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No. 478



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Development:	(CR 95–152) – SS. DOD 28.02 & 28.03
Development:	(CR 95–159) – Ch. DOD 12
Employe Trust Funds:	(CR 95–88) – SS. ETF 10.633, 10.70, 10.82, 20.20, 50.31 & 60.51
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Revenue:	(CR 95–65) – SS. Tax 2.89, 2.96 & 3.03
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NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

**(Reprinted from 09-30-95
Wis. Adm. Register)**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 70, Wis. Adm. Code, relating to food processors.

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until **October 27, 1995** for additional written comments.

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

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

Hearing Information

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

Eau Claire Area:

**October 11, 1995
Wednesday**

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

Green Bay Area:

**October 12, 1995
Thursday**

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

Milwaukee Area:

**October 13, 1995
Friday**

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

Madison Area:

**October 17, 1995
Tuesday**

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

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

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

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

General Overview

The Department of Agriculture, Trade and Consumer Protection currently licenses and regulates food processing plants under s. 97.29, Stats. This rule amends the Department's current rules under ch. ATCP 70, Wis. Adm. Code, related to food processing plants. Among other things, this rule does the following:

- Authorizes the Department to grant a variance from a food processing plant construction standard if the variance is reasonable and necessary, and will not compromise the purpose served by the construction standard.
- Updates current water supply standards for food processing plants, including bottling establishments.
- Modifies current standards for handling distressed and salvaged food (e.g. food affected by a fire, flood or other casualty).
- Requires a food processor to report any lab tests showing that ready-to-eat food contains pathogenic organisms or toxins, unless the food is identified by production lot and the processor still owns and controls the entire affected lot.
- Gives fish processors greater flexibility to package and sell fish in reduced oxygen packages if the fish are processed to eliminate botulism risks.
- Requires fish processors to prepare and follow a HACCP ("hazard analysis and critical control point") plan. Under a HACCP plan, a processor prevents food safety hazards by monitoring and controlling critical control points to ensure that critical limits are met.
- Updates current food safety standards related to:
 - Raw fish processing.
 - Smoked fish processing and labeling.
 - Caviar processing.

"Potentially Hazardous" Foods: Safe Temperatures

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

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

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

- 150°F. (65°C.) or above for potentially hazardous heated foods.
- 40°F. (5°C.) or below for potentially hazardous refrigerated foods.
- 0°F. (-17°C.) or below for potentially hazardous frozen foods.
- This rule establishes new "safe temperatures" as follows:
 - 140°F. (60°C.) or above for potentially hazardous heated foods.
 - 41°F. (5°C.) or below for potentially hazardous refrigerated foods, other than fish or fish products.
 - 38°F. (3.4°C.) or below for refrigerated fish or fish products.
 - 0°F. (-17°C.) or below for potentially hazardous frozen foods.

Facilities and Equipment

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

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

Personnel Sanitation

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

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

- A communicable disease.
- Flu or flu-like symptoms.
- A sore or lesion on the hands, arms or other exposed portion of the body.

Water Supply

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

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

- Reclaimed water may not be used as operations water or ingredient water unless all of the following apply:
 - The reclaimed water meets all normal standards for operations or ingredient water.
 - The operator tests the reclaimed water for bacterial and organic content according to this rule.
 - The distribution system for the reclaimed water has no cross-connections to any municipal or private water supply system, and is effectively designed and labeled to prevent misuse of reclaimed water.
- Reclaimed water may not be used as ingredient water unless it is reclaimed by condensation (or by another reclamation process which the Department approves), and is used within 24 hours after it is reclaimed.
- Reclaimed water may not be used as an ingredient in bottled water or in any soda water beverage.

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

Distressed and Salvaged Food

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

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

- Must separate distressed food from other food.
- May not reprocess unwholesome or adulterated food for sale as human food.
- May not sell or distribute food in packages which are not fully labeled, or which have been damaged to the point that food may be exposed to contamination.
- Must keep records showing the source and disposition of distressed food.
- May not sell reprocessed or reconditioned distressed food without notifying the purchaser, in writing, that the food is reprocessed or reconditioned. Notice must include the name and address of the reprocessor or reconditioner and the date on which the food was reprocessed or reconditioned.

