1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Joint Committee for Review of Administrative Rules (JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-153
- Committee Hearings ... CH
-
- Committee Reports ... CR
-
- Executive Sessions ... ES
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
-
- Record of Comm. Proceedings ... RCP
-

TRANS 300 - SCHOOL BUS STROBE LITE

98-153

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **98–153**

AN ORDER to repeal Trans 300.54 (4) (intro.); to renumber Trans 300.54 (4) (a) to (d); to renumber and amend Trans 300.54 (4) (e); to amend Trans 300.16 (1); and to create Trans 300.54 (1) (am) and (4), relating to school bus equipment standards.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10–13–98 RECEIVED BY LEGISLATIVE COUNCIL.
10–26–98 REPORT SENT TO AGENCY.

RS:WF:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☐ NO ☑

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☑ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 98–153

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

In s. Trans 300.54 (4), the notation ", Stats.," should be inserted after "s. 347.44."

5. Clarity, Grammar, Punctuation and Use of Plain Language

Section Trans 300.16 (1) requires that the strobe light be actuated whenever the bus is in operation on the highway for purposes specified in s. 340.01 (56) (a) and (am), Stats. Section Trans 300.54 (1) (am) 6. requires that the strobe light be actuated whenever the bus is in operation on a highway ***unless*** the bus is being operated in accordance with s. 346.48 (2) (c), Stats. Section 346.48 (2) (c), Stats., regulates when flashing red warning lights on a school bus may be used to warn approaching traffic that the bus is intending to stop to either pick up or discharge passengers. The statutory section says that the flashing red warning lights shall ***not*** be used when a school bus is being used on a highway for purposes ***other*** than those specified in s. 340.01 (56) (a) and (am), Stats., but says that the flashing red warning lights ***may*** be used at any time that a school bus is transporting children for any purpose. If the department intends that strobe lights may be used at any time that a school bus is transporting children for purposes other than those specified in s. 340.01 (56) (a) and (am), Stats., it is suggested that the rule be redrafted to explicitly say so.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 300.54(4)(intro.); renumber TRANS 300.54(4)(a) to (d); renumber and amend TRANS 300.54(4)(e); amend TRANS 300.16(1); and create TRANS 300.54(1)(am) and (4), relating to school bus equipment standards.	**NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING AND TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 85.16 and 347.25(2), and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 300 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Lt. Sandra Huxtable, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 and 347.25(2), Stats.
STATUTES INTERPRETED: s. 347.25(2), Stats.

General Summary of Proposed Rule. This proposed rule making amending ch. Trans 300, relating to school bus equipment standards, will address the installation, operation and light output brilliance of the white strobe light which will be required on all school buses first registered in WI after October 1, 1998. Currently, s. Trans 300.54(4) advises that the strobe light is an optional piece of equipment for use on school buses. 1997 Wis. Act 117 requires the strobe light as mandatory equipment for all buses first registered on or after October 1, 1998. The current specifications for optional strobe lights will be made applicable to the mandatory strobe lights, and the use of the lights will be required whenever a school bus is in operation on a highway for the purposes specified in s. 340.01(56)(a) and (am), Stats.

Fiscal Effect. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities. The rule will not impose any fiscal effect on school districts other than that imposed by the amendment of s. 347.26(7), Stats.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule. Copies of this proposed rule may be obtained upon request, without cost, by writing to Lt. Sandra Huxtable, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912, or by calling (608) 267-0325. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16 and 347.25(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 347.25(2), Stats., relating to school bus equipment standards.

SECTION 1. Trans 300.16(1) is amended to read:

TRANS 300.16(1) Prior to the start of any trip, the driver shall check the condition of the bus, giving particular attention to brakes, tires, lights, emergency equipment, mirrors, windows, and interior cleanliness of the bus. Defects shall be reported in writing to the person in charge of bus maintenance. The driver shall be responsible for the cleanliness of the interior of the bus and shall ensure that the windshield and mirrors are clean before each school bus operation and that the strobe light is actuated whenever the bus is in operation on a highway for purposes specified in s. 340.01(56)(a) and (am), Stats.

SECTION 2. Trans 300.54(1)(am)(intro.) and 6. are created to read:

TRANS 300.54(1)(am)(intro.) Each bus first registered on or after October 1, 1998, shall be equipped with a strobe light which shall conform with the following requirements:

6. The strobe light shall be actuated whenever the bus is in operation on a highway unless the bus is being operated in accordance with s. 346.48(2)(c), Stats.

SECTION 3. Trans 300.54(4)(intro.) is repealed.

SECTION 4. Trans 300.54(4)(a) to (d) are renumbered Trans 300.54(1)(am)1. to 4.

SECTION 5. Trans 300.54(4)(e) is renumbered Trans 300.54(1)(am)5. and amended to read:

TRANS 300.54(1)(am)5. The unit ~~shall~~ may be wired with an independent switch with an indicator light in the driver's compartment showing when the light is in operation.

SECTION 6. Trans 300.54(4) is created to read:

TRANS 300.54(4) School buses painted as provided in s. 347.44, Stats., and registered prior to October 1, 1998, may be equipped with a strobe light meeting the requirements of sub. (1)(am).

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 12 day of October, 1998.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

July 29, 1998

JUL 30 19 8

Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 300**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 300. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,

Julie A. Johnson
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director
Senator Robert Welch, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Gene Kussart
Sandy Beaupre
Mike Goetzman
Bill Singletary
Lt. Sandra Huxtable
Frieda Andreas

STATEMENT OF SCOPE

DESCRIPTION OF THE OBJECTIVE OF THE RULE:

This proposed rule making amending ch. Trans 300, relating to school bus equipment standards, will address the installation, operation and light output brilliance of the white strobe light which will be required on all school buses first registered in WI after October 1, 1998 as provided by 1997 Wis. Act 117.

DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:

Currently, s. Trans 300.54(4) advises that the strobe light is an optional piece of equipment for use on school buses. 1997 Wis. Act 117 requires the strobe light as mandatory equipment for all buses first registered on or after October 1, 1998.

STATUTORY AUTHORITY FOR THE RULE:

s. 347.25(2), Stats.

ESTIMATES OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

It is estimated that approximately 20 hours will be spent in the development of the rule.

Signed at Madison, Wisconsin, this 27 day of July, 1998.

for CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

October 13, 1998

The Honorable Robert Welch
Senate Chairman
Joint Committee for Review
of Administrative Rules
One East Main, Suite 201
Madison, Wisconsin 53707

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 125, State Capitol
Madison, Wisconsin 53707

RE: **NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING** and Text of Proposed Rule, relating to **school bus equipment standards**, Trans 300

Dear Senator Welch and Representative Grothman:

Enclosed for your information is a Notice of Intent to Adopt Rule Without Public Hearing and Text of Proposed Rule making relating to the above-entitled matter. This document has also been filed with the Legislative Council and with the Revisor of Statutes in accordance with the requirements of ss. 227.15(1) and 227.16(2)(e), Stats.

Sincerely,

Julie A. Johnson
Paralegal

Enclosure

cc: Gene Kussart
Sandy Beaupre
Mike Goetzman
Bill Singletary
Lt. Sandy Huxtable
Frieda Andreas

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 300.54(4)(intro.); renumber TRANS 300.54(4)(a) to (d); renumber and amend TRANS 300.54(4)(e); amend TRANS 300.16(1); and create TRANS 300.54(1)(am) and (4), relating to school bus equipment standards.	**NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING AND TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 85.16 and 347.25(2), and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 300 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Lt. Sandra Huxtable, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 and 347.25(2), Stats.
STATUTES INTERPRETED: s. 347.25(2), Stats.

General Summary of Proposed Rule. This proposed rule making amending ch. Trans 300, relating to school bus equipment standards, will address the installation, operation and light output brilliance of the white strobe light which will be required on all school buses first registered in WI after October 1, 1998. Currently, s. Trans 300.54(4) advises that the strobe light is an optional piece of equipment for use on school buses. 1997 Wis. Act 117 requires the strobe light as mandatory equipment for all buses first registered on or after October 1, 1998. The current specifications for optional strobe lights will be made applicable to the mandatory strobe lights, and the use of the lights will be required whenever a school bus is in operation on a highway for the purposes specified in s. 340.01(56)(a) and (am), Stats.

Fiscal Effect. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities. The rule will not impose any fiscal effect on school districts other than that imposed by the amendment of s. 347.26(7), Stats.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule. Copies of this proposed rule may be obtained upon request, without cost, by writing to Lt. Sandra Huxtable, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912, or by calling (608) 267-0325. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16 and 347.25(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 347.25(2), Stats., relating to school bus equipment standards.

SECTION 1. Trans 300.16(1) is amended to read:

TRANS 300.16(1) Prior to the start of any trip, the driver shall check the condition of the bus, giving particular attention to brakes, tires, lights, emergency equipment, mirrors, windows, and interior cleanliness of the bus. Defects shall be reported in writing to the person in charge of bus maintenance. The driver shall be responsible for the cleanliness of the interior of the bus and shall ensure that the windshield and mirrors are clean before each school bus operation and that the strobe light is actuated whenever the bus is in operation on a highway for purposes specified in s. 340.01(56)(a) and (am), Stats.

SECTION 2. Trans 300.54(1)(am)(intro.) and 6. are created to read:

TRANS 300.54(1)(am)(intro.) Each bus first registered on or after October 1, 1998, shall be equipped with a strobe light which shall conform with the following requirements:

6. The strobe light shall be actuated whenever the bus is in operation on a highway unless the bus is being operated in accordance with s. 346.48(2)(c), Stats.

