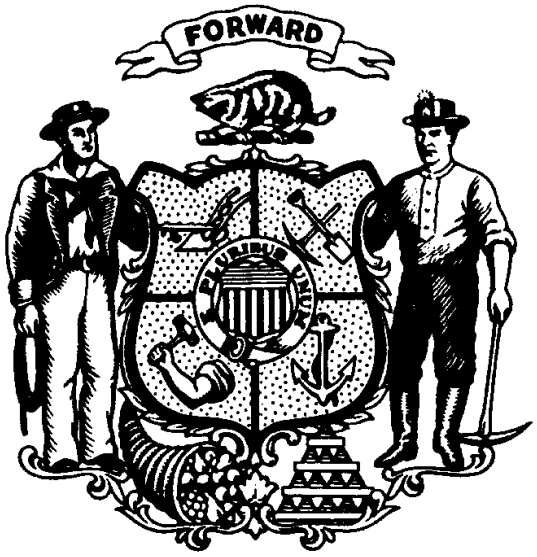
WISCONSIN ADMINISTRATIVE REGISTER

No. 476



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REVISOR OF STATUTES BUREAU
SUITE 800, 131 WEST WILSON STREET
MADISON, WISCONSIN 53703-3233

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NOTICE SECTION

Notice of Hearing
Accounting Examining Board

Notice is hereby given that pursuant to authority vested in the Accounting Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 440.08 (3), Stats., and interpreting ss. 440.08 (3), 442.04 (4) and (5) and 442.08, Stats., the Accounting Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Accy 3.05 (1); to repeal and recreate s. Accy 3.05 (3); and to create ss. Accy 3.09 (1) (e) and (f), 3.11 and 4.035, relating to examinations, educational and graduation requirements and late renewal.

Hearing Information

August 25, 1995 **Room 291**
Friday **1400 East Washington Ave.**
10:00 a.m. **Madison, WI**

Written Comments

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

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

Written comments must be received by **September 11, 1995** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 440.08 (3)

Statutes interpreted: ss. 440.08 (3), 442.04 (4) and (5) and 442.08

The proposed rule–making order of the Accounting Examining Board primarily relates to the certified public accountant examination (CPA examination) provided by the American Institute of Certified Public Accountants (AICPA). That examination is administered nationally through the AICPA and its successful completion is one of the requirements for obtaining a certificate and license to practice as a Certified Public Accountant in this state. One requirement for eligibility to sit for the CPA examination is that the candidate possess a bachelor's or higher degree from an institution, with a resident major in accounting or its reasonable equivalent. (See s. 442.04 (4), Stats.; ch. Accy 7, Wis. Adm. Code.) The current rules of the Board authorize a candidate to take the CPA examination based upon the candidate's affirmative statement on the application that he or she has obtained the required education. The proposed rule–making order would modify the procedure by which a candidate's credentials are verified and make modifications to other related rules regarding the examination. Also, in an unrelated section, the proposal creates a provision addressing the requirements for renewing a license to practice as a certified public accountant which has previously expired.

Section 1 would require that a candidate for admittance to the CPA examination submit certified copies of transcripts reflecting the course work completed and the granting of a bachelor's or higher degree at least 60 days prior to the date the CPA examination is to be administered. The purpose for the change is to assure that the Board has received independent documentation of a candidate's eligibility to sit for the examination, rather than granting admission based solely upon the applicant's representation of eligibility or own evaluation of his or her educational credentials.

This change in procedure is based upon the fact that beginning with its administration in May, 1996, the CPA examination will be "nondisclosed"; meaning that the questions and answers to the examination will no longer be published or disclosed by the AICPA following its administration. In order to safeguard the security of the CPA examination content, it has been recommended by the AICPA that each state's CPA credentialing authority,

> "...have rules and procedures to ensure that only candidates qualified to take the (CPA examination) can register and sit for it. Rules and procedures should require the verification of qualifications before a candidate can be permitted to register. Failure to do so will encourage unqualified test takers to take the (CPA examination), unnecessarily increasing the risk of a security breach." [From "INFORMATION FOR BOARDS OF ACCOUNTANCY, Implementing the Non disclosed Uniform CPA Examination, THIRD INSTALLMENT (April 26, 1995)", p. B–1].

An amendment to the Board's rule to require a candidate to submit academic transcripts indicating possession of a bachelor's or higher degree, rather than relying upon the mere representation to that effect, is necessary in order to meet the CPA examination security concerns regarding access to its contents by unqualified individuals.

The proposed rule would also require that the transcripts be submitted to the Board at least 60 days prior to the administration of the CPA examination. This filing deadline is necessary in order for Board staff to evaluate the materials and make a determination as to whether or not the individual possesses the necessary academic qualifications to sit for the examination. It also will permit the applicant time to submit additional supportive materials in the event of deficient filings, as well as provide adequate time to resolve any questions regarding an applicant's eligibility to take the CPA examination.

In addition, the proposal repeals the current requirement that a notarized photograph of the applicant must be submitted with the application to take the CPA examination. In reviewing the various security issues raised by virtue of the AICPA developing a nondisclosed examination, the Board noted that the notarized photograph requirement did not serve a valid security purpose, since the application is not present at the examination site at the time it is administered. Rather, the identity of the applicant is verified at the testing location through requiring the applicant to present identification with his or her photograph and signature. Accordingly, the Board has repealed the requirement that a notarized photograph must be submitted with the application.

The last subsection of the proposal provides that the application contain any request an applicant may have for an accommodation of a disability. This is in recognition of the Americans with Disabilities Act and the need to determine any necessary accommodations in order that appropriate arrangements may be made.

Section 2 repeals and recreates s. Accy 3.05 (3), concerning the time at which an individual becomes eligible to apply to take the CPA examination. Under the current language, an applicant may take the CPA examination at its first administration subsequent to the applicant's graduation. The need to review and process the academic transcripts received under proposed s. Accy 3.05 (1), requires not only that a specific filing deadline be established, but that the applicant must have completed all academic course work and have graduated by the time of the filing deadline. Accordingly, the proposal sets forth that requirement.

Section 3 also relates to attempting to assume that the CPA examination content will remain nondisclosed and secure in order to protect the integrity and validity of future examinations as reliable indicators of the professional knowledge possessed by individual candidates. Section Accy 3.09 (1) lists conduct at the examination which is considered to constitute cheating upon the examination. The proposed additions would additionally specifically prohibit candidates from disclosing the nature or content of the examination

or answers subsequent to the examination, and prohibit candidates from removing any examination materials or notes from the examination room.

Section 4 creates s. Accy 3.11, regarding the procedures by which an unsuccessful candidate upon either the CPA examination or the professional ethics examination may obtain a review of his or her examination. Subsection (1) provides that the candidate must contact the advisory grading service of the AICPA in order to obtain a review of the CPA examination. Subsection (2) refers to the professional ethics examination described within s. Accy 3.10, which is administered by Board staff and consists of an open book examination addressing the specific Wisconsin statutes and rules governing the practice of public accounting. Among other things, the proposal would permit a candidate to review the professional ethics examination either in person or by telephone within 30 days after the results had been mailed to the candidate.

Section 5 relates to the requirements which must be met in order to renew a license as a Certified Public Accountant which has previously expired. Under s. 440.08 (3), Stats., an expired license generally will be renewed upon payment of a late fee. However, if the license has not been renewed within 5 years after its renewal date, the Board may by administrative rule require an examination or education, or both, prior to renewing the license. In cases involving a license which has not been renewed for 5 years or more, the intent of the proposed rule is to permit the Board to review each applicant's individual circumstances in making a determination of what, if any, examination or education will be required. For example, some applicants for renewal after a 5 year absence from practice as a licensed CPA may not have been practicing in an accounting–related field during that time period. Under such circumstances, an examination or additional education, or both, may be necessary to assure that the applicant has sufficient currency of accounting knowledge to resume professional practice. However, there may be other individuals who continued to practice in accounting–related areas which did not require a current license as a CPA in which to practice, and for whom a need for examination or additional education may be less extensive or unnecessary. The proposed rule is intended to provide the Board with the appropriate flexibility to determine each situation according to the individual circumstances presented.

Text of Rule

SECTION 1. Accy 3.05 (1) is amended to read:

Accy 3.05 Examination application. (1) A candidate for the certified public accountant examination shall apply on an application form provided by the board. Applications must be complete, signed by the candidate, received in the board office no later than 60 days prior to the examination date, and be supported by the following:

(a) The appropriate fee ~~specified~~ authorized in s. 440.05, Stats.

(b) ~~Identification photograph properly notarized~~ Certified copies of transcripts for all academic work completed at an institution, as defined in s. 442.04 (4) (a), Stats. The award of a bachelor's or higher degree must be reflected on one of the transcripts.

(c) ~~A statement by the candidate that the education required by ss. Accy 7.02 and 7.03 has been completed~~ Request for accommodation of disability, if applicable.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 2. Accy 3.05 (3) is repealed and recreated to read:

Accy 3.05 (3) Applicants who have completed the education and graduation requirements by the application deadline may apply to take the next scheduled examination, but no certified public accountant certificate may be issued until all other requirements are met.

SECTION 3. Accy 3.09 (1) (e) and (f) are created to read:

Accy 3.09 (1) (e) Divulging the nature or content of any examination question or answer to any individual or entity subsequent to the conclusion of the examination.

(f) Removing any examination materials, notes or other unauthorized materials from the examination room.

SECTION 4. Accy 3.11 is created to read:

Accy 3.11 Examination review. (1) Applicants for the certified public accountant examination may request a review of their examination papers from the American institute of certified public accountants advisory grading service.

(2) An applicant who fails the professional ethics examination may request a review of the examination. The following conditions apply:

(a) The applicant shall file a written request to the board within 30 days of the date on which examination results were mailed and pay the fee under s. RL 4.05.

(b) Examination reviews are by appointment only and shall be limited to 1 hour.

(c) Reviews shall be conducted prior to the time an applicant applies to retake the examination.

(d) An applicant may review a failed examination only once.

(e) The examination may be reviewed by telephone. During a telephone review an applicant shall be provided with the statute or administrative code reference number and the topic of the test questions the applicant failed.

(f) An applicant may not be accompanied during the review by any person other than the proctors.

(g) Bound reference books shall be permitted. Applicants may not remove any notes from the area. Notes shall be retained by the proctor. The proctor shall not respond to inquiries by the applicant regarding allegations of examination error.

SECTION 5. Accy 4.035 is created to read:

Accy 4.035 Requirements for late renewal; reinstatement. (1) An individual certified public accountant who files an application for renewal of a license within 5 years after the renewal date may be reinstated by filing with the board:

(a) An application for renewal on a form prescribed by the department.

(b) The fee specified in s. 440.08 (2), Stats., plus the applicable late renewal fee as specified in s. 440.08 (3), Stats.

(2) An individual certified public accountant who files an application for renewal 5 years or more after the renewal date may be reinstated by filing with the board:

(a) An application for renewal on a form prescribed by the department.

(b) The fee specified in s. 440.08 (2), Stats., plus the applicable late renewal fee as specified in s. 440.08 (3), Stats.

(c) Verification of successful completion of examinations or education, or both, as the board may prescribe.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Proposed Rule

Agriculture, Trade & Consumer Protection

Notice is hereby given that pursuant to s 227.16(2)(e), Stats., the state of Wisconsin department of agriculture, trade and consumer protection will adopt the following rule without public hearing unless within 30 days after publication of this notice, on **August 15, 1995**, the department receives a petition for hearing signed by 25 persons who will be affected by the rule, a municipality which will be affected by the proposed rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Proposed Order of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to repeal s. ATCP 27.06, ch. 106(note), ch. 107(note), ch. 108(note), ch. 130 and s. 135.11(note); to renumber ch. ATCP 26(title), ss. ATCP 26.01(title), (1) to (3), (5), (7), (8), (10) to (13) and (15), 26.02(title), (1) and (3), 26.03, 26.04(title), (1) to (4), (5)(title), (5)(a)(title) and 1 to 10, and (5)(b)(title) and 1 to 9, 26.05(title), (1)(title) and (intro.), (1)(a), (1)(b)(intro.) and 1 to 6, and (2) to (5), 26.07(title), (1)(title), (1)(a)(title), (1)(b) and (c), (2)(title), and (2)(a)(title), (b) and (c), 26.08(title), 26.09, ch. 27(title), 27.01(title), (1), (3) to (5) and (7) to (9), 27.02, 27.03(title), (1) to (4), (5)(a) and (b), and (6)(a) and (b), 27.04 and 27.05, 100.57(2), (2), (3) and (4), 106.01 to 106.03, 107.01 and 107.02, 107.04(title), 107.05(title) and (1)(a), (c), (d) and (f), 107.06, ch. 108(title), 108.01(title) and (1) to (4), 108.02 and 108.03, ch. 135(title), 135.05(title), (2) and (3), ch. 156(title), 156.01(title) and (1) to (12), 156.02 to 156.08, ch. 157(title) and 157.01 to 157.04; to renumber and amend ss. ATCP 26.01(4), (6), (9) and (14), 26.02(2), 26.04(5)(a)(intro.) and (b)(intro.), 26.05(1)(b)7 and 8, 26.06(1)(b)6 and 7, 26.07(1)(a) and (2)(a), 26.08(1) and (2), 27.01(2) and (6), 27.03(5)(intro.), (6)(intro.) and (7), ch. 106(title), ch. 107(title), 107.03, 107.04(1) and (2), 107.05(1)(intro.), (b) and (e), 107.05(2), 108.01(intro.), 135.01, 135.03, 135.05(1), 135.07, 135.11 and 156.01(intro.); to amend ss. ATCP 1.06(1), ch. 105(title), 137.01, 137.02(intro.), 137.04(4), 137.05(4), 137.07(3), 140.15 and 161.23(4)(b); and to create ss. ATCP 21.14(1)(intro.), ch. 102(title), ch. 102(note), 102.01(intro.), 102.11(intro.), ch. 137, subch. I (title), and ch. 157 (title); relating to nonsubstantive rule organization and drafting changes.

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

Statutory authority: ss. 93.07(1), 93.09, 93.44, 96.15, 97.09(4), 100.20 (2), 100.295,
100.33(2), 227.11

Statutes interpreted: ss. 93.06(1m), 93.09, 93.14, 93.18, 93.44, 94.01, 94.02, 94.03;
ch. 96; ss. 97.09(4), 100.06, 100.20, 100.295, 100.30, and
100.33; and subch. III of ch. 227

This rule makes nonsubstantive organizational and drafting changes to several rules which the department currently administers. This rule consolidates, renumbers, and corrects typographical errors in the current rules, but does not change the substance of those rules. This rule does all of the following:

- Incorporates a current rule related to potato rot nematode (ATCP 27) into the department's general rule related to plant inspection and pest control (ATCP 21).

- Renumbers the department's certified seed potato rule from ATCP 26 to ATCP 156, so that it will be located among other rules administered by the department's marketing division. The marketing division is primarily responsible for administering the rule, in cooperation with the college of agricultural and life sciences.

- Consolidates 3 current price discrimination rules into a single new chapter (ATCP 102, Price Discrimination and Related Practices). The 3 current rules regulate price discrimination in the sale of fermented malt beverages (ATCP 106), soda water beverages (ATCP 107) and motor fuel (ATCP 108). Each of the current rules will comprise a subchapter in the consolidated rule.

- Retitles ATCP 105 from "Unfair Sales Act" to "Sales Below Cost." ATCP 105 interprets the unfair sales act, s. 100.30, Stats., but is not itself the unfair sales act. The rule interprets provisions of s. 100.30, Stats., related to sales below cost.

- Consolidates 2 current rules related to environmental labeling of products into a single chapter (ATCP 137, Environmental Labeling of Products). One of the current rules (ATCP 137) regulates claims that products are recycled, recyclable or degradable. The other (ATCP 135) requires that plastic containers be labeled to facilitate recycling. Each of the current rules will comprise a subchapter in the consolidated rule.

- Repeals ch. ATCP 130, an obsolete list of forms.

- Consolidates current grading rules for honey and maple syrup into a single chapter (ATCP 157, Honey and Maple Syrup). Within the consolidated rule, there will be separate subchapters for honey and maple syrup.

- Corrects miscellaneous typographical errors in current rules.

Text of Rule

SECTION 1. ATCP 1.06(1) is amended to read:

ATCP 1.06(1) WHO MAY REQUEST. A person adversely affected by a department action may request a hearing on that action. Except as provided under s. ~~ATCP 1.03(4)(a)~~ ATCP 1.03(3)(a), a request for hearing shall be filed with the secretary and shall comply with sub. (2). A request for hearing on a department action does not stay or modify that action.

SECTION 2. ATCP 21.14(1)(intro.) is created to read:

ATCP 21.14(1)(intro.) In this section:

SECTION 3. Chapter ATCP 26 is renumbered chapter ATCP 156; and ATCP 156.01(4), (6), (9) and (14), 156.02(2), 156.04(5)(a)(intro.) and (b)(intro.), 156.05(1)(b)7 and 8, 156.06(1)(b)6 and 7, 156.07(1)(a) and (2)(a), and 156.08(1) and (2), as renumbered, are amended to read:

ATCP 156.01(4) "Damage" means any defect, except sunburn, greening and hollow heart, or any combination of defects which materially detracts from the internal or external appearance of the potato, or any defect which cannot be removed without a loss of more than 5% of the total weight of the potato. "Damage" may include one or more of the internal or external defects specified in s. ~~ATCP 26.04(5)(a) and (b)~~ ATCP 156.04(5)(a) and (b).

ATCP 156.01(6) "External defect" means any defect under s. ~~ATCP 26.04(5)(a)~~ ATCP 156.04(5)(a) which can be detected by inspection of the outer surface of a seed potato, except that cutting may be required to determine the extent of internal injury related to the external defect.

ATCP 156.01(9) "Internal defect" means any defect under s. ~~ATCP 26.04(5)(b)~~ ATCP 156.04(5)(b) which cannot be detected without cutting the potato.

ATCP 156.01(14) "Serious damage" means any defect or combination of defects under s. ~~ATCP 26.04(5)~~ ATCP 156.04(5), except sunburn or greening, which seriously detracts from the internal or external appearance of the potato, or any defect which cannot be removed without a loss of more than 10% of the total weight of the potato.

ATCP 156.02(2) ISSUANCE OF CERTIFICATES. Field and bin and grading inspections and certifications or reports shall be based upon visual inspections of fields, bins, plants and tubers in accordance with standards, procedures, and tolerances specified in ss. ~~ATCP 26.03 and 26.04~~ ATCP 156.03 and 156.04. In the issuance of inspection certificates or reports, neither the department nor the college may make any express or implied warranties or representations as to freedom from disease or quality of the certified seed, but certifies only that at the time of inspection the sample plants and tubers of each lot inspected conform to standards and tolerances for certified seed or certified seed of a particular grade under this chapter.

ATCP 156.04(5)(a)(intro.) External defects. The following external defects may individually or collectively constitute damage or serious damage as defined under s. ~~ATCP 26.01(4)~~ ATCP 156.01(4) and (14), respectively:

ATCP 156.04(5)(b)(intro.) Internal defects. The following internal defects may individually or collectively constitute damage or serious damage as defined under s. ~~ATCP 26.01(4)~~ ATCP 156.01(4) and (14), respectively.

ATCP 156.05(1)(b)7 Damage as defined in s. ~~ATCP 26.01(4)~~ ATCP 156.01(4), including damage arising from external or internal defects under s. ~~ATCP 26.04(5)(a)~~ ATCP 156.04(5)(a) and (b), and

ATCP 156.05(1)(b)8 Serious damage as defined in s. ~~ATCP 26.01(14)~~ ATCP 156.01(14).

ATCP 156.06(1)(b)6 Damage by external defects as defined in s. ~~ATCP 26.04(5)(a)~~ ATCP 156.04(5)(a), and

ATCP 156.06(1)(b)7 Serious damage, except hollow heart, caused by internal defects as defined in s. ~~ATCP 26.04(5)(b)~~ ATCP 156.04(5)(b).