Ready-to-Eat Foods: Reporting Pathogens and Toxins

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

Fish Processing Plants: HACCP Plan

Under this rule, every fish processing plant must have and follow a written HACCP ("hazard analysis critical control point") plan by January 1, 1997. A plant processing fish for sale in reduced oxygen packages must have and follow a HACCP plan not later than the effective date of this rule. Under a HACCP plan, an operator prevents food safety hazards by monitoring and controlling food safety variables at critical control points in the production process.

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

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

Processing Raw Fish

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

Packaging Fish in Reduced Oxygen Packages

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

- The package is heat processed after sealing to destroy botulism bacteria and spores.
- The packaged fish product is frozen and labeled as a frozen food according to current rules.

This rule gives fish processors greater flexibility to package and sell fish in reduced oxygen packages if the fish are processed to eliminate botulism risks. Under this rule, fish products may be packaged in reduced oxygen packages if one of the following applies:

- The package is heat processed after sealing to destroy botulism bacteria and spores.
- The packaged fish product is frozen and labeled as a frozen food under this rule.
- The fish product is processed (e.g., acidified) so that it is no longer a "potentially hazardous food."
- The fish product is smoked according to standards specified in this rule.

Repackaging Fish

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

Smoked Fish Processing

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

- Fish must be dry salted or brined before it is smoked so that the finished smoked fish contains at least 3.5 percent water-phase salt.

- All smoked fish must be heated to a temperature of at least 160°F for at least 30 minutes unless the fish is clearly labeled to indicate that the consumer must cook it.

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

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

- It must be brined so that the finished smoked fish contains at least 2.5 percent water-phase salt.

- It must be heated to at least 145° F. (63° C.) for at least 30 minutes.

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

- It must be brined so that the finished smoked fish contains at least 3.5 percent water-phase salt, except that fish brined with a sodium nitrite solution may be brined to contain 3.0 percent water-phase salt.

- It must be heated to at least 145° F. (63° C.) for at least 30 minutes.

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

- It must be dry salted or brined so that the finished smoked fish contains at least 3.5 percent water-phase salt, except that fish brined in sodium nitrite may be brined to contain 3.0 percent water-phase salt and frozen fish may be brined to contain 2.5 percent water-phase salt.

- It must be smoked at a temperature of not more than 90° F. (32° C.) for not more than 20 hours, or at a temperature of not more than 50° F. (10° C.) for not more than 24 hours.

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

Under this rule, smoke flavorings used in processing smoked fish must be approved by the United States Department of Agriculture or by the Federal Food and Drug Administration.

Labeling and Selling Smoked Fish

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

- Required labeling must appear on the principal display panel of the smoked fish package.

- Cold-process smoked fish must be labeled with the statement "NOT FULLY COOKED."

- Smoked fish products must be removed from sale if, at any time prior to retail sale, they are held at a temperature above 38° F. (3.4° C.).

- Cold-process smoked fish may not be used as an ingredient in any other perishable, ready-to-eat food.

Caviar Processing

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

- Fish roe and fish by-products containing roe must be held at a temperature of 38° F. (3.4° C.) or below during storage, transportation and processing.

- Fish roe and fish by-products containing roe must be harvested, stored and transported in covered, food grade containers.

- Containers of fish roe must be labeled with the dates and times when the roe was harvested and dressed. Roe must be separated from fish entrails within 48 hours after it is harvested from the fish, and must be separated from roe sacks within 72 hours.

- No fish processing plant may accept any fish roe which is not properly refrigerated, contained and labeled according to this rule.

- Finished caviar must be free of pathogens, and must contain at least 2.5 percent salt. No person may have direct hand contact with finished, ready-to-eat caviar.

Standards Incorporated By Reference

The Department has asked the Attorney General and the Revisor of Statutes for permission to incorporate standards by reference in this rule.

Fiscal Estimate

See page 8 of Sept. 30, 1995 Wis. Adm. Register.

