.
	2811 Agriculture Dr.
<i>Handicapped</i>	MADISON, WI
<i>Accessible</i>	

Written Comments

Public comment is being sought on the Department's emergency rule, pursuant to s. 227.24 (4), Stats., which requires that a public hearing be held within 45 days after an emergency rule is adopted. Following the public hearing, the hearing record will remain open until **November 27, 1996** to receive additional written comments.

An interpreter for the hearing-impaired will be available upon request for this public hearing. Please make reservations for a hearing interpreter by November 8, 1996 either by writing to Jamie Tukiendorf, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911 [telephone (608) 224–4924] or by calling the Department TDD at (608) 224–5058.

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

Statutory authority: ss. 93.07 (1) and 100.37 (2)

Statute interpreted: s. 100.37

In order to protect the public from fire and explosion hazards, this emergency rule bans the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Hazardous Substances Law

The Department of Agriculture, Trade and Consumer Protection ("Department") regulates the sale and labeling of hazardous substances under s. 100.37, Stats. Section 100.37 (1), Stats., defines a hazardous substance to include any substance or mixture of substances which is flammable or combustible "if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use."

The hazardous substances law authorizes the Department to identify "hazardous substances" by rule. The Department may regulate "hazardous substances" in various ways. The Department may, by rule:

- Require precautionary labeling of hazardous substances.
- Restrict the use of hazardous ingredients.
- Prescribe package safety standards.
- Ban the sale of a hazardous substance if less restrictive alternatives are inadequate to protect public health and safety.

Current rules under ch. ATCP 139, Wis. Adm. Code, spell out packaging and labeling requirements for hazardous substances. Current rules also prohibit the sale of certain hazardous substances if there is a serious hazard that cannot be adequately addressed by other means.

Emergency Rule Contents

This emergency rule lists, as "hazardous substances" under ch. ATCP 139, gaseous hydrocarbons intended for use as refrigerants in mobile air conditioners. It also prohibits the sale of those substances for use in mobile air conditioners because they pose a serious safety hazard which cannot be adequately addressed by labeling or other means. The prohibition does not apply to refrigerants which are properly labeled for specific end uses approved by the United States Environmental Protection Agency, and which meet recognized industry flammability standards for those end uses.

Fiscal Estimate

See page 21 of the October 31, 1996 *Wis. Adm. Register*.

Copies of Emergency Rule and Fiscal Estimate

A copy of this emergency rule and fiscal estimate can be obtained at no charge by making a request to:

Tom Stoebig, (608) 224–4944
Bureau of Consumer Protection
Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
P.O. Box 8911
MADISON, WI 53708–8911

Initial Regulatory Flexibility Analysis

See page 21 of the October 31, 1996 *Wis. Adm. Register*.

Notice of Hearings

Agriculture, Trade & Consumer Protection

► (Reprinted from October 31, 1996 *Wis. Adm. Register*)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold five public hearings on amending the Corn Marketing Order (ch. ATCP 143). The proposed amendment increases the assessment rate under the corn marketing order from one–tenth of one cent (\$0.001) per bushel to one–half of one cent (\$0.005) per bushel.

Written Comments

The hearings will be held at the dates and places indicated below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open for additional written comments until **December 20, 1996**.

Copies of Rule and Contact Person

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

Marketing Order Program
Telephone 1 (800) 462–2765
Wis. Dept. of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708–8911

Copies will also be available at the public hearings.

An interpreter for the hearing–impaired will be available upon request for these hearings. Please make reservations for a hearing interpreter by November 25, 1996 by contacting Margaret Fay at 1–800–462–2765 (Voice) or by contacting the Department at (608) 224–5058 (TDY Telephone).

Hearing Information

The hearings are scheduled as follows:

December 9, 1996 Monday 11:00 a.m. to 2:00 p.m. <i>Handicapped</i> <i>Accessible</i>	Room 106 Wis. Dept. of Agriculture, Trade & Consumer Protection Prairie Oak Office Bldg. 2811 Agriculture Dr. MADISON, WI
December 10, 1996 Tuesday 11:00 a.m. to 2:00 p.m. <i>Handicapped</i> <i>Accessible</i>	Room UW–Cooperative Extension Demonstration Center—First Floor Rock Co. Courthouse 51 South Main Street JANESVILLE, WI
December 11, 1996 Wednesday 11:00 a.m. to 2:00 p.m. <i>Handicapped</i> <i>Accessible</i>	Large Conference Room DATCP—Eau Claire Regional Office 927 Loring St. ALTOONA, WI
December 12, 1996 Thursday 11:00 a.m. to 2:00 p.m. <i>Handicapped</i> <i>Accessible</i>	Room 101 Classroom Bldg. UW–Fond du Lac Center/ UW–Cooperative Extension Campus Drive FOND DU LAC, WI
December 13, 1996 Friday 11:00 a.m. to 2:00 p.m. <i>Handicapped</i> <i>Accessible</i>	UW Cooperative Extension— Lower Level Conference Room Iowa Co. Courthouse (New Addition) 222 North Iowa St. DODGEVILLE, WI

Analysis

Statutory authority: ss. 96.05 and 96.08

Statute interpreted: s. 96.11

The proposed rule amends s. ATCP 143.06 (1) by increasing the assessment rate under the corn marketing order from one–tenth of one cent (\$0.001) per bushel to one–half of one cent (\$0.005) per bushel.

The proposed amendment must be approved by more than 50% of the affected corn producers voting in a referendum before the increased assessment rate becomes effective. If corn growers or affected producers approve the referendum, the Department intends to have the amended marketing order in effect in the fall of 1997 for the harvest and sale of corn grown in 1997 and subsequent years.

BACKGROUND

The corn marketing order (ch. ATCP 143, Wis. Adm. Code) was created in 1983 and requires all producers of corn sold into commercial channels to pay an assessment at the rate of one–tenth of one cent (\$.001) per bushel. The funds are used for financing research, market development, and educational programs related to corn sales.

Each producer selling corn into commercial channels is liable for payment of the assessment under the corn marketing order. Handlers and dealers taking title to corn sold to them by producers are responsible for collecting the assessment from amounts due the producers. Under the marketing order, a producer may request a refund of the assessment which the producer paid into the marketing order.

The rate of assessment has not changed since the marketing order became effective on February 1, 1983.

The Wisconsin Corn Growers Association has petitioned the Department Secretary to amend the marketing order to increase the assessment rate to one–half of one cent (\$.005) per bushel. The increase is projected to generate an additional \$400,000 in assessment revenue annually.

Fiscal Estimate

The Department would incur one–time costs of \$35,000 to cover administrative costs related to the rule amendment process. The Wisconsin Corn Growers Association has signed an agreement with the Department to fully reimburse the agency for the cost of adoption. There will be no net fiscal impact to the Department.