ATCP 156.07(1)(a) Grade requirements. Badger State Brand Foundation certified seed potatoes shall consist of potatoes of one variety, certified by the college, which shall meet the grade requirements of Badger State Brand certified seed potatoes under s. ~~ATCP 26.05~~ ATCP 156.05.

ATCP 156.07(2)(a) Grade requirements. Yellow Tag Grade Foundation seed potatoes shall consist of potatoes of one variety, certified by the college, which shall meet the grade requirements of Yellow Tag Grade certified seed potatoes under s. ~~ATCP 26.06~~ ATCP 156.06.

ATCP 156.08(1) Seed potatoes produced and sold by the college as elite foundation seed potatoes may be used for the planting and production of potatoes to be entered for certification as foundation or certified seed without grading inspection by the department. Elite foundation seed shall conform to all of the requirements prescribed in s. ~~ATCP 26.03(6)~~ ATCP 156.03(6), and shall be the progeny from tuber–unit selections combined with clonal increase that have been rigidly screened for freedom from diseases by accepted indexing methods. No person may sell or represent potatoes as elite foundation seed potatoes unless the potatoes have been produced by the college and conform to the requirements of this section.

ATCP 156.08(2) Elite foundation seed potatoes shall consist of potatoes of one variety and as a minimum meet the standards for Yellow Tag Grade seed potatoes under s. ~~ATCP 26.06~~ ATCP 156.06, except for defects not affecting productivity such as shape, sunburn, insect damage, mahogany browning, and internal discoloration. Elite foundation seed potatoes shall be labeled with a white tag printed with the words "Wisconsin Certified Seed Potatoes" with the words "Elite Foundation" overprinted on the face of the tag.

SECTION 4. Chapter ATCP 27(title) and ATCP 27.01 to 27.05 are renumbered ATCP 21.14(title) and (1) to (5); and ATCP 21.14(1)(b), (1)(f), (3)(e)(intro.), (3)(f)(intro.) and (3)(g), as renumbered, are amended to read:

ATCP 21.14(1)(b) "Certified seed potatoes" means seed potatoes which have been inspected and certified by the college as having been produced under and meeting field and bin inspection standards and requirements under ~~ch. ATCP 26~~ ch. ATCP 156, and which have been graded and certified by the department as being of a grade specified under ~~ch. ATCP 26~~ ch. ATCP 156.

(1)(f) "Infested field" means any parcel of land which is declared to be an infested field under ~~s. ATCP 27.03(1)~~ sub. (3)(a), or which is known to be currently infested in fact with potato rot nematode.

(3)(e)(intro.) If a field used in the production of table stock potatoes is designated as an infested field under ~~sub. (1)~~ par. (a), the department may withdraw that designation only if one of the following conditions is met:

(3)(f)(intro.) If any field used in the production of certified seed potatoes is designated as an infested field under ~~sub. (1)~~ par. (a), the department may not withdraw that designation unless both of the following conditions are met:

(3)(g) If a notice of infestation is withdrawn under ~~sub. (5) or (6)~~ par. (e) or (f), the department may continue to examine potatoes grown on the field to verify that there is no evidence of potato rot nematode infestation.

SECTION 5. ATCP 27.06 is repealed.

SECTION 6. ATCP 100.57(2), (2), (3) and (4) are renumbered ATCP 100.57(2) to (5).

SECTION 7. Chapter ATCP 102 (title) is created to read:

Chapter ATCP 102(title) **PRICE DISCRIMINATION AND RELATED PRACTICES**

SECTION 8. Chapter ATCP 102 (note) is created to read:

NOTE: This chapter is adopted under authority of s. 100.20(2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.26(3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20(5), Stats., and may recover twice the amount of the loss together with costs and reasonable attorneys' fees.

See also s. 133.04, Stats. (price discrimination; intent to destroy competition); s. 100.201, Stats., and ch. ATCP 103 (dairy trade practices); s. 100.22, Stats. (price discrimination in milk procurement); and s. 100.31, Stats. (drug price discrimination).

SECTION 9. ATCP 102.01(intro.) is created to read:

ATCP 102.01 **DEFINITIONS.** In this subchapter:

SECTION 10. ATCP 102.11(intro.) is created to read:

ATCP 102.11 DEFINITIONS. In this subchapter:

SECTION 11. ATCP 105(title) is amended to read:

ATCP 105 (title) **SALES BELOW COST**

SECTION 12. Chapter ATCP 106 (title) is renumbered chapter ATCP 102, subchapter I (title), and amended to read:

Chapter ATCP 102, subchapter I (title) **FERMENTED MALT BEVERAGES**

SECTION 13. Chapter ATCP 106 (notes) are repealed.

SECTION 14. ATCP 106.01 to 106.03 are renumbered ATCP 102.01 to 102.03.

SECTION 15. Chapter ATCP 107 (title) is renumbered chapter ATCP 102, subchapter II (title) and amended to read:

Chapter ATCP 102, subchapter II (title) **SODA WATER BEVERAGES**

SECTION 16. Chapter ATCP 107 (note) is repealed.

SECTION 17. ATCP 107.01 to 107.06 are renumbered ATCP 102.11 to 102.16; and 102.13, 102.14(1) and (2), 102.15(1)(intro.), (b) and (e), and 102.15(2), as renumbered, are amended to read:

ATCP 102.13 PROHIBITED ACTS OF RETAILERS. No retailer or any officer, director, employe or agent thereof shall solicit or receive, directly or indirectly, from or through a wholesaler, broker, or another retailer, anything which is prohibited by s. ~~ATCP 107.02~~ ATCP 102.12, where it is known, or in the exercise of reasonable prudence should be known that it is prohibited.

ATCP 102.14(1) No broker, or any officer or agent thereof, shall participate, directly or indirectly, in any trade practice prohibited by s. ~~ATCP 107.02~~ ATCP 102.12.

ATCP 102.14(2) No wholesaler shall engage or offer to engage in any trade practice prohibited by s. ~~ATCP 107.02~~ ATCP 102.12, directly or indirectly, through a broker.

ATCP 102.15(1)(intro.) Nothing in s. ~~ATCP 107.02(1)~~ ATCP 102.12(1) and (3) shall apply to the sale or offering for sale of soda water beverages:

ATCP 102.15(1)(b) With differences in services or facilities under s. ~~ATCP 107.02(3)~~ ATCP 102.12(3), if made in good faith to meet services or facilities, or any compensation therefor, furnished by a competitor.

ATCP 102.15(1)(e) To customers other than ~~wholesalers or~~ retailers or wholesalers as defined in s. ~~ATCP 107.01~~ ATCP 102.12(2) or (3).

ATCP 102.15(2) Equipment furnished, sold, given, lent, or rented prior to the effective date of this chapter shall, within 18 months after the effective date of this chapter, be either removed from the retailer's premises or brought into compliance with the requirements of s. ~~ATCP 107.02(2)~~ ATCP 102.12(2) and (3).

SECTION 18. Chapter ATCP 108 (title) is renumbered chapter ATCP 102, subchapter III (title) and amended to read:

Chapter ATCP 102, subchapter III (title) **MOTOR FUEL**

SECTION 19. Chapter ATCP 108 (note) is repealed.

SECTION 20. ATCP 108.01 to 108.03 are renumbered ATCP 102.21 to 102.23; and ATCP 102.21(intro.), as renumbered, is amended to read:

ATCP 102.21 **DEFINITIONS**. ~~As used in this chapter and in ch. ATCP 113, the following terms are defined as follows~~ In this subchapter:

SECTION 21. Chapter ATCP 130 is repealed.

SECTION 22. Chapter ATCP 135 (title) is renumbered chapter ATCP 137, subchapter II (title).

SECTION 23. ATCP 135.01 is renumbered ATCP 137.11 and amended to read:

ATCP 137.11 **AUTHORITY**. This ~~chapter~~ subchapter is promulgated pursuant to s. 100.33, Stats.

SECTION 24. ATCP 135.03 is renumbered ATCP 137.12, and ATCP 137.12(intro.), as renumbered, is amended to read:

ATCP 102.13 **PROHIBITED ACTS OF RETAILERS**

ATCP 137.12 DEFINITIONS. The definitions set forth in s. 100.33, Stats., apply to this ~~chapter~~ subchapter. For the purpose of interpreting s. 100.33, Stats., and this ~~chapter~~ subchapter:

SECTION 25. ATCP 135.05 is renumbered ATCP 137.13, and ATCP 137.13(1), as renumbered, is amended to read:

ATCP 137.13(1) TRIANGULAR SYMBOL. Each plastic container regulated under this ~~chapter~~ subchapter and under s. 100.33, Stats., shall have a triangular symbol molded, imprinted or otherwise attached. Inside the triangle shall be a number and below the triangle shall be a series of letters identifying the resin used in the plastic container, as specified in sub. (2).

SECTION 26. ATCP 135.07 is renumbered ATCP 137.14 and amended to read:

ATCP 137.14 **VARIANCES.** The department may grant a variance from this ~~chapter~~ subchapter, as provided under s. 100.33(3m), Stats., if the requester can prove that labeling a type of plastic container is technologically impossible.

SECTION 27. ATCP 135.11 is renumbered ATCP 137.15 and amended to read:

137.15 **PENALTY**. Each violation of ~~these rules~~ this subchapter is subject to a forfeiture of not more than $500, as provided in s. 100.33(4), Stats. Each day of violation constitutes a separate offense.

SECTION 28. ATCP 135.11 (note) is repealed.

SECTION 29. Chapter ATCP 137, subchapter I (title) is created to read:

SUBCHAPTER I
RECYCLED, RECYCLABLE OR DEGRADABLE PRODUCTS

SECTION 30. ATCP 137.01 is amended to read:

ATCP 137.01 **SCOPE AND AUTHORITY.** This ~~chapter~~ subchapter is adopted under ss. 100.20(2) and 100.295, Stats. This subchapter applies to representations made for any product that is sold or leased, offered for sale or lease, or promoted or distributed for sale or lease at wholesale or retail. This ~~chapter~~ subchapter applies to oral, written or graphic representations including advertisements, product labels, statements made in the print or broadcast media, and representations made in the form of trademarks, logos, symbols or trade names.

SECTION 31. ATCP 137.02(intro.) is amended to read:

ATCP 137.02 DEFINITIONS. In this ~~chapter~~ subchapter:

SECTION 32. ATCP 137.04(4) is amended to read:

ATCP 137.04(4) A label only used at wholesale by a manufacturer of connectors for beverage containers as defined in s. 134.77(1)(b), Stats., representing compliance with s. 134.77(3), Stats., to packagers of beverages as defined in s. 134.77(1)(a), Stats., does not constitute a representation, for purposes of this section, that a plastic beverage container is degradable ~~as defined in this chapter~~.

SECTION 33. ATCP 137.05(4) is amended to read:

ATCP 137.05(4) An identifying symbol placed on a plastic container to comply with ~~ch. ATCP 135~~ subchapter II does not constitute a representation, for purposes of this ~~chapter~~ subchapter, that the container is recyclable.

SECTION 34. ATCP 137.07(3) is amended to read:

ATCP 137.07(3) If a representation is required to include any disclosure or qualifying statements under this ~~chapter~~ subchapter, the disclosures and qualifying statements shall be clear and conspicuous in relation to the representation.

SECTION 35. ATCP 140.15 is amended to read:

ATCP 140.15 LIST OF AFFECTED PRODUCERS OR HANDLERS; COMPILATION PRIOR TO HEARING. If a decision is made to initiate proceedings for the adoption, amendment or repeal of a marketing order, the secretary shall establish a current list of producers and handlers who will be affected by the proposal, as provided in s. 96.05(3) through (5), Stats. The list shall be used in determining whether the proposal to adopt, amend or repeal a marketing order is approved in a referendum of producers and handlers, as provided in s. ~~ATCP 140.16~~ ATCP 140.19. The list shall be established and updated using the procedures under s. 96.05(3) through (5), Stats., before any notice of public hearing is issued on the proposal.

SECTION 36. Chapter ATCP 156 (title) is renumbered chapter ATCP 157, subchapter I (title).

SECTION 37. ATCP 156.01 to 156.08 are renumbered ATCP 157.01 to 157.08, and ATCP 157.01(intro.), as renumbered, is amended to read:

ATCP 157.01 DEFINITIONS. ~~The following terms, wherever used in these standards or regulations, shall have the meaning here indicated~~ In this subchapter:

SECTION 38. Chapter ATCP 157 (title) is renumbered chapter ATCP 157, subchapter II (title).

SECTION 39. ATCP 157.01 to 157.04 are renumbered ATCP 157.11 to 157.14.

SECTION 40. Chapter ATCP 157 (title) is created to read:

Chapter ATCP 157 (title) **HONEY AND MAPLE SYRUP**

SECTION 41. ATCP 161.23(4)(b) is amended to read:

ATCP 161.23(4)(b) For each product or commodity identified under par. (a), information showing that the product or commodity complies with the eligibility requirements under s. ~~ATCP 161.28~~ ATCP 161.25.

Fiscal Effect

There is no fiscal impact with the promulgation of this rule.

Notice of Hearing

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

Notice is hereby given that, pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ss. 443.04, 443.09 (6) and 443.10 (2) (e), Stats., the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to amend ss. A–E 3.05 (8) (b), 4.08 (7) (b), 5.04 (8) (b), 6.05 (9) (b) and 10.05 (6) (b); to create s. A–E 2.05; and to repeal and recreate ss. A–E 4.05 and 4.06, relating to the examination review procedure, renewal of credentials, requirements for registration as a professional engineer, and education as an experience equivalent for registration as a professional engineer.

Hearing Information

August 29, 1995 **Room 180**
Tuesday **1400 East Washington Ave.**
10:00 a.m. **Madison, WI**

Written Comments

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

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

Written comments must be received by **September 15, 1995** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

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

Statutes interpreted: ss. 443.04, 443.09 (6) and 443.10 (2) (e)

In this proposed rule–making order, the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors creates and amends rules as follows:

1) Section A–E 2.05 is created to provide that the affected section of the Board may make appropriate inquiry of persons seeking to renew their credentials more than five years after expiration, and may impose reasonable conditions on renewal after that period, including imposition of any of the conditions required for grant of an initial credential.

2) Sections A–E 3.05 (8) (b), A–E 4.08 (7) (b), A–E 5.04 (8) (b), A–E 6.05 (9) (b), A–E 9.05 (6) (b) and A–E 10.05 (6) (b) are amended to reflect the procedure currently in place for all sections of the Board covering examination review by failing candidates. Under the proposed rule, failing candidates would be notified of the appeal procedure without being required to inquire in that regard.

3) Sections A–E 4.05 and 4.06 are repealed and recreated to more clearly define the requirements for licensure under s. 443.04 (1) (a), (b), (c) and (d), Stats. The previous rule utilized a table to establish various experience equivalency criteria which proved confusing for candidates. The proposed rule does not change those criteria, but merely defines them in a more easily understood narrative form.

Text of Rule

SECTION 1. A–E 2.05 is created to read:

A–E 2.05 Failure to be registered. (1) If a licensee who fails to renew his or her credential by the established renewal date applies for renewal of the credential less than 5 years after its expiration, the credential shall be renewed upon payment of the renewal fee specified in s. 440.08, Stats.

(2) (a) If a licensee applies for renewal of his or her credential more than 5 years after its expiration, the board shall make an inquiry as it finds necessary to determine whether the applicant is competent to practice under the credential in this state. The inquiry shall include a review of the applicant's practice within the previous 5 years, if any, in other licensing jurisdictions.

(b) After inquiry, the board shall impose any reasonable conditions on reinstatement of the credential as the board deems appropriate, including a requirement that the applicant complete any current requirement for original licensure.

SECTION 2. A–E 3.05 (8) (b) is amended to read:

A–E 3.05 (8) (b) *Review procedure.* ~~An applicant shall contact the board office located at 1400 East Washington Avenue, Madison, Wisconsin 53702, to schedule an appointment to review~~ Failing candidates shall be notified of the procedure to schedule a review of the appropriate examination parts. The applicant may take notes on the examination questions reviewed. No notes may be retained by the applicant following the review. ~~All notes taken during the review shall be placed in the applicant's file.~~ The review may not take place within 30 days prior to a scheduled examination.

SECTION 3. A–E 4.05 and 4.06 are repealed and recreated to read:

A–E 4.05 Requirements for registration as a professional engineer. (1) Requirements for registration under s. 443.04 (1) (a), Stats., are as follows:

(a) A bachelor of science degree from a school or college of engineering accredited by the engineering accreditation commission of the accreditation board for engineering and technology (EAC/ABET) in an engineering course of not less than 4 years, or a diploma of graduation in an engineering course of not less than 4 years deemed by the board to be equivalent to a B.S. degree in engineering from an EAC/ABET accredited school or college of engineering.

(b) Not less than 4 years of experience in engineering work of a character satisfactory to the board indicating that the applicant is competent to practice engineering. Experience gained in obtaining a master's degree in engineering and experience gained in obtaining a Ph.D. in engineering or in an engineering related program shall each be deemed equivalent to one year of qualifying experience.

(c) Successful completion of the fundamentals of engineering, the principles and practice of engineering and the barrier free design parts of the board's examination.

(2) Requirements for registration under s. 443.04 (1) (b), Stats., are as follows:

(a) A specific record of 8 or more years of experience in engineering work of a character satisfactory to the board indicating that the applicant is competent to be placed in responsible charge of the work, or a combination of engineering experience and equivalent education totaling 8 years.

(b) Successful completion of the fundamentals of engineering, the principles and practice of engineering and the barrier free design parts of the board's examination.

(3) Requirements for registration under s. 443.04 (1) (c), Stats., are as follows:

(a) A specific record of not less than 12 years or more of experience in engineering work of a character satisfactory to the board indicating that the applicant is competent to practice engineering, or a combination of experience and equivalent education totaling 12 years.

(b) Submission of documentary evidence establishing to the satisfaction of the board that the applicant has acquired by practical experience or professional education sufficient knowledge of mathematics, the physical sciences and the principles of engineering to competently practice engineering.

(c) Successful completion of the principles and practice of engineering and the barrier free design parts of the board's examination.

(4) Requirements for registration under s. 443.04 (1) (d), Stats., are as follows:

(a) A bachelor of science degree from a school or college of engineering accredited by the engineering accreditation commission of the accreditation board for engineering and technology (EAC/ABET) in an engineering course of not less than 4 years, or a diploma of graduation in an engineering course of not less than 4 years deemed by the board to be equivalent to a B.S. degree in engineering from an EAC/ABET accredited school or college of engineering.

(b) Not less than 8 years of experience in engineering work of a character satisfactory to the board indicating that the applicant is competent to practice engineering. Experience gained in obtaining a master's degree in engineering and experience gained in obtaining a Ph.D. in engineering or in an engineering related program shall each be deemed equivalent to one year of qualifying experience.

(c) Submission of a statement describing provisions of Wisconsin law which govern the practice of engineering and which concern the design needs of people with physical disabilities.

(d) Submission of evidence that the applicant has had at least 6 months of engineering experience in Wisconsin or has had sufficient contacts with this state to make the applicant familiar with Wisconsin engineering law and practice.

(5) If an engineering degree is from an international educational institution, the applicant shall provide an official evaluation by a transcript evaluation service acceptable to the board which shows that the degree is equivalent to a B.S. or higher degree in an engineering program accredited by the engineering accreditation commission of the accreditation board for engineering and technology. The board may approve the degree if it finds equivalence.

A–E 4.06 Education as an experience equivalent for registration. For the purpose of meeting experience requirements for registration as a professional engineer under s. 443.04 (1) (b) and (c), Stats., an applicant may claim education as equivalent to experience as follows:

(1) Completion of each year of engineering coursework at a school or college of engineering accredited by the engineering accreditation commission of the accreditation board for engineering and technology (EAC/ABET) in an engineering program of not less than 4 years, or completion of each year of engineering coursework at a school or college of engineering in an engineering program of not less than 4 years deemed by the board to be equivalent to an EAC/ABET accredited school or college of engineering program shall be deemed equivalent to one year of qualifying experience.