SECTION 3. Trans 300.54(4)(intro.) is repealed.

SECTION 4. Trans 300.54(4)(a) to (d) are renumbered Trans 300.54(1)(am)1. to 4.

SECTION 5. Trans 300.54(4)(e) is renumbered Trans 300.54(1)(am)5. and amended to read:

TRANS 300.54(1)(am)5. The unit ~~shall~~ may be wired with an independent switch with an indicator light in the driver's compartment showing when the light is in operation.

SECTION 6. Trans 300.54(4) is created to read:

TRANS 300.54(4) School buses painted as provided in s. 347.44 and registered prior to October 1, 1998, may be equipped with a strobe light meeting the requirements of sub. (1)(am).

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 12 day of October, 1998.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

October 13, 1998

Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 138/139**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 138/139. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,

Julie A. Johnson
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director
Senator Robert Welch, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Gene Kussart
Sandy Beaupre
Mike Goetzman
Roger Cross
Chuck Supple
Cathy Skaar
Carson Frazier

STATEMENT OF SCOPE

Description of the Objective of the Proposed Rulemaking:

Chapters Trans 138 and 139 regulate the conduct of motor vehicle dealers, salespeople, and other licensees in Wisconsin and provide protection for consumers from unfair trade practices. The purpose of this rulemaking is to amend these regulations to incorporate some new consumer protections and to consider the Wisconsin Automobile and Truck Dealers Association's (WATDA) and other industry requests for changes that are intended to facilitate commerce. For each item below, a description of the proposed change, a description of policy alternatives and the analysis used to arrive at the chosen policy decision are described.

PROPOSED AMENDMENT 1
REGULATE SALES BY OUT-OF-STATE DEALERS

Description of Objective of the Amendment:

Amend current s. Trans 138.02(10), definition of "sell" a motor vehicle, to include delivering a vehicle from a seller in another jurisdiction to a retail consumer in Wisconsin. The change would bring under dealer licensing authority those people who currently deliver vehicles to Wisconsin consumers for out-of-state sellers.

Description of Existing Policies Relevant to the Amendment:

Trans 138.025(1) requires a dealer license for "any person engaging wholly or partly in the business of selling motor vehicles...." Current policy allows out of state sellers to sell vehicles to Wisconsin consumers by phone, fax or the Internet without a dealer license as long as they do not have a business location in Wisconsin and the sale occurs outside of Wisconsin. The Department has determined that a sale occurs in Wisconsin when a consumer orders a vehicle from another state by mail, fax or Internet and the dealer delivers it to the consumer in Wisconsin. Developing technologies have led to out-of-state dealers delivering truckloads of cars to Wisconsin residents in this state without complying with Wisconsin unfair trade practice regulations. This rulemaking will clarify that these sellers are subject to regulation in this state.

Analysis of Policy Alternatives:

The proposed change would provide Wisconsin consumers with the same protections if they buy a vehicle at their local dealership or via their computer, if they take delivery in Wisconsin. This proposal would have no effect on interstate or internet purchases where the customer accepts delivery in another state. It would also put out-of-state dealers who deliver vehicles to Wisconsin consumers on a more even playing field with regulated Wisconsin dealers. One alternative would be to make no rule change, but instead rely on states to join in a voluntary resolution to assist in the enforcement of

each others' dealer laws. Regulators from 20 states have already signed such a resolution. However, lightly regulated states that either do not participate in the resolution or lack laws similar to other participating states create loopholes where reciprocity can't occur.

Another alternative would be to require anyone delivering a vehicle from a dealer in another state to provide the consumer with disclosures explaining which state's laws regulate the sale and who to call for help with a complaint. Though this alternative would facilitate a consumer's recourse in the event of a dispute, it would do little to level competition between resident dealers and out-of-state dealers who are shipping cars into the state. This solution would also be hard to enforce against dealers over whom Wisconsin has no licensing authority.

Not implementing the proposed change would leave consumers who take delivery of vehicles in Wisconsin from out-of-state sellers via phone, fax or the Internet unprotected against unfair trade practices, and it would put Wisconsin dealerships at an unfair competitive disadvantage because out-of-state sellers could use unfair trade practices that Wisconsin dealerships are prohibited by law from using.

PROPOSED AMENDMENT 2
AUCTION SALES

Description of Objective of the Amendment:

Exempt from dealer licensing requirements those retail auctions that sell, at one time, heavy (over 16,000 lbs.) construction motor vehicles owned by several businesses, when those sales are incidental to the vehicle owners' primary business activities.

Description of Existing Policies Relevant to the Amendment:

Current policy exempts from dealer licensing those retail auctions that sell the vehicles of one individual or business at a time, or sell no more than three vehicles at a time. Large retail auctions of vehicles owned by several individuals or businesses are currently prohibited. However, businesses are currently allowed to sell any number of their privately titled vehicles at retail by any other means. The distinction allowing a business to sell or auction off its own fleet, but prohibiting more than one business from pooling vehicles for sale at a retail auction, exists to ensure that consumers know whose vehicles they are buying, which may provide information on how a vehicle was used.

Analysis of Policy Alternatives:

Ritchie Bros. International, Inc., a large retail auctioneer of road machinery and construction company fleets, which has moved its business into Wisconsin, has asked the Department to evaluate the possibility of expanding the current exemption from dealer licensing for certain retail auctioneers. The Department has evaluated the company's request and is considering a change which would make it easier for a

business like Ritchie Bros. to operate in the state, and would expand other businesses' opportunities for conveniently disposing of their heavy construction vehicles. Because businesses can currently sell these vehicles without complying with dealer trade practice laws or inspecting or disclosing vehicle condition, these commercial purchasers would lose little protection by buying the same vehicle at an unregulated retail auction and might benefit from the convenience of a wider selection.

An alternative would be to allow auctions to sell vehicles at retail for any number of sellers of any type, including private individuals, without a dealer license. However, large unregulated auctions of private sellers' used vehicles would endanger retail consumers and put regulated dealerships at a competitive disadvantage. Dealers currently sell private sellers' vehicles with inspection and disclosure. This existing consumer protection would be lost if this alternative were adopted.

The auction companies suggest that not implementing any change would continue to put unnecessary regulatory burdens on private businesses wishing to dispose of vehicles they use for construction.

PROPOSED AMENDMENT 3
ELIMINATE 500-MILE LIMITATION ON OPERATION OF "NEW" VEHICLES

Description of Objective of the Amendment:

To change the definition of a "new" vehicle to allow any number of miles for manufacturer tests, pre-delivery test, dealer exchange or delivery, plus up to 200 miles for any other purpose (including the purchasing consumer's test drive).

Description of Existing Policies Relevant to the Rule:

Current regulations require a dealer to disclose a vehicle with more than 500 miles on it as a "used" vehicle. Those miles may be accrued for any purpose. However, before a recent rule change, long-standing Department policy allowed vehicles to be sold as new which had accrued as many miles as necessary for manufacturer tests, pre-delivery dealer test, dealer exchange or delivery. The Department informally allowed an additional 200 miles for other dealership tests and the purchaser's test drive.

Analysis of Policy Alternatives:

The recent change to the definition of "new" vehicle was intended to make it easier for state investigators to determine if a new vehicle had reached the "used" vehicle threshold. However, the new definition has imposed serious unintended hardship on dealerships by requiring them to sell as "used" vehicles that have been driven more than 500 miles from the manufacturer to the point of sale. In particular, recreational vehicle dealers have been harmed since most of their vehicles are driven from the manufacturer, often from a long distance. The proposed amendment would allow dealers as many

miles as necessary to move new vehicles to the consumer and to perform necessary tests to make sure new vehicles will perform as consumers expect.

One alternative would be to raise the 500 mile limit to 700 or a 1,000 miles that may be accrued for any purpose. However, that change could result in vehicles being used as demonstrators and sold as new, and the limit might still be too low for dealers with a legitimate need to drive a car from a distant dealership.

Another alternative would be to limit the effect of the rule on recreational vehicles. However, there are situations in which a car or truck also must travel more than 500 miles to the point of sale. The Department has evaluated WATDA's request for this rule change and proposes that the Department revert to its long standing definition for all vehicles, and allow unlimited mileage for vehicle delivery, and manufacturer and dealer tests.

The Department believes consumers benefit when vehicles are thoroughly tested before sale, and when consumers can order through their dealer a hard to get new model from a dealer in a distant state.

PROPOSED AMENDMENT 4
CHANGE MANNER OF PROVIDING USED VEHICLE DISCLOSURES FOR MOTORCYCLE SALES

Description of Objective of the Amendment:

To modify used motor vehicle disclosure requirements applicable to motorcycles. The department proposes to exempt motorcycle dealers from the requirement of displaying the Wisconsin Buyer's Guide label on the motorcycle. Customers would be have to be provided with an opportunity to review the Wisconsin Buyer's Guide prior to entering into a contract to purchase a motorcycle.

Description of Existing Policies Relevant to the Rule:

The current rule requires that the Wisconsin Buyers Guide be completed and attached to any motor vehicle including a motor driven cycle. The Guide is completed based on an inspection, and gives consumers information about vehicle history and title brands, and vehicle equipment and safety requirements. Many of the disclosures on the Guide do not relate to motorcycles. Motorcycle dealers currently use a scaled down version of the Used Vehicle Disclosure Label (the predecessor of the recently created Wisconsin Buyers Guide), which they attach to a cycle handlebar.