Initial Regulatory Flexibility Analysis

The proposed amendment will not have a significant economic impact on small businesses. The corn marketing order provides for a refund which enables a producer to receive a refund upon submitting proof satisfactory to the marketing board that the assessment for which the refund is requested has been paid.

Notice of Hearings

Department of Commerce

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

(Multifamily Dwellings, Ch. ILHR 66)

(Barrier–Free Design, Ch. ILHR 69)

(Historic Buildings, Ch. ILHR 70)

Notice is given that pursuant to ss.101.02 (15) and 101.13, Stats., the Department of Commerce proposes to hold public hearings to consider the revision of rules under chs. ILHR 51, 52, 66, 69 and 70, Wis. Adm. Code, relating to Barrier–free Design.

Hearing Information

December 9, 1996 Monday 11:00 a.m.	Wausau North Central Technical Institute Room 450/451 1000 Campus Drive
December 10, 1996 Tuesday 11:00 a.m.	Madison Room 103 Conf. Room GEF–I, State Office Bldg. 201 E. Washington Ave.
December 17, 1996 Tuesday 10:30 a.m.	Milwaukee Multi–Media Center Goodwill Industries 6055 North 91st. Street

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety and Buildings, 201 East Washington Avenue, P.O. Box 7969, Madison, Wisconsin 53707, by calling (608) 261–6546 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **January 6, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Diane Meredith at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses. These hearings are held in accessible facilities.

If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266–8982 or Telecommunication Device for the Deaf (TDD) at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 and 101.13

Statute Interpreted: s. 101.13

The purpose of ch. ILHR 69 and the other accessibility related code chapters is to insure that any public building or facility is designed, constructed, and altered to be accessible and usable by people with disabilities.

The proposed changes are in response to 1995 Wis. Act 27 that eliminated the percentage requirements for remodeled buildings and to concerns raised by users of the code. The following is a summary of the major changes being proposed in ch. ILHR 69 and the other accessibility related code chapters.

1. Eliminate the requirement in the Building Code that prohibits the use of open risers. The requirements in ADAAG 4.1.3 (4) allow open risers under certain conditions. [ILHR 51.16 (4) (a) 1.]
2. Create acceptable installation heights for water fountains accommodating persons who have difficulty stooping. [ILHR 52.60 (4)]
3. Add to s. ILHR 66.38 (4) (a) 2. an informational note clarifying that a stairway adjacent to a ramp is considered a stairway on an accessible route. [ILHR 66.38 (4) (a) 2.]
4. Establish minimum construction requirements for existing buildings that are converted from a non–covered occupancy to a covered occupancy under the Building Code. [ILHR 69.03 (3) (b)]
5. Create rules covering maintenance of facilities and describing department authority. [ILHR 69.045 and 69.11 (2)]
6. Eliminate the requirements for a petition for variance to be submitted when an owner is justifying disproportionality or is applying the alternate technical provisions specified in ADAAG 4.1.6 (3). [ILHR 69.10 (3) and ILHR 69.20 (1)]
7. Incorporate by reference the national standards for automatic doors, American National Standards Institute (ANSI) A156.10–1991 and A156.19–1990 as specified in ADAAG 4.13.12. [ILHR 69.105 and 69.29 (3)]
8. Clarify the accessibility requirements to be applied to places of worship. [ILHR 69.16]
9. Clarify the parking sign requirements to permit owners to identify employee parking spaces with signs other than the TRANS 200 sign. [ILHR 69.17 (2) (b)]
10. Clarify that all buildings and facilities are required to comply with chapter ILHR 69. [ILHR 69.18 (1)]
11. Clarify the accessible route requirements in buildings less than 3 stories and with a gross area less than 20,000 square feet. An accessible route shall be provided to all areas of the accessible floor level raised or depressed by not more than 3 feet. Where common–use areas, such as lunchrooms and meeting rooms, are provided in the building or facility, the accessible floor level shall contain at least one of each type of common–use areas. [ILHR 69.18 (1m)]
12. Clarify the accessible route requirements for buildings less than 3 stories and with a gross area 20,000 square feet or more. Vertical access shall be provided to mezzanines containing common–use and public–use areas. Vertical access will not be required to mezzanines containing additional employment areas. Permit the use of vertical wheelchair lifts and limited–use elevators to provide vertical access between floor levels. [ILHR 69.18 (2) (b)]
13. Allow an exemption for an accessible route to floors used entirely for storage. [ILHR 69.18 (2) (a) 2. and (b) 2.]
14. Clarify when areas of rescue assistance are required. [ILHR 69.18 (3)]
15. Repeal the requirements relating to unisex toilet rooms to be consistent with 1995 Wis. Act 285. [ILHR 69.18 (4)]
16. Repeal the percentage of remodeling of requirements to be consistent with 1995 Wis. Act 27. [ILHR 69.19 and 69.20]
17. Clarify that a petition for variance will not be required when alterations to an existing building comply with the technical provisions specified in ADAAG 4.1 6 (3). [ILHR 69.20 (1) (a)]
18. Clarify that residential elevators are restricted for use in existing churches only. [ILHR 69.20 (3) (c)]
19. Revise the accessibility requirements for historical buildings to be consistent with the minimum accessibility requirements specified in ADAAG 4.1.7. [ILHR 69.21, 70.42, 70.43 and 70.44]
20. Clarify the parking access aisle must lead to an accessible route in front of the parking spaces. [ILHR 69.245]
21. Eliminate the sentence relating to open risers under the guardrail section, since it does not apply. [ILHR 69.26 (2)]
22. Allow handrails in elevators to have shapes differing from ADAAG 4.26 and require certain shaped handrails to be used at stairways and ramps. [ILHR 69.275 and 69.36 (1)]
23. Specify the minimum platform sizes for wheelchair platform lifts and limited–use elevators, but eliminate the minimum shaft sizes. [ILHR 69.28 (2)]
24. Specify, in Figure 25, the “x” dimension is 12 inches, if the door has a latch. [ILHR 69.29]
25. Clarify requirements relating to shower spray units in bathtubs and showers, and clear floor space at bathtubs. [ILHR 69.33, 69.34 (2), 69.35 (2)]
26. Specify that accessible seating in bleacher–type seating must be located within the first row of permanent seating. [ILHR 69.375]
27. Create minimum requirements for mini–storage buildings. [ILHR 69.415(2)]
28. Clarify requirements relating to accessible transient lodging. [ILHR 69.42]

The proposed rules have been developed with the assistance of the Barrier–free Design Advisory Committee. The members of that citizen advisory committee are as follows:

Kayleen Brereton	Public member
Cleo Eliason	Easter Seals Society of Wisconsin, Inc.
Chuck Hanson	American Society of Civil Engineers
Mary Lawson	Wisconsin Society of Architects
Len Linzmeier	Wisconsin Builders Assoc.
Jim Mather	Department of Health and Social Services
Richard Pomo	Department of Administration
Edward Solner	Wisconsin Society of Architects
Dave Wheaton	Southeastern Wisconsin Building Inspectors Assoc.