(2) Completion of each year of engineering coursework at a school or college of engineering in an engineering program of not less than 4 years deemed by the board not to be equivalent to an EAC/ABET accredited school or college of engineering shall be deemed equivalent to not more than 7/8 of one year of qualifying experience.

(3) Completion of each year of coursework in engineering technology at a school or college of engineering technology accredited by the technology accrediting commission of the accreditation board for engineering and technology in an engineering technology program of not less than 4 years shall be deemed equivalent to 3/4 of one year of qualifying experience.

(4) Completion of each year of coursework in engineering technology at a school or college of engineering technology not accredited by the technology accreditation commission of the accreditation board for engineering and technology in an engineering technology program of not less than 4 years shall be deemed equivalent to not more than 2/3 of one year of qualifying experience.

(5) Completion of each year of coursework leading to a B.S. degree in engineering related sciences, including but not limited to physics, mathematics and chemistry, from a college or university accredited by a

regional accrediting agency approved by the state board of education in the state in which the college or university is located shall be deemed equivalent to 3/4 of one year of qualifying experience.

(6) Completion of each year of coursework leading to a B.S. degree in areas other than engineering or engineering related sciences from a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located shall be deemed to be equivalent to not more than 1/2 of one year of qualifying experience.

(7) Engineering experience gained in a cooperative educational program shall be evaluated on an individual basis but may not be deemed to be equivalent to more than a total of one year of qualifying experience. To obtain equivalent work experience credit, an applicant shall submit a record of work completed in the cooperative educational program with the application for registration. The engineering section shall determine the amount of equivalent experience awarded by evaluating the record of work completed using the criteria in s. A–E 4.03.

SECTION 4. A–E 4.08 (7) (b) is amended to read:

A–E 4.08 (7) (b) ~~An applicant shall contact the board office, located at 1400 East Washington Avenue, Madison, Wisconsin 53702, to schedule an appointment to review~~ Failing candidates shall be notified of the procedure to schedule a review of the appropriate examination parts. The applicant may take notes on the examination questions reviewed. No notes may be retained by the applicant following the review. ~~All notes taken during the review shall be placed in the applicant's file.~~ The review period may not take place within 30 days prior to a scheduled examination.

SECTION 5. A–E 5.04 (8) (b) is amended to read:

A–E 5.04 (8) (b) *Review procedure.* ~~An applicant shall contact the board office, located at 1400 East Washington Avenue, Madison, Wisconsin 53702, to schedule an appointment to review~~ Failing candidates shall be notified of the procedure to schedule a review of the appropriate examination parts. The applicant may take notes on the examination questions reviewed. No notes may be retained by the applicant following the review. ~~All notes taken during the review shall be placed in the applicant's file.~~ The review may not take place within 30 days prior to a scheduled examination.

SECTION 6. A–E 6.05 (9) (b) is amended to read:

A–E 6.05 (9) (b) *Review procedure.* ~~An applicant shall contact the board office, located at 1400 East Washington Avenue, Madison, Wisconsin 53702, to schedule an appointment to review~~ Failing candidates shall be notified of the procedure to schedule a review of the appropriate examination parts. The applicant may take notes on the examination questions reviewed. No notes may be retained by the applicant following the review. ~~All notes taken during the review shall be placed in the applicant's file.~~ The review may not take place within 30 days prior to a scheduled examination.

SECTION 7. A–E 9.05 (6) (b) is amended to read:

A–E 9.05 (6) (b) ~~An applicant shall contact the board office, located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, to schedule an appointment to review~~ Failing candidates shall be notified of the procedure to schedule a review of the appropriate examination parts. The applicant may take notes on the examination questions reviewed. No ~~such~~ notes may be retained by the applicant following the review. ~~All notes taken during the review shall be placed in the applicant's file.~~ The review may not take place within 30 days prior to a scheduled examination.

SECTION 8. A–E 10.05 (6) (b) is amended to read:

A–E 10.05 (6) (b) ~~An applicant shall contact the board office, located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, to schedule an appointment to review~~ Failing candidates shall be notified of the procedure to schedule a review of the appropriate examination parts. The applicant may take notes on the examination questions reviewed. No ~~such~~ notes may be retained by the applicant following the review. ~~All notes taken during the review shall be placed in the applicant's file.~~ The review may not take place within 30 days prior to a scheduled examination.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing
Development

Notice is hereby given that pursuant to s. 560.29 (4) (g), Stats., the Wisconsin Department of Development will hold a hearing to consider a proposed order to repeal ss. DOD 21.02 (5) and 21.05 (2); to amend ss. DOD 21.02 (3), 21.03 (1) and (3), 21.04 (1) and (2) (a), (b), (c), (e) and (f) and 21.05 (1) and (3) (b) to (d); and to create ss. DOD 21.02 (2m) and (7), 21.04 (4) to (6) and 21.05 (3) (f) and (g), relating to the joint effort marketing program.

Hearing Information

September 7, 1995 **Room 918**
Thursday **123 West Washington Ave.**
10:00 a.m. **Madison, WI**

Analysis Prepared by the Dept. of Development

Section 560.29, Stats., creates a joint effort marketing program and s. 560.29 (4) (g), Stats., authorizes the Department to adopt rules required to administer the program.

The program provides for grants to non–profit organizations engaged in tourism activities. Under current rules, grant funds may be used for the development of publicity and the production and media placement of advertising that are part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin. The proposed rules add direct mail to the activities that may be funded.

Under current rules, funds for any project are limited to one half of the costs of that project. The funding available to any applicant is limited to no more than 7% of the total of joint effort marketing grants made during the fiscal year. The proposed rule makes several changes to these funding limits. The 7% limit is applied to the project rather than the applicant. The limit on the applicant is increased to 14%. The proposed rule places a limit on the eligible advertising expense portion of the project to a maximum of 75% in the first year of funding, 50% the second year and 25% the third year. The proposed rule also makes clear that an applicant must reapply for second and third year funding. The remainder of the funding for a project, under the proposed rules, may not come from an agency of Wisconsin state government.

The proposed rule also changes the determinations the Department must make before it may award funding to a project. Whether the project is new or innovative is proposed to be dropped as a determination. Instead the Department must determine that the project has broad appeal, targets markets beyond the local area, that the project will make a positive economic impact on the local area and that the project has potential to be self–sufficient within three years.

Finally, the time limit for the Department's determination is eliminated.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.14, Stats., the proposed rule will have minimal impact on small business. The initial regulatory flexibility analysis as required by s. 227.17 (3) (f), Stats., is as follows:

1. Type of small business affected by the rule: None.

2. The proposed reporting, bookkeeping and other procedures required for compliance with the rule: None.

3. The types of professional skills necessary for compliance with the rule: None.

Fiscal Estimate

The proposed rule has no fiscal effect.

Contact Person

Dennis Fay, General Counsel, (608) 266–6747

Text of Rule

SECTION 1. DOD 21.02 (2m) is created to read:

DOD 21.02 (2m) "Eligible advertising" means advertising that will appear outside of the local area where the project will occur and that will use a medium that has not been used outside of the local area to publicize the project.

SECTION 2. DOD 21.02 (3) is amended to read:

DOD 21.02 (3) "Eligible applicant" means any Wisconsin public or private organization not organized or incorporated for profit.

SECTION 3. DOD 21.02 (5) is repealed.

SECTION 4. DOD 21.02 (7) is created to read:

DOD 21.02 (7) "Statewide marketing strategy" means the annual tourism marketing plan for Wisconsin recommended by the marketing committee and adopted by the department.

SECTION 5. DOD 21.03 (1) and (3) are amended to read:

DOD 21.03 (1) Grant funds received by an eligible applicant may only be used for those project costs related to the development of publicity, ~~and~~ the production and media placement of advertising and direct mail campaigns.

(3) The total grant amount that may be awarded to any ~~applicant~~ project during a fiscal year is limited to ~~no more than 7% of the total amount to be awarded during the year.~~ the following:

(a) No more than 7% of the joint effort marketing fiscal year budget.

(b) No more than 50% of the project's fiscal year budget.

(c) No more than 75% of the eligible advertising expense for the first year a project receives funds under this chapter.

(d) No more than 50% of the eligible advertising expenses for the second year a project receives funds under this chapter.

(e) No more than 25% of the eligible advertising expenses for the third year a project receives funds under this chapter.

SECTION 6. DOD 21.03 (4), (5) and (6) are created to read:

DOD 21.03 (4) A project may receive up to 3 years of funding and the 3 years are not required to be consecutive. For each year of funding requested, an application shall be submitted and a determination made as provided under this chapter.

(5) An eligible applicant may be awarded no more than 14% of the joint effort marketing budget during any fiscal year.

(6) Funds, other than those provided under this chapter, necessary to undertake the project may not be received from an agency of Wisconsin state government.

SECTION 7. DOD 21.04 (1) and (2) (a), (b), (c), (e) and (f) are amended to read:

DOD 21.04 (1) An eligible applicant may submit an application no less than 90 days prior to the ~~date on which the project proposed in the application~~ first date advertising supported by funds under this chapter is scheduled to begin.

(2) (a) The name, address, telephone number and contact person for the applicant, ~~and~~ its advertising agency, if any, and its federal employer identification number.

(b) A description of the project including the market to be reached, the media to be used, ~~and~~ the date or dates during which the advertising will appear in the media and the size or length of the advertising.

(c) An advertising plan, ~~and~~ a budget for the project and an income and expense statement for the year of the project and the previous year, if applicable.

(e) A description ~~of the innovative quality of~~ and time table for the project.

(f) A description of ~~the proposed benefits of~~ the project ~~including any increase in tourist visits to Wisconsin or tourism expenditures in Wisconsin~~ goals and methods to measure their attainment.

SECTION 8. DOD 21.05 (1) is amended to read:

DOD 21.05 (1) A group consisting of the marketing committee members, department staff and a representative of the department's advertising agency shall review all applications and make funding recommendations to the department.

SECTION 9. DOD 21.05 (2) is repealed.

SECTION 10. DOD 21.05 (3) (b) to (d) are amended to read:

DOD 21.05 (3) (b) That~~, in comparison with all other applications received during the same month,~~ the proposed project coordinates ~~effectively~~ with the statewide marketing ~~plan~~ strategy.

(c) That the project ~~is new and innovative~~ has broad appeal and targets markets beyond the local area.

(d) That~~, in comparison with all other applications reviewed during the same month,~~ the proposed project will generate ~~a substantial increase in tourist visits to Wisconsin or a substantial increase in spending by tourists in Wisconsin~~ increased travel into or within the state.

SECTION 11. DOD 21.05 (3) (f) and (g) are created to read:

DOD 21.05 (3) (f) That the project will make a positive economic impact in the local area.

(g) That the project has the potential to be self–sufficient within 3 years.

Notice of Public Hearing
State Emergency Response Board

The State Emergency Response Board (SERB) has promulgated an emergency rule in order to assure continuity of the hazardous material transportation registration fee. The proposed change to this fee structure has been referred to standing committees of the legislature for review. Please be advised that should any initiatives to eliminate the SERB's ability to assess fees be passed by the legislature and signed into law, the emergency rule and proposed fee structure will be withdrawn.

This public hearing is being held in order to comply with administrative rule procedures which require a pubic hearing to be held on emergency rules.

Notice is hereby given that pursuant to ss. 166.20 (7g) and 227.24 (4), Stats., and interpreting s. 166.20 (7g), Stats., the State Emergency Response Board will hold a public hearing to consider emergency rule ch. ERB 4 relating to fees for transporters and offerors of hazardous material. The public hearing is scheduled as follows:

Hearing Information

August 25, 1995
Friday
Beginning at 10:00 a.m.

Department of Military Affairs
Auditorium
2400 Wright Street
Madison, WI

The hearing site is fully accessible people with disabilities.

Written Comments

Persons making oral statements are requested to submit their comments in writing either at the time of the hearing or no later than **August 18, 1995**. Persons unable to make an oral statement may submit written comments which will have the same weight and effect as oral statements presented at the hearing. All written comments should be submitted to Jan Grunewald, State Emergency Response Board, 2400 Wright St., P.O. Box 7865, Madison, WI 53707–7865 and must be received no later than **August 18, 1995**.

Notice of Hearings

Health & Social Services (Community Services, Chs. HSS 30––)

Notice is hereby given that pursuant to s.51.61(5)(b) and (9), Stats., the Department of Health and Social Services will hold public hearings to consider the revision of ch. HSS 94, Wis. Adm. Code, relating to the rights of persons receiving services for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency, including the creation of ss. HSS 94.40 to 94.52, relating to standards for grievance procedures.

Hearing Information

August 28, 1995
Monday
From 1 p.m. to 3 p.m.
Room 450
North Central Technical College
1000 Campus Avenue
WAUSAU, WI

August 29, 1995
Tuesday
From 1 p.m. to 3 p.m.
Room C016
Student Commons Building
Waukesha County Technical College
800 Main Street
PEWAUKEE, WI

The public hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Social Services

This order establishes standards for grievance procedures used by persons receiving services for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency. Section 51.61(5)(a), Stats., as amended by 1993 Wis. Act 445, requires grievance procedures for programs that provide services to people with these disabilities as one means of ensuring that the rights of these persons as set out under s.51.61, Stats., and ch. HSS 94 will be protected. Section 51.61(5)(b), Stats., as repealed and recreated by 1993 Wis. Act 445, directs the Department to promulgate rules that establish standards for the required grievance procedures. These are those rules. They are made a separate subchapter of ch. HSS 94.

The standards for a program's grievance procedure require the program to have written policies, designate one or more client rights specialists, have informal and formal dispute resolution processes, have protections for client advocates and provide client instruction in understanding and use of the grievance procedure. As part of the formal process, there is program level review (presentation of grievance, inquiry by client rights specialist, report of client rights specialist, program manager's decision) with time limits for filing a grievance and processing the grievance; a first administrative review at either the county or state level of the program manager's decision, leading to the county director's decision or a state grievance examiner's decision, with time limits for requesting a review and for the review; a state level review of a county director's decision; and a final state level review by a Department division administrator of a state grievance examiner's decision or a state office's decision. The standards also cover coalitions of programs that operate combined grievance resolution procedures, the treatment of multiple grievances, the treatment of grievances presented by others on behalf of clients, interim relief to protect a client's well–being pending resolution of the client's grievance, and the treatment of complaints related to existence or operation of a grievance procedure.

This order also updates the current ch. HSS 94 which has not been revised since it went into effect in February 1987. The updating incorporates new rights added to s. 51.61 by 1993 Wis. Act 445; allows for obtaining informed consent by telephone, under certain conditions, before getting it in writing; allows use of a video to orally explain patient rights; requires that long–term patients be renotified of their rights; requires notification of the county, guardian and guardian–ad–litem when a patient is ready for placement in a less restrictive setting; reflects recent statutory changes concerning a patient's right to refuse treatment; allows use of restraint or seclusion in community settings, but only with Department approval on a case–by–case basis and approval of the county department in some cases; requires that providers using electroconvulsive therapy have written policies for obtaining and monitoring informed consent; allows requiring inpatients to perform light personal housekeeping chores without pay in shared living quarters; clarifies the right to telephone access; allows for searches of patients committed under ch. 980, Stats.; allows facilities to prohibit gang–related decorations and to restrict the areas where other potentially offensive room decorations may be displayed; and allows some restrictions on inpatient possessions and access to public media, the out–of–doors and physical exercise equipment for documented security reasons.

Contact Person

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

Claude Gilmore
Division of Care and Treatment Facilities
P.O. Box 7851
Madison, WI 53707–7851
(608) 266–9354 or,
if you are hearing impaired, (608) 267–4519 (TDD)

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

Written Comments

Written comments on the proposed rules received at the above address no later than **September 5, 1995** will receive the same consideration as testimony presented at the hearing.

Fiscal Estimate

These new and updated rules will not affect the expenditures or revenues of state government or local governments.

Section 51.61 (5)(d), Stats., as repealed and recreated by 1993 Wis. Act 445, directs the Department to promulgate rules that establish grievance procedure standards and specifies several components of those standards, including identification by the Department, county departments under ss. 51.42 and 51.437, Stats., and other service providers of a person in each program responsible for initiating and processing grievances. All costs to the Department and local governments for operating under the standards were taken into consideration when Act 445 was enacted.

The updating of the current ch. HSS 94 is being done to incorporate recent statutory changes, to clarify requirements that on the basis of experience in implementing ch. HSS 94 have not been clear, and to make adjustments to current requirements based on experience with ch. HSS 94.

Initial Regulatory Flexibility Analysis

These rules apply to the Department, to county departments of human services, community programs and developmental disabilities services and to privately operated clinics, agencies, residential facilities and other providers of care and treatment for persons with mental disabilities, either under contract to a county department or independently. Many of the privately operated clinics, agencies, residential facilities and other service providers are small businesses as "small business" is defined in s.227.114(1)(a), Stats.

Section 51.61, Stats., establishes legal rights for persons receiving services for mental illness, a developmental disability, alcoholism or drug dependency. The statute identifies each of those rights and for many of them elaborates on what they mean for care and treatment, including in some cases specifying procedures, conditions or qualifications related to protection of the rights. The Department's administrative rules, ch. HSS 94, further interpret the statute. This rulemaking order updates the rules to add new rights established by 1993 Wis. Act 445, to incorporate other changes in s.51.61 (1), (3) and (5)(a), Stats., made by Act 445, and to clarify, amend and further develop requirements on the basis of experience with the rules since they went into effect in 1987. These updating changes do not include new reporting or bookkeeping requirements, but do include requiring service providers to renotify long–term patients of their rights and notify various parties when a patient is ready for placement in a less restrictive setting.

This rulemaking order also establishes standards for program grievance procedures. Every program subject to s. 51.61, Stats., and ch. HSS 94 must have a grievance procedure for persons receiving residential care or services. This is a current requirement of s. 51.61(5)(a), Stats., and s. HSS 94.27. The standards for grievance procedures are required by a new s.51.61(5)(b), Stats., as created by Act 445. Every grievance procedure must be in compliance with those standards. They are included in outline in s. 51.61(5)(b), Stats. Every grievance procedure must provide for: a contact person for initiating and processing grievances; an informal process for resolving grievances; a formal process for resolving grievances if the informal process is not successful; time limits for responding to grievances and for deciding appeals; a process for appealing unfavorable decisions within the decisionmaking organization; a process for appealing unfavorable decisions from that level to the Department; and protections against the application of sanctions against persons who file a grievance or who help complainants file grievances. Sections HSS 94.40 to 94.52 are added to the Department's rules by this order to set out the standards in greater detail.

No new professional skills are needed for program compliance with the rules.

Notice of Hearing
Pharmacy Examining Board

Notice is hereby given that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2), 450.02 (3) (a), (d) and (e) and 450.07 (4) (a), Stats., and interpreting ss. 450.01 (8), 450.06 (1), 450.07 (2) and (4) (a) and 450.11 (1) and (4), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 8.05 (4); and to create ss. Phar 6.02 (1m) and 13.02 (11) (f), relating to licensing outpatient hospital pharmacies; to the time in which a controlled substance listed in schedule II must be dispensed; and to exempting certain pharmacies from the distributor licensing requirements when selling prescription drugs to practitioners for office dispensing.

Hearing Information

September 12, 1995 **Room 179A**
Tuesday **1400 East Washington Ave.**
9:00 a.m. **Madison, WI**

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

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

Written comments must be received by **September 29, 1995** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 450.02 (3) (a), (d) & (e) and 450.07 (4) (a)

Statutes interpreted: ss. 450.01 (8), 450.06 (1), 450.07 (2) and (4) (a) and 450.11 (1) and (4)

In this proposed rule–making order, the Pharmacy Examining Board makes changes to its administrative rules to clarify and modify provisions relating to the licensing of outpatient hospital pharmacies, the time period in which prescriptions for schedule II controlled substances must be dispensed, and circumstances in which a pharmacy will not be required to obtain a distributor's license when selling prescription drugs to practitioners for office dispensing.