Analysis of Policy Alternatives:

The Department has evaluated a request from the Wisconsin Motorcycle Dealers Association (WMDA) to eliminate required use of the Wisconsin Buyers Guide by motorcycle dealers. WMDA feels that the Guide offers little benefit to consumers because some of the disclosures do not relate to cycles, and most cycle problems are

readily apparent during a test drive and walk around inspection the consumer can perform. WMDA also feels that attaching the label is impractical because of its size and even scaled-down labels are often lost during test drives.

One alternative would be to develop an alternative label that includes only disclosures relevant to motorcycle history and condition in a size that fits a cycle. However, this would not address the problem of labels becoming lost or damaged due to exposure to the elements.

Another alternative would be to entirely exempt motorcycle dealers from all used motor vehicle disclosure requirements. This alternative could easily lead to abusive practices.

The Department receives very few consumer complaints regarding motorcycle disclosure. Because the motorcycle industry has shown that it can operate without generating disgruntled consumers, the Department sees some sense in exempting motorcycle dealers from the display requirement because of the fact that the labels cannot be adequately protected from the elements outdoors.

PROPOSED AMENDMENT 5
CONSIGNMENT SALE REGULATION

Description of Objective of the Amendment:

To create new protections for people who sell vehicles on consignment through a dealer and to protect the people who buy those consignment vehicles.

Description of Existing Policies Relevant to the Amendment:

The Department regulates consignment agreements between the consignor and the dealer and regulates disclosure of consignment vehicles. Current regulations do not address the problem that vehicles held on a consignment basis by a dealer can be considered the dealer's property under law. Because vehicle owners usually do not realize that they have to file Uniform Commercial Code (U.C.C.) financing statements and take other steps to perfect their lien interest in their vehicles, the cars can be taken from them without compensation in a bankruptcy action or repossession by a secured lender. Under the U.C.C. at s. 402.326, Stats., vehicle owners will be protected in these situations if vehicles offered for sale on consignment are clearly marked as such and include the owner's name, and the dealership discloses to the public and creditors that it sells on consignment. This proposal will also clarify that the dealer must pay the consignor promptly when the vehicle sells.

Analysis of Policy Alternatives:

The Department proposes to enact regulations that will require dealers to clearly disclose that they sell on consignment, label consignment vehicles as such, and pay a vehicle consignor within 4 days of the sale. A possible variation on the proposed solution would

be to also require on the consignment agreement a disclosure to the owner about how to file a U.C.C. financing statement to perfect their lien interest in the consignment vehicle.

Another alternative would be to amend those provisions of the Uniform Commercial Code that create this result and to statutorily provide that legal and equitable title to a motor vehicle remains in the titled owner when motor vehicles are sold by dealers on a consignment basis. However, this would require a statutory change and cannot be accomplished by administrative rulemaking.

PROPOSED AMENDMENT 6
PERMIT MULTIPLE OFFERS ON SINGLE VEHICLE

Description of Objective of the Amendment:

To clarify that a dealer may accept a subsequent offer on a vehicle when an accepted offer is already pending, and to specify required disclosures to the consumer whose offer is subject to an earlier pending offer.

Description of Existing Policies Relevant to the Amendment:

Current rules prohibit a dealership from selling a motor vehicle during the time the dealership is considering a purchase offer on the vehicle. However, the rule is silent about whether a dealership can accept a subsequent offer on a vehicle after it has accepted an earlier offer. Accepting subsequent offers is a common practice at dealerships today. The Department has not prohibited the practice.

Analysis of Policy Alternatives:

The Department has evaluated a request from the Wisconsin Automobile and Truck Dealers Association that the Department codify current policy regarding multiple offers on the same vehicle. The Department proposes codifying the policy because it will facilitate dealer education about allowed practices and will ensure consumers will receive disclosures when their offer is contingent on an earlier offer. One alternative would be to provide for subsequent offers to be non-binding on the consumer. Another alternative is to do nothing, which would deprive dealers and consumers of clear guidelines for a widespread and accepted practice in the industry.

PROPOSED AMENDMENT 7
SALES CONTRACT AMENDMENTS

Description of Objective of the Amendment:

To clarify that there are two allowed methods for dealerships to document changes to the motor vehicle purchase contract after the dealer has accepted the offer.

Description of Existing Policies Relevant to the Amendment:

By policy, the Department currently allows dealers to make changes on the motor vehicle purchase contract by writing a new contract and attaching all superseded contracts. However, current rule language says that any change must be made on the original contract and must be notated and initialed on all copies by all parties.

Analysis of Policy Alternatives:

The proposed change would codify current policy of allowing the two following methods for making contract changes: notating and initialing the original contract or rewriting the contract, including the notice that it supersedes a previous contract, and attaching all copies.

Motor vehicle purchase contracts are complex and crowded documents. Changes, notated and initialed, can result in a contract that's messy and hard to read. One alternative would be to allow a third method in which purchase contract forms vendors could redesign the contract form to include a separate column for making contract changes. However, because the contract is already very crowded, this change would complicate the form or might result in the contract becoming a multi-page form, which would increase dealer costs. The Department has received no consumer complaints resulting from its current policy of allowing dealers to make contract changes with superseded contracts, and believes no consumer harm will result from codifying current practice.

PROPOSED AMENDMENT 8
AUCTION PURCHASE RESCISSION RIGHTS

Description of Objective of the Amendment: Amend Trans 138.05(5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase.

Description of Existing Policies Relevant to the Amendment:

At a recent meeting, wholesale auction dealers asked if we could amend Trans 138.05(5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase. Industry practice is to use the 14 day timeline. There is no policy reason to use a 12 rather than 14 day limit.

Analysis of Policy Alternatives:

The department could continue to apply the 12 day standard, pick another arbitrary standard, or amend its rule to conform to industry practice. The department believes following industry practice is practical in this situation.

PROPOSED AMENDMENT 9
PROHIBIT ARTIFICIAL CONTRACT ADJUSTMENTS

Description of Objective of the Amendment:

To restrict fraudulent consumer loan application practices made possible by artificial adjustments to the price of a vehicle.

Description of Existing Policies Relevant to the Amendment:

Under current law, dealers may set the price of a vehicle as indicated on a sales contract without regard to the asking price or MSRP (Manufacturer's Suggested Retail Price) for a vehicle. This can result in essentially fraudulent loan applications being forwarded to lenders. Lenders require consumers to put sufficient equity into a car when purchasing it to demonstrate the capacity to pay off the loan. Dealerships sometimes artificially inflate the price of a vehicle, even above the vehicle's MSRP, and then give an artificial discount to the consumer, so that the person appears to have the requisite amount of equity in the car but, in fact, does not. These practices defraud lenders who are faced with borrowers who cannot pay for their cars.

This proposal would require dealers to list on the contract the MSRP for a new vehicle or the price from the Wisconsin Buyers Guide for a used vehicle. Dealers will still be able to make adjustments to sales prices to reflect actual discounts from MSRP or the price on the Wisconsin Buyers Guide, but will not be able to exceed those limits.

Analysis of Policy Alternatives:

Not regulating the basic price a dealer inserts onto a sales contract would perpetuate the problems currently evident in these transactions. Requiring the sales contract to more accurately reflect the transaction should eliminate fraud on lenders and make contracts more understandable for consumers.

This proposal will not affect a dealer's ability to sell vehicles at prices above the MSRP. A "dealer markup," however, would have to be shown to reflect the fact that the price has been inflated above the MSRP.

PROPOSED AMENDMENT 10
SALES CONTRACT DISCLOSURE REQUIREMENTS

Description of Objective of the Amendment:

Amend current s. Trans 139.05(2)(g) to permit dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document that itemizes the components of that price. The consumer would sign the incorporated sheet.

Description of Existing Policies Relevant to the Amendment:

Current policy requires dealers to specify all components of price on the face of the purchase contract to ensure consumers are agreeing to each charge that makes up part of the price and to ensure that the consumer reviews the list of components that will be provided as part of the contract.

Analysis of Policy Alternatives:

The proposed change will reduce transcription errors and lower dealers' transactional costs by allowing them to use computer generated lists of options on new vehicles not in stock as attachments to the contract, rather than requiring that the information be handwritten or typed onto the contract. Because the consumer will review and sign the attachment, the Department believes consumer protection will not be diminished.

PROPOSED AMENDMENT 11
LIEN PAYOFF ADJUSTMENTS

Description of Objective of the Amendment:

Regulate adjustments to the amount due on delivery when a lien pay-off is an estimate.

Description of Existing Policies Relevant to the Amendment:

The parties are often unsure of the exact payoff amount of an outstanding loan secured by a motor vehicle to be accepted in trade by a dealer. Estimated pay-off amounts are often inserted into contracts, and the amount due at closing is then adjusted to reflect the actual pay-off amount. When the estimate is significantly incorrect, however, it can leave a consumer with a contract obligation he/she cannot afford to consummate. Existing regulations do not address this problem.

Analysis of Policy Alternatives:

This rule change would allow consumers to rescind a motor vehicle purchase contract without penalty if an adjustment for an estimated lien pay-off increases the amount due on delivery by more than an amount agreed upon and specified in the contract.

One alternative would be to designate by rule the amount a lien pay off estimate may vary from the actual pay-off, for example, as a fraction of the original loan amount. However, the proposed alternative allowing the consumer and dealer to agree on the allowed variance allows the consumer to designate an amount he/she can actually afford.

Another alternative would be to allow the dealer and consumer to fill in an agreed upon amount of variance up to a dollar limit specified by rule.

Not making any rule change would result in consumers continuing to face contract obligations that they cannot fulfill.

PROPOSED AMENDMENT 12
VEHICLE REBATES

Description of Objective of the Amendment:

Allow a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery.