Initial Regulatory Flexibility Analysis

See page 9 of Sept. 30, 1995 Wis. Adm. Register.

Notice of Hearings Agriculture, Trade & Consumer Protection (Reprinted from 09-30-95 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chs. ATCP 74 and ATCP 75, Wis. Adm. Code, relating to retail food establishments, and retail food establishments; local government regulation.

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until **October 27, 1995** for additional written comments.

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

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DATCP
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Board Room**

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

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

Statute interpreted: s. 97.30

The Department of Agriculture, Trade and Consumer Protection currently licenses and regulates retail food establishments under s. 97.30, Stats. In many of the state's metropolitan areas, agent cities regulate retail food establishments on behalf of the Department.

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

Licensing and Fees

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

Variances

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

Personnel Sanitation

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

Food Sources

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

Shellfish and Crustaceans

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

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

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

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

Sulfites and Other Food Additives

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

Adulterated, Misbranded or Suspect Food

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

- Returned or recalled food, pending a decision on the disposition of that food.

- "Distressed food" (e.g., food affected by a fire, flood, transportation accident, refrigeration breakdown or other casualty), pending a decision on the disposition of that food.

- Food which is to be discarded, reprocessed, reconditioned, relabeled or returned to a supplier.

- Food which the operator, the Department or the Department's agent finds to be unwholesome, adulterated or misbranded.

- Food which the operator suspects or should reasonably suspect as being unwholesome, adulterated or misbranded, pending evaluation by the operator to determine whether the food is actually unwholesome, adulterated or misbranded.

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

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

- Reprocess for sale any unwholesome or adulterated food.

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

Distressed and Salvaged Food

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

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

- Reprocess, for sale, any distressed food that is unwholesome or adulterated.

- Sell any distressed food in containers damaged to the point that their contents may be contaminated.

- Sell distressed food in containers that are not fully labeled.

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

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

Protecting Food from Cross–Contamination

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

- Keep meat, fish, poultry, shellfish, crustaceans, and other raw foods of animal origin separate from every kind of ready–to–eat food, whether raw or cooked.

- Keep different types of raw foods of animal origin such as beef, fish, lamb, pork, and poultry, separate from each other, except when combining them as ingredients.

- Keep unwashed fruits and vegetables separate from every kind of ready–to–eat food, whether raw or cooked.

Serving Ready–to–Eat Foods

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

- Utensils do not contaminate or cross–contaminate food.

- There is no rapid or progressive growth of pathogenic or toxigenic organisms on food adhering to utensils.

Food Display Facilities

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

Displaying Unpackaged Food

Under current rules, unpackaged displayed food must be covered or protected to protect it against contamination and customer handling. There

are exemptions for raw agricultural, commodities, fully wrapped foods that are not potentially hazardous, salad bars and food sold from approved self–service dispensers. This rule expands the current salad bar exemption to include buffets, and clarifies the current exemption for self–service dispensers.

Buffets and Salad Bars

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

- The buffet or salad bar must be designed, equipped and managed to prevent contamination and cross–contamination of food.
- One or more employees trained in safe food handling procedures must monitor the buffet or salad bar whenever food is displayed there.
- The buffet or salad bar may not include any potentially hazardous foods, other than salad garnishes or condiments such as shredded cheese, cottage cheese, or sliced or crumbled hard boiled eggs, which are kept at 41° F. (5° C.) or below.

Self–Service Dispensers

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

Deceptive Food Displays

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

Food Storage

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

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

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

“Potentially Hazardous” Foods: Safe Temperatures

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

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

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

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

Food Temperatures Upon Receipt

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

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

Under this rule:

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

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

Cooling Potentially Hazardous Food

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

- Fluid milk and milk products, shell eggs, and molluscan shellfish must be cooled to 41° F. (5° C.) or lower within 4 hours after they are received at a retail food establishment.
- Potentially hazardous food prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna, must be cooled to 41° F. (5° C.) or lower within 4 hours.
- Potentially hazardous food which is cooled after cooking must be cooled from 140° F. (60° C.) to 70° F. (21° C.) within 2 hours, and from 70° F. (21° C.) to 41° F. (5° C.) or lower within 4 hours, so that the overall cooling time does not exceed 6 hours.