Section 1 clarifies the requirement that a hospital operating a pharmacy in its facility for the dispensing of medications on an outpatient basis, which is physically separate from and in addition to a pharmacy on the premises to respond to inpatient medication needs, must have a pharmacy license for the separate, outpatient dispensing location. Pursuant to s. 450.06 (1), Stats., each location from which a pharmacist dispenses medication must be licensed by the Pharmacy Examining Board as a pharmacy. Hospitals which dispense from separate locations within the institution, and serving separate classes of patients need separate licenses. This is to assure that the separate records required for outpatient as opposed to inpatient dispensing are recognized and maintained. For example, pharmacy dispensing to inpatients may be performed "consistent with accepted inpatient institutional drug distribution systems;" whereas the dispensing requirements applicable to all pharmacies apply "to any institutional pharmacy dispensing to outpatients, including prescriptions for discharged patients." See s. Phar 7.01 (2), Wis. Adm. Code. The proposal would formally require that a second pharmacy license be obtained when a separate location is set aside within a hospital to specifically dispense outpatient medications, due to the separate recordkeeping and dispensing requirements, greater public access to the outpatient pharmacy, the need for increased security for the pharmaceutical area, and the existence of a physical separation between the outpatient and inpatient pharmacy locations within such hospitals.

Section 2 relates to situations in which a patient receives a prescription order for a schedule II controlled substance which is presented at a pharmacy for dispensing which the prescriber does not desire to be immediately dispensed. Under the current rule, all prescription orders for a schedule II controlled substance must be presented to the pharmacy within 7 days after having been prepared by the prescriber. However, although the prescription order must be presented shortly after issuance, there are situations in which the prescriber may not desire that the prescribed medication be immediately dispensed; such as, for example, where the patient has an adequate supply of the medication to meet his or her needs for a couple weeks and the prescriber does not desire the patient to have possession of a large quantity of schedule II medications.

Also, under s. Phar 8.05 (5), no more than a 34–day supply of a controlled substance may be dispensed at one time. Furthermore, s. Phar 8.06 (1), prohibits a prescription order for a schedule II controlled substance from being renewed. The effect of these provisions is to require a patient receiving schedule II medications to visit the prescriber on a monthly basis in order to obtain new prescription orders for needed medication. In some situations, requiring visits upon such a frequent basis solely in order to obtain a new prescription order is medically unnecessary, as well as unduly costly and inconvenient for both the prescriber and patient. The proposal would permit a prescription order to be dispensed within 60 days after the date that it was written. This may be accommodated by a prescriber, for example, providing a notation upon the face of a prescription order written on February 1: "Do Not dispense Until March 1." The proposed rule would make it clear that such prescription orders are valid and may be dispensed at the time specifically directed as long as the schedule II medication is dispensed within 60 days from the date on the face of the prescription order, and the prescription order was presented to and filed by the pharmacy within 7 days following the date on the face of the prescription order.

Section 3 relates to the exceptions provided in s. Phar 13.01 (11), from the general requirement in s. 450.07 (2), Stats., that persons who engage in the sale or distribution at wholesale of prescription drugs obtain a distributor's license. The proposal would permit pharmacies to make sales of relatively small quantities of prescription drugs to practitioners for office dispensing to their patients without being required to obtain a distributor's license. The language in the proposal, as well as the exception itself, is taken from the similar exclusion provided by the Drug Enforcement Administration from federal registration as a distributor of controlled substances for licensed pharmacies under 21 CFR § 1307.11 (a) (4). The proposal would exempt pharmacies from the distributor licensing requirements if the sales of controlled substances and all prescription drugs to practitioners for patient office dispensing do not exceed 5% of all such medications distributed and dispensed by the pharmacy during the calendar year. The Board has by policy adhered to this "5% Rule" in the past. The policy should be formalized through rule–making.

Text of Rule

SECTION 1. Phar 6.02 (1m) is created to read:

Phar 6.02 (1m) A hospital which has a pharmacy area providing outpatient pharmacy services which is physically separate from, and noncontiguous to the area from which inpatient pharmacy services are provided, must have a pharmacy license for the outpatient pharmacy in addition to a license for the inpatient pharmacy.

SECTION 2. Phar 8.05 (4) is amended to read:

Phar 8.05 (4) A prescription containing a controlled substance listed in schedule II may be dispensed only pursuant to a written order signed by the prescribing individual practitioner, except in emergency situations. No prescription containing a controlled substance listed in schedule II shall be dispensed unless the order is presented for dispensing within 7 days following the date of its issue. A prescription for a controlled substance listed in schedule II may not be dispensed more than 60 days after the date of issue on the prescription order.

SECTION 3. Phar 13.02 (11) (f) is created to read:

Phar 13.02 (11) (f) Distributions to a practitioner for the purpose of general dispensing by the practitioner to his or her patients, provided that the total number of dosage units of all prescription drugs distributed by the pharmacy during each calendar year in which the pharmacy is licensed does not exceed 5 percent of the total number of dosage units of all prescription drugs distributed and dispensed by the pharmacy during the same calendar year, and that the total number of dosage units of all controlled substances distributed by the pharmacy during each calendar year in which the pharmacy is licensed does not exceed 5 percent of the total number of dosage units of all controlled substances drugs distributed and dispensed by the pharmacy during the same calendar year.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing
Public Service Commission

Notice is hereby given that the Commission will hold a public hearing on these proposed rules at the time and place indicated below to create rules in ch. PSC 160, Wis. Adm. Code, relating to the provision of universal telecommunications service and the establishment of a universal service fund.

Hearing Information

September 7, 1995
Thursday
1:30 p.m.

Room 1300
(Amnicon Falls Hearing Room)
Public Service Commission Bldg.
610 North Whitney Way
MADISON, WI

Notice is further given that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (Lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building. Any party with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267–9766 (voice) or (608) 267–1479 (TTY).

Prior to the taking of formal testimony, staff proposes to conduct an informal question–and–answer session regarding the proposed rules.

Written Comments

Notice is further given that anyone unable to attend the hearing may submit written comments on these rules. Written comments receive no less weight than testimony given at the formal hearings. The hearing record will be open for written comments from the public before the public hearing and until **September 22, 1995**. Written comments should be addressed to Lynda L. Dorr at the address indicated below and include reference to Docket 1–AC–155:

Lynda L. Dorr, Secretary to the Commission
Public Service Commission of Wisconsin
P.O. Box 7854
MADISON, WI 53707–7854

Analysis prepared by the Public Service Commission

Statutory Authority: ss. 196.02 (3); 196.218 (2), (3), (4), (4m), (5), (5m), (7) and (8); and 227.11

Statutes Interpreted: ss. 196.01, 196.02, 196.03 (6), 196.202, 196.203 (3), 196.217, and 196.218

Plain Language Analysis

In 1993 Wis. Act 496 (Act 496), the Legislature enacted a new regulatory model to manage the transition to a competitive telecommunications marketplace without compromising the concepts of universal service. The Commission is given broad authority to clarify and establish universal service concepts and to fund the programs necessary to assure universal service. The Commission is to hold a hearing, establish a universal service fund and contract for its administration. The fund is to be operational in 1996. These rules and this rulemaking proceeding are in compliance with the legislative mandates.

As required by the Legislature in s. 196.218 (6), Stats., the Commission appointed a Universal Service Fund Council (Council) to provide advice on these rules and on the administration of s. 196.218, Stats. That Council has reviewed the issues of universal service and on July 13, 1995, filed a report with the Commission recommending various elements of a universal service fund program in Wisconsin. The rules proposed in this notice reflect the input of the Council. In those instances where the Commission is proposing a rule different than suggested by the Council, that variance is noted.

Section PSC 160.01 includes general information about this chapter, including purpose, scope and exception, disputes, orders and enforcement.

Numerous definitions used throughout this chapter are included in s. PSC 160.02.

As required by s. 196.218 (4), Stats., s. PSC 160.03 sets forth the essential components of universal local exchange service that shall be available at affordable prices to all residents of the state. The list of service components incorporates items that customers have become accustomed to receiving as part of their telephone service and without which a modern telecommunications network would be insufficient. The list also incorporates certain items needed to keep pace with customer demand for moderate speed data and facsimile transmission capabilities over local lines. Some items are required to be included in the basic service package offered to customers and others are shown as necessary dialing or subscription options. In major part, this list is consistent with recommendations made by the Council. Differences between what is in this rule proposal and what was recommended by the Council are:

– the Council made no recommendation on data transmission speed. The proposed rule specifies a minimum speed of 9,600 baud, which is consistent with the legislative mandate to provide facsimile capability.

– the Council would preface the entire list of services by saying the requirement is having "access to" these services. The Commission believes that language is redundant and it is therefore not included.

– the Council did not address call trace service or the availability of non–listed and non–published telephone numbers. These additions are in the rules proposed by the Commission in its Telecommunications Privacy docket (1–AC–138) and are included here for consistency.

– the Council suggested that the minimum requirement for public paystation service be consistent with the existing code requirements in s. PSC 165.088. In addition, the rule proposed herein specifies that the

provider must also make available semi–public service and private payphone service.

–the Council recommended that for other than low–income customers, the toll blocking and extended community calling (ECC) blocking options may be charged to subscribing customers. The proposed rules treat these options as bill management options consistent with current 900/976 number blocking policies; charges are only applied for subsequent service orders after initial blocking is removed. No monthly charge is allowed.

Advanced service capabilities are established in s. PSC 160.035, as also required by s. 196.218 (4), Stats. These capabilities are to be available upon request in a timely manner and at affordable prices throughout the state. Pursuant to the statute, the rules are to specify time frames in which these capabilities are to be made available statewide and cannot go beyond January 1, 2005, in this rulemaking. While the Council did not recommend that this list be incorporated in these rules, the Commission believes it is required by statute. Where possible, the rules specify capabilities, but where the technological description serves as a shorthand for a set of services not otherwise describable, they are framed in terms of a technology. The rules, however, do not limit who may provide these capabilities or how they will be provisioned.

The Council advised the Commission to establish the advanced services list for future rulemakings based on collection of demand and service availability information. The Commission will take under advisement the demand and availability monitoring program recommended by the Council for review and revision of the list of advanced service capabilities. The Commission believes that the Council's recommendations will also be useful in pursuing investigations resulting from any petitions filed under the rules alleging non–availability or unaffordability of advanced services. Many services on this list may undergo review as a result of such petitions and, as required by statute, the whole list will be reviewed within two years.

Section PSC 160.04 addresses toll blocking. Free toll blocking service for low–income customers is required by s. 196.218 (4m), Stats., along with a waiver process for the requirement. To make this requirement functional, a definition of low–income was necessary. That definition, recommended by the Council, and shown in s. PSC 160.02, is common to all programs codified in this rulemaking that include an income eligibility requirement.

The programs for which universal service fund money may be used are listed in s. PSC 160.05.

Section PSC 160.06 sets forth the criteria to establish eligibility for the various universal service programs designed to protect low–income customers.

Link–Up and Lifeline programs are codified in ss. PSC 160.061 and 160.062 in accordance with Federal Communications Commission (FCC) guidelines to make essential service more affordable for low–income customers. These programs provide low–income households with affordable service through connections to telephone service at low, or no, non–recurring charges and with reduced rates for monthly local service. The current Commission low–income eligibility test includes five state–administered income–assistance programs. The Council recommends adding the Homestead Tax Credit to that list and these rules include that change. The Link–Up program (s. PSC 160.061) is changed from that authorized by the Commission in its order in Docket 05–TR–103 by not requiring companies with service order and connection charges below $20.00 to participate and by elimination of the limit of one waiver per household per year. Further, the Lifeline credit program (s. PSC 160.062) is changed from that currently authorized under the Commission's order in Docket 05–TR–103, by setting a $15.00 statewide low–income guaranteed rate which includes touch–tone service, the federal subscriber line charge, at least 120 local calls and 9–1–1 monthly fees where authorized. It remains the Commission prerogative to set Lifeline rates for customers with non–optional measured local rates, and this rule does not change the existing Lifeline plans of any such companies.

The Council recommended that oral notification of available low–income programs or inquiry regarding eligibility was not necessary on the part of telephone companies while taking service orders. The Commission believes that continuation of the current policy of inquiry regarding eligibility on new and moved service orders is necessary to reach the target population for these programs.

While it is not possible to assure the provision of the essential telephone services to the homeless, modern telecommunications services provide options for keeping households and individuals in desperate or transitional circumstances accessible through the telecommunications network. Free voice–mail service for the homeless in s. PSC 160.063 is an innovative means of keeping these people accessible by telephone to employers, medical services, social services and other necessary contacts. The program makes unused voice–mail boxes available from telecommunications utilities to legitimate providers of services to the homeless, for use by their clients.

Under s. PSC 160.07, disabled customers may apply for vouchers to purchase equipment necessary for affordable access to and comparable use of essential services. The voucher amounts are those recommended by the Council and are set assuming an average purchase price for the equipment of about $100 over the voucher amount (except for the add–on equipment for the hard–of–hearing). This voucher amount is intended to make the cost of purchasing special equipment comparable to the cost of purchasing a good quality ordinary telephone. Low–income deaf and hard–of–hearing applicants will be referred to the DH&SS Telecommunications Assistance Program for equipment purchase vouchers; those vouchers are for full purchase price up to $600. Custom calling services necessary to accommodate use of essential services by the handicapped will be provided at no charge to the customer. The availability of leased equipment for the handicapped at cost from telephone companies was authorized in 1976 by order of the Commission in Docket 05–TV–6. That program is continued under these rules because it is not expected that all demand for this equipment will be met through amounts budgeted in the first years of the voucher program. Several other existing discount programs for the disabled are codified in these rules.

Responsibility for payphone usability by handicapped individuals is clarified in s. PSC 160.075 to include the payphone service providers. Federal law requires that payphone accessibility and usability for handicapped individuals be assured by location owners. In the case of payphone usability, those factors are generally under the control of service providers. This rule makes the provider accountable to the Commission for its provision of reasonably usable payphone services to location owners.

The Commission has opened Docket 1–AC–154 to create rules for Telecommunications Customer Assistance Plans (TelCAPs) to enable providers to address problems that lower telephone service subscription levels within their service territories. These rules are being developed through a cooperative process with representatives of the telecommunications industry, energy utilities, low–income advocacy agencies and others. While this process is ongoing, the proposed TelCAP rule in s. PSC 160.08 allows companies to gain Commission approval to go forward with proposals or pilot programs that might otherwise have to wait for the more comprehensive rules to be adopted.

Section PSC 160.09 adapts the Commission's existing rate ceiling policy to competitive telecommunications markets. These revisions are necessary to provide some protection to customers facing high rates, as a result of high underlying costs, while eliminating the barriers to effective competition inherent in the old program. Because the new rate ceiling credits program increases customer ability to pay for services without modifying prices, it avoids the inefficiencies inherent in artificial prices. The revised program addresses three main problems in the old rate ceiling program. First, since the customer pays a portion of all charges, the customer will have an incentive to choose low cost providers, thus market forces will limit prices. Second, subsidies are made available to all providers. Third, the proportionate cap will also eliminate the conflict between the old program and small telephone companies seeking to increase rates under s. 196.213/215, Stats.

Section PSC 160.091 allows the Commission to approve other universal service programs to protect high–cost customers in competitive areas. Any such programs will be tailored to specific areas and to the needs of the customers and competitors in those areas. As evidenced by the Council's comments, high–cost support in competitive areas is a difficult and complex issue. This section will allow the Commission to explore various alternatives in limited trials.

The Commission's current rate shock mitigation policy, as ordered in Docket 05–TR–103 and modified in subsequent individual rate cases, is codified in s. PSC 160.10.

A two–part program to meet the needs of institutional customers is established in s. PSC 160.11 to promote the statutory goal of affordable access throughout the state to high–quality education, library and health care information services. One part of the program provides seed money for initiatives which educate institutions programs and foster cooperative efforts between institutions to achieve this goal. The second part provides rate discounts to institutions for new services to accelerate deployment of telecommunications technologies.

Section PSC 160.12 creates a program to help rural customers living in unserved areas meet the cost of loop extensions. This program will pay a portion of the cost of loop extensions for full–time residents who could otherwise face extremely high up–front costs to receive telephone service.

Section PSC 160.13 codifies that the provider of last resort for local services in exchanges where local competition has not been authorized is the incumbent monopoly provider. This section also allows the Commission to designate a provider of last resort, if necessary, in competitive areas. The restructuring of the high–rate assistance program (s. PSC 160.09) makes it unlikely that this section will be used, but it is included as a fall–back should problems develop.

Section PSC 160.14 sets forth rules for determining the provider of last resort for intraLATA toll services. The Commission may not need to designate a provider of last resort for intraLATA toll, since competition in this market is developing. However, the existing intraLATA toll providers have raised the possibility of exiting portions of the market. These rules address that situation should it occur before a fully competitive market appears.

Section PSC 160.15 prohibits the identification of a charge on customer's bills as recovery of payments to the universal service fund. This prohibition is required by statute.

Section PSC 160.16 addresses the services and compensation of the fund administrator and the audit of the fund. Detailed fund administration decisions are left to the fund administrator and the Commission.

Section PSC 160.17 sets forth a budget process for the universal service fund as recommended by the Council. Each year, the Commission will set a budget level for the fund as a whole and for each program component. As the year progresses, the Commission will monitor the expenditures and may adjust the fund levels, the component programs or assessment as needed. Whenever possible, the Commission will seek the advice of the Council before making program changes.

Fund administration and assessment calculation, payment and collection is covered in s. PSC 160.18. Assessment for the funds required will be made to all intrastate telecommunications providers with a few exceptions, including those providers with less that $500,000 in annual revenue. This is considerably higher than the Council recommendation of $50,000 in annual revenue as the contribution cutoff. The Commission believes the higher level is necessary to avoid administrative burden and diminishing returns from attempting to collect small amounts of universal service fund contributions from numerous providers.

Section PSC 160.19 sets forth guidelines for the formation of the Council.

Initial Regulatory Flexibility Analysis

These proposed universal service rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. The agency has considered the methods in s. 227.114 (2), Stats., for reducing the impact of the rules on small telecommunications utilities and finds that incorporating all but one of these methods into the proposed rules would be contrary to the statutory objectives which are the basis for the proposed rules. The Commission has, in s. PSC 160.061 (1), exempted from participation in the Link–Up America Program small telecommunications utilities with low service ordering and connection charges and, in s. PSC 160.062 (1), exempted from participation in the Lifeline Program small telecommunications utilities with low monthly local service rates.

The Commission also established a universal service fund assessment exemption policy in s. PSC 160.18 (1) (a) that protects the entry and continuation of small telecommunications providers as directed in the statutory objectives.

At the time of this notice, there are 86 local exchange companies in Wisconsin, 82 of which are small telecommunications utilities.

Fiscal Estimate

Some parts of the rules codify programs already administered by the Commission. Many of the new programs will be administered by contract with an outside party and funded through the Universal Service Fund (USF) by all telecommunications providers. The costs of the USF Council are already part of the Commission's budget, due to statutory requirement. Shifts of staff responsibility under the statutory changes enacted in 1993 Wis. Act 496 will cover the agency's staffing requirements for administration of these rules.

These rules will have no impact on the agency or on any other state or local units of government.

Environmental Analysis

This action is not expected to result in significant environmental impacts according to s. PSC 2.90. In addition, no unusual circumstances have come to the attention of the Commission which would require further environmental review. It consequently requires neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment.

Text of Proposed Rule

SECTION 1. Chapter PSC 160 is created to read:

Chapter PSC 160

UNIVERSAL SERVICE SUPPORT FUNDING AND PROGRAMS

PSC 160.01 Scope and purpose. (1) PURPOSE. Chapter PSC 160 is designed to effectuate and implement s. 196.218, Stats., and parts of other sections of the Wisconsin statutes, authorizing the commission to establish a universal service fund and programs to further the goal of providing a basic set of essential telecommunications services and access to advanced service capabilities to all customers of the state.