Description of Existing Policies Relevant to the Amendment:

The current rule requires the dealer to reference rebates separately on the contract by dollar amount and assignment. The parties are often unsure when the contract is completed whether a consumer will qualify for a rebate that may expire before delivery, or may be conditioned on consumer eligibility--for example, based on student or first-time-buyer status. When an anticipated rebate is unavailable at the time of delivery, it is unclear whether the consumer or the dealer has to make up the price difference. Existing regulations do not address this problem.

Analysis of Policy Alternatives:

This rule change would require that a contract conspicuously disclose if a referenced rebate is conditioned on the consumer's or vehicle's eligibility to be determined at the time of delivery. The proposal would also allow consumers to rescind a contract if they fail to qualify for a rebate referenced in the contract. It would also require dealers to pass on to the consumer any rebate, not referenced in the contract, for which the consumer becomes eligible at the time of delivery. Not making any change would result in consumers continuing to face contract obligations they cannot fulfill.

PROPOSED AMENDMENT 13
LIEN SATISFACTION

Description of Objective of the Amendment:

Require dealers to pay off loans on a trade-in vehicle within 7 business days of acquiring the vehicle.

Description of Existing Policies Relevant to the Amendment:

Currently, regulations and statutes prohibit the sale of encumbered property and, therefore, require dealerships to satisfy liens on trade-in vehicles before selling them. However, current regulations include no requirement that the dealership pay off the lien while it possesses the vehicle, but before selling it. If a dealer delays paying-off a loan

on a trade-in vehicle which it hasn't yet sold, a consumer may receive demands for payment of the debt, delinquency notices, bad credit reports to credit agencies or may be sued for the outstanding amount due. If consumers actually do make payments, the amount the dealer has to pay to satisfy the debt is unfairly reduced.

Analysis of Policy Alternatives:

The proposed alternative requiring dealers to pay off the loan within 7 days of acquiring a trade-in vehicle, is consistent with the number of days a dealer has to file title/registration application under s. 342.16, Stats., and it allows reasonable time for dealership staff to process the transaction.

One alternative would be to require dealers to pay any and all late fees, interest, or additional charges made to the consumer because of failure to promptly satisfy the debt as required. Another alternative would be for the Department to require that the consumer be named as a co-payee on a check to satisfy the debt at the time of vehicle trade-in and require dealers to provide notice to consumers of their right to have the debt promptly paid.

The Department has chosen to first propose this less burdensome requirement.

PROPOSED AMENDMENT 14
CONTRACT DISCLOSURE REQUIREMENTS

Description of Objective of the Amendment:

Make the penalty warning more apparent to the consumer by moving it next to the contract signature block.

Description of Existing Policies Relevant to the Amendment:

Current rules require that any penalty the consumer will pay for non-acceptance of the vehicle be specifically referenced on the contract.

Analysis of Policy Alternatives:

One of the most common points of confusion for consumers in vehicle purchase transactions is the fact that the motor vehicle purchase contract is binding once signed, and that they may pay a penalty of up to 5% of the purchase price if they renege. The proposed change would make the warning of a penalty more conspicuous to consumers by mandating that it be placed directly above the purchaser's signature on the contract.

One alternative would be to require dealers to provide a separate disclosure for consumers to sign explaining that the contract is binding and that there may be a penalty for non-acceptance. This alternative would be more burdensome for dealers, and would complicate the transactions with another form. Another alternative would be to add a box

beside the penalty warning on the contract for the consumer to check off and initial. Making no rule change would perpetuate consumer confusion about the consequences of reneging on a motor vehicle purchase contract.

PROPOSED AMENDMENT 15
SALES CONTRACTS SUBJECT TO FINANCING

Description of Objective of the Amendment:

Require a dealer either (a) to cancel a purchase contract within 5 business days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or (b) be bound to delivery of the vehicle on those terms.

Description of Existing Policies Relevant to the Amendment:

This proposal relates to situations in which a purchaser is obligated to finance the vehicle purchase on the disclosed credit terms. The present rule language is unclear whether the dealer is obligated to make the disclosed terms available if the consumer fails to qualify for credit with the finance company to which the dealer intends to assign the loan. In some cases, dealers cannot commit to credit terms at the time the purchase contract is signed because the purchaser's eligibility is unknown.

Analysis of Policy Alternatives:

The Department has evaluated a request from the Wisconsin Automobile and Truck Dealers Association, and is proposing amending the rule to allow dealers to condition the availability of credit terms on the consumer being approved for credit on those terms. The proposal requires the dealer to cancel the contract in writing to the consumer within 5 days of signing the contract or the dealer will be obligated to provide credit on the disclosed terms. The contract must contain a provision requiring the dealer to give a consumer written notice of the cancellation within 5 days or the dealer cannot cancel the contract. The dealer also must make a good faith effort to obtain approval of the consumer's credit. The Department would define in the rule a "good faith effort to obtain financing."

The dealer association proposed giving dealers 10 days to notify consumers when they fail to qualify for credit. However, the Department believes 5 days allows time for the dealer's administrative processes while not unduly delaying the consumer. The Department also believes the amendment should make clear that the dealer may not cancel the deal after delivering the vehicle if the consumer fails to qualify for credit.

PROPOSED AMENDMENT 16
SALES CONTRACTS SUBJECT TO FINANCING

Description of Objective of the Amendment:

WATDA has asked the Department to evaluate the possibility of reducing the time period a dealer must wait for a consumer to accept or reject proposed credit terms when the consumer has not yet signed a binding purchase contract. The Department has evaluated WATDA's request and proposes that dealers be allowed to cancel a purchase contract, in which credit terms were not originally offered and disclosed, if the purchaser fails to accept credit terms offered to them in writing after the contract is signed but before vehicle delivery. If the vehicle was not yet ready for delivery, consumers would have 10 business days to respond to a written offer and disclosure of credit terms, and could reject the credit terms and break the deal without penalty. If the specified delivery date had arrived and the vehicle was available for delivery, the consumer would have 5 business days after receiving written disclosure of credit terms to enter into a consumer credit agreement for purchase of the vehicle on the terms disclosed. If the consumer rejected the credit terms or did not respond in the allowed time, the dealer could cancel the contract with no penalty to either party.

Description of Existing Policies Relevant to the Amendment:

Currently, the contract is contingent on the purchaser finding financing he/she finds acceptable, no binding contract is created. At the time of delivery, the consumer reviews the credit terms the dealer can provide and may accept or reject the whole transaction without penalty. The current rule is unclear about whether a dealer can disclose available credit terms to the consumer after the contract is signed, but before delivery, in order to secure the consumer's decision to accept or reject a binding contract.

Analysis of Policy Alternatives:

The proposed alternative would more accurately reflect modern loan review processes that allow credit terms to be known soon after the contract is signed and often well before the vehicle is available for delivery. It would reduce the amount of time a dealer must hold a vehicle for a consumer who has not yet committed to a binding contract for the sale. One alternative would be to require that the proposed addendum, which is binding on the consumer if signed, include the warning in Trans 139.05(2)(i) regarding the penalty for not accepting the vehicle. Another alternative would be to combine box A and box B of the Finance Transaction section of the purchase contract into one choice in which the dealer creates a binding contract by either disclosing known credit terms or disclosing an estimate that will not exceed an agreed upon amount. This alternative would benefit dealers by creating a binding contract sooner; however, it would harm consumers by eliminating an option they now have to make a tentative deal they may later reject without penalty if exact financing terms are not acceptable.

PROPOSED AMENDMENT 17
SALES CONTRACTS SUBJECT TO FINANCING

Description of Objective of the Amendment:

To clarify that a dealer may cancel a purchase contract by a date specified in the contract if the contract is subject to the consumer obtaining acceptable financing of the consumer's choice, and the consumer does not notify the dealer in writing that financing has been secured.

Description of Existing Policies Relevant to the Amendment:

This concept is already reflected in the standard purchase contract language, though not prescribed by the Department. The proposed change would codify the policy in the rule.

Analysis of Policy Alternatives:

The proposed change would codify current policy, and would allow dealers and consumers to limit the amount of time a vehicle would be tied up while a consumer tries to get a loan. The proposal limits dealership costs for interest and storage of vehicles that cannot be sold while awaiting a prospective purchaser's response about securing financing. One alternative would be to make no rule change. Making no rule change would allow vendors of the motor vehicle purchase contract to modify or eliminate the current policy by changing or removing the current contract provision from the form at will.

PROPOSED AMENDMENT 18
AMENDMENT DUE TO TAX CHANGES

Description of Objective of the Amendment:

To allow dealers to change the purchase contract if federal, state or local taxes change.

Description of Existing Policies Relevant to the Amendment:

Current rule language allows dealers to change the contract price of a vehicle if the state or federal tax rate changes, but not if a local tax rate changes or if the tax amount changes for another reason, such as the creation of a new tax.

Analysis of Policy Alternatives:

The change would codify current Department policy of allowing dealers to adjust the contract price in response to tax changes that result from a local tax rate change or the creation of a new tax, such as the Brewer Stadium tax, and new county sales taxes.

PROPOSED AMENDMENT 19
DISCLOSURE OF VEHICLE DAMAGE

Description of Objective of the Amendment:

Exclude audio equipment and molding damage when calculating whether a new vehicle has been damaged to the extent of more than 6% of its value when that equipment is replaced with identical manufacturer's original equipment.

Description of Existing Policies Relevant to the Amendment:

Current law requires dealers to disclose to customers that a new vehicle has been damaged and required repairs amounting to 6% or more of the MSRP. Damaged glass, tires and bumpers, when replaced by identical manufacturer's original equipment, are currently excluded from the calculation because these items are particularly vulnerable to damage during transit, dealership testing, or as a result of vandalism.