Cooking Potentially Hazardous Food

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

Reheating Potentially Hazardous Food

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

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

Reduced Oxygen Packaging

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

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

HACCP Plans

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

- Potential food safety hazards.
- Critical control points in the processing and packaging of that food at which the retail food establishment operator will monitor critical safety

variables, such as time, temperature or pH to ensure that critical limits are met.

- The critical limits which must be met at each critical control point to prevent unacceptable food safety hazards.
- Procedures which the operator will use to monitor critical variables at each critical control point.
- Corrective actions which the operator will take whenever a critical limit is violated. Corrective actions must correct the process, evaluate the safety of food processed while the critical limit was violated, and prevent the sale of any food which is unwholesome or adulterated, or which presents an unacceptable food safety hazard.
- Methods which the operator will use to verify compliance with HACCP procedures.
- HACCP records which the operator will keep.

Cleaning and Sanitizing Equipment and Utensils

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

Mobile Retail Food Establishments

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

Reporting Pathogens

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

Agent Cities: Program Review

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

Standards Incorporated By Reference

The Department has asked the Attorney General and the Revisor of Statutes for permission to incorporate standards by reference in this rule.

Fiscal Estimate

See page 12 of Sept. 30, 1995 Wis. Adm. Register.

Initial Regulatory Flexibility Analysis

See page 12 of Sept. 30, 1995 Wis. Adm. Register.

Notice of Hearing **Commissioner of Insurance**

The Commissioner of Insurance, pursuant to the authority granted under s. 601.41 (3), Stats., and according to the procedures under s. 227.18, Stats., will hold a public hearing in **Room 23, 121 East Wilson Street, Madison, Wisconsin, on October 30, 1995, at 1:00 p.m.**, or as soon thereafter as the matter may be reached, to consider the amendment of ss. Ins 6.57 (4), 6.58 (5) (a), and 6.59 (4) (a) and (am), Wis. Adm. Code, relating to the fees for listing insurance agents and renewal of corporation licenses and other licensing procedures.

Summary of Proposed Rule

This change will increase the annual listing fees for resident agents from \$5.00 per year to \$8.00 per year and for nonresident agents from \$15.00 per year to \$24.00 per year. These changes will generate more revenue for OCI. The recent budget bill raised the limits to these amounts and the increased amounts were utilized in preparing OCI's current budget. The renewal fees for corporations are raised to the same level as individual intermediaries. Agents will be specifically required to give their current residence address when applying for a license.

Summary of Fiscal Estimate

The changes will increase agency revenues by \$1,400,000 if they went into effect on October 1, 1995.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses. The rule raises certain annual and biannual fees by a maximum of \$20.00 as permitted in the recent budget bill.

Contact Person

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

Notice of Hearing **Public Instruction**

Notice is hereby given that pursuant to ss. 115.28(7), 121.02(1)(a) and 227.11(2)(a), Stats., and interpreting s. 118.19(1) and (3)(a), Stats., the department of public instruction will hold a public hearing as follows to consider the amending of chs. PI 3 and 4, emergency and proposed permanent rules, relating to substitute teacher permits, special education program aide licenses, principal licenses and general education components. Emergency rules were promulgated by the department effective August 21, 1995. The hearing will be held as follows:

Hearing Information

November 1, 1995
Wednesday
4:00 – 5:00 p.m.

Madison
GEF 3 Building
125 South Webster Street
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation, which may include materials prepared in an alternative format, as provided under the Americans with Disabilities Act, to access any meeting, please call Peter Burke, Director, Bureau for Teacher Education, Licensing and Placement, 266-1879 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date.