(2) SCOPE AND EXCEPTION. (a) The requirements of ch. PSC 160 shall be observed by the telecommunications providers subject to the jurisdiction of the commission as indicated in this chapter, except insofar as any exemption may be made by the commission.

(b) Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

(3) DISPUTES. Disputes not resolved between the affected parties regarding assessment or support amounts or the eligibility to receive or the liability to pay under this chapter shall be referred to the commission for resolution.

(4) ENFORCEMENT. The manner of enforcing ch. PSC 160 is prescribed in s. 196.66, Stats., and includes such other means as provided in statutory sections administered by the commission.

(5) ORDERS. The commission may issue orders it deems necessary to assist in the implementation or interpretation of this chapter. Orders shall be issued only after notice and an opportunity for comment by interested parties including the universal service fund council.

PSC 160.02 Definitions. In this chapter:

(1) "Contributory provider" means a telecommunications provider that pays monies to the universal service fund.

(2) "Disability" means a physical or sensory impairment that limits or curtails an individual's access to or usage of telecommunications services. Disabilities include speech, vision and hearing impairments and a whole range of motion impairments that limit an individual's ability to handle telecommunications equipment.

(3) "Emergency service numbers" mean 9–1–1 where available and fire, ambulance/EMS, police/sheriff, and poison center emergency numbers where 9–1–1 is not available.

(4) "Institutions" means:

(a) Not–for–profit schools, which includes each school in a school district as defined by s. 115.01 (3), Stats., private schools as defined by s. 115.01 (3) (r), Stats., charter schools as defined by s. 118.40, Stats., colleges and universities as defined by s. 36.05 (13), Stats., and vocational, technical and adult education districts as defined by s. 38.01 (5), Stats.

(b) Public libraries.

(c) Not–for–profit hospitals.

(5) "Lifeline" means the program that provides reduced monthly service rates for low–income customers.

(6) "Link–Up" means the program that waives service connection charges for low–income customers.

(7) "Low–income" means being eligible for benefits from one or more of the following programs:

(a) Aid for families with dependent children.

(b) Medical assistance under title 19.

(c) Supplemental security income.

(d) Food stamps.

(e) The low income household energy assistance program.

(f) The Wisconsin homestead tax credit.

(8) "Universal service" means a statewide rapid, efficient, communications network with adequate, economically placed facilities to assure that a basic set of essential telecommunications services is available to all persons in this state at affordable prices and that the advanced service capabilities of a modern telecommunications infrastructure are affordable and accessible anywhere in this state.

PSC 160.03 Essential telecommunications services. (1) Each local exchange service provider shall make available to all customers at affordable prices all essential telecommunications services.

(2) Essential telecommunications services that shall meet minimum service standards and that are necessary components of universal service are as follow:

(a) Single–party voice–grade service with:

1. Facsimile capability.

2. Data transmission of at least 9600 baud capability.

3. Dual–tone multi–frequency (touch tone) and rotary pulse dialing operability, both at no additional charge.

4. Access to emergency services numbers and 9–1–1 operability where requested by local authorities.

5. Equal access to interlata interexchange carriers subject to federal communications commission orders and rules.

6. Equal access to intralata interexchange carriers pursuant to commission orders and rules.

7. Single party revertive calling.

8. A reasonably adequate local calling area as defined by the commission.

9. Connectivity with all other toll and local, wireline and wireless, public networks.

10. Telecommunications relay service for voice–to–text and text–to–voice translation between teletypewriter users and non–teletypewriter users.

11. Operator service.

12. Directory assistance.

13. Toll blocking, 900/976 blocking and extended community calling blocking options at no charge other than that for second and subsequent service activation orders.

14. Custom calling services as subscription options.

15. Intercept and announcements for vacant, changed, suspended and disconnected numbers.

16. Repair service.

17. A directory listing with the option for non–listed and non–published service.

18. Call trace service where signalling system 7 is deployed.

(b) Annual publication and distribution of a local telephone directory in accordance with s. PSC 165.055.

(c) Public, semi–public and private payphone services, including those specified by s. PSC 165.088.

PSC 160.035 Advanced service capabilities. (1) Each local exchange service provider shall, by the date set by the commission, make available to any customer on request, in a timely manner, at affordable prices, any advanced service capabilities.

(2) Advanced service capabilities that are necessary components of universal service as of the dates indicated and for which use or subscription is elective on the part of customers are as follow:

(a) Digital access lines or channels, to include base rate integrated services digital network or switched 56 kbps or the equivalent by January 1, 1998; DS0 by January 1, 1998; DS1/E1 or the equivalent by January 1, 1999, and primary rate integrated services digital network by January 1, 2000.

(b) High speed data transfer connectivity, to include frame relay or its equivalent by January 1, 2000 and asynchronous transfer mode by January 1, 2002.

(c) Redundant, self–healing interexchange routing facilities by January 1, 2005.

(3) Upon its own motion or upon petition by a customer alleging that an advanced service is not available in a timely manner, is needed but not scheduled for deployment under this section, or is not priced at an affordable level, the commission may investigate the offering of a given advanced service capability. Following investigation, including notice and opportunity for hearing, the commission may determine a deployment schedule, a maximum reasonable rate, whether a contributory provider requires assistance from an appropriate intrastate universal service program to provide the service, and any other requirement necessary to meet customer demand for an advanced service capability.

PSC 160.04 Toll blocking. (1) FREE BLOCKING FOR LOW–INCOME CUSTOMERS. By January 1, 1996, every local telecommunications utility in the state must offer, without monthly or nonrecurring charge to low–income customers, the capability to block all long distance or other toll calls and, separately, the capability to block extended community calling and 900/976 calls unless a timely waiver has been granted to the utility by the commission.

(2) EMERGENCY SERVICE. Blocking must not prohibit the customer from reaching the emergency service numbers appropriate for the customer's location.

(3) PUBLIC NOTIFICATION AND EDUCATION. A telecommunications utility must make all reasonable efforts to inform customers within its service areas of the availability of, and eligibility requirements for cost–free toll, 900/976 and extended community calling blocking services. The utility must also make reasonable efforts to instruct eligible customers requesting the service in use of the equipment or service.

(4) PETITION FOR WAIVER. A telecommunications utility seeking a waiver of its blocking obligations under this chapter must submit to the commission the following information:

(a) The utility's name and address.

(b) An explanation of why a waiver is being requested, and of why the utility considers implementation of blocking to be an unreasonable expense for the telecommunications utility and its customers.

(c) Costs of hardware, software, programming, customer education, installation, maintenance and any other costs, on a per–customer basis, for blocking capability using customer premises equipment.

(d) Costs of hardware, software, programming, customer education, installation, maintenance and any other costs, on a per customer basis, for blocking equipment installed in a central office, providing a separate calculation for each exchange for which an exemption is requested.

(e) An estimate of the number of customers, by exchange, expected to request the service.

(5) The commission staff will review the waiver request and issue a letter to the utility granting or denying the application.

PSC 160.05 Universal service fund programs. Universal service fund monies can be used for fund administration and for the following programs:

(1) Link–Up America.

(2) Lifeline Assistance.

(3) Free voice mail service for the homeless.

(4) Special needs equipment vouchers.

(5) Telecommunications customer assistance program.

(6) High rate assistance credits.

(7) Alternative, experimental universal service protection plans.

(8) Rate shock mitigation.

(9) Assistance for institutions.

(10) Local loop extensions.

(11) Intralata toll service provider of last resort.

PSC 160.06 Eligibility for low–income programs. (1) LOW–INCOME ASSISTANCE ELIGIBILITY. Eligibility for low–income assistance programs is verified by finding the social security number and the name of the customer in the active client records of the Wisconsin department of health and social services or with the Wisconsin department of revenue as a recipient of the homestead tax credit in the past tax year. Eligibility verifications will be done through timely queries of the applicable databases of the Wisconsin department of health and social services or the Wisconsin department of revenue.

(2) ELIGIBILITY RECONFIRMATION. Eligibility will be reconfirmed on at least an annual basis for all customers receiving lifeline assistance.

(3) ELIGIBILITY INQUIRY. All local exchange companies will inquire regarding eligibility of the customer for low–income programs on each order for initial or moved service.

(4) QUERY AUTHORIZATION. All local exchange companies must comply with client authorization requirements of the Wisconsin department of health and social services or the Wisconsin department of revenue for database queries necessary for eligibility verification. Customers must complete and remit any reasonably required query authorization forms or forfeit eligibility.

(5) EXCEPTIONS. Lifeline and Link–Up programs are not available to customers who are dependents for federal income tax purposes as defined in 26 U.S.C. § 152 (1986), unless the customer is more than 60 years of age.

PSC 160.061 Link–Up America program. (1) Low–income residential customers shall receive a waiver of all applicable regulated service nonrecurring charges when initiating or moving network access line service. Where such charges are less than $20.00, participation in the waiver program is optional on the part of the telecommunications utility. All federal, state, county and local taxes applicable to the waived charges will also be waived.

(2) Waivers apply for new service installations, moves from one residence to another, and reconnection of an existing service.

(3) Charges which will be waived include the following, or their equivalent: service ordering, record change, central office connection, outside plant or line connection and premises visit.

(4) (a) Customers whose claim of eligibility for link–up benefits cannot be verified at the time the service order is issued will be billed for installation charges. These customers will receive a grace period for payment of installation charges until the due date of the second bill issued following installation of service.

(b) The telecommunications utility will periodically perform an eligibility verification check during the 60–day period from the date service is connected. If the customer's eligibility cannot be confirmed within 45 days, the customer will be notified in writing of the situation. A credit will be issued for appropriate charges once eligibility has been confirmed.

(5) Customers who have paid installation charges may receive the link–up waiver as a credit on their bills, providing that claim is made with the telecommunications utility within 60 days following completion of the service order and that all other link–up eligibility requirements are met.

PSC 160.062 Lifeline assistance program. (1) Local exchange telecommunications utilities whose monthly residential rate exceeds $15.00 for single–party residential service including 120 local calls (excluding extended community calling), touch–tone service, 9–1–1 charges billed on the telephone bill, and the federal subscriber line charge will offer lifeline rates to all qualified low–income customers.

(2) (a) Lifeline monthly rates, including 120 local calls (excluding extended community calling), touch–tone service, 9–1–1 charges billed on the telephone bill, and the federal subscriber line charge, may not exceed $15.00.

(b) Lifeline rates established prior to the adoption of these rules may be retained but must be amended to include 120 local calls, touch–tone service, and 9–1–1 charges billed on the telephone bill.

(3) For a local exchange telecommunications utility that offers residential local calling priced only on usage units, an appropriate alternative lifeline plan may be established by order of the commission to reduce either the monthly portion of the bill, the local usage charges, or both.

(4) Lifeline rates will appear as a credit against the full tariffed rate on customers' bills. Credits will begin to appear on an eligible customer's bill on the next bill date following the date of application for lifeline assistance. In cases where a customer's eligibility date as found in the records of the Wisconsin department of health and social services or the Wisconsin department of revenue precedes the last bill date prior to application, credit will also be given for one month's prior bill.

(5) Eligibility for lifeline assistance continues until the next bill date following a failure to meet eligibility requirements.

(a) When the low income household energy assistance program is one of the customer's qualifying income assistance programs, the eligibility for lifeline assistance will continue until the bill date in the next December following the close of the heating season. At that time, lack of eligibility shall be reverified by the telecommunications utility before removing the lifeline assistance from the customer's bill.

(b) When the homestead tax credit is one of the customer's qualifying income assistance programs, the eligibility for lifeline assistance will continue until the bill date in the next May following the end of the tax year. At that time, lack of eligibility shall be reverified by the telecommunications utility before removing the lifeline assistance from the customer's bill.

PSC 160.063 Free voice–mail service for the homeless. (1) When a local exchange telecommunications service provider or its affiliate offers voice–mail service within an exchange and has available capacity on its voice–mail system, a social service agency or an authorized homeless shelter authority shall receive, on request, voice–mail service without charge on behalf of its homeless and transient clients or residents.

(2) The local exchange provider or its affiliate providing voice–mail boxes at no charge to the homeless agencies may request and receive reimbursement only for its incremental cost of providing this service.

PSC 160.07 Special needs certification. (1) A person with a disability may determine whether that disability presents a barrier to use of telecommunications services. That person shall determine what accommodations are needed to ensure effective telecommunications access.

(2) When a company or the fund administrator has sound reason to question the self–certification of a customer under sub. (1), additional verification of disability, such as an appropriate doctor's written medical diagnosis and description of physical limitations and special needs resulting from that diagnosis, may be required for certification of special telecommunications needs.

PSC 160.071 Service and equipment pricing for individuals with special needs. (1) Vouchers are available to assist disabled customers in the purchase of equipment needed to access and use the telecommunications network.

(a) Vouchers are limited to the following amounts by category of disability:

1. $50 for hard of hearing.
2. $400 for deaf.
3. $1,500 for speech impaired.
4. $1,500 for mobility impaired.
5. $2,500 for deaf–low vision.
6. $6,000 for deaf–blind.

(b) The commission shall annually establish a budget for the total voucher program.

(c) Customers with disabilities may apply, pursuant to commission–approved procedures, for these vouchers. Applicants must be Wisconsin residents and not have received a voucher within the last three years. Low–income deaf and hard of hearing applicants will be referred to the Wisconsin department of health and social services for application for telecommunications assistance program funding.

(d) Applications shall be granted on a first–come, first–served basis; except, no single disability classification listed above may be issued vouchers totalling more than 75 percent of the total annual budget within the first three quarters of the budget year.

(e) A waiting list shall be established for applicants whose applications must be held pending available funding.

(f) The commission may establish new disability categories and voucher maximums if a need is identified.

(g) Vendors may redeem vouchers, submitted with an invoice, from the universal service fund administrator. Reimbursement is not to exceed the total purchase price of the equipment with tax.

(2) Customer premises equipment required to meet special telecommunications needs of those with disabilities shall be tariffed by the local exchange telecommunications utility for monthly lease at rates that recover, over a reasonable period of time, only the utility's direct costs for the customer premises equipment, plus directly attributable overheads. No further contribution to the utility's earnings or general overheads shall be included in calculating the rate.

(3) Certified hearing speech impaired customers and certified speech impaired customers who must use a teletypewriter for telephonic conversations shall receive discounted toll service. For these customers, all interexchange telecommunications utilities are required to apply their evening discounts or rate schedules in the daytime rate period and their night or weekend discounts or rate schedules in all other rate periods.

(4) Customers with certified impairments that prevent them from using the telephone directory shall not be charged for directory assistance.

(5) Customers with certified impairments that prevent them from directly dialing or keying calls shall not be charged for operator assistance to place calls.

(6) Customers with certified impairments who deem one or more custom calling services essential in order to receive service that is useful and comparable to the essential service provided to other customers shall receive those services without charge.

PSC 160.075 Responsibility for payphone usability. (1) In this section, "payphone usability" means the ability to use payphone equipment once it has been accessed by an individual.

(2) Payphone usability standards include, but are not limited to signage, volume control, monitoring height, cord length, and text telephones.

(3) Payphone service providers and local exchange service providers are responsible for compliance with all federal and state standards regarding usability of their payphones for individuals with disabilities.

PSC 160.08 Telecommunications customer assistance program. The commission may authorize individual telecommunications providers to establish telecommunications customer assistance programs that meet authorized goals and objectives for increasing or stabilizing subscription levels for non–optional, essential telephone service within its service territory or to address avoidance of disconnection of service to low–income households with payment problems.

PSC 160.09 High rate assistance credits. (1) Rate assistance credits for a portion of the local service rate will be issued to residential customers when the rate charged for service exceeds levels set in this section. Providers issuing credits in accordance with this section will be eligible for reimbursement from the universal service fund for the cost of those credits.

(2) Credits will be applied to the local access line or local loop portion of the total charge for service.

(a) If a provider charges a flat rate which covers both the local loop and local usage portions of the monthly telephone bill, the rate credit formula will be applied against two–thirds of the flat rate.

(b) If a provider charges a single rate covering the local access line and other telecommunications or related services, the commission may determine, by order after opportunity for hearing, the portion of such bundled rates to which rate assistance credits apply.

(3) Local service providers shall issue high rate assistance credits according to the following criteria:

(a) For the portion of the local loop charge below 0.75 percent of median household income, per month, for the area in which the rate applies, no rate credits will apply.

(b) For the portion of the local loop charge above 0.75 percent but below 1.5 percent of median household income, per month, for the area in which the rate applies, the company will issue a credit equal to 50 percent of that amount.

(c) For the portion of the local loop charge above 1.5 percent but below 3.0 percent of median household income, per month, for the area in which the rate applies, the company will issue a credit equal to 75 percent of that amount.

(d) For the portion of the local loop charge above 3.0 percent of median household income, per month, for the area in which the rate applies, the company will issue a credit equal to 95 percent of that amount.

Note: For example, assume that the median household income for an area is $20,000 per year, or $1,667 per month. The thresholds are thus: 0.75 percent = $12.50, 1.5 percent = $25.00, 3.0 percent = $50.00. Thus, if the customer's local loop rate is below $12.50, the customer pays the entire rate. If the customer's rate were $18.00, the customer would pay the first $12.50, plus half the amount above $12.50, for a total of $12.50 + (0.5 * $5.50) or $14.75. If the customer's rate were $48, the customer would pay the first $12.50, plus half the amount between $12.50 and $25.00, plus 0.25 percent of the amount above $25, for a total of $12.50 + (0.5 * $5.50) + (0.25 * $23.00), or $20.50.

(e) When a rate applies in only one county, the median household income, as published by department of industry, labor and human relations, used to calculate the credit will be that of that county in which the rate applies. When a rate applies in more than one county, the median household income used to compute the credit will be the average of the median household incomes in each county in which the rate applies, weighted by the number of customers paying that rate in each county.

(f) The commission may determine, by order, after notice and an opportunity for hearing, whether any technologies other than wire or cable based connections (e.g. wireless services) should be eligible for credits under this section, and the portion of the charges to which credits will be applied.

(g) If the amount of money required to reimburse providers for credits under this section exceeds the amount budgeted for the service under s. PSC 160.17, the commission may modify the formula for high rate assistance credits. Such modification may be done by commission order, after notice and an opportunity for hearing.

(4) Each provider shall be reimbursed by the universal service fund for the value of the credits it issues.

(5) When a telecommunications provider charges a pro–rated portion of the normal monthly charge for service because the customer has had service for only a portion of the month, the rate assistance credit for that customer will be pro–rated by the same percentage.

(6) If the customer is eligible for the lifeline program, per s. 160.062, the rates and reimbursement for that program shall apply, unless the customer chooses not to participate in the lifeline program.

(7) High rate assistance credits shall be shown and identified on bills issued to customers.

(8) Local exchange providers with rate ceiling programs currently in effect may continue those programs.

(9) Customers receiving high–rate assistance credits may not be provided service under contracts of durations greater than one year. The commission may grant waivers of this subsection by order. Rural line extension contracts entered into before January 1, 1996, are exempted from this subsection.

PSC 160.091 Qualifications for providers receiving universal service funding for rate assistance credits. All providers receiving reimbursement for high rate assistance credits under s. PSC 160.09 must be providing service which meets the minimum requirements of s. PSC 160.03, and other quality of service rules established by the commission, and must be a contributory provider unless exempted from payment under s. PSC 160.18 (1) (a).

PSC 160.092 Alternative, experimental universal service protection plans allowed in competitive areas. (1) The commission may, by order after notice and an opportunity for hearing, implement other plans to protect universal service in high cost areas, as an alternative to the rate assistance credit mechanism described in s. PSC 160.09.

(2) Alternative plans under sub. (1) shall be implemented on an experimental basis. These experiments will be reviewed within 3 years of inception and shall terminate, unless extended by commission order after notice and an opportunity for hearing, within 5 years of inception.