Current law also requires manufacturers to disclose to dealers any damage to a vehicle exceeding 6% of the MSRP between the time of manufacture and the time of delivery, but excludes from that calculation damage to glass, tires, bumpers, fenders, moldings, audio equipment, instrument panels, hoods and deck lids, when replaced with identical manufacturer's original equipment.

Analysis of Policy Alternatives:

The Department has evaluated WATDA's request for this change, and proposes that the consumer disclosure requirement of s. Trans 139.05(6) be made more consistent with the provision in s. 218.01(2d)(a), Stats., that permits dealers to reject delivery of vehicles that arrive with certain damage. This change would allow dealers in more situations to sell vehicles without disclosing to the consumer minor damage that has been corrected with original manufacturer's equipment--damage which, if disclosed, could potentially affect a vehicle's value. The proposal would continue to require that any damaged items excluded from the 6% calculation be replaced with identical manufacturer's original equipment.

The Department could require disclosure of all repairs made to vehicles, continue the current policy requiring dealers to disclose repairs that exceed 6% of the vehicle's MSRP, adjust the percentage level to some other number, or exempt certain items from the calculation. Disclosing all repairs would provide consumers with the most knowledge about the vehicle they are buying, but might lower profit margins for dealers on vehicles that are stigmatized by having minor damage repaired, even when the vehicles have been returned to their original state through replacement of identical manufacturer's original equipment.

Allowing damage to moldings and audio equipment to be excluded from the calculation would allow dealers to sell more new vehicles free of the stigma of being repaired vehicles.

PROPOSED AMENDMENT 20
USED VEHICLE DISCLOSURES

Description of Objective of the Amendment:

Clarify that a dealer may complete a purchase contract for a vehicle without inspecting and disclosing it if the vehicle is exempt by rule from inspection and disclosure.

Description of Existing Policies Relevant to the Amendment:

Section Trans 139.04(6)(c) exempts certain vehicles, for example, unrepaired salvage, from inspection and disclosure required under s. Trans 139.04(6)(a) and (b). However, s. Trans 139.05(11) does not make clear that a purchase contract can be written for a vehicle that has not been inspected and disclosed when the vehicle is exempt from inspection and disclosure.

Analysis of Policy Alternatives:

This is a technical, non-substantive change that restates existing policy. No policy change will result.

PROPOSED AMENDMENT 21
CONSISTENT USE OF TERMS THROUGHOUT RULE

Description of Objective of the Amendment:

To eliminate use of the term "service agreement" in the rule and to use "service contract" throughout instead. (Current rule uses both terms for this kind of contract.)

Description of Existing Policies Relevant to the Amendment:

None. This change is simply a language revision that is being made for consistency.

Analysis of Policy Alternatives:

No policy change will result from this language change.

PROPOSED AMENDMENT 22
REIMPOSE WARRANTY DISCLOSURE REQUIREMENTS ON PURCHASE CONTRACTS

Description of Objective of the Amendment:

In the Department's last amendments to Ch. Trans 139, a number of disclosure requirements with regard to warranty information potentially pertinent to consumers were

removed from the required purchase contract, as was the provision that clearly provided dealers are financially responsible for providing warranty coverage to a customer if they misinform the customer about the existence or nature of a warranty and the customer is damaged as a result.

Misinformation regarding warranties has resurfaced as a significant problem since the purchase contract disclosure requirements were loosened in 1996. The Department therefore proposes to reintroduce the consumer protections repealed in the 1996 rulemaking.

Description of Existing Policies Relevant to the Amendment:

With or without this amendment, dealers are liable for misrepresenting warranty information to consumers and face potential license suspension or revocation for such actions. Because the abandonment of purchase contract disclosures has led to increased complaints about warranty misrepresentations, it would appear that the Department's 1996 decision to repeal the disclosure requirement was in error.

Analysis of Policy Alternatives:

The Department could take more aggressive licensing action against dealers who misrepresent warranty information to customers and suggest that those customers file bond claims against offending dealers. This might deter other dealers from engaging in similar behavior. Because the Department saw fewer such cases when disclosure was required in the purchase contract, and the Department prefers to work with the industry to solve such problems rather than deterring through prosecution, the Department has elected to amend the rule to clarify a dealer's responsibility in the area of warranty disclosures.

Statutory authority for the Rule Amendments:

Sections 218.01(5), 227.10 and 227.11, Stats.

Time Estimate:

The Department expects 200 hours will be expended developing these proposed rule amendments. The Department does not expect to use other resources in rule development.

Signed at Madison, Wisconsin, this 12 day of October, 1998.

Charles H. Thompson
Secretary
Wisconsin Department of Transportation

State of Wisconsin
Department of Public Instruction
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John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

October 12, 1998

The Honorable Robert Welch
Co-Chair, JCRAR
One East Main
Room 201
Madison, WI 53703

Dear Senator Welch:

The Department of Public Instruction will hold public hearings to consider the amending of sections PI 11.07 and PI 11.14, proposed permanent rules, relating to transfer pupils with disabilities and surrogate parents. The hearings will be held as follows:

December 1, 1998 3:00 - 4:00 p.m.	Wausau Northcentral Technical College 1000 West Campus Drive Room D101
December 14, 1998 3:00 - 4:00 p.m.	Madison GEF 3 Building 125 South Webster Street Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please call Paul Halverson, Director, Exceptional Education, at (608) 266-1781 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of the proposed rule and the fiscal estimate are attached. Written comments on the rules should be submitted to Lori Slauson, Administrative Rules Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written comments on the proposed rules received at the above address no later than December 31, 1998, will be given the same consideration as testimony presented at the hearing.

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the proposed rules:

- Amend the section relating to transfer pupils to permit local educational agencies (LEAs) to treat out-of-state transfer pupils in the same manner as intrastate transfer pupils so that unnecessary delays in the provision of special education services does not occur.
- Delete the provision relating to surrogate parents that limits the number of children that may be appointed to the surrogate parent.

In addition, to make it easier for an LEA to obtain the services of a surrogate parent, the department will make the following changes:

- Delete the provision requiring a school board to notify the department of a surrogate parent's termination or resignation.
- Delete the provision prohibiting surrogate parents from serving as a surrogate parent as part of a job for a public agency.
- Delete the provision prohibiting surrogate parents from receiving payment for time spent acting as a surrogate parent.

The rule also makes several technical language and cross-reference modifications to coincide with the changes made in 1997 Wisconsin Act 164 and proposed changes made in CHR 98-068.

Sincerely,

Lori L. Slauson

Lori L. Slauson
Administrative Rules Coordinator

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AMENDING RULES

The state superintendent of public instruction hereby proposes to repeal PI 11.14(1)(d), PI 11.14(2)(h), and PI 11.14(3)(c) and (d); to amend PI 11.14(1)(title), (a)(intro.) and 1. and 2., PI 11.14(1)(b)(intro.) and (c), PI 11.14(1)(e)(intro.), 1. and 5., PI 11.14(1)(f), PI 11.14(2)(g), PI 11.14(3)(b), PI 11.14(4)(b) and PI 11.14(5); to repeal and recreate PI 11.07 and to create PI 11.02(5m), relating to transfer pupils with disabilities and surrogate parents.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: Subch. V of ch. 115, Stats.

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the proposed rules:

- Amend the section relating to transfer pupils to permit local educational agencies (LEAs) to treat out-of-state transfer pupils in the same manner as intrastate transfer pupils so that unnecessary delays in the provision of special education services does not occur.
- Delete the provision relating to surrogate parents that limits the number of children that may be appointed to the surrogate parent.

In addition, to make it easier for an LEA to obtain the services of a surrogate parent, the department will make the following changes:

- Delete the provision requiring a school board to notify the department of a surrogate parent's termination or resignation.
- Delete the provision prohibiting surrogate parents from serving as a surrogate parent as part of a job for a public agency.
- Delete the provision prohibiting surrogate parents from receiving payment for time spent acting as a surrogate parent.

The rule also makes several technical language and cross-reference modifications to coincide with the changes made in 1997 Wisconsin Act 164 and proposed changes made in CHR 98-068.

SECTION 1. PI 11.02(5m) is created to read:

PI 11.02(5m) "IDEA" means the individuals with disabilities education act under 20 USC 1400 et. seq.

SECTION 2. PI 11.07 is repealed and recreated to read:

PI 11.07 (1) DEFINITIONS. In this section transfer pupil with a disability means a child with a disability under the IDEA whose residence has changed from an LEA in this state to another LEA in this state or from a public agency in another state to an LEA in this state.

(2) TRANSFER PUPILS WITH DISABILITIES IN WISCONSIN. (a) The purpose of this subsection is to ensure that there is no interruption of special education and related services when a child with a disability transfers from one LEA in this state to another LEA in this state.

(b) When an LEA receives a transfer pupil with a disability, the receiving LEA shall implement the IEP from the sending LEA until the receiving LEA adopts the sending LEA's IEP or develops its own IEP. To the extent that the receiving LEA cannot implement the sending LEA's IEP, the receiving LEA shall provide services that approximate, as closely as possible, the sending LEA's IEP.

(c) The receiving LEA shall adopt the evaluation and the eligibility determination of the sending LEA or conduct an evaluation and eligibility determination. The receiving LEA shall adopt the IEP of the sending LEA or develop a new IEP. The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending LEA if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

(d) When an LEA receives a transfer pupil with a disability and the LEA does not receive the pupil's records from the sending LEA, the LEA shall request in writing the pupil's records from the sending LEA. The sending LEA shall transfer the pupil's records to the receiving board within 5 working days of receipt of the written notice as required under s. 118.125(4), Stats.