Paul Yochum
People with Disabilities

Governor's Committee for

Initial Regulatory Flexibility Analysis

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

Small architectural, engineering and plumbing design firms will be affected by the proposed rules. When a small business operator is remodeling or altering an existing building or constructing a new building, the remodeling, alteration or new construction must comply with the proposed rules.

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

Small architectural, engineering and plumbing design firms will be affected by the proposed rules. When a small business operator is remodeling or altering an existing building or constructing a new building, the remodeling, alteration or new construction must comply with the proposed rules.

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

None known.

Environmental Assessment

The Department has prepared a preliminary environmental assessment (EA) on the revisions to chapters ILHR 51, 52, 66, 69 and 70, relating to Barrier-free Design requirements. The preliminary recommendation is a finding of no significant impact. Copies of the EA are available from the Department on request and will be available at the public hearings. Comments on the EA should be directed to:

Diane Meredith
Safety and Buildings Division
Department of Commerce
P. O. Box 7969
Madison, Wisconsin 53707
Phone (608) 266-8982 or
TTY (608) 264-8777

Written comments will be accepted until **January 6, 1997**.

Fiscal Estimate

Existing rules are being revised to clarify and in some instances eliminate certain requirements, therefore not creating a fiscal impact.

Notice of Hearing

Employe Trust Funds

The Wisconsin Department of Employe Trust Funds will hold a public hearing in accordance with the provisions of s. 227.16 (1), Stats., to review a proposed rule, which creates s. ETF 60.53 (2), Wis. Adm. Code, relating to deadlines to apply for death benefits payable from the Wisconsin Retirement System and timing of automatic distribution of these benefits. The public hearing will be held on **Tuesday, November 26, 1996 at 1:00 p.m. in Room 371, GEF 1, 201 East Washington Avenue, Madison, Wisconsin.**

The public record on this proposed rule making will be held open until **4:30 p.m. on Friday, November 29, 1996** to permit the submission of written comments from persons unable to attend the public hearing in person or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Mary Anglim, Department of Employe Trust Funds, P.O. Box 7931, Madison, Wisconsin 53707-7931, FAX (608) 267-0633.

Analysis Prepared by the Wisconsin Department of Employe Trust Funds

Under s. 401(a)(9)(B) of the Internal Revenue Code (IRC), if a participant or alternate payee dies before beginning a distribution from a qualified retirement plan, the person's entire interest in the plan must be distributed by the end of the fifth year after the year of death. This is the so-called five-year rule. Normally, death benefits are paid in a lump sum under this rule.

There are two exceptions to the five-year rule. First, any beneficiary may receive the death benefit as an annuity paid over his or her lifetime or for a period not exceeding his or her life expectancy, provided the annuity begins and at least one payment is made by the end of the first year following the year of the participant's death. Second, a beneficiary who was the spouse of the participant may defer application for an annuity or a lump sum until the later of this date or January 1 of the year the participant would have attained age 70.5. The exception for spouses does not include spouses of deceased alternate payees.

Before May 16, 1996, the Department lacked statutory authority to limit death benefit payment options in accord with federal tax law and to make mandatory distributions when the account owner failed to apply voluntarily. 1995 Wisconsin Act 302 authorized the Department to require distributions of death benefits in conformance with federal tax law. The Department is in the process of promulgating another rule to govern automatic distributions to living participants and alternate payees and to beneficiaries of annuitants. This proposed rule is intended to govern payment of death benefits to beneficiaries of participants and alternate payees who died before beginning a distribution from their Wisconsin Retirement System (WRS) account. This proposed rule potentially affects death benefits for all active and inactive WRS participants and for annuitants who have not yet begun distribution from their additional contributions account.

The proposed rule provides the following:

- Beneficiaries may receive a death benefit as a life annuity by applying by the end of September of the year following the year of the participant's or alternate payee's death. This deadline was chosen for administrative and federal compliance reasons. Federal law requires a beneficiary who chooses a life annuity to receive at least one annuity payment before the end of the year following the year of death. In order to receive a check from the WRS on December 1, a beneficiary must have an annuity effective date of November 1. The late September application deadline ensures that the Department has sufficient time to process the application and issue the first check within federal deadlines.

•Beneficiaries who elect a lump sum benefit control the date of payment by filing an application at the appropriate time. The Department pays lump sum death benefits as quickly as possible, usually within 60 days of the date it receives the application. In the year of payment, lump sum death benefits are credited with 5% interest pro-rated for the number of full calendar months before the payment date. Thus it is often to the beneficiary's advantage to apply for a payment early in a calendar year. The proposed rule provides that the Department will not accept applications filed after the end of September in the fifth year following the year of the participant's or alternate payee's death. Since the Department is required to distribute the benefit in a lump sum prior to December 31 with or without an application, the late September deadline ensures that the Department has sufficient time to make the distribution within federal deadlines.

•A beneficiary who was the spouse of the participant at the time of death may defer application until the end of the year in which the participant would have reached age 69.5, if that is later than the dates described above. However, under the proposed rule, to preserve the right to receive a life annuity at a later date, a spouse must file a beneficiary designation by the end of September in the year following the year of the participant's death or by September 30, 1999, whichever is later. The deferred effective date is included to allow the Department time to locate and inform spouses who would otherwise be beyond the deadline to apply for a life annuity.

Section 40.23 (4) (e) 2., Stats., and this proposed rule require the spouse to file a beneficiary designation in order to prevent significant tax penalties to a secondary beneficiary or possible forfeiture of the benefit should the spouse die before applying. Under s. 40.02 (8)(b), Stats., if a potential beneficiary dies without filing either a benefit application or a beneficiary designation, the benefit is payable to the original participant's next beneficiary. Non-spouse beneficiaries have only five years after the year of the participant's death to receive the death benefit in any form. However, under IRC s. 401(a)(9)(B)(iv)(II) and Prop. Reg. 1.401(a)(9)(B)-1, C-5, if the spouse has named a beneficiary the five-year period starts over from the date of the spouse's death.

•Provided a beneficiary can be located, the Department will automatically distribute the benefit as a lump sum if no application is filed by the deadlines described above, i.e., before December 31 of the fifth year after the year of the participant's or alternate payee's death or (for the spouse of the deceased participant only) effective January 1 of the year the participant would have attained age 70.5.

This rule does not address steps the Department will take, as mandated under s. 40.08 (8), Stats., when beneficiaries cannot be located. The Department intends to promulgate a rule on abandoned account procedures in the future.

General Summary of Rule

This proposed rule specifies deadlines within which beneficiaries of certain deceased participants, alternate payees, and beneficiaries may apply for death benefits from the Wisconsin Retirement System.