(3) Experimental high cost support plans may make use of cost studies, bidding, defined service territories or other mechanisms to protect universal service. The commission may, by order, authorize payment of universal service fund monies as part of an experimental plan.

PSC 160.10 Rate shock mitigation. (1) The commission may authorize assistance, through temporary rate credits, for customers of rate of return regulated telecommunications utilities to mitigate the impact of large increases in authorized rates.

(2) Rate shock mitigation credits may not be authorized if both of the following conditions occur:

(a) The approved local service rate increase is less than 50 percent.

(b) The post–increase local service flat rate, or the measured service base rate plus typical usage charges, is less than the residential service rate calculated under s. 196.215 (7) (b), Stats.

(3) Rate shock mitigation credits will be funded out of intracompany sources, where possible. Where that is not the case, the local exchange provider will be reimbursed for the amount of the credits from the universal service fund. Funding for the rate shock mitigation will be specified by the commission in individual cases.

(4) When a telecommunications provider charges a pro–rated portion of the normal monthly charge for service because the customer has had service for only a portion of the month, the rate shock mitigation credit for that customer will be pro–rated by the same percentage. The universal service fund will reimburse the provider for the portion of the credit actually issued to the customer.

(5) Rate shock mitigation credits shall be shown and identified on bills issued to customers.

PSC 160.11 Assistance to institutions. (1) Partial funding is available for projects which raise awareness and education regarding high–quality education, library, and health care information services and/or promote cooperation among institutions in using such services, and for projects that promote affordable access to these services.

(2) Projects or events intended to raise awareness, education or cooperation among institutions about telecommunications services and technologies shall be funded as follows:

(a) Individuals, groups, organizations or institutions may submit applications for funding to assist in bringing about events or opportunities to improve awareness of, promote education about or facilitate coordination among institutions concerning telecommunications and information services.

(b) Applications under par. (a) shall contain a description of the project, its expected benefits, its estimated total cost and the amount of support funding requested.

(c) Applications shall be reviewed by a screening committee appointed by the commission. The screening committee will consist of one person representing the commission and up to three members of the universal service fund council. The screening committee will decide how much universal support funding, if any, will be allocated to proposed projects or events.

(d) No single project may receive more than $4,000 in universal service fund support per year.

(3) Partial support funding through rate discounts is available for institutions ordering telecommunications services to be used to provide any of the following services:

(a) Two–way interactive video services.

(b) High–speed data transfer.

(c) Toll call access to the internet.

(d) Direct internet access.

(4) Support funding is available only for new services which either were not previously available, or which provide significant improvements over existing services at that institution. Support will only be available for services obtained from a contributory provider, unless exempted from payment under s. PSC 160.18 (1) (a).

(5) Support funding is available only as partial payment for new services. The amount of funding will decrease year by year, as follows:

(a) For the first year, the monthly credit will be 30 percent of the monthly charge or $300 per month, whichever is less.

(b) For the second year, the monthly credit will be 20 percent of the monthly charge or $200 per month, whichever is less.

(c) For the third year, the monthly credit will be 10 percent of the monthly charge or $100 per month, whichever is less.

(d) For the fourth year, and thereafter, no credits will be issued.

(6) An institution is eligible to receive support for only one service at a time, at a single location. If that service links 2 locations at an institution, the discount may be applied to the entire channel. The University of Wisconsin system may receive a separate discount at each of its regional 2–year and 4–year campuses.

(7) After the discount for a service under sub. (5) has ended, the institution may receive support for a new service. An institution may not receive a discount for a service that has been canceled and reinstated.

PSC 160.12 Local loop extensions. (1) Telecommunications providers shall not charge a new customer for basic telecommunications service for extension of facilities when existing facilities of that provider are located within one mile of the customer's premises.

(2) When facilities need to be extended more than one mile to reach a customer for basic telecommunications services, the provider may charge the customer for the cost of the extension beyond the first mile. The charge shall be computed on a time and materials basis.

(3) The universal service fund will pay a portion of the charges for extensions beyond one mile as follows:

(a) For low–income customers, the universal service fund will pay 90 percent of the cost of the loop extension.

(b) For other customers, the universal service fund shall pay 50 percent of the cost of the loop extension.

(4) The customer is responsible for paying the portion of charges not paid by the universal service fund.

(5) Universal service funding for loop extensions is available only to residential customers occupying the premises to be receiving services as a primary home or domicile.

(6) In competitive areas, interested providers may submit bids to the commission on the up–front costs of providing basic telephone service to the customer. The amount of support will be 50 or 90 percent, as specified in sub. (3), of the lowest cost option. The customer may use that dollar amount to purchase service from any provider. The customer is responsible for paying the remainder of the loop extension charges.

(7) In circumstances where one provider can extend service to a customer at a lesser extension cost than the local exchange provider that normally serves that location, the commission may order that the customer be served by the provider that has the lower cost for the loop extension.

PSC 160.13 Local service provider of last resort. (1) The commission may designate providers of last resort for local service within a geographic area.

(2) In exchanges in which the commission has not authorized local service competition, the provider of last resort for local services, including extended community calling, shall be the telecommunications utility serving the exchange.

(3) In exchanges in which the commission has authorized local service competition, the commission may designate, after opportunity for hearing, a provider of last resort.

PSC 160.14 IntraLATA toll service provider of last resort. (1) The intralata toll provider of last resort for an exchange shall be the designated local exchange company toll provider for that exchange until intralata 1+ presubscription service is available in that exchange.

(2) Once intralata 1+ presubscription service is available in an exchange, the designated local exchange company toll provider may petition the commission for withdrawal of its toll provider of last resort requirements for that exchange.

(a) The petition must be filed in writing with the commission, and the petitioner retains intralata toll provider of last resort responsibilities until a new provider of last resort is designated, or for a period of 12 months, whichever is shorter.

(b) The petitioner must notify all affected customers of its request to have its provider of last resort requirements lifted. The notice to customers must be approved in advance by the commission and clearly state the following:

1. The petitioner is seeking authority to deny service to some or all customers within the exchange.

2. Toll services in the future may be available only from other telecommunications providers, or from only one telecommunications provider.

3. If a new provider of last resort is designated, all customers may be switched to that carrier's service, although they may choose to obtain service from any other carrier providing service in the area after reassignment of the provider of last resort requirement.

(3) If a petition under sub. (2) is filed, the commission will issue a notice requesting applications from all telecommunications providers interested in becoming the intralata toll provider of last resort for that exchange.

(4) If only one provider responds to the request for applications, that provider becomes the provider of last resort, effective in 90 days. All customers shall be notified of the proposed change at least 60 days prior to the effective date. The notice shall include a telephone number which they may use to designate their intralata toll provider. On the effective date, all customers who do not designate an intralata toll provider shall be presubscribed to the new intralata toll provider of last resort.

(5) If more than one toll provider applies to become the toll provider of last resort, the local service provider will ballot customers on their choice of intralata toll provider.

(a) Only those companies that filed applications to be the intralata toll provider of last resort for the exchange may appear on the ballot, although customers may "write–in" another carrier if desired.

(b) Customers who do not return ballots will be randomly allocated to the carriers appearing on the ballot, according to the percentage of customers who chose each listed carrier.

(c) All providers appearing on the ballot shall be the intralata toll providers of last resort for at least one year. After that date, providers may notify the commission that they wish to be relieved of last resort responsibility. When the last provider of last resort files to exit the market, the process described in this section recommences.

(d) The costs of balloting will be paid by the universal service fund, except where the existing toll provider seeks to abandon toll service to an

exchange in which it is the local service provider, that provider shall bear the costs of balloting.

(6) If no toll providers apply to be provider of last resort for an exchange, the commission shall hold an auction of the provider of last resort responsibility. The commission may authorize compensation from the universal service fund for the provider of last resort selected by the auction.

PSC 160.15 Identification of charges caused by universal service funding liability. Telecommunications providers may not establish a surcharge or separately identify on customer bills, any amounts for recovering, or contributing to, payment of universal service fund obligations.

PSC 160.16 Fund administrator. (1) The commission shall designate the fund administrator and provide for an annual audit of the fund. The commission shall establish by order, guidelines for administration and assignment of liabilities.

(2) The fund administrator may propose changes or modification to the mechanisms of administration of the fund. The commission may approve such requests without hearing.

(3) The fund administrator may assess a reasonable late payment penalty or interest charge to providers that do not pay in a timely manner per s. PSC 160.18 (9).

(4) The fund administrator shall maintain a reasonable cash working capital balance sufficient to cover contingencies. If cash working capital surpluses accrue above a reasonable level, the surplus amount will be used to reduce the total liability for the next quarter.

(5) The fund administrator, with commission approval, may borrow monies to cover short−term liabilities, where time constraints or administrative efficiencies make borrowing preferable to an immediate increase in assessment levels.

(6) The universal service fund shall compensate the administrator for its costs of administering the fund as approved by the commission.

PSC 160.17 Fund budget. (1) At least annually the commission shall set the budget for the entire universal service fund and its individual programs.

(2) The commission may make adjustments to the budget as needed to address unforeseen circumstances. Adjustments may include:

(a) Reallocating the budget among programs.

(b) Modifying the support formulas or benefits within a program.

(c) Deferring support payments to a later period.

(d) Raising or reducing assessment levels.

(3) The commission shall provide notice of the proposed annual fund budget and any proposed changes to the budget to the universal service fund council and other interested parties with an opportunity for comment prior to commission action.

PSC 160.18 Collection of universal service fund monies. (1) Each assessed provider shall pay the amount of its assessment to the universal service fund. Assessed providers include all telecommunications providers operating within Wisconsin, with the following exceptions:

(a) Wisconsin telecommunications providers with intrastate gross telecommunications revenues of less than $500,000 dollars during the preceding calendar year are exempt from assessment.

(b) Cellular providers will be assessed only if the commission determines after hearing that market information regarding the cellular service area indicates that cellular services are a substitute for land line telephone exchange service for a substantial portion of the communications in this state pursuant to 47 U.S.C. § 332 (c) (3).

(2) The commission may require a person other than a telecommunications provider to contribute to the universal service fund, if after notice and opportunity for hearing the commission determines that the person is offering nontraditional broadcast services in competition with a telecommunications service for which a contribution is required under these rules.

(3) Providers will be assessed on the basis of their gross intrastate operating revenues from telecommunications services.

(4) Each telecommunications provider shall submit information, by April 1 of each year, in a format to be approved by the commission, on the provider's gross intrastate telecommunications revenues during the preceding calendar year.

(5) The percentage liability for a given provider is the ratio of that provider's intrastate gross telecommunications revenues to the sum of the intrastate gross telecommunications revenues for all contributory providers.

(6) The amount to be assessed to a given provider is the percentage liability of that provider under sub. (5) multiplied by the total amount to be collected.

(7) Telecommunications providers who provided intrastate telecommunications service for only part of the preceding calendar year shall be assessed based on actual revenues for the year, without adjustments to annualize that revenue.

(8) Failure to receive a bill is not grounds for relief from a provider's liability for assessment.

(9) A provider that has not paid within 45 days of receiving a bill will be deemed to have not paid under s. 196.218 (8), Stats.

PSC 160.19 Universal service fund council. (1) The commission shall appoint a universal service fund council to advise the commission concerning the administration of s. 196.218, Stats., the content of administrative rules adopted pursuant to s. 196.218, Stats., and any other matters assigned to the universal service fund council by the commission.

(2) The universal service fund council shall consist of telecommunications providers and of consumers of telecommunications services. The commission shall appoint a diverse membership to the universal service council including representatives of the local exchange telecommunications industry; the interexchange telecommunications industry, including facilities−based carriers and resellers; the cable television industry; other telecommunications providers and consumers of telecommunications services; including residential, business, governmental, institutional, and public special interest group users of telecommunications services.

(3) A majority of the members of the universal service fund council shall be representatives of consumers of telecommunications services.

(4) (a) Terms of universal service fund council members initially appointed by the commission are effective through December 31, 1995. After December 31, 1995, universal service fund council members shall be appointed to staggered three−year terms.

Note: For terms beginning on January 1, 1996, the commission will appoint some universal service fund council members to a one−year term, others to a 2−year term and the remaining members to a 3−year term.

(b) The commission may appoint a replacement member when necessary to serve the remaining term of a member withdrawing from the universal service fund council.

(5) The commission shall appoint a chairperson for the universal service fund council who will shall serve in that capacity through December 31, 1995. Thereafter, the universal service fund council shall elect a chairperson and a vice−chairperson from its membership, not including the commission staff liaison. The term of office for these positions shall be one year. Elections may be held at the first meeting of each calendar year commencing after December 31, 1995, or may be conducted by mail prior to the first meeting of each calendar year.

(6) The universal service fund council shall meet at least twice annually. Other meetings may be called as needed, upon adequate notice to all members, to address matters of the fund as they arise. Meetings of the universal service fund council shall be open to the public.

(7) Members of the universal service fund council shall serve without compensation. Members, other than those members representing the telecommunications industry and any members representing state agencies, may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as part of the universal service fund council, subject to budget guidelines adopted by the commission.

(8) (a) The universal service fund council may adopt bylaws appropriate for its operation.

(b) The universal service fund council may form subcommittees of its membership as necessary to review issues and make recommendations for consideration of the full council.

(9) The commission shall assign staff members as needed to facilitate the work of the universal service fund council. The commission shall appoint a member of the commission staff to serve as staff liaison for the universal service fund council. The liaison shall be a non−voting member and shall do all of the following:

(a) Assist the universal service fund council in obtaining subject matter expertise in the area of telecommunications universal service.

(b) Maintain the official record of the universal service fund council, including membership, minutes of meetings, agenda and reports.

(c) Assist the chairperson of the universal service fund council in planning the agenda, time and place of meetings.

(d) Provide other administrative assistance as required.

Contact People

Questions on this matter may be directed by telephone to Jeffrey J. Richter, Principal Rate Analyst, Telecommunications Division, at (608) 267–9624 (Voice/TTY); Gary A. Evenson, Assistant Administrator, Telecommunications Division (and staff liaison to the Universal Service Fund Council), at (608) 266–6744; or Ann Pfeifer, Administrator, Examining Division, at (608) 266–5473.

Notice of Proposed Rule
Revenue

Notice is hereby given that pursuant to s. 71.80(1)(c), Stats., and interpreting ss. 71.09(9), 71.22(4), 71.24(7), 71.26(2) and (3)(j), 71.29(5), 71.42(2), 71.44(3) and 71.45(2)(a)8, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **August 15, 1995**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Contact Person

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

Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c)

Statutes interpreted: ss. 71.09(9), 71.22(4), 71.24(7), 71.26(2) and (3)(j), 71.29(5), 71.42(2), 71.44(3) and 71.45(2)(a)8

SECTION 1. Tax 2.89 is created to prescribe the estimated tax payment requirements for taxable periods of less than 12 months, as required by ss. 71.21(15) and 71.22(5), Stats., as repealed and recreated by 1987 Wis. Act 27. Sections 71.21(15) and 71.22(5), Stats., were renumbered ss. 71.09(9) and 71.29(5), Stats., respectively, by 1987 Wis. Act 312.

SECTION 2. Tax 2.96, relating to extensions for filing corporation tax returns, is repealed and recreated to: reflect statutory changes in the extension requirements, interest charges, late filing fees and temporary recycling surcharge provisions made by 1989 Wis. Act 31, 1991 Wis. Acts 39 and 269 and 1993 Wis. Acts 16 and 199; add a reference to the insurance company franchise tax return; and reflect current department policy regarding estimated tax extension payments.

SECTION 3. Tax 3.03, relating to the dividends received deduction for corporations, is repealed and recreated to reflect law changes made by 1993 Wis. Act 16. As a result of amendments to ss. 71.26(3)(j) and 71.45(2)(a)8, Stats., the deduction based on the payer corporation's Wisconsin activity was repealed, the ownership percentage requirement for deducting dividends was reduced from 80% to 70% of the payer corporation's stock, and insurance companies may claim a dividends received deduction even if the payer corporation is not a Wisconsin corporation.

Text of Rule

SECTION 1. Tax 2.89 is created to read:

Tax 2.89 ESTIMATED TAX REQUIREMENTS FOR SHORT TAXABLE YEARS. (ss. 71.09(9) and 71.29(5), Stats.) (1) GENERAL. Under ss. 71.09 and 71.29, Stats., certain corporations and persons other than corporations shall make estimated tax payments. For short taxable years, estimated tax payments shall be made in accordance with this section.

Note: For taxable years beginning on or after January 1, 1994, and ending before April 1, 1999, estimated tax includes the temporary recycling surcharge under s. 77.93, Stats.

(2) DEFINITIONS. In this section:

(a) "Corporation" includes corporations, tax–option (S) corporations, insurance companies, publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code, limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts, regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, nuclear decommissioning trust funds and virtually exempt entities as defined in s. 71.29(1)(c), Stats.

(b) "Estimated tax payable" means the amount calculated under s. 71.09(13) or 71.29(9) or (10), Stats.

(c) "Persons other than corporations" includes individuals, estates, trusts other than those treated as corporations in par. (a), partnerships except publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code and limited liability companies treated as partnerships under the internal revenue code.

(d) "Short taxable year" means a period of less than 12 months.

(3) NUMBER OF INSTALMENT PAYMENTS REQUIRED. (a) For short taxable years, the following number of estimated tax instalment payments shall be made:

1. For periods of one month or less, none.

2. For periods of 2 to 3 months, one.

3. For periods of 4 to 6 months, 2.

4. For periods of 7 to 9 months, 3.

5. For periods of 10 to 11 months, 4.

(b) Except as provided in par. (c), for purposes of determining the required number of estimated tax instalment payments under par. (a), a portion of a month shall be treated as a full month.

(c) If a short taxable year terminates before the end of a month and another taxable year begins at that time, for estimated tax instalment purposes the first taxable period shall be treated as ending on the last day of that month and the second taxable period shall be treated as beginning on the first day of the following month.

Note: Refer to the examples of the estimated tax payment requirements for short taxable years involving a portion of a month that follow sub. (7)(b)4.

(4) DUE DATES OF INSTALMENT PAYMENTS FOR CORPORATIONS. For short taxable years, corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

(a) For periods of 2 to 3 months, the last month of the taxable year.

(b) For periods of 4 to 6 months, the 3rd and last months of the taxable year.

(c) For periods of 7 to 9 months, the 3rd, 6th and last months of the taxable year.

(d) For periods of 10 to 11 months, the 3rd, 6th, 9th and last months of the taxable year.

(5) DUE DATES OF INSTALMENT PAYMENTS FOR PERSONS OTHER THAN CORPORATIONS.

(a) Except as provided in pars. (b) and (c), for short taxable years, persons other than corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

1. For periods of 2 to 3 months, the first month following the close of the taxable year.

2. For periods of 4 to 6 months, the 4th month of the taxable year and the first month following the close of the taxable year.

3. For periods of 7 to 9 months, the 4th and 6th months of the taxable year and the first month following the close of the taxable year.

4. For periods of 10 to 11 months, the 4th, 6th and 9th months of the taxable year and the first month following the close of the taxable year.

(b) If a person other than a corporation files an income tax return on or before the last day of the first month following the close of the taxable year and pays the full amount computed on that return as payable, that person need not make the last payment of estimated tax.

(c) Instead of making estimated tax instalment payments, a farmer or fisher as defined in s. 71.09(1)(a), Stats., may either pay the estimated tax in full by the 15th day of the first month after the close of the taxable year or file the tax return on or before the first day of the 3rd month following the close of the taxable year and pay the full amount computed on that return as payable.