(3) TRANSFER PUPILS WITH DISABILITIES FROM OUTSIDE WISCONSIN. (a) The purpose of this subsection is to permit an LEA to adopt the most recent evaluation and eligibility determination and IEP of a transfer pupil with a disability from a public agency in another state.

(b) When an LEA receives a transfer pupil with a disability from a public agency in another state, the LEA may provide special education and related services in accordance with the most recent IEP developed by the sending public agency until the LEA develops its own IEP or adopts the sending public agency's IEP.

(c) The LEA shall adopt the evaluation and the eligibility determination of the sending public agency or conduct a new evaluation and eligibility determination. If the LEA decides not to adopt the evaluation and eligibility determination of the sending public agency, the LEA shall initiate a special education referral of the child. The LEA shall complete the evaluation and develop an IEP and the placement in accordance with the requirements of subch. V, ch. 115, Stats., within 90 days of the date the child enrolls in the LEA. The LEA shall adopt the IEP of the sending public agency or develop a new IEP.

(d) The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending public agency if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

SECTION 3. PI 11.14(1)(title), (a)(intro.) and 1. and 2. are amended to read:

PI 11.14 SURROGATE PARENTS. (1)(title) ~~BOARD~~ LEA DUTIES. (a)(intro.) ~~A board~~ An LEA shall ensure that the rights of all children who are or are suspected to be children with ~~EEN~~ disabilities, who are residents of the district, are protected and it shall appoint a surrogate parent as provided under this section whenever one of the following occurs:

1. The ~~board~~ LEA cannot identify a parent of a child.

2. The ~~board~~ LEA is unable to discover the whereabouts of a parent after the ~~board~~ LEA has made reasonable efforts to locate a parent.

SECTION 4. PI 11.14(1)(b)(intro.) and (c) are amended to read:

PI 11.14(1)(b)(intro.) At least annually ~~a board~~ an LEA shall review the appointment of each surrogate parent it has appointed. The ~~board~~ LEA shall consider whether there is still a need for a surrogate parent, whether the surrogate parent continues to meet the requirements under sub. (2), whether the surrogate parent has carried out his or her responsibilities as a surrogate parent and whether the surrogate parent has acted in the interest of the child he or she was appointed to represent. ~~A board~~ An LEA shall terminate and may only terminate an appointment if it finds one of the following:

(c) 1. Whenever a board intends to terminate the appointment of a surrogate parent it shall ~~send~~ provide a written notice to the surrogate parent of its intent. The notice shall be sent to the surrogate parent at least 10 calendar days before the termination becomes effective. The notice shall inform the surrogate parent of the reasons for the termination, the date the termination will be effective and the surrogate parent's right to request a hearing under ~~s. PI 11.10~~ s. 115.80, Stats.

2. A surrogate parent may request a hearing under ~~s. PI 11.10~~ s. 115.80, Stats. to challenge the termination of his or her appointment. If a surrogate parent sends a request for a hearing before the effective date of the termination, ~~a board~~ an LEA shall continue the surrogate parent's appointment during the pendency of a hearing under ~~s. PI 11.10~~ s. 115.80, Stats., or a court proceeding arising from such a hearing, unless the board and the surrogate parent agree otherwise.

SECTION 5. PI 11.14(1)(d) is repealed.

SECTION 6. PI 11.14(1)(e)(intro.), 1. and 5. are amended to read:

(e)(intro.) ~~A board~~ An LEA shall establish and be responsible for carrying out policies and procedures in accordance with this section for all of the following:

1. Identifying children who have been referred to ~~a board~~ an LEA under ~~s. PI 11.03(2)~~ s. 115.777, Stats., and children with ~~EEN~~ disabilities who need to have a surrogate parent appointed.

5. Ensuring that surrogate parents are allowed to function independently from, and are not subject to the influence of, the ~~board~~ LEA and any of its staff.

SECTION 7. PI 11.14(1)(f) is amended to read:

PI 11.14(1)(f) ~~A board~~ An LEA may contract for the recruitment and training of surrogate parents.

SECTION 8. PI 11.14(2)(g) is amended to read:

PI 11.14(2)(g) Is not an employe of ~~a board, CESA, CHCEB,~~ the department, the LEA, or of ~~an~~ any other agency that is responsible for the care or education of the child. A person is not an employee of the department, the LEA, or another agency solely because he or she is paid by the department, the LEA or another agency to serve as a surrogate parent; and

SECTION 9. PI 11.14(2)(h) is repealed.

SECTION 10. PI 11.14(3)(b) is amended to read:

PI 11.14(3)(b) A surrogate parent that wishes to resign shall notify the appointing ~~board~~ LEA of the resignation at least calendar 30 days before the resignation takes effect.

SECTION 11. PI 11.14(3)(c) and (d) are repealed.

SECTION 12. PI 11.14(4)(b) is amended to read:

PI 11.14(4)(b) A surrogate parent shall represent a child in all matters related to this chapter and subch. V of ch. 115, Stats., including ~~the screening, EEN~~ special education referral, ~~M-team~~ evaluation, IEP and educational placement of the child and the provision of a free appropriate public education of the child.

SECTION 13. PI 11.14(5) is amended to read:

PI 11.14(5) Neither a surrogate parent nor the ~~board~~ LEA that appointed the surrogate parent nor the department may be found liable for the actions of the surrogate parent unless such actions constitute willful or wanton misconduct.

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 31st day of August, 1998

John T. Benson
State Superintendent

1997 Session

FISCAL ESTIMATE ☒ ORIGINAL ☐ UPDATED)

DOA-2048 (R10/92) ☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.: ss. PI 11.07 and PI 11.14

Amendment No. If Applicable:

Subject: Transfer pupils with disabilities and surrogate parents

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs-May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☐ No local government costs (See below)

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
   ☐ Towns ☐ Villages ☐ Cities
   ☐ Counties ☐ Others _____
   ☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules make several technical modifications to ch. PI 11, relating to children with disabilities and:

- Modify provisions allowing LEAs to treat pupils with disabilities transferring from out of state in the same manner as pupils with disabilities transferring from within the state.
- Modify provisions relating to surrogate parents.

These modifications were made to ensure that unnecessary delays in the provision of special education services do not occur for a child with disabilities and to make it easier for an LEA to obtain the services of a surrogate parent.

The proposed rules may reduce local costs due to provisions relating to transfer pupils. In the past when a pupil transferred to an LEA from out of state, the LEA would have to treat that pupil as a new referral, meaning the pupil would have to go through evaluation procedures, IEP development and placement determination. The proposed rules would allow a receiving LEA to accept the sending district's evaluation report and IEP if the receiving LEA determines the report and IEP are appropriate.

The proposed rules may increase local costs by allowing LEAs to pay qualified persons to act as surrogate parents. However, an increase in local costs would be voluntary since the rules do not require payments to be made to surrogate parents.

There is no state fiscal effect as a result of these proposed rules.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Department of Public Instruction Lori Slauson (608) 267-9127	Gina Frank-Reece (608) 266-2804	8/19/98

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Department of Public Instruction
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John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

October 12, 1998

The Honorable Robert Welch
Co-Chair, JCRAR
One East Main
Room 201
Madison, WI 53703

Dear Senator Welch:

The Department of Public Instruction will hold public hearings to consider the amending of section PI 11.35, proposed permanent rules, relating to eligibility criteria for children with disabilities. The hearings will be held as follows:

December 1, 1998 3:00 - 7:00 p.m.	Chippewa Falls CESA 10 725 West Park Avenue, Conference Center Rooms 1, 2 and 3
December 1, 1998 4:00 - 7:00 p.m.	Wausau Northcentral Technical College 1000 West Campus Drive, Room D101
December 2, 1998 3:00 - 7:00 p.m.	Rice Lake Wisconsin Indianhead Technical College 1900 College Drive, Room 247-49
December 3, 1998 3:00 - 7:00 p.m.	Ashland Wisconsin Indianhead Technical College 2100 Beaser Avenue, Room 306
December 7, 1998 3:00 - 7:00 p.m.	Portage Portage Public Library 253 West Edgewater Street, Conference Room
December 8, 1998 3:00 - 7:00 p.m.	Oshkosh CESA 6 2300 State Road, Main Conference Room
December 8, 1998 3:00 - 7:00 p.m.	Fennimore CESA #3 1300 Industrial Drive, Conference Room
December 9, 1998 3:00 - 7:00 p.m.	La Crosse Western Wisconsin Technical College 405 8th Street North, Room 103
December 9, 1998 3:00 - 7:00 p.m.	Gillett CESA 8 223 West Park Street, Aspen/Birch Room
December 10, 1998 3:00 - 7:00 p.m.	Green Bay Northeast Wisconsin Technical College 2740 West Mason Street, Room 2327

December 14, 1998 4:00 - 7:00 p.m.	Madison GEF 3 Building 125 South Webster Street, Room 041
December 15, 1998 3:00 - 7:00 p.m.	Milwaukee Administration Building 5225 West Vliet Street, Auditorium

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please call Paul Halverson, Director, Exceptional Education, at (608) 266-1781 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of the proposed rule and the fiscal estimate are attached. Written comments on the rules should be submitted to Lori Slauson, Administrative Rules Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written comments on the proposed rules received at the above address no later than December 31, 1998, will be given the same consideration as testimony presented at the hearing.

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the state superintendent appointed seven task forces to develop criteria determining the need for special education services and to modify eligibility criteria relating to:

- Cognitive disabilities.
- Visual impairments.
- Hearing impairments.
- Speech and language impairments.
- Specific learning disabilities.
- Emotional behavioral disabilities.