Copies of Rule & Written Comments

A copy of the proposed rule and the fiscal estimate may be obtained by writing to Lori Slauson, Administrative Rules Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written comments on the proposed rules received at the above address no later than **November 6, 1995**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

In August 1994, the state superintendent appointed a 21-member task force on restructuring teacher education and licensure to review, discuss, and debate current issues in the preparation and licensing of education professionals. The task force was asked to make recommendations aimed at improving the status of teacher education and licensing. Specifically, the task force was asked to determine the skills and abilities necessary for education professionals to be successful in the schools of the 21st century and to make recommendations aimed at improving the quality of the work force. These rules address the task force recommendations, field recommendations, and statutory changes made as a result of 1995 Wisconsin Act 27 (the 1995-97 biennial budget bill).

The rules make the following certification modifications:

- Creates a substitute teacher permit. A 5-year permit may be granted to an applicant who holds a bachelor's degree to substitute teach if the district administrator or designated official of an employing school district makes a request for such certification. The permit may be renewed if the district administrator or designated official of an employing school district makes another request for certification. Currently, applicants qualify for a one-year

permit only and are required to complete six credits each year to renew a permit.

- Eliminates requirements for special education program aide licenses. An applicant needs only to be 18 years of age and recommended by the district administrator of the employing school district, or his or her designee, to be licensed as an aide.

- Creates a PK-12 principal license. An applicant may receive a PK-12 principal license regardless of the grade level of the individual's teaching license or teaching experience.

- Deletes the requirement that the general education component in a professional education program constitute at least one-third of the semester hours in collegiate level course work required for a baccalaureate degree. The rules also delete the requirement that course work included in the professional sequence and major, minor, or concentration may not be included in the general education component.

Fiscal Estimate

The proposed rules eliminate some of the restrictive language relating to substitute teacher permits, special education program aide licenses, principal licenses and general education components.

It is assumed that the proposed rules will not result in any increased costs to school districts. In fact, the desired result is to make it easier for school districts to hire qualified staff, and may even reduce their costs associated with recruitment.

The proposed rules should not have a fiscal effect on the University of Wisconsin System and should allow teacher training programs more flexibility. A copy of the proposed rules have been submitted to the University of Wisconsin System with a request for a fiscal note.

The proposed rules will have no fiscal effect on the department.

Notice of Hearings Public Instruction

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 115.85, 115.81(3) and 115.80(4m), Stats., the department of public instruction will hold public hearings as follows to consider the creation of s. PI 11.13(4) and (5), emergency and proposed permanent rules, relating to interim alternative educational settings for children with EEN who bring firearms to school. Emergency rules were promulgated by the department effective August 21, 1995.

Hearing Information

November 1, 1995 Wednesday 5:00 to 6:00 p.m.	Wausau University of Wisconsin Center—Marathon County 518 South 7th Avenue Room 201 South Hall
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November 7, 1995 Tuesday 4:30 – 5:30 p.m.	Madison GEF #3 Bldg. 125 South Webster Street Room 041
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The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation, which may include materials prepared in an alternative format, as provided under the Americans with Disabilities Act, to access any meeting, please call Elliot Weiman, Consultant, Exceptional Education Team, at (608) 266-3648 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date.

Copies of Rule & Written Comments

A copy of the proposed rule and the fiscal estimate may be obtained by writing to Lori Slauson, Administrative Rules Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written comments on the proposed rules received at the above address no later than **November 10, 1995**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Under the federal Individuals with Disabilities Education Act (IDEA) and s. 115.81(3), Stats., parents of children with exceptional educational needs (EEN) may challenge the educational placement of their children by requesting a due process hearing. During the pendency of such a challenge, the child remains in the current educational placement, unless the parent and the school agree otherwise or unless a court orders a change. This legal requirement is commonly referred to as the "stay-put" rule.

With the passage of the Gun Free Schools Act (GFSA) and a growing national concern over violence in schools, congress amended the IDEA in October, 1994 to create an exception to the "stay-put" rule for children with EEN who are found to have brought a firearm to school. These children may be placed in an "interim alternative educational setting" for up to 45 calendar days. If the parent challenges that setting or the placement proposed after that setting, the child remains in the interim alternative setting pending any due process proceedings, unless the parents and the board agree otherwise.