(6) COMPUTATION OF ESTIMATED TAX PAYABLE. Corporations and persons other than corporations shall make estimated tax payments equal to the lesser of the following amounts:

(a) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(b) For individuals, corporations having less than $250,000 of Wisconsin net income and estates and trusts having less than $20,000 of Wisconsin taxable income for the current taxable year, the tax shown on the return for the preceding taxable year, provided the taxpayer filed a return for the preceding year covering a full 12–month year. When the current year is a short taxable year and the preceding year was a period of 12 months, the tax shown on the return for the preceding taxable year may be prorated based on the number of months in the short taxable year.

Example: Corporation A receives federal approval to change its taxable year from a calendar year to a fiscal year ending on June 30. To make the change, Corporation A files a franchise or income tax return for the period beginning January 1 and ending June 30. On this short–period return, it reports net tax of $8,000. Corporation A's Wisconsin net income for the current taxable year is less than $250,000. Therefore, its estimated tax payable is the lesser of 90% of the tax shown on its current year return or 100% of the tax shown on its prior year return, provided it had filed a tax return for that year covering a 12–month period. The tax shown on Corporation A's return for the preceding taxable year, a 12–month period, was $6,000. Corporation A's estimated tax payable for the current taxable year is $3,000, $6,000 prior year's tax x 6 months/12 months.

Note: Corporations having Wisconsin net income of $250,000 or more for the current taxable year and estates or trusts having Wisconsin taxable income of $20,000 or more for the current taxable year may not calculate their estimated tax payable under par. (b).

(c) Ninety percent of the tax calculated by annualizing the taxable income earned for the months in the taxable year ending before the due date of the instalment. The following special rules apply:

1. Corporations which determine their Wisconsin net incomes under the apportionment method may compute their annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the instalment for which the income is being annualized and the apportionment percentage on that return is greater than zero. A corporation that has at least $250,000 of Wisconsin net income for the current taxable year may also compute annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the 3rd instalment, the apportionment percentage on that return is greater than zero, and the apportionment percentage used in computing the first 2 instalments is not less than the apportionment percentage used on that return.

2. Entities subject to tax on unrelated business taxable income and trusts and estates shall annualize their incomes for the months in the taxable year ending one month before the instalment due date.

(7) PORTION OF ESTIMATED TAX PAYABLE IN EACH INSTALMENT. The portion of the estimated tax payable in each instalment depends on when the taxpayer determines that the taxable year will be a period of less than 12 months and the number of instalment payments required, as follows:

(a) If an event that will terminate the taxable year before the end of the 12th month occurs after the taxpayer has begun making estimated tax payments, the initial estimated tax instalment payments shall be based on 25% of the estimated tax payable, with the last payment adjusted for the difference between the estimated tax liability and the amount previously paid.

Examples: 1) Corporation B, which has been filing tax returns on a calendar–year basis, receives federal approval to change its taxable year to a fiscal year ending on July 31. To make the change, Corporation B files a franchise or income tax return for the short taxable year beginning January 1 and ending July 31. Since this is a period of 7 months, Corporation B must make 3 estimated tax payments. Twenty–five percent of the estimated tax shall be paid for each of the instalments due March 15 and June 15. The balance of the estimated tax shall be paid on or before July 15. If Corporation B's estimated tax payable is $80,000, Corporation B must pay $20,000, 25% x $80,000 estimated tax payable, for each of the instalments due March 15 and June 15 and $40,000, 50% x $80,000 estimated tax payable, for the instalment due July 15.

2) Corporation C, a calendar–year filer, merges into Corporation D on October 6. As a result, Corporation C files its final franchise or income tax return for the short taxable year beginning January 1 and ending October 6. Corporation C must make 4 estimated tax payments, each for 25% of the estimated tax payable. The instalments must be paid on or before March 15, June 15, September 15 and October 15. If Corporation C's estimated tax payable is $100,000, Corporation C must pay $25,000, 25% x $100,000 estimated tax payable, for each instalment.

(b) If an event that will result in a taxable year of less than 12 months occurs before the taxpayer has begun making estimated tax payments, instalment payments shall be made as follows:

1. If one instalment is due, all of the estimated tax shall be paid at that time.

2. If 2 instalment payments are due, 75% of the estimated tax shall be paid for the first instalment and 25% shall be paid for the remaining instalment.

3. If 3 instalment payments are due, 50% of the estimated tax shall be paid for the first instalment and 25% shall be paid for each of the 2 remaining instalments.

4. If 4 instalment payments are due, 25% of the estimated tax shall be paid for each instalment.

Examples: 1) Corporation E owns 100% of the stock of Corporation F. The corporations file consolidated federal income tax returns on a calendar–year basis. On March 10, Corporation E sells all of the stock of Corporation F to third parties, severing the affiliated group. For federal purposes, Corporations E and F file a consolidated return for the period from January 1 through March 10. Corporation F files a separate federal return for the period from March 11 through December 31. Since the taxable period for Wisconsin purposes is the same as the federal taxable year, Corporation F must also file 2 short–period Wisconsin returns. For the first taxable year, Corporation F must make one estimated tax instalment payment for 100% of the estimated tax liability on or before March 15. For the second short period, Corporation F must make 3 estimated tax instalment payments. The first payment for 50% of the estimated tax liability is payable on or before June 15. Since March is the last month of the first short period, April is treated as the first month of the second short period. The second and third payments, each for 25% of the estimated tax, are due on or before September 15 and December 15, respectively. If Corporation F's estimated tax for the period beginning March 11 and ending December 31 is $150,000, Corporation F must pay $75,000, 50% x $150,000 estimated tax payable, for the first instalment and $37,500, 25% x $150,000 estimated tax payable, for each of the remaining 2 instalments.

2) Corporation G buys 100% of the stock of Corporation H on August 29. Both corporations compute their incomes on a calendar–year basis. Corporations G and H file a consolidated federal income tax return for the period from August 30 through December 31. Corporation H files a separate federal return for the period from January 1 through August 29. Since the taxable year is the same for Wisconsin and federal purposes, Corporation H must file 2 short–period Wisconsin returns. For the first short taxable year, 3 estimated tax instalment payments are required, due on or before March 15, June 15 and August 15. Twenty–five percent of the estimated tax shall be paid for each of the instalments due March 15 and June 15 and the balance of the estimated tax shall be paid for the instalment due August 15. For the second short period, 2 instalments are payable on or before November 15 and December 15. Since August is the last month of the first short period, September is treated as the first month of the second short period. The first instalment payment, due November 15 is for 75% of the estimated tax and the payment due December 15 is for 25% of the estimated tax.

(8) ANNUALIZED INCOME INSTALMENT PAYMENTS. Under ss. 71.09(13)(d) and 71.29(9)(c), Stats., taxpayers may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the instalment payment's due date. Corporations that are subject to a tax on unrelated business taxable income and virtually exempt entities may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the date one month before the due date for the instalment payment. Annualized income installment payments shall be computed as follows:

(a) Computation of annualized income. Taxpayers shall annualize income for the annualization period as follows:

1. Compute the Wisconsin net income for the annualization period, excluding adjustments which remain constant from period to period, such as net business loss carryforwards and the amortization of adjustments for changes in the method of accounting.

2. Calculate the annualization factor for the annualization period by dividing the number of months in the taxable year by the number of months in the annualization period.

3. Multiply the amount computed in subd. 1 by the annualization factor computed in subd. 2.

4. Subtract from the result in subd. 3 any adjustments excluded from the calculation of Wisconsin net income in subd. 1 which remain constant for each period. Individuals shall also subtract the standard deduction.

Example: Corporation J's taxable year begins January 1 and ends May 10. It has Wisconsin net income of $200,000 for the period from January 1 through February 28. Corporation J's annualization factor for that period is 2.5, calculated by dividing the 5 months of the taxable year by the 2 months of the annualization period. The annualized income for that period is $500,000, which is $200,000 Wisconsin net income x 2.5 annualization factor.

(b) Computation of instalment payments. Taxpayers shall calculate their estimated tax instalment payments based on annualized income for the annualization period as follows:

1. Determine the gross tax on the amount calculated under par. (a).

2. Subtract from the gross tax under subd. 1 any allowable tax credits, excluding estimated tax paid.

3. Multiply the net tax computed in subd. 2 by the applicable percentage from sub. (7).

Example: Corporation K, a calendar year filer, merges into Corporation L on July 14. Corporation K elects the annualized income method for determining whether it paid sufficient estimated tax. Corporation K's Wisconsin net income is $300,000 for the first 2 months of the taxable year, $1,400,000 for the first 5 months of the taxable year, and $1,800,000 for the first 6 months of the taxable year. Corporation K has $9,000 of tax credits and its net tax due for the year ending July 14 is $135,000. Therefore, Corporation K's estimated tax payable is $121,500. For Corporation K's 7−month year, the annualization factors are 3.5 (7 months/2 months), 1.4 (7 months/5 months), and 1.167 (7 months/6 months). Corporation K calculates its required estimated tax payments as follows:

	First 2 months	First 5 months	First 6 months
Wisconsin net income	$ 300,000	$1,400,000	$1,800,000
Annualization factor	3.5	1.4	1.167
Annualized income	$1,050.00	$1,960,000	$2,100,600
Annualized gross tax	$ 82,950	$ 154,840	165,947
Tax credits	9,000	9,000	9,000
Annualized net tax	$ 73,950	$ 145,840	$ 156,947
Applicable percentage	22.5%	45%	90%
Portion of annualized tax	$ 16,639	$ 65, 628	$ 141, 252
25% of estimated tax	30,375	60,750	121,500
Amount payable in preceding periods	0	16,639	60,750
Instalment payable	$ 16,639	$ 44,111	$ 60,750

Note: After the end of the taxable year, persons other than corporations shall use schedule U and corporations shall use form 4U to determine whether they have made sufficient estimated tax payments. Taxpayers with short taxable years shall adjust the computations on those forms as provided in this section.

SECTION 2. Tax 2.96 is repealed and recreated to read:

Tax 2.96 EXTENSIONS OF TIME TO FILE CORPORATION FRANCHISE OR INCOME TAX RETURNS. (ss. 71.24(7) and 71.44(3), Stats.) (1) DUE DATES. (a) General. Except as provided in par. (b), corporation franchise or income tax returns, forms 4, 4I, 5 and 5S are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year and form 4T is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted.

(b) Short−period returns. Corporation franchise or income tax returns for periods of less than 12 months are due on or before the federal due date.

(2) EXTENSIONS. (a) The automatic extension to 30 days after the federal due date. If an automatic six−month extension of time has been allowed for filing the corresponding federal income tax return under the internal revenue code, an automatic extension until 30 days after the federal extended due date shall be allowed for filing the Wisconsin return. A copy of federal extension

form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 6−month extension provision for the Wisconsin return to be considered timely filed.

Note: The additional 30−day extension allowed to corporations having a federal extension first applies for taxable years beginning on January 1, 1993, as a result of the enactment of 1993 Wis. Act 199.

(b) The 30−day, 3−month or 6−month extension from department. As an alternative to the extension in par. (a), a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 3 months in the case of a foreign corporation that does not have an office or place of business in the United States, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return. A request for a 30−day, 3−month or 6−month extension, form IC−830, from the department shall be filed by the taxpayer prior to the original due date of the tax return. Requests for extensions shall be mailed to the address specified by the department on form IC−830 or delivered to the department.

Note: The 3−month extension allowed to foreign corporations that do not have an office or place of business in the United States first applies for taxable years beginning on January 1, 1992, as a result of the enactment of 1991 Wis. Act 39.

(c) Estimated tax payment. A taxpayer who desires to minimize interest charges during the extension period may pay the estimated tax liability on or before the original due date of the franchise or income tax return. This shall be done by attaching a remittance to a corporation estimated tax voucher, form 4−ES, and mailing them to the address specified by the department on the form 4−ES. The estimated tax liability includes the temporary recycling surcharge imposed under s. 77.93, Stats.

Note: The inclusion of the temporary recycling surcharge in the estimated tax liability first applies for taxable years beginning on January 1, 1994, as a result of the enactment of 1993 Wis. Act 16.

(d) Federal termination or refusal to grant extension. If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before 30 days after the date of termination fixed by the internal revenue service.

(3) INTEREST CHARGES AND LATE FILING FEES. (a) Regular interest. Except as provided in par. (b), additional tax due with the complete return and the temporary recycling surcharge imposed under s. 77.93, Stats., which are not paid by the original due date are subject to interest at 12% per year during the extension period and 1 1/2% per month from the end of the extension period until the date of payment.

Note: The 12% per year interest charge during the extension period for temporary recycling surcharge not paid by the original due date first applies for taxable years beginning on January 1, 1993, as a result of the enactment of 1993 Wis. Act 16.

(b) Delinquent interest. If 90% of the tax shown on the return, form 4, 4I, 5 or 5S, is not paid by the 15th day of the 3rd month or, for form 4T, by the 15th day of the 5th month beginning after the end of the taxable year, the difference between that amount and the estimated taxes paid along with any interest due is subject to interest at 1 1/2% per month until paid regardless of any extension granted for filing the return. The tax shown on the return includes the temporary recycling surcharge imposed under s. 77.93, Stats.

Note: 1) The imposition of delinquent interest during the extension period applied for 1987 and prior taxable years and was reinstated by 1989 Wis. Act 31, effective for taxable years beginning on or after January 1, 1990.

2) The requirement to include temporary recycling surcharge payments in the tax shown on the return first applies for taxable years beginning on January 1, 1994, as a result of the enactment of 1993 Wis. Act 16.

(c) Late filing fee. A corporation return filed after the extension period is subject to a $30 late filing fee.

Note: 1) Refer to s. 71.83(3), Stats.

2) For franchise or income tax returns with an original or extended due date before July 20, 1985, the late filing fee was $10.

3) The late filing fee was increased to $20 for returns 60 or more days late by 1985 Wis. Act 29, effective for franchise or income tax returns with an original or extended due date on or after July 20, 1985.

4) The late filing fee was increased to $30 by 1991 Wis. Act 269, effective for assessments, determinations or other actions taken on or after May 1, 1992.

(4) CONSOLIDATED RETURNS. Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

SECTION 3. Tax 3.03 is repealed and recreated to read:

Tax 3.03 DIVIDENDS RECEIVED DEDUCTION – CORPORATIONS. (ss. 71.22(4), 71.26(2) and (3)(j), 71.42(2) and 71.45(2)(a)8, Stats.) (1) PURPOSE. This section clarifies the deduction from gross income allowed to corporations for dividends received. Dividends may be deductible due to the recipient's ownership of the payer corporation, as provided in sub. (3).

(2) DEFINITION. "Dividends received" means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under ch. 71, Stats.

Note: Refer to s. 71.26(3)(j), Stats.

(3) DIVIDENDS DEDUCTIBLE DUE TO OWNERSHIP. A corporation may deduct from gross income 100% of the dividends received from a payer corporation during a taxable year if both of the following occur:

(a) The dividends are paid on common stock of the payer corporation.

(b) The corporation receiving the dividends owns directly or indirectly during the entire taxable year in which the dividends are received at least 70% of the total combined voting stock of the payer corporation.

Note: 1) Refer to s. 71.26(3)(j), Stats.

2) Only cash dividends were deductible by the recipient in taxable years 1980 through 1986. This limitation was eliminated by 1987 Wis. Act 27.

3) For taxable years 1980 through 1983 the deduction was limited to 50% of the dividends received.

4) For the taxable year 1984 the deduction was limited to 75% of the dividends received.

5) For taxable years 1985 and thereafter the deduction equals 100% of the dividends received.

6) For taxable years beginning before January 1, 1993, the corporation receiving the dividends was required to own directly or indirectly during the entire taxable year in which the dividends were received at least 80% of the total combined voting stock of the payer corporation. The percentage of ownership requirement was changed from 80% to 70% by 1993 Wis. Act 16.

(4) LIMITATION ON DEDUCTION. The deduction under sub. (3) may not exceed the dividend received and included in gross income for a taxable year.

(5) DIVIDENDS INCLUDABLE IN GROSS INCOME. All dividend income shall be included in full in gross income on the franchise or income tax return of the recipient, whether or not certain dividends are deductible.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

This rule prescribes estimated tax payment requirements for taxable periods of less than 12 months, as required by 1987 Wis. Act 27. It has no fiscal effect.

Notice of Proposed Rule

Department of Transportation

Notice is hereby given that pursuant to the authority of s. 13.096(4), Stats., as created by 1993 Wis. Act 282, and s. 85.16(1), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule creating ch. Trans 278 without public hearing unless, within 30 days after publication of this notice, **August 15, 1995**, 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 Mark Morrison, Division of Highways, Bureau of Highway Engineering, Room 601, P. O. Box 7916, Madison, Wisconsin 53707–7916, telephone (608) 266–1675.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 13.096(4) and s. 85.16(1)

Statute Interpreted: s. 13.096

General Summary of Proposed Rule. Effective on November 1, 1995, 1993 Wis. Act 282 created s.13.096 of the statutes which requires the Department of Transportation to prepare reports for the Legislature concerning introduced bills which directly or indirectly establish exceptions to the vehicle weight limits specified in ch. 348, Stats. The proposed rule establishes the policies and procedures which the Department intends to follow in carrying out its responsibilities under s. 13.096, Stats.

In s. Trans 278.02(2), the Department sets forth its interpretation of which bills fall within the scope of § 13.096, Stats., and will require that a report be filed. Included are bills which propose to increase axle, group axle or gross weights in existing exceptions; to make additional commodities or vehicles eligible under existing exceptions; to modify restrictions limiting eligibility for existing exceptions; to reduce or eliminate fees or permit requirements under existing exceptions; to modify or eliminate authority to set permit conditions; and to create new exceptions to current weight limitations.

Section Trans 278.03 describes the information which will be contained in reports prepared by the Department. At a minimum, the Department will discuss the factors outlined in s. 13.096(3), Stats., which includes a discussion of the problem addressed by the proposed legislation including whether current vehicle weight limitations create a hardship, the costs of complying with current limitations and any savings which will likely result from a change, other efforts to resolve the problem, and the degree of control motor carriers have over the weight and weight distribution of the vehicle and its load; a description of the proposed exception including any changes in current axle, group axle or gross vehicle weight limitations, width, height and length limitations, transportation of particular commodities, highways or areas of the state affected by the proposed exception and seasonal transportation patterns; and a discussion of other special considerations such as frequency of use of the proposed exception and the support and involvement of businesses and local authorities affected by the proposed exception. In addition, the report may include comments and opinions of federal agencies, a comparison of the proposal to the laws of other surrounding states and other information which the Department determines will assist the Legislature in assessing the impact of the proposed weight exception.

Section Trans 278.04 describes the procedures which the Department intends to follow after receiving notice from the Legislative Reference Bureau that a bill has been introduced which requires a report. The following divisions in the Department will be involved in information gathering and report preparation: the Division of Highways, the Division of Motor Vehicles and the Division of State Patrol. The proposed rule provides that persons, organizations and government units contacted for information will respond to requests within 2 weeks and that the Department will complete its report within 6 weeks of the introduction of the bill.

Fiscal Impact

The Department estimates that there will be no fiscal impact on the liabilities or revenues of the State of Wisconsin or any county, city, village, town, school district, technical college district or sewerage district.

Initial Regulatory Flexibility Analysis

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

Contact Persons and Copies of Proposed Rule

Persons having questions about this proposed rule may write or call the following Wisconsin Department of Transportation employees: **Kathleen Nichols** or **Tom Cantwell**, Division of Motor Vehicles, Motor Carrier Tax and Permits Section, P. O. Box 7980, Room 151, at (608) 266–6648 and (608) 267–4541, respectively; or **Mark Morrison**, Regional Traffic Engineer, Division of Highways, Bureau of Highway Engineering, P. O. Box 7916, Room 601, Madison, WI 53707–7916, (608) 266–1675. Copies of this proposed rule may also be obtained, without cost, from Mr. Morrison. Hearing–impaired individuals may contact the Department using TDD (608) 266–0396. Alternate formats of the proposed rule will be provided to individuals at their request.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin, department of transportation, by s. 13.096(4), Stats., as created by 1993 Wis. Act 282, and s. 85.16(1), Stats., the department of transportation hereby proposes to create a rule implementing and interpreting s. 13.096, Stats., relating to proposed legislation establishing vehicle weight limit exceptions.