As a result of the task force recommendations, the proposed rules modify provisions relating to the identification of a child with a disability. The intent of these proposed rules is to assist the IEP team participants in making an accurate determination of an impairment and need for special education. It is not the intent to expand the number of children eligible for special education services or to cause the identification rates of children with disabilities to increase. The department is specifically requesting comment on whether the proposed eligibility rules would result in increased special education identification rates.

When evaluating a child with a potential disability, the rules require that an IEP team:

- May not use any single procedure as a sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.
- Must determine if an impairment specified in this chapter adversely affects the child's educational performance, thereby requiring the need of special education and related services on the part of the child.
- Must determine the child's needs that cannot be met in the regular education program, modifications that can be made in the regular education program, potential harmful effects if the child does not receive special education, and whether any additions or modifications need to be made to the child's special education and related services in order for the child to meet his or her goals.

The proposed rules also set forth eligibility criteria to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities, and emotional behavioral disabilities. The multiple handicapped impairment has been eliminated since a child with multiple impairments would be identified under one or more of the existing impairments. Finally, other technical modifications have been made to update terminology and to renumber and reorganize the section relating to impairments.

Sincerely,

Lori L. Slauson
Administrative Rules Coordinator

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION CREATING/AMENDING RULES

The state superintendent of public instruction hereby proposes to repeal PI 11.35(title), (1), (1m) and (2)(title) and (intro.), PI 11.35(2)(h); to renumber PI 11.35(2)(a), PI 11.35(2)(b), PI 11.35(2)(c), PI 11.35(2)(d), PI 11.35(2)(e), PI 11.35(2)(f), PI 11.35(2)(g), PI 11.35(2)(I), PI 11.35(2)(j), and PI 11.35(2)(k); to amend PI 11.36(9)(b); to repeal and recreate PI 11.36(1), PI 11.36(3), PI 11.36(4), PI 11.36(5), PI 11.36(6), and PI 11.36(7); and to create PI 11.35(1) to (3) and PI 11.36, relating to eligibility criteria for children with disabilities.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: s. 115.782, Stats.

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the state superintendent appointed seven task forces to develop criteria determining the need for special education services and to modify eligibility criteria relating to:

- Cognitive disabilities.
- Visual impairments.
- Hearing impairments.
- Speech and language impairments.
- Specific learning disabilities.
- Emotional behavioral disabilities.

As a result of the task force recommendations, the proposed rules modify provisions relating to the identification of a child with a disability. Specifically, when evaluating a child with a potential disability, the rules require that an IEP team:

- May not use any single procedure as a sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.
- Must determine if an impairment specified in this chapter adversely affects the child's educational performance, thereby requiring the need of special education and related services on the part of the child.
- Must determine the child's needs that cannot be met in the regular education program, modifications that can be made in the regular education program, potential harmful effects if the child does not receive special education, and whether any additions or modifications need to be made to the child's special education and related services in order for the child to meet his or her goals.

The proposed rules also set forth eligibility criteria to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities, and emotional behavioral disabilities. The multiple handicapped impairment has been eliminated since a child with multiple impairments would be identified under one or more of the existing impairments. Finally, other technical modifications have been made to update terminology and to renumber and reorganize the section relating to impairments.

SECTION 1. PI 11.35(title), (1), (1m) and (2)(title) and (intro.) are repealed.

SECTION 2. PI 11.35(1) to (3) are created to read:

PI 11.35 DETERMINATION OF ELIGIBILITY. (1) An evaluation conducted by an IEP team under s. 115.782, Stats., shall focus on the consideration of information and activities that assist the IEP team in determining how to teach the child in the way he or she is most capable of learning. Specifically, the IEP team shall meet the evaluation criteria specified under s. 115.782(2)(a), Stats., when conducting tests and using other evaluation materials in determining a child's disability.

(2) A child shall be identified as having a disability if the IEP team has determined from an evaluation conducted under s. 115.782, Stats., that the child has an impairment under s. PI 11.36 that adversely affects the child's educational performance, and the child, as a result thereof, needs special education and related services.

(3) As part of an evaluation or reevaluation under s. 115.782, Stats., conducted by the IEP team in determining whether a child is or continues to be a child with a disability, the IEP team shall identify all of the following:

(a) The child's needs that cannot be met through the regular education program as currently structured.

(b) Modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified under par. (a), in order to access the general education curriculum and meet the educational standards that apply to all children.

(c) Potential harmful effects, if any, if the child does not receive special education.

(d) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child, and to participate, as appropriate, in the general curriculum. Any such additions or modifications should include the extent to which the child requires replacement content, or supplementary aids, services, and other supports provided in regular education classes or other education-related settings to enable the child to be educated with nondisabled children to the maximum extent appropriate.

SECTION 3. PI 11.36 is created to read:

PI 11.36 AREAS OF IMPAIRMENT.

SECTION 4. PI 11.35(2)(a) is renumbered PI 11.36(1).

SECTION 5. PI 11.36(1) is repealed and recreated to read:

PI 11.36(1) COGNITIVE DISABILITY. (a) Cognitive disability means significantly subaverage intellectual functioning that exists concurrently with related limitations in 2 or more adaptive skill areas and that adversely affects educational performance.

(b) The IEP team may identify a child as having a cognitive disability if the child meets the criteria under subd. 1. and 2. and subd. 3.a. or b.

1. The child has an IQ standard score of 2 or more standard deviations below the mean, based on an assessment that includes at least one individually administered intelligence test developed to assess intellectual functioning. Alternatively, the IEP team may identify a child as having a cognitive disability if the child has an IQ standard score between one and two

standard deviations below the mean; if the child acts as does a child who has an IQ standard score below 70; if the child exhibits concomitant lags in intellectual functioning, adaptive skills and educational performance; if the child has been documented as having a cognitive impairment in the past; and if the child's condition is expected to last indefinitely.

2. The child has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in at least 2 of the following areas:

a. Communication.

b. Self-care.

c. Home living skills.

d. Social skills.

e. Appropriate use of resources in the community.

f. Self-direction.

g. Health and safety.

h. Applying academic skills in life.

i. Leisure.

j. Work.

3.a. The IEP team may identify a child aged 3 to 6 as having a cognitive impairment if the child has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: academic readiness, comprehension of language or communication, or motor skills.

b. The IEP team may identify a child aged 6 to 22 as having a cognitive impairment if the child has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: written language, mathematics, general information or reading.

NOTE: Cognitive disabilities manifests before age 18. An etiology should be determined when possible, so that the IEP team can use this information for program planning.

SECTION 6. PI 11.35(2)(b) is renumbered PI 11.36(2)

SECTION 7. PI 11.35(2)(c) is renumbered PI 11.36(3)

SECTION 8. PI 11.36(3) is repealed and recreated to read:

PI 11.36(3) VISUAL IMPAIRMENT. A visual impairment means a visual impairment that adversely affects a child's educational performance, even after the best conventional correction. The IEP team may identify a child as having a visual impairment after all of the following events occur:

(a) A teacher of the visually impaired conducts a functional vision evaluation which includes a review of medical history, formal and informal tests of visual functioning and the determination of the implications of the visual impairment on the educational and curricular needs of the child.

(b) A teacher of the visually impaired, in conjunction with the orientation and mobility specialist, evaluates the child at school, at the child's residence and in the community.

(c) An ophthalmologist or optometrist finds at least one of the following:

1. Central visual acuity of 20/70 or less in the better eye after conventional correction.

2. Reduced visual field of 50 degrees or less in the better eye.

3. Other physical conditions or ocular diseases that are permanent and irremediable.

4. Cortical visual impairment.

5. A degenerative condition that is or is likely to result in a significant loss of vision.

SECTION 9. PI 11.35(2)(d) is renumbered PI 11.36(4).

SECTION 10. PI 11.36(4) is repealed and recreated to read:

PI 11.36(4) HEARING IMPAIRMENT. Hearing impairment means any hearing loss, including deafness, that adversely affects educational performance. The evaluation of a child who is suspected of having a hearing impairment must include an evaluation by an audiologist licensed under Chapter 459, Stats.

SECTION 11. PI 11.35(2)(e) is renumbered PI 11.36(5)

SECTION 12. PI 11.36(5) is repealed and recreated to read:

PI 11.36(5) SPEECH AND LANGUAGE IMPAIRMENT. (a) Speech and language impairment means an impairment of speech or sound production, voice, fluency or language that significantly affects educational performance or social, emotional or vocational development.

(b) The IEP team may identify a child who meets any of the following criteria as having a speech and language impairment:

1. The child exhibits one or more errors in articulating sounds that persists beyond the age at which 90 percent of children of the same age can articulate the sounds and the child's conversational intelligibility is significantly affected or the child's conversational intelligibility significantly affects educational performance, as evaluated by at least one person other than a speech and language pathologist.

2. Forty percent of the child's patterns of sound are disordered, or the child scores in the severe or profound range of phonological use in formal testing and the child's conversational intelligibility is significantly affected or the child's conversational intelligibility significantly affects educational performance, as evaluated by at least one person other than a speech and language pathologist.

3. The child performs on a norm-referenced test of articulation or phonology at least 1.5 standard deviations below overall functioning, and the child's conversational intelligibility is significantly affected or the child's conversational

intelligibility significantly affects educational performance, as evaluated by at least one person other than a speech and language pathologist.

4. In the absence of an acute, respiratory virus or infection, the child exhibits atypical loudness, pitch, quality or resonance, as reported by at least one person other than a speech pathologist and the child's voice is moderately to severely impaired.