The proposed permanent rules provide for a child with EEN to be placed in an interim alternative educational setting for up to 45 calendar days if he or she has brought a firearm to school. The setting must be determined by individuals specified in rule and the child's parents must be notified of such alternative setting. The rules also require that during due process proceedings involving the child placed in an interim alternative educational setting, the child shall remain in the interim alternative educational setting during the pendency of such proceeding, unless the parents and the board agree otherwise.

Fiscal Estimate

Prior to the enactment of the October 1994 IDEA amendment allowing for an interim alternative educational placement for a child with EEN who has brought a firearm to school, the parent of a child with EEN could challenge a change in placement in a due process hearing. During the pendency of such proceedings the child remained in the original educational placement unless the parent agreed to a change. If the parent did not agree, a school district could apply to a court of competent jurisdiction to change the child's placement. The October 1994 IDEA amendment permits a school district to place a child with EEN who has brought a firearm to school in an alternative educational setting for 45 days without the parent's agreement and without seeking a court's order.

Consistent with the October 1994 amendment to IDEA, the emergency rules and proposed permanent rules provide that a child with EEN may be placed in an alternative educational setting for 45 days if he or she has brought a firearm to school. The alternative educational setting must be determined by individuals specified in rule and the child's parent must be notified of placement in an alternative educational setting. The rules also require that the child shall remain in the interim alternative educational setting during the pendency of any due process hearing, appeal, or proceeding involving the child, unless the parents and the board agree otherwise.

If a child with EEN brings a firearm to school and the school district seeks to place the child in an interim alternative educational setting, various individuals as prescribed under s. PI 11.05(2)(b) will need to meet in order to determine the interim alternative educational setting for the child. Most of these meeting participants would already be contracted to provide services to the school district and would, most likely, meet during contracted hours. Therefore, increased costs may be minimal. In addition, because a school district could change the educational placement in these particular circumstances for 45 days without the parent's agreement and without seeking a court order, the rule may result in decreased costs to school districts.

The rules will have no state fiscal effect.

Notice of Hearing Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 458.03 and 458.05, Stats., and interpreting ss. 458.06, 458.08, 458.085, 458.09, 458.095, 458.11, 458.13 and 458.24, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order of the Department of Regulation and Licensing to repeal ss. RL 80.03 (16), 81.02 and 82.02 (1); to renumber ss. RL 80.03 (1), 82.02 (1) and (3) and 83.02 (7); to amend ss. RL 80.02, 80.03 (3), (8), (9) and (17), 81.01 (intro.), (1), (2), (3), (4), (5), (6) and (7), 81.03 (2) (intro.) and (2) (d), 82.01, 82.04 (1) (intro.) and (3), 83.01 (3) (a) and (b), (4) (b), 83.02 (2) and (3), 84.01 (6) (intro.), 84.02 (1) and (3) (intro.), 84.03 (2) (a) and (3) (intro.), 85.01 (4), 85.02 (2) and (8) (intro.) and 86.01 (8) and (9) (a), and the Uniform Standards of Professional Appraisal Practice; and to create ss. RL 80.03 (1), (2a), (8a), (8b), (8c) and (8d) and 83.02 (6), relating to real estate appraisers.

Hearing Information

October 31, 1995
Tuesday
10:30 A.M.

Room 179A
1400 E. Washington Ave.
MADISON, WI

Written Comments

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

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

Written comments must be received by **November 13, 1995** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutory authority: ss. 227.11 (2), 458.03 and 458.085

Statutes interpreted: ss. 458.06; 458.08; 458.085, 458.09, 458.095, 458.11, 458.13 and 458.24

In this proposed rule-making order, the Department of Regulation and Licensing amends, repeals and recreates numerous provisions contained in chs. RL 80 to 87, and Appendix I, relating to the regulation of certified and licensed appraisers. Significant changes to the current rules are as follows:

1. Section RL 80.03 is revised to create definitions for the following terms: "ad valorem tax appraisal," "appraisal course instruction," "feasibility analysis," "fee and staff appraisal," "highest and best use" and "highest and best use analysis." These terms are used, but are not defined, in ch. RL 83, to refer to the various types of acceptable appraisal experience.