SECTION 1. Chapter Trans 278 is created to read:

VEHICLE WEIGHT LIMIT EXCEPTIONS

Trans 278.01 PURPOSE AND SCOPE. The purpose of this chapter is to:

(1) Establish general policies and criteria for the analysis of any bill that is introduced in either house of the legislature that indirectly or directly establishes an exception to the vehicle weight limits specified in ch. 348, Stats.

(2) Establish the responsibilities of each division within the department for timely preparation of reports on bills.

Trans 278.02 DEFINITIONS. The words and phrases defined in chs. 340 and 348, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Bill" means any bill that requires a report under s. 13.096(2)(a), Stats.

(2) "Establishes an exception to the vehicle weight limits specified in ch. 348, Stats." includes the following:

(a) To increase maximum allowable axle, axle group or gross weights in existing exceptions.

(b) To make additional commodities or vehicle combinations eligible for transport under existing exceptions.

(c) To modify or eliminate special equipment requirements, trip purpose, allowable trip distance, time or season of operation, or other factors limiting eligibility for or operations under existing exceptions.

(d) To reduce or eliminate fees associated with permits required under existing exceptions or to eliminate the requirement that a permit be obtained for movement of overweight loads under existing exceptions.

(e) To modify or eliminate the authority of the state agency or local officer issuing a permit to establish conditions for the grant of a permit and operations under a permit, or to modify or eliminate the authority of the state agency or local authority in charge of the maintenance of a highway to impose weight limitations on a highway or to suspend the operation of vehicles on a highway.

(f) To create entirely new statutory exceptions.

Trans 278.03 CONTENTS OF REPORTS. (1) Reports of the department required by s. 13.096(2)(a), Stats., shall contain an analysis of the impact of each proposed vehicle weight exception.

(2) The analysis shall include, at a minimum, the information required by s. 13.096(3)(a), (b) and (c), Stats., and may include the comments or opinions of interested federal agencies, a comparison of the proposed exception to the laws of surrounding states and other information that the department determines will assist the legislature in assessing the impact of the proposed exception.

(3) If the same or a substantially similar bill was introduced in a previous session, the department may fulfill its obligation under s. 13.096(2)(a), Stats., by providing a copy of a previously prepared report and a memorandum addressing any differences in the bills or any factors which may have changed since the prior report was written.

(4) If the department concludes that it has not been able to gather sufficient information to adequately assess the impact of the proposed exception, the department may recommend that no action be taken on the bill until the sponsor can provide additional sources of information to the department to enable the department to complete the required analysis.

Trans 278.04 REPORT PREPARATION. (1) When a bill is introduced, the legislative reference bureau shall submit a copy of the bill to the chief counsel of the department, and to such other officials of the department as the legislative reference bureau deems appropriate.

(2) The chief counsel of the department shall distribute a copy of the bill to the divisions of highways, motor vehicles, and state patrol of the department.

(3) Each division shall make appropriate contact with the following:

(a) Interested parties identified by sponsoring legislators.

(b) Representatives of organizations with a probable interest in the legislation.

(c) Local governments and individuals with a probable interest in the legislation.

(d) Officials in other departments or nearby states who may have reviewed similar legislation.

(4) Individuals, organizations and governments contacted shall be asked to provide the following:

(a) Any information that may assist the department in completion of its report as provided in s. Trans 278.03. Any information pertaining to cost or impact shall describe the method and assumptions used.

(b) If the contacted individuals, organizations or governments do not have the requested information, they shall so indicate.

(5) Responses to department requests for information under sub. (4) shall be submitted within 2 weeks of the request date.

(6) The department shall prepare its report based on the best available information.

(7) Findings contained in the report shall be derived from reasonable and generally accepted engineering principles and cost calculation methodology.

(8) The department shall submit its report to the legislature within 6 weeks after the bill is introduced.

EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

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

FINDING OF EMERGENCY

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

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

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

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

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

Publication Date: **June 30, 1995**
Effective Date: **June 30, 1995**
Expiration Date: **November 27, 1995**
Hearing Date: **August 25, 1995**
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Employment Relations–Merit Recruitment & Selection

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

FINDING OF EMERGENCY

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

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

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Health and Social Services

(Community Services, Chs. HSS 30––)

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

EXEMPTION FROM FINDING OF EMERGENCY

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

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

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

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

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

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

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

Publication Date: **September 1, 1994**
Effective Date: **September 1, 1994**
Expiration Date: **1993 Wis. Act 446, s. 182**
Hearing Dates: **January 24, 25 & 26, 1995**

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

FINDING OF EMERGENCY

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

A recent session law, 1993 Wis. Act 327, created ss. 50.01 (1) (b) and 50.033, Stats., which establish a new type of adult family home as a regulated residential placement. Until now the only type of adult family home for 3 or 4 adults was one that was originally licensed under s. 48.62, Stats., as a foster home for 3 or 4 developmentally disabled children prior to the children becoming adults and is now certified under s. 50.032, Stats., and ch. HSS 82. An adult family home covered by s. 50.033, Stats., as created by Act 327, is to be a licensed home providing care, treatment or services above the level of room and board but not including nursing care to 3 or 4 residents.

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Health and Social Services

(Health, Chs. HSS 110––)

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

FINDING OF EMERGENCY

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

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

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

The Department revised its licensing standards for home health agencies, ch. HSS 133, effective June, 1984. Chapter HSS 133 has not been significantly updated since then, although a general revision of those rules is under development. One part of the updating will be an increase in the annual license fee to cover increased costs of this regulatory program and basing the fee on annual net income of the home health agency, as required by s. 50.49 (2) (b), Stats., rather than gross annual income of the agency as provided for in the current rules.

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

which are intended to promote safe and adequate care and treatment of home health agency patients.

Publication Date: **April 15, 1995**

Effective Date: **April 15, 1995**

Expiration Date: **September 12, 1995**

Hearing Date: **June 16, 1995**

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

FINDING OF EMERGENCY

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

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

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

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

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

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

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

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

Publication Date: **July 1, 1995**
Effective Date: **July 1, 1995**
Expiration Date: **November 28, 1995**

EMERGENCY RULES NOW IN EFFECT (2)

Health & Social Services

(Economic Support, Chs. HSS 200––)

1. Rules adopted creating **ch. HSS 207**, relating to work not welfare demonstration project.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 113 (2) of the 1993 Wis. Act 99 directed the Department to promulgate rules for the implementation of s. 49.27, Stats., as created by 1993 Wis. Act 99, using emergency rule–making procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

Under s. 49.19, Stats., a family can apply and be determined eligible for the Aid to Families with Dependent Children (AFDC) program. As long as the family continues to meet all eligibility criteria under s. 49.19, Stats., eligibility for AFDC benefits continues. While many AFDC recipients remain on public assistance for relatively short periods of time, at any given point in time, 65% of AFDC recipients are individuals who will spend 8 years or more on welfare.

Wisconsin has obtained approval from the Food and Consumer Service of the U.S. Department of Agriculture and from the Administration for Children and Families and the Health Care Financing Administration of the U.S. Department of Health & Human Services to conduct a Work Not Welfare demonstration project beginning January 1, 1995. The demonstration project will be conducted in 2 counties, Fond du Lac and Pierce. The demonstration project will test whether requiring recipients to work for their public assistance benefits in a time–limited program will reduce the time recipients are on welfare and foster self–sufficiency.

The Work Not Welfare (WNW) demonstration project will place a strictly enforced 24–month time limit on cash assistance payments and require AFDC recipients to participate in a combination of education, training and work under the Job Opportunities and Basic Skills (JOBS) program to receive monthly cash benefits. Recipients will receive a combination of AFDC and cashed–out Food Stamp benefits for up to 24 months. Except under very limited circumstances, WNW benefits will not increase when a second or subsequent child is born to an adult enrolled in the WNW program. When WNW participants are no longer eligible for cash benefits, WNW participants may be eligible for 12 months of transitional Medical Assistance and child care benefits. The 24 months of cash benefits and 12 months of transitional benefits must be used within a 4–year period. When the 24 months of cash benefits are exhausted, the recipient will be ineligible for the WNW program, the AFDC program, the General Relief program or the Relief to Needy Indian Persons program for 3 consecutive years from the last date the recipient draws a cash benefit. During this period of ineligibility, the household may apply for Food Stamp coupons, Medical Assistance and shelter payments and for services provided under a Children's Services Network.

The rules for the Work Not Welfare demonstration project include various requirements affecting individual participants, calculation of the participation requirement for WNW employment and training activities, good cause for nonparticipation in WNW employment and training activities and how sanctions are applied for failure to meet the monthly participation requirement.

Publication Date: **December 30, 1994**
Effective Date: **January 1, 1995**
Expiration Date: **May 31, 1995**
Hearing Dates: **February 28 & March 2, 1995**
Extension Through: **October 30, 1995**

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

FINDING OF EMERGENCY

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

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

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

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

The Department has been operating this program on the basis of s. 49.19 (11) (b), Stats., which references the federal regulations, a Division of Economic Support Operations memo, and policy handbook material. However, the lack of policy established through administrative rules has caused confusion for applicants, recipients and economic support agencies responsible for administering the program. Section 49.19 (11) (b), Stats., provides that the AFDC emergency assistance payment amount, except when the need is the result of an energy crisis, may not exceed $150 per eligible family member, but does not provide how a payment less than $150 is to be determined nor does it establish a lesser amount. Yet sum certain funds appropriated for the program are not sufficient to permit the program to pay out as much $150 per eligible family member without turning away some eligible applicants. A recent Dane County Court decision (93–CV–4004) held that rules are needed to set a fixed amount for the AFDC emergency assistance benefit level. The Department is now proceeding to publish the rules by emergency order to ensure that the funds available for the program are used to assist people who are most in need.

Publication Date: **April 4, 1995**
Effective Date: **April 4, 1995**
Expiration Date: **September 1, 1995**
Hearing Date: **May 19, 1995**

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Youth Services, Chs. HSS 300––)

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

FINDING OF EMERGENCY

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

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

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

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

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

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Barrier–Free Design, Ch. ILHR 69)

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

FINDING OF EMERGENCY

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

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

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

a. All shopping malls or shopping centers;

b. Rest–area building located off of major highways;

c. Schools;

d. Restaurants with a capacity of 100 or more people; or

e. Large assembly areas such as, but not limited to, stadiums and outdoor or indoor theaters, with a capacity of more than 100 persons.

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Contractor Registration, Ch. ILHR 74)

Rules adopted creating **s. ILHR 2.36 and ch. ILHR 74**, relating to contractor registration and certification.

FINDING OF EMERGENCY

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

1. During the 1993–1994 legislative session, the legislature passed 2 acts relating to registration and certification of contractors. The acts imposed specific requirements on the Department, municipalities and contractors.

2. 1993 Wis. Act 126 requires the Department to promulgate rules for certifying the financial responsibility of contractors who must obtain a building permit to perform work on a one– or 2–family dwelling covered under the Uniform Dwelling Code. The act prohibits municipalities from issuing a building permit to a contractor who is required to be certified unless the contractor has the certificate of financial responsibility from the Department. The law applies to applications for a building permit after March 31, 1995.

3. 1993 Wis. Act 243 prohibits contractors from installing or servicing heating, ventilating or air conditioning equipment unless the contractor registers with the Department. The acts also requires the Department to promulgate rules for a voluntary program for certification of heating, ventilating and air conditioning contractors. The effective date for the registration requirement was August 1, 1994.

4. The 1995 building construction season will be starting soon. In order to ensure consistent and uniform application of the laws and rules for the entire 1995 construction season, the building construction industry has asked the Department to have the rules in effect at the start of the building season.

5. The Department initiated its rule making efforts in response to these laws in May, 1994. The year 1994 was an election year. Chapter 227, Stats., prohibits the forwarding of proposed final rules to the legislature after November 1 of an election year. This 2 month period of time was not available to the Department. The Department has held the required public hearings and will be forwarding the final rules to the standing committees shortly. However, the required timeframes will not permit adoption of the permanent rules by April 1, 1995.

ANALYSIS

The rules consist of the necessary provisions to comply with the mandates in 1993 Wis. Acts 126 and 243. The rules for the dwelling contractor certification require the submittal of basic identification information in addition to the requirements in Act 126 relating to a surety bond, general liability insurance, worker's compensation insurance and unemployment compensation contributions. The rules apply to a contractor who must obtain a local building permit in order to perform construction or erosion control work on a one– or 2–family dwelling covered under the Uniform Dwelling Code.

The rules contain requirements for mandatory registration and voluntary certification of contractors who perform hearing, ventilating, or air conditioning work. The mandatory registration consists of the submittal of basic identification information. The voluntary certification requires qualified persons to pass a Department examination.

The rules also include requirements relating to denial, suspension and revocation of the registrations and certifications. All of the registrations and certifications issued under the rules will expire annually and may be renewed. In order for the Department to cover the costs of administering the respective programs, the rules also include the establishment of program fees.

Publication Date: **March 17, 1995**
Effective Date: **March 17, 1995**
Expiration Date: **August 14, 1995**
Hearing Date: **April 27, 1995**
Extension Through: **October 12, 1995**

EMERGENCY RULES NOW IN EFFECT

Insurance

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

FINDING OF EMERGENCY

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Rules adopted amending **ss. NR 20.02 (1) (c)** and **25.06 (2) (b)**, relating to sport fishing for yellow perch on Lake Michigan and commercial fishing for yellow perch in zones 2 and 3 on Lake Michigan and Green Bay.

ANALYSIS

The order affects Lake Michigan sport fishing rules and Green Bay and Lake Michigan commercial fishing rules. SECTION 1 decreases the sport fishing daily bag limit for yellow perch taken from Lake Michigan from 50 to 25 fish and closes the sport fishing season for yellow perch in Lake Michigan during June (effective June 1, 1995). SECTION 2 decreased the total allowable annual commercial harvests of yellow perch from zones 2 and 3 of Green Bay and Lake Michigan. For zone 2 the commercial yellow perch harvest limit is reduced from 13,300 pounds to 4,655 pounds and for zone 3 the harvest limit is reduced from 306,700 pounds to 107,345 pounds (effective July 1, 1995).

FINDING OF EMERGENCY

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

The yellow perch population in Lake Michigan is rapidly declining. This decline reflects five consecutive years of extremely poor reproduction. Sport and commercial harvests of adult yellow perch must be limited immediately in order to maximize the probability of good reproduction in the near future. The harvest limitations proposed here are part of a four–state yellow perch protection plan.

Publication Date: **May 31, 1995**
Effective Dates: **June 1, 1995 (part) & July 1, 1995 (part)**
Expiration Dates: **October 29, 1995 & November 28, 1995**

EMERGENCY RULES NOW IN EFFECT (2)

State Public Defender

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

FINDING OF EMERGENCY

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

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

ANALYSIS

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

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

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

FINDING OF EMERGENCY

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

The Office of the State Public Defender assigns approximately 40% of its cases annually to private bar attorneys. To ensure that assignments are made within budgetary expenditures that provide efficient and effective representation of the public, the proposed rule is necessary.

ANALYSIS

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

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

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

EMERGENCY RULES NOW IN EFFECT

Public Instruction

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

FINDING OF EMERGENCY

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Commissioner of Transportation

[Commissioner of Railroads]

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

FINDING OF EMERGENCY

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

Rules adopted revising **ch. Trans 327**, relating to motor carriers safety requirements.

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is that Wisconsin has been notified by the U.S. Department of Transportation that it will lose $700,000 in Motor Carrier Safety funds on April 1, 1995 unless the Wisconsin rule for Motor Carrier Safety more strictly complies with the federal regulations. Loss of these funds will have a direct effect on public health and safety by forcing substantial reductions in State Patrol inspection and enforcement activities involving operation of commercial motor vehicles on the highways of Wisconsin.

Publication Date: **April 1, 1995**
Effective Date: **April 1, 1995**
Expiration Date: **August 29, 1995**
Hearing Date: **May 3, 1995**
Extension Through: **August 31, 1995**

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

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

Agriculture, Trade and Consumer Protection (CR 95–175):
Chs. ATCP 79 and 81 – Relating to cheese grading, packaging and labeling, and standard of identity and labeling requirements for Baby Swiss cheese.

Corrections (CR 95–92):
Ch. DOC 316 – Relating to medical, dental and nursing copayment charge to be paid by inmates.

Medical Examining Board (CR 95–50):
S. Med 13.03 – Relating to the biennial training requirement for physicians.

Natural Resources (CR 94–71):
SS. NR 25.07 and 25.08 – Relating to quota allocation, quota transfers and commercial fishing for smelt on Lake Michigan and Green Bay.

Natural Resources (CR 95–28):
Ch. NR 45 – Relating to state land use regulations.

Natural Resources (CR 95–35):
Ch. NR 440 – Relating to incorporation of revisions and additions to the federal new source performance standards.

Natural Resources (CR 95–56):
Chs. NR 400 to 499 and s. NR 30.03 – Relating to clarification and cleanup changes in ch. NR 30 and throughout the NR 400 series.

Psychology Examining Board (CR 95–10):
S. Psy 4.02 (1), (2), (3) and (4) – Relating to continuing education.

Psychology Examining Board (CR 95–68):
S. Psy 4.02 (5) and (6) – Relating to the biennial training requirement for psychologists.

Public Defender (CR 95–37):
SS. SPD 4.02, 4.03 and 4.06 – Relating to capping private bar attorney billable hours to 2,080 hours annually.

Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board (CR 95–55):
S. SFC 3.11 – Relating to temporary certificates issued to social workers.

Transportation, Dept. of (CR 95–44):
Ch. Trans 103 – Relating to habitual traffic offenders.

Transportation, Dept. of (CR 95–96):
SS. Trans 2.015 (1) and 2.05 (1) (a) – Relating to the elderly and disabled transportation capital assistance program.

Administrative Rules Filed With The Revisor Of Statutes Bureau

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

Chiropractic Examining Board (CR 94–158):

An order amending s. Chir 2.01 and repealing and recreating s. Chir 3.03, relating to licensure by endorsement.

Effective 10–01–95.

Industry, Labor and Human Relations (CR 93–158):

An order repealing and recreating ch. ILHR 30, relating to fire department health and safety standards.

Effective 09–01–95.

Industry, Labor and Human Relations (CR 95–36):

An order affecting chs. ILHR 100 to 150, relating to definitions used in Unemployment Compensation rules.

Effective 10–01–95.

Industry, Labor and Human Relations (CR 95–46):

An order affecting ss. ILHR 50.115, 51.01 and 51.07, relating to notice of intent regarding certain construction sites.

Effective 09–01–95.

Natural Resources (CR 94–128):

An order repealing ch. NR 114, relating to certification requirements for waterworks, wastewater treatment plant and septage servicing operators.

Effective 10–01–95.

Natural Resources (CR 95–23):

An order amending ss. NR 20.02 (1) (c) and 25.06 (2) (b) 2 & 3, relating to sport fishing for yellow perch on Lake Michigan and commercial fishing for yellow perch in zones 2 and 3 on Lake Michigan and Green Bay.

Effective 10–01–95.

Natural Resources (CR 95–25):

An order affecting ss. NR 400.02, 406.04, 407.03, 419.02, 419.04 and 419.07, relating to revisions of the rules regulating emissions from the remediation of contaminated soil and water.

Effective 09–01–95.

Natural Resources (CR 95–29):

An order affecting ss. NR 10.01, 11.03 and 11.043, relating to hunting.

Part effective 09–01–95.

Part effective 04–01–96.

Physical Therapists Affiliated Credentialing Board (CR 94–220):

An order creating chs. PT 1 to 8, relating to the regulation of physical therapists and physical therapist assistants.

Effective 10–01–95.

Psychology Examining Board (CR 94–222):

An order repealing and recreating s. Psy 5.01 (14) and creating s. Psy 5.01 (14m), relating to sexual misconduct.

Effective 09–01–95.

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