5. In absence of or with stress, struggle or avoidance, the child repeats, prolongs, or hesitates over syllables words, phrases or sentences, revises sounds or uses interjections on at least or less than 10 percent of a 100-word sample, and these nonfluencies interfere with communication, as evaluated by at least one person other than a speech pathologist.

6. The child's oral communication is inadequate, as documented by a language sample or by a notation explaining why language sampling was not possible; and the child's performance on a global norm-referenced test designed to assess language functioning is at or below 1.5 standard deviations from overall functioning; and the child's receptive or expressive language interferes with oral communication, as judged by at least one person other than a speech pathologist.

(c) The IEP team may not identify a child who exhibits any of the following as having a speech and language impairment:

1. Mild, transitory or developmentally appropriate speech or language difficulties that most children experience at various times and to varying degrees.

2. Speech or language difficulties resulting from learning English as a second language, unless the child has a documented disorder of language acquisition and impairment in his or her primary language.

3. Difficulties with auditory processing without a concomitant documented oral speech and language impairment.

4. A tongue thrust that does not significantly reduce the child's intelligibility.

5. Elective or selective mutism or school phobia.

(d) The IEP team shall substantiate a speech and language impairment by having all of the following:

1. A representative speech or language sample of the child.

2. Information about the child's speech or language in unstructured activities.

3. Formal tests using normative data or informal tests using criterion-referenced data.

SECTION 13. PI 11.35(2)(f) is renumbered PI 11.36(6)

SECTION 14. PI 11.36(6) is repealed and recreated to read:

PI 11.36(6) SPECIFIC LEARNING DISABILITY. (a) Specific learning disability means a severe learning problem due to a disorder in one or more of the basic psychological processes involved in acquiring, organizing or expressing information and that manifests itself in school as an impaired ability to listen, reason, speak, read, write, spell or do mathematical calculations, despite appropriate instruction in the general education curriculum. Specific learning disability may include conditions such as perceptual disability, brain injury, minimal brain dysfunction, dyslexia and development aphasia.

(b) The IEP team may identify a child as having a specific learning disability if all of the following are true:

1. 'Classroom achievement.' Upon initial identification, the child's ability to meet the instructional demands of the classroom and to achieve commensurate with his or her age and ability levels is severely delayed in the following areas:

a. Oral expression.

b. Listening comprehension.

c. Written expression.

d. Basic reading skill.

e. Reading comprehension.

f. Mathematical calculation.

g. Mathematical reasoning.

2. 'Significant discrepancy.' Upon initial identification, a significant discrepancy exists between the child's academic achievement in any of the areas under subd. 1 a. to g. and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument. The IEP team may base a determination of significant discrepancy only upon the results of individually administered, standardized achievement and ability tests that are reliable and valid. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures. See appendix A. This regression procedure shall be used except under any of the following conditions:

a. The regression procedure under this subdivision may not be used to determine a significant discrepancy if the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age.

b. If the IEP team makes such a determination under subpar. a., it shall document the reasons why it was not appropriate to use the regression formula and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the areas under subd. 1. a. to g. using other empirical evidence.

c. If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut-off under subd. 2.(intro.), the child's performance in any of the areas in subd. 1. a. to g. is variable, and the IEP team determines that the child meets all other criteria under subd. 1. and 3., the IEP team may consider that a significant discrepancy exists.

3. 'Information processing deficit.' The child has an information processing deficit that is linked to the child's classroom achievement delays under subd. 1. and to the significant discrepancy under subd. 2. The IEP team shall document its determination that the child has an information processing deficit with empirical evidence.

(c)1. The IEP team may not identify a child as having a specific learning disability if it determines that the significant discrepancy between ability and achievement is primarily due to environmental, cultural or economic disadvantage or any of the reasons specified under s. 115.782(3)(a) or any of the impairments under s. 115.76(5), Stats.

2. If the IEP team is concerned that a child has a significant discrepancy in oral expression or listening comprehension, the IEP team shall include a person qualified to assess speech and language impairments.

3. At least one observation in the general classroom setting by a team member other than the classroom teacher shall be conducted.

(d) Upon reevaluation, a child who met initial identification criteria under subd. 1. and 2. and continues to demonstrate a need for special education under s. PI 11.35(2) is a child with a disability under this section, unless the provision under par. (c)1. applies. If a child with a specific learning disability performs to their ability in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

SECTION 15. PI 11.35(2)(g) is renumbered PI 11.36(7)

SECTION 16. PI 11.36(7) is repealed and recreated to read:

PI 11.36(7) EMOTIONAL BEHAVIORAL DISABILITY. (a) Emotional behavioral disability means social, emotional or behavioral functioning that so departs from generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self-care or vocational skills.

(b) The IEP team may identify a child as having an emotional behavioral disability if the child meets the definition under par. (a), and meets all of the following:

1. The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.

2. The child's behavior described under subpar. a. occurs in school and in at least one other setting.

3. The child displays any of the following:

a. Inability to develop or maintain satisfactory interpersonal relationships.

b. Inappropriate affective or behavior response to a normal situation.

c. Pervasive unhappiness, depression or anxiety.

d. Physical symptoms, pains or fears associated with personal or school problems.

e. Inability to learn that cannot be explained by intellectual, sensory or health factors.

f. Extreme withdrawal from social interactions.

g. Extreme aggressiveness for a long period of time.

h. Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or others in a regular or special education program are negatively affected.

(c) The IEP team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the IEP team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the IEP team's written evaluation summary.

(d) The IEP team may not exclude a child from being identified under this paragraph solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose behavior is primarily due to cultural deprivation, familial instability, suspected child abuse or socio-economic circumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

SECTION 17. PI 11.35(2)(h) is repealed.

SECTION 18. PI 11.35(2)(i) is renumbered PI 11.36(8)

SECTION 19. PI 11.35(2)(j) is renumbered PI 11.36(9)

SECTION 20. PI 11.36(9)(b) as renumbered is amended to read:

PI 36.(9)(b) Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other ~~handicapping conditions~~ impairments under this section~~, such as other health impairment, learning disability, or multiple handicapped~~.

SECTION 21. PI 11.35(2)(k) is renumbered PI 11.36(10)

SECTION 22. The note following PI 11.36(10) as renumbered is amended to read:

NOTE: With respect to the eligibility criteria under s. PI ~~11.35~~ 11.36, in September 1991 the U.S. department of education issued a memorandum clarifying state and local responsibilities for addressing the educational needs of children with attention deficit disorder (ADD). (See 18 IDELR 116). as a condition of receipt of federal funds under the Individuals with Disabilities Act (IDEA), the state and local school districts are bound to comply with the federal policy outlined in that memo. (See e.g. *Metropolitan school district of Wayne Township, Marion County, Indiana v. Davila,* 969 F. 2d 485 (7th cir. 1992)).

Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under ch. 115, Stats. In considering eligibility, ~~a multidisciplinary team (M-team)~~ an IEP team must determine whether the child diagnosed with ADD has one or more ~~handicapping conditions~~ impairments under ~~ch. 115, Stats.,~~ this section and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under ch. 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other ~~condition~~ impairment enumerated in ~~ch. 115, Stats~~ this section. A copy of the federal policy may be obtained by writing the ~~Exceptional Education Mission~~ Special Education Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

SECTION 23. Appendix A is created to read:

Appendix A
Regression Formula for Calculating Significant Discrepancy Scores

Information needed for Calculation:

IQ/Ability Score = _____ SD of IQ/Cognitive Test = _____(SDi)

Achievement Score = _____ SD of Achievement Test = _____(SDa)

Correlation between tests = 0.____(r)*

Formula:

Expected Achievement = (SDa/SDi)r(IQ-100)+100 = _____

Discrepancy = Expected Achievement - Obtained Achievement Score =

SD Discrepancy = SDa $\sqrt{1-r^2}$ =

Cut-off:

Discrepancy / SD Discrepancy =

If number is **greater than 1.75**, there is a significant discrepancy between achievement and ability scores

* If correlation between tests is unknown, use .62

When the test publisher provides tables for significant differences between ability and achievement scores (such as with the Weschler Intelligence Scale for Children- 3 and the Weschler Individual Achievement Test), these tables may be used in lieu of this formula. Cut-offs should be derived using a 1.75 Standard Error of Estimate (SEe) criterion so that the difference between expected and obtained scores in the bottom 4% of the distribution meet the standard for a significant discrepancy (i.e. 1.75 SEe units below the expected score).

SECTION 24. Cross-reference changes. In the sections of the rule listed in Column A, the cross-references shown in Column B are changed to the cross-references in Column C.

Column A Rule Sections	Column B Old Cross-References	Column C New Cross-References
s. PI 11.36(8)(a) as renumbered	par. (g)	s. PI 11.36(7)
s. PI 11.36(8)(b) as renumbered	subd. 2.a. and b. subd. 2.c. through f.	subd. 1. and 2. subd. 3. through 6.
s. PI 11.36(9)(c) as renumbered	subd. 1.	par. (a)
s. PI 11.36(9)(d) as renumbered	this paragraph	this subsection

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 10th day of September, 1998

John T. Benson

John T. Benson
State Superintendent

1997 Session

FISCAL ESTIMATE ☒ ORIGINAL ☐ UPDATED)

DOA-2048 (R10/92) ☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. PI 11.35 and 11.36

Amendment No. If Applicable

Subject: Eligibility Criteria for Children with Disabilities

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs-May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others _____ ☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule specifies criteria used in determining the need for special education. The rules also modify the eligibility criteria used to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities and emotional behavioral disabilities.

The eligibility criteria modified in these rules should not result in altering the size of the population of children identified as having a disability. Therefore, the rules are not expected to have a local or state fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
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