Beneficiaries may receive a death benefit as a life annuity by applying by the end of September of the year following the year of the participant's or alternate payee's death. They may apply for a lump sum benefit no later than the end of September of the fifth year following the year of the participant's or alternate payee's death. A beneficiary who was the spouse of the participant at the time of death may defer application until the end of the year in which the participant would have reached age 69.5, if that is later than the dates described above. However, to preserve the right to receive a life annuity at a later date, a spouse must file a beneficiary designation by the end of September in the year following the year of the participant's death or by September 30, 1999, whichever is later.

If the department does not receive an application by the applicable deadline, and it is able to locate a beneficiary, the department will distribute the benefit as a lump sum. The rule limits a beneficiary's ability to postpone the distribution by filing a waiver of benefits and specifies that beneficiaries who become eligible as a result of a waiver or the death of another beneficiary are subject to the original application and distribution deadlines.

Authority for Rule

SS. 40.015 (2), 40.03 (2) (i), (t), and 40.24 (4) (e) and (f), as affected by 1995 Wis. Act 302.

Statutes Interpreted

SS. 40.02 (8), 40.08 (8), 40.23 (4) (c), (e) and (f), and 40.73, as affected by 1995 Wis. Act 302

Related Federal Statutes and Regulations

Section 401(a)(9)(B), Internal Revenue Code; Prop. Reg. 1.401(a)(9)-1, C-1 to C-6.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Persons

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule, please call Mary Anglim, (608) 266-6611.

Notice of Hearing

Hearing and Speech Examining Board

Notice is hereby given that pursuant to authority vested in the Hearing and Speech Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.085 and 459.12 (2), Stats., as amended by 1995 Wis. Act 170, and interpreting ss. 459.34 (2), 459.085 and 459.12 (2), Stats., the Hearing and Speech Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. HAS 4.03, 5.02 (2) (f) and 6.09 (2) (t) and (u); and to create ss. HAS 4.03 (2) and (3), 5.02 (2) (fm), 6.02 (4n) and 6.065, relating to calibration of audiometric equipment and the use of support personnel.

Hearing Information

The hearing will be held:

December 2, 1996
Monday
2:00 p.m.

Room 179A
1400 East Washington Ave.
MADISON, WI

Written Comments

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

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

Written comments must be received by **December 16, 1996** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.085 and 459.12 (2), Stats., as amended by 1995 Wis. Act 170

Statutes interpreted: ss. 459.34 (2), 459.085 and 459.12 (2)

In this proposed rule–making order, the Hearing and Speech Examining Board amends s. HAS 4.03 and creates ss. HAS 4.03 (2) and (3) and 5.02 (2) (fm), relating to the conduct of hearing instrument specialists. The proposed rules establish the frequency of the calibrations of audiometric equipment, clarify the requirements relating to masking sources and define unprofessional conduct to include the failure to maintain adequate records of certification of calibrations for a period of 5 years and failure to provide access to those records when requested by the Board or its representative.

Several provisions in ch. HAS 6 are created, relating to the supervision of unlicensed individuals by speech–language pathologists and audiologists. The proposed rules define “direct supervision” for purposes of monitoring unlicensed individuals and identify the number of unlicensed individuals which may be supervised by a speech–language pathologist or audiologist at any given time. In addition, the proposed rules amend s. HAS 6.09 (2) (u), to clarify that “knowingly permitting an unlicensed person to provide clinical services that exceed that person’s competence, education, training and experience” constitutes a ground for discipline.

Text of Rule

SECTION 1. HAS 4.03 is amended to read:

HAS 4.03 Equipment used to measure hearing. (1) Pure tone audiometry must be conducted with a pure tone audiometer which conforms to the American National Standards Institute, ANSI S3.6 (R1989 1996) approved June 19, 1969. A copy of such standard may be obtained by writing to: American National Institute, 1430 Broadway, New York, NY 10018. Copies are on file at the offices of the department, the secretary of state and the revisor of statutes. Such audiometer shall be capable of generating a minimum of 9 discrete frequencies, ranging from 250 Hz through 8 KHz (250, 500, 1000, 1500, 2000, 3000, 4000, 6000, 8000 Hz). Output levels over the frequency range shall conform to standard ANSI S3.6 specified above. ~~A masking source shall be either available within, or capable of being attached to, the audiometer. The masking source must have white noise or narrow band capability.~~

SECTION 2. HAS 4.03 (2) and (3) are created to read:

HAS 4.03 (2) A masking source shall be either available within, or capable of being attached to, the audiometer. The masking source must have one of the following:

- (a) White noise capability.
- (b) Speech noise capability.
- (c) Narrow band noise and white noise or speech noise capability.

Note: A copy of Standard ANSI S3.6 may be obtained by writing to: The American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies of the Standard are on file at the offices of the Department of Regulation and Licensing, the Secretary of State and the Revisor of Statutes.

(3) Audiometric equipment used in the evaluation of hearing sensitivity for the fitting and sale of hearing instruments shall be calibrated not less than once every 12 months.

SECTION 3. HAS 5.02 (2) (f) is amended to read:

HAS 5.02 (2) (f) Failing to maintain proper calibration ~~and record of audiometer, of audiometric equipment~~ as specified in s. 459.085, Stats.

SECTION 4. HAS 5.02 (2) (fm) is created to read:

HAS 5.02 (2) (fm) Failing to maintain adequate records of certification of calibrations of audiometric equipment for a period of 5 years or failing to provide access to those records when requested by the board or its representative.

SECTION 5. HAS 6.02 (4n) is created to read:

HAS 6.02 (4n) “Direct supervision” means:

(a) For purposes of monitoring unlicensed persons who assist in the practice of speech–language pathology, providing direct observation of the clinical services provided by the individual to patients during 220 of the first 720 hours following the individual’s training and providing on–site observation and evaluation of clinical care provided by the individual to each patient a minimum of 2 out of every 10 sessions, or 2 sessions each month including the final session, whichever is sooner.

(b) For purposes of monitoring unlicensed persons who assist in the practice of audiology, providing comprehensive, periodic and documented supervision which include, but is not limited to:

1. Identifying specific roles and tasks for the individual.

2. Ensuring that the tasks performed by the individual do not require the exercise of professional judgment or entail interpretation of results or the development or modification of treatment plans.

3. Providing appropriate training that is competency–based and specific to job performance.

SECTION 6. HAS 6.065 is created to read:

HAS 6.065 Supervision of unlicensed persons. For purposes of supervising unlicensed persons who assist in the practice of speech–language pathology or audiology:

- (1) A speech–language pathologist may supervise up to 3 individuals at any given time.
- (2) An audiologist may supervise up to 10 individuals at any given time.