2. Section RL 82.04 (3), relating to claim of examination error, is amended to clarify that an applicant may retake an examination if the Department's decision relating to a claim of examination error does not result in a passing grade. If the Department's decision results in the denial of the credential application, the applicant may request a hearing under ch. RL 1.

3. Section RL 83.02 (6) is created for purposes of identifying the type of documentation which an applicant seeking a credential must submit in order to receive credit under s. 458.09, Stats., for assessor experience.

4. Sections RL 80.03 (16) and 81.02, and the Note following s. RL 87.01 (3), relating to "transitional licenses" are being repealed. These changes are being made in anticipation of the phase-out of transitional licenses on January 1, 1996. Under s. 458.08 (5), Stats., transitional licenses are valid for 2 years or until January 1, 1996, whichever occurs first.

5. Appendix I is being amended to reflect modifications to the Uniform Standards of Professional Appraisal Practice ("USPAP") by the Appraisal Standards Board of the Appraisal Foundation. These include changes to the Record Keeping section of the Ethics Provision and to Standard 3. In

addition, the USPAP *Statements on Appraisal Standards (No. 1-8)*, are being adopted by the Department. These *Statements* are authorized by the bylaws of the Appraisal Foundation and are "specifically for the purpose of clarification, interpretation, explanation or elaboration of USPAP." *Statements* have the full weight of a Standards Rule and can only be adopted by the Appraisal Standards Board after exposure and comment. The Department is required under s. 458.24, Stats., to periodically review USPAP and, if appropriate, revise the administrative rules to reflect revisions to the Standards.

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 Transportation, Dept. of

Notice is hereby given that pursuant to ss. 85.16 (1) and 85.20 (3), Stats., interpreting s. 85.20, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below, to consider the amendment of ch. Trans 4, Wis. Adm. Code, relating to Urban Mass Transit Operating Assistance Program.

Hearing Information

November 3, 1995
Friday
10:00 a.m.

Room 144-B
Hill Farms State Trans. Bldg.
4802 Sheboygan Ave.
Madison, WI

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

An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **October 20, 1995**.

Copies of Emergency Rule and Contact Person

A copy of the emergency rule may be obtained upon request from:

Dick Martin, (608) 266-6812
Division of Transportation Assistance, Room 701
Wis. Dept. of Transportation
P. O. Box 7914
Madison, WI 53707-7914

Alternate formats of the proposed rule will be provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351.

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 85.16 (1) and 85.20 (3)

Statute interpreted: s. 85.20

General Summary of Emergency Rule

This emergency rule amends ch. Trans 4, to clarify the definition of “required local contribution” as allowing only state transit aid recipients to contribute the minimum 20 percent local share of state aid and to expressly prohibit private transportation providers under contract with the provider from contributing to such local share. The emergency rule is also amended

to clarify that the minimum local share applies to the total amount of transit aids provided to the recipient under the State Urban Mass Transit Operating Assistance Program.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

This emergency rule should have no significant adverse impact on small businesses.

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

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

Wisconsin Gaming Commission

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

FINDING OF EMERGENCY

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

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

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

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

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

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

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

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

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

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

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

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

Publication Date: August 25, 1995

Effective Date: August 25, 1995

Expiration Date: January 22, 1996

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
Hearing Dates: October 16 & 18, 1995

EMERGENCY RULES NOW IN EFFECT (2)

Health & Social Services

(Economic Support, Chs. HSS 200--)

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

FINDING OF EMERGENCY

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

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

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

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

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

assistance benefit level. The Department is now proceeding to publish the rules by emergency order to ensure that the funds available for the program are used to assist people who are most in need.