SECTION 7. HAS 6.09 (2) (t) and (u) are amended to read:

HAS 6.09 (2) (t) Delegating the provisions of clinical services to unlicensed persons for whom the licensee does not provide direct supervision and assume full responsibility. In this paragraph, 'direct supervision' means providing direct observation of the clinical services rendered by an employe to a patient during the first 10 hours following the employe's training, and providing on–site observation and evaluation of clinical care provided by the employe to each patient during the first session following the assessment, and thereafter, a minimum of one out of every 10 sessions or one session each month including the final session, whichever is sooner has the meaning given in s. HAS 6.02 (4n).

(u) Knowingly permitting any professional staff or unlicensed person to provide clinical services that exceed that staff person's competence, education, training and experience.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Hearing and Speech Examining Board

Notice is hereby given that pursuant to authority vested in the Hearing and Speech Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 440.035 (1), Stats., the Hearing and Speech Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. HAS 6.09 (2) (o), relating to the grounds for discipline for individuals who are credentialed as speech–language pathologists and audiologists.

Hearing Information

The hearing will be held:

December 2, 1996	Room 179A
Monday	1400 East Washington Ave.
2:00 p.m.	MADISON, WI

Written Comments

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

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

Written comments must be received by **December 16, 1996** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

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

Statute interpreted: s. 440.035 (1)

In this proposed rule–making order, the Hearing and Speech Examining Board amends s. HAS 6.09(2) (o), relating to the grounds for discipline for individuals who are credentialed as speech–language pathologists and audiologists.

Text of Rule

SECTION 1. HAS 6.09 (2) (o) is amended to read:

HAS 6.09 (2) (o) ~~Evaluating or treating~~ Treating solely by correspondence.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Medical Examining Board

Notice is hereby given that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 448.05 (3) (b), as created by 1995 Wis. Act 245, and ss. 448.07 (1) (d) and 448.13 (1), Stats., as amended by 1995 Wis. Act 245, and interpreting ss. 448.05 (3) (b), 448.07 (1) (d) and 448.13 (1), Stats., will hold a public hearing at the time and place indicated below to consider an order to amend ch. Med 13 (title) and ss. Med 13.01, 13.02, 13.03 (1), 13.04 (title) and 13.04, 13.05 (1) (intro.), (1) (a) and (2) and 13.06; and to create ss. Med 13.03 (1) (b) and 13.05 (1m), relating to continuing medical education for podiatrists.

Hearing Information

The hearing will be held:

December 19, 1996	Room 179A
Thursday	1400 East Washington Ave.
9:00 a.m.	MADISON, WI

Written Comments

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

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

Written comments must be received by **January 3, 1997** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., s. 448.05 (3) (b), as created by 1995 Wis. Act 245, and ss. 448.07 (1) (d) and 448.13 (1), Stats., as amended by 1995 Wis. Act 245.

Statutes interpreted: ss. 448.05 (3) (b), 448.07 (1) (d) and 448.13 (1)

In this proposed rule–making order, the Medical Examining Board amends and creates rules relating to continuing medical education for podiatrists. 1995 Wis. Act 245 requires the Board to promulgate rules establishing continuing education requirements for podiatrists. At the time of application for renewal of registration, each podiatrist shall submit proof of completion of continuing education programs or courses of study for at least 30 hours of credit. These programs or courses must be approved by the Council of Podiatry Education of the American Podiatric Medical Association. The Board may waive this requirement if it finds that exceptional circumstances have prevented a podiatrist from meeting the requirement. Applicants for a license to practice podiatry must supply evidence satisfactory to the Board that he or she has completed 12 months of postgraduate training in a program approved by the Board. The rules also require that an applicant for a license to practice podiatry must supply evidence satisfactory to the Board that he or she has completed 12 months of postgraduate training in a program approved by the Board.

Text of Rule

SECTION 1. Chapter Med 13 (title) is amended to read:

Chapter Med 13

CONTINUING MEDICAL EDUCATION FOR PHYSICIANS AND PODIATRISTS

SECTION 2. Med 13.01 and 13.02 are amended to read:

Med 13.01 Authority and purpose. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11, and 448.40 ~~448.13~~, Stats., and govern the biennial training requirements for physicians and podiatrists under s. 448.40 ~~448.13~~, Stats.

Med 13.02 Continuing medical education required; waiver. (1) Each physician or podiatrist required to complete the biennial training requirement provided under s. 448.13, Stats., shall, in each second year at the time of making application for a certificate of registration as required under s. 448.07, Stats., sign a statement on the application for registration certifying that the physician or podiatrist has completed at least 30 hours of acceptable continuing medical educational programs within the 2 calendar years immediately preceding the calendar year for which application for registration is made.

(2) A physician or podiatrist may apply to the board for waiver of the requirements of this chapter on grounds of prolonged illness or disability or other similar circumstances, and each such case will be considered individually on its merits by the board.

SECTION 3. Med 13.03 (1) is amended to read:

Med 13.03 (1) Educational courses and programs approved in advance by the board may be used for credit, except that the board may approve for credit completed programs and courses conducted in other countries.

(a) Physicians. The board recognizes only those educational programs recognized as approved at the time of the physician's attendance by the council on medical education of the American medical association, or the American osteopathic association, or the liaison committee on continuing medical education or may recognize program providers outside the U.S. unless any of the foregoing have been previously disapproved by the board. The board will accept attendance at and completion of programs accredited as the American medical association's or the American osteopathic association's "Category I" or an equivalent as fulfilling the requirements of this chapter for continuing medical education. One clock hour of attendance shall be deemed to equal one hour of acceptable continuing medical education ~~for the purposes of this chapter.~~

SECTION 4. Med 13.03 (1) (b) is created to read:

Med 13.03 (1) (b) Podiatrists. The board recognizes only those educational programs recognized as approved at the time of the podiatrist's attendance by the council on podiatric medical education of the American podiatric medical association, or may recognize program providers outside the U.S. One clock hour of attendance shall be deemed to equal one hour of acceptable continuing medical education.

SECTION 5. Med 13.04 (title) and 13.04 are amended to read:

Med 13.04 Physician postgraduate training program; length of service. The board will accept postgraduate training in a program approved by the board under the provisions of s. Med 1.02 (3), as fulfilling the requirements of this chapter for continuing medical education for physicians. Three consecutive months of such postgraduate training shall be deemed to equal 30 hours of acceptable continuing medical education for the purpose of this chapter.

SECTION 6. Med 13.05 (1) (intro.) and (1) (a) are amended to read:

Med 13.05 Evidence of compliance. (1) PHYSICIANS. The board will accept as evidence of compliance by physicians with the requirements of this chapter, as original documents or verified copies thereof, any or all or any combination of the following:

(a) Certification by either the providing institution or organization or the American medical association or the American osteopathic association, or components thereof, of attendance at and completion of continuing medical education programs approved under the provisions of s. Med 13.03 ~~(1) (a)~~.

SECTION 7. Med 13.05 (1m) is created to read:

Med 13.05 (1m) PODIATRISTS. The board will accept as evidence of compliance by podiatrists with the requirements of this chapter, as original documents or verified copies thereof, certification by either the providing institution or organization or the council on podiatric medical education of the American podiatric medical association, or components thereof, of attendance at and completion of continuing medical education programs approved under the provisions of s. Med 13.03 (1) (b).

SECTION 8. Med 13.05 (2) is amended to read:

Med 13.05 (2) RETENTION REQUIREMENT. Evidence of compliance shall be retained by each physician or podiatrist through the biennium for which 30 hours of credit are required for registration.

SECTION 9. Med 13.06 is amended to read:

Med 13.06 Audit. The board may require any physician or podiatrist to submit his or her evidence of compliance to the board during the biennium for which 30 hours of credit are required for registration to audit compliance.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to s. 114.31(7), Stats., and interpreting s. 114.31(7), Stats., the Department of Transportation will hold a public hearing in **Room 414 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 3rd day of December, 1996, at 1:00 PM**, to consider the creation of ch. Trans 55, Wis. Adm. Code, relating to the granting of state aid to airport owners.

The public record on this proposed rule making will be held open until **December 6, 1996**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Tomas Thomas, Department of Transportation, Division of Transportation Infrastructure Development, Bureau of Aeronautics, Room 701, P. O. Box 7914, Madison, WI 53707–7914.

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

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 114.31(7)

STATUTE INTERPRETED: s. 114.31(7)

General Summary of Proposed Rule. Section 114.31(7), Stats., directs that the Secretary shall, by rule, establish the conditions necessary for the granting of state aid for airport development projects and for other related purposes. The purpose of this proposed rule is to assure that state funded investments in public–use airports, once constructed, are operated in a way consistent with sound public policy goals. These goals include:

- Protection of the public investment in airport facilities
- Operation of facilities in a safe manner
- Providing facilities to the general public in a non–discriminatory form
- Maintenance of facilities to assure maximum useful life and value

In addition to assuring that funded facilities meet public policy expectations, the proposed rule will provide provisions for compliance assistance and a progressive process for dispute resolution.

The proposed rule will replace the existing process of preparing written project grant assurances and have those assurances adopted by municipal resolutions for each project requested. The proposed rule will thereby reduce state and local administrative activity and reduce incrementally the cost, time and effort required to conduct an airport improvement project. The proposed rule will also provide potential project sponsors with public notice of the requirements (conditions) attached to a grant of state funds for airport improvement.

Fiscal Impact

The state airport aid program is currently funded at \$10 mil/yr. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally–recognized tribes or bands.

Initial Regulatory Flexibility Analysis

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

Preparation and Copies of Proposed Rule

This analysis was prepared by Keith W. Gerard, J.D., Room 751, Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, WI 53707. Copies of the proposed rule may be obtained upon request, without cost, by writing to Tomas Thomas, Department of Transportation, Division of Transportation Infrastructure Development, Bureau of Aeronautics, Room 701, P. O. Box 7914, Madison, WI 53707–7914, or by calling (608) 266–2023. Hearing–impaired individuals may contact the Department using TDD (608) 266–3351. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to s. 85.16, Stats., interpreting s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., the Department of Transportation will hold a public hearing on the **16th day of December, 1996, at the Hill Farms State Transportation Building, Room 901A, 4802 Sheboygan Avenue, Madison, WI, at 9:30 AM**, to consider the repeal and recreation, by emergency rule, of ch. Trans 76, Wis. Adm. Code, relating to general transportation aids.

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

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

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 85.16

STATUTE INTERPRETED: s. 86.303(5)(f)(intro.) and (i)(intro.)

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

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

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

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

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

Fiscal Impact

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

Initial Regulatory Flexibility Analysis

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

Copies of Emergency Rule and Contact Person

Copies of this emergency rule are available without cost upon request by writing to the Department's Office of General Counsel, P. O. Box 7910, Room 115-B, Madison, WI 53707-7910, or by calling (608) 267-3703. Alternate formats of the proposed rule will be provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396.

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to s. 343.02, Stats., and interpreting s. 343.10, Stats., the Department of Transportation will hold a public hearing in **Room 421 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 26th day of November, 1996, at 9:30 AM**, to consider the emergency revision and the proposed revision of ch. Trans 117, Wisconsin Administrative Code, relating to occupational driver's licenses.

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

The public record on this proposed rule making will be held open until **December 6, 1996**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Richard Kleist, Department of Transportation, Bureau of Driver Services, Room 301, P. O. Box 7920, Madison, WI 53707-7920.

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

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: SS. 343.10, 343.02

STATUTES INTERPRETED: SS. 343.10, 343.06, 343.38, 351.025

General Summary of Proposed Rule. 1995 Wis. Act 269 rewrote the statute governing issuance of occupational driver licenses in Wisconsin. Under prior law, drivers who lost their operating privileges could petition any municipal or circuit judge in the state and request an occupational license. In many instances, the day-to-day task of reviewing applications and issuing licenses was being performed by court staff. 1995 Wis. Act 269 vested responsibility for reviewing applications and issuing licenses in the Department of Transportation instead of judges.

This proposed rule making provides the Department's administrative interpretation of the newly revised statute. In addition, this rule making ties together many of the other laws and regulations affecting driver licensing to present one coherent source of information on the issuance of occupational licenses.

There are two primary sections to this rule making: proposed s. Trans 117.025, which lays out the occupational licensing process, and s. Trans 117.03, which describes the manner in which the Department will decide whether to issue an occupational license, what restrictions will be placed on the license. The proposed amendments to s. Trans 117.03 also clarify which prohibitions or restrictions of occupational licensing may be waived by a court in conducting a review under s. 343.10(4), Stats.

To obtain an occupational license, a person makes an application to the Department at any DMV service center (except the "express service facilities" that are not equipped to handle any matters other than driver license and registration renewals). The application includes a petition for occupational license, proof of financial responsibility for the future, and the original or a certified copy of any required court order for issuance of the license, and a \$40 non-refundable application fee.

The DMV service center will accept the application and conduct an on-the-spot initial screening of the application. If the center detects no obvious defect in the application or reason the person would be ineligible for an occupational license, it will issue the person a 15 day temporary driving receipt and ask the person to return to the DMV service center on the next working day (or, if the center is a "travelling site," the next time the travel team returns to the location.) The application will then be forwarded to the Division of Motor Vehicles Compliance and Restoration Section for formal review.

The Compliance and Restoration Section will carefully review the application for occupational license and make an initial determination regarding the person's eligibility for occupational licensing and what restrictions should be placed on the license. If the person is ineligible for licensing, it will notify the driver by mail that the application was denied and the reasons for denial. If the person is eligible for licensing, the unit will advise the DMV service center to issue the person an occupational license and will set the restrictions to be placed on the license.

A person whose application for occupational license is denied may appeal the decision to deny the license, or the decision to impose certain restrictions on the license, to the circuit court in the county where the person resides. Section 343.10, Stats., requires the driver to provide the court with a copy of his or her driver record. WISDOT will encourage courts to adopt local rules also requiring the driver to provide a copy of DMV's denial letter to the court so that the court can see what prompted DMV's license denial.

The court can review the Department's decision de novo and grant or deny the person an occupational license or whether to change the restrictions imposed on the licensee by DMV. The court can change any of the discretionary decisions made by the Department in issuing the license. As was the case under prior law, the court may not overstep its statutory powers and order issuance of a license or waiver of a restriction where license denial or imposition of the restriction are mandatory. Upon completion of its review, the person may return to DMV and reapply for an occupational license. The Department will issue the license subject to any restrictions imposed by the court. As was the case under the prior law, the Department will not issue the license if the person is statutorily prohibited from being licensed, and will impose any statutorily required restrictions.

Proposed s. Trans 117.03(1) lays out the mandatory qualifications for occupational licensing:

- Wisconsin residency;
- A revoked or suspended license;
- Proof of financial responsibility;
- A completed application;
- Surrender of old licenses;
- Proof of installation of any required ignition interlock device (repeat drunk drivers only);
- Proof of completion of alcohol assessment (repeat drunk drivers only);
- Valid license status in other states (if the person is moving to Wisconsin);
- Having passed their driving tests (primarily new drivers);
- Not being convicted of certain sexual offenses;
- Meeting all physical health requirements;
- Not being revoked more than once in the preceding year; and
- Not having "judge shopped" to more than one circuit court.

All of these mandatory requirements are taken from various statutory provisions within Ch. 343, Stats., and are reiterated in this proposed rule making for clarity.

Proposed s. Trans 117.03(2) details the restrictions which are required for occupational licensing under the statutes:

- The license can't grant any privileges the driver didn't have before his/her license was suspended or revoked;
- The license can't authorize operation of commercial motor vehicles if the driver is disqualified;
- An absolute sobriety requirement if the driver has 2 or more alcohol related convictions;
- The license can't authorize operation of any vehicle for which the person hasn't posted proof of financial responsibility; and
- The license can't authorize operation of a school bus.

Section 343.10, Stats., leaves a number of discretionary decisions in the Department's hands, subject to judicial review. Discretionary determinations to be made by the Department in deciding whether to issue an occupational license to a person include:

- Whether operating a motor vehicle is essential to the driver's livelihood; and
- The number and seriousness of prior offenses.

The Department will rely on drivers' affirmations that they need licenses for their livelihood. In considering the number and seriousness of prior offenses, the Department proposes to preliminarily deny occupational licenses to two types of drivers: those with 24 or more demerit points in the preceding year and those with 3 or more alcohol offenses in a 5 year period.

Drivers in either class will need to apply to a circuit court for license. The Department expects that approximately 1 in 500 occupational license applicants will receive a preliminary denial based on points (44 people statewide per year). The number of drivers with 3 or more alcohol offenses in a 5-year period who will apply for occupational licenses is not known. With both groups of drivers, the Department believes a case-by-case review by a judge of the driver's request for an occupational license is appropriate.

The Department also has discretion regarding whether to impose certain restrictions on a driver. These restrictions include:

- Limitations on the hours or routes of travel to be authorized under the license;
- Whether to impose restrictions on the use of alcohol or controlled substances; and
- Whether to require an ignition interlock as a condition of licensing.

Under this proposed rule, the Department will decide the reasonableness of hours and routes of travel on a case by case basis. The Department will impose an ignition interlock device requirement only in instances where third offense drunk drivers are required to install the device on a vehicle following a conviction for operating while intoxicated. The Department will restrict the use of alcohol or controlled substances under the proposed rule for drivers convicted of 2 or more prior alcohol offenses as required by statute.

Any discretionary decision made by the Department may be reviewed by a circuit court upon the driver's request. The Department will implement the court's determinations on these discretionary matters.

This proposed rule making does not affect the Department's longstanding practice of permitting emergency service providers extended operating authority in bona fide emergencies. Clarification is made, however, that only persons engaged in activities to minimize threats to human life qualify for the emergency service provider endorsement.

Fiscal Effect

The fiscal effect of this rule making derives from that of 1995 Wis. Act 269. The Department has issued approximately 22,000 occupational licenses over the past few years and expects to issue approximately the same number in the coming year. This will result in an increase to state revenues of approximately \$440,000 as monies that were paid to courts are directed to the Department.

The Department expects to incur one-time data processing costs of at least \$21,000, and forms development, revision and distribution costs of \$5,000. The Department expects a workload increase of at least 1.2 FTEs at a cost of approximately \$37,500 and ongoing forms costs of approximately \$2,000 annually.

Initial Regulatory Flexibility Analysis

This proposed rule is not expected to affect small businesses.

Preparation and Copies of Proposed Rule

Preparation of this proposed rule was done by Richard Kleist of the Division of Motor Vehicles. Copies of the emergency rule and the proposed rule may be obtained upon request, without cost, by writing to Richard Kleist, Department of Transportation, Bureau of Driver Services, Room 301, P. O. Box 7920, Madison, WI 53707–7920, or by calling (608) 266–2261. Hearing-impaired individuals may contact the Department using TDD (608) 266–0396. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to s. 227.18, Stats., and interpreting ss. 341.405, 341.43 and 341.45, Stats., the Department of Transportation will hold a public hearing in **Room 414 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 6th day of December, 1996, at 1:00 PM**, to consider the amendment of ch. Trans 152, Wis. Adm. Code, relating to Wisconsin Interstate Fuel Tax and the International Registration Plan.

The public record on this proposed rule making will be held open until **December 13, 1996**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Steven R. Postler, Department of Transportation, Bureau of Vehicle Services, Room 151, P. O. Box 7955, Madison, WI 53707–7955.

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

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 227.11(2), 227.18, 341.405 and 341.45(5)

STATUTES INTERPRETED: ss. 341.405, 341.43 and 341.45

General Summary of Proposed Rule. The purpose of this proposed rule is to update rules that are used in the administration of fuel use taxes for certain types of motor vehicles. Essentially, this proposed rule applies to vehicles that operate in Wisconsin at a weight greater than 26,000 pounds. Section 341.45(1g)(a), Stats., indicates that qualified motor vehicles as described in this proposed rule must pay tax on motor fuel used while operating in Wisconsin. Since most states collect fuel tax at the pump, Wisconsin would not receive tax on fuel purchased out of state but used here. The proposed rule updates the policies and procedures used to collect fuel taxes on that fuel.

The proposed rule also codifies rules used in the administration of the International Registration Plan (IRP). Section 341.405, Stats., indicates the Secretary of Transportation shall do all things necessary to effectuate the IRP adopted by the American Association of Motor Vehicles Administrators, with such exceptions as are deemed advisable and such changes as are necessary. The IRP is an agreement among states of the United States and provinces of Canada providing for payment of heavy vehicle (18 wheel semi tractor–trailers for the most part) registration fees based on the miles operated in each member jurisdiction.

The concept of IRP is for interstate operators of heavy vehicles to pay registration fees to IRP member jurisdictions based on the percentage of total miles travelled in each IRP jurisdiction in which they operate. Interstate operators are required to file mileage reports with the jurisdiction in which they are based. The base jurisdiction collects the registration fees due each member jurisdiction according to the data on the mileage reports. The base jurisdiction then forwards the registration fees collected to each IRP member jurisdiction once a month.

Trans 152 contains the following key provisions:

1. Trans 152.02 defines various terms pertaining to fuel tax collection and to the administration of the IRP.
2. Trans 152.05 updates rules concerning a fuel tax license.
3. Trans 152.095 establishes rules concerning successor liability.
4. Trans 152.11 establishes rules concerning records requirements.
5. Trans 152.123 establishes rules concerning inadequate records.
6. Trans 152.124 establishes rules concerning a staggered registration period.
7. Trans 152.125 establishes rules concerning issuance of permanent IRP plates.
8. Trans 152.126 establishes rules concerning display of IRP plates.
9. Trans 152.13 updates rules concerning audits and assessments.
10. Trans 152.16 establishes rules concerning jeopardy assessments.

Fiscal Effect

Minimal fiscal effect is expected. Ch. Trans 152 updates and codifies procedures currently being used to collect fuel taxes and IRP registration fees.

Initial Regulatory Flexibility Analysis

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

Preparation and Copies of Proposed Rule

Preparation of this proposed rule was done by Steven R. Postler. Copies of the rule may be obtained upon request, without cost, by writing to Steven R. Postler, Department of Transportation, Bureau of Vehicle Services, Room 151, P. O. Box 7955, Madison, WI 53707–7955, or by calling (608) 266–3376. Hearing-impaired individuals may contact the Department using TDD (608) 266–0396. Alternate formats of the proposed rule will be provided to individuals at their request.

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

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

Agriculture, Trade & Consumer Protection (CR 96–149):

Ch. ATCP 77 – Relating to laboratory certification fees for laboratories that test milk, food or water for compliance with public health standards.

Commerce (CR 96–99):

Chs. ILHR 20 and 21 – Relating to one- and two-family dwelling construction in floodplains.

Commerce (CR 96–144):

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

Health & Family Services (CR 92–55):

Ch. HSS 46 – Relating to group day care centers for children.

Health & Family Services (CR 96–90):

Chs. HSS 101, 105 and 107 – Relating to Medical Assistance (MA) reimbursement for provision of school-based health care services.

Health & Family Services (CR 96–124):

Ch. HSS 136 – Relating to embalming standards.

Health & Family Services (CR 96–154):

Chs. HSS 105 and 107 – Relating to elimination of coverage under the Medical Assistance (MA) program for services that are medically unnecessary, including services and items that enhance fertility in males or females.

Medical Examining Board (CR 92–162):

Chs. Med 1 to 8, 19 and 20 and s. Med 14.03 – Relating to open book examinations on statutes and rules, examination reviews and claims of examination error, and requirements relating to oral examinations by applicants.

Natural Resources (CR 96–77):

Ch. NR 235 – Relating to the regulation of effluent limitations and pretreatment standards for the organic chemicals, plastics and synthetic fibers industry.

Natural Resources (CR 96–78):

Ch. NR 233 – Relating to the regulation of wastewater effluent limitations and pretreatment standards for the pesticide chemicals industry.

Natural Resources (CR 96–86):

SS. NR 439.01 and 484.04 and ch. NR 460 – Relating to general provisions for emission standards for hazardous air pollutants.

Natural Resources (CR 96–87):

SS. NR 400.02, 400.03, 407.02, 407.03, 407.04, 423.02, 423.03, 460 Appendix T, 468.40 and 484.04 – Relating to emission standards for hazardous air pollutants generated from halogenated solvent cleaning operations.

Regulation & Licensing (CR 96–130):

SS. RL 34.01 and 34.011 – Relating to conditions for transporting firearms in vehicles by private security persons.

Regulation & Licensing (CR 96–150):

Ch. RL 130 – Relating to examinations and continuing education requirements for interior designers.

Revenue (CR 96–75):

S. Tax 11.83 – Relating to the Wisconsin sales and use tax treatment of motor vehicles.

Transportation (CR 96–146):

SS. Trans 325.01, 325.02, 326.01 and 328.03 – Relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

Transportation (CR 96–147):

Ch. Trans 102 – Relating to driver license issuance.

Transportation (CR 96–155):

S. Trans 269.11 (2a) – Relating to transportation of garbage or refuse permits.

Workforce Development (CR 96–140):

SS. HSS 55.70 to 55.77 and ch. DWD 56 – Relating to administration of child care funds.

Workforce Development (CR 96–141):

Ch. DWD 55 – Relating to child care certification.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Commerce (CR 96–89):

An order amending ss. ILHR 14.31 (3) (c) 1., ILHR 14.36 and ILHR 14.38, relating to the inspection of fire extinguishing systems.

Effective 01–01–97.

Health & Family Services (CR 96–120):

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

Effective 12–01–96.

Insurance, Commissioner of (CR 96–37):

An order affecting s. Ins 6.20, relating to investments by town mutual insurers.

Effective 01–01–97.

Securities, Commissioner of (CR 96–128):

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

Effective 12–01–96.

Transportation (CR 96–69):

An order affecting ch. Trans 128, relating to a traffic violation and registration program.

Effective 01–01–97.

Transportation (CR 96–117):

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

Effective 12–01–96.

Workforce Development (CR 95–70):

An order creating ch. DWD 75 (HSS 275), relating to appeal procedures for persons applying for or receiving vocational rehabilitation services.

Effective 01–01–97.

NOTICE OF NONACQUIESCENCE

CONSOLIDATED PAPERS, INC., :
Petitioner, :

v. :

WISCONSIN DEPARTMENT OF REVENUE, :
Respondent, :

Docket No. 95-M-126 :

Pursuant to sec. 73.01 (4) (e) 2, Stats., the respondent hereby gives notice that, although it is not appealing the Order of the Tax Appeals Commission rendered in the above-captioned matter under date of October 2, 1996, it has adopted a position of nonacquiescence in regard to that decision or order. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale and construction of statutes in the instant case are not binding upon or required to be followed by the respondent in other cases.

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