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

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

FINDING OF EMERGENCY

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

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

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

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

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

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

Publication Date: August 30, 1995
Effective Date: September 1, 1995
Expiration Date: January 29, 1996
Hearing Date: October 13, 1995

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

(Petroleum Products, Ch. ILHR 48)

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

FINDING OF EMERGENCY

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

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

(Multi-Family Dwellings, Ch. ILHR 66)

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

FINDING OF EMERGENCY

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Barrier-Free Design, Ch. ILHR 69)

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

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

FINDING OF EMERGENCY

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

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

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

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

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

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Insurance

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

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

FINDING OF EMERGENCY

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Natural Resources

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

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

FINDING OF EMERGENCY

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

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

Publication Date: September 1, 1995
Effective Date: September 1, 1995
Expiration Date: January 29, 1996
Hearing Date: October 16, 1995

EMERGENCY RULES NOW IN EFFECT (4)

State Public Defender

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

FINDING OF EMERGENCY

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

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

ANALYSIS

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

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

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

FINDING OF EMERGENCY

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

The Office of the State Public Defender assigns approximately 40% of its cases annually to private bar attorneys. To ensure that assignments are made within budgetary expenditures that provide efficient and effective representation of the public, the proposed rule is necessary.

ANALYSIS

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

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

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

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

FINDING OF EMERGENCY

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

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

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

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

FINDING OF EMERGENCY

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

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

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

EMERGENCY RULES NOW IN EFFECT (3)

Public Instruction

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

FINDING OF EMERGENCY

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

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

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

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

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

FINDING OF EMERGENCY

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

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

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

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

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

Publication Date: August 21, 1995
Effective Date: August 21, 1995
Expiration Date: January 18, 1996
Hearing Date: November 1, 1995
 [See Notice this Register]

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

FINDING OF EMERGENCY

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

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

Publication Date: August 21, 1995
Effective Date: August 21, 1995
Expiration Date: January 18, 1996
Hearing Dates: November 1 & 7, 1995
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

State Fair Park

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

FINDING OF EMERGENCY AND RULE ANALYSIS

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

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

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

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court System are reluctant to process and charge offenders for relatively minor property-type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee County by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various

weapons prohibitions. There is also included provisions to protect the police horses, which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family-oriented environment at this year's State Fair and other Park events.

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

EMERGENCY RULES NOW IN EFFECT

Commissioner of Transportation

[Commissioner of Railroads]

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

FINDING OF EMERGENCY

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

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

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

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

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

A rule was adopted amending **s. Trans 4.06 (4)**, relating to the Urban Mass transit Operating Assistance Program.

FINDING OF EMERGENCY

Under the current administrative rule, **ch. Trans 4**, recipients of state transit aid must contribute a minimum local share of 20% towards such aid. Under current practice, private transportation providers who contract with the recipient have been permitted to contribute the local share. Public policy considerations require amendment of the rule to make certain that only the recipient is permitted to contribute the local share of transit aid.

The Wisconsin Department of Transportation finds that an emergency exists regarding the public welfare. Without the emergency rule, there would be insufficient lead time for recipients to respond to the rule's impact on their budgets. Also, additional lead time may be required for recipients to re-bid contracts with private transportation providers, if necessary.

Publication Date: September 28, 1995
Effective Date: September 28, 1995
Expiration Date: February 25, 1996

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

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

Agriculture, Trade & Consumer Protection (CR 95–17):

SS. ATCP 29.01, 29.15 and 29.155 – Relating to pesticide worker protection and pesticide application site posting.

Development (CR 95–151):

SS. DOD 17.02 and 17.04 – Relating to the business development initiative program.

Development (CR 95–152):

SS. DOD 28.02 and 28.03 – Relating to the health care provider loan assistance program.

Development (CR 95–159):

Ch. DOD 12 – Relating to the Wisconsin development zone program.

Employe Trust Funds (CR 95–88):

SS. ETF 10.633, 10.70, 10.82, 20.20, 50.31 and 60.51 – Relating to:
a) Deadlines for requesting cancellation of applications for retirement annuities, disability annuities, beneficiary annuities and lump sum payments, and
b) Disclosure of beneficiary designations and other individual personal information.

Employment Relations (CR 95–101):

SS. ER–MRS 22.02, 22.08 and 22.09 – Relating to layoff procedures for employes in the permanent classified civil service not covered by a collective bargaining agreement.

Industry, Labor & Human Relations (CR 95–148):

Ch. ILHR 145 – Relating to active fresh perishable fruit and vegetable processing seasons.

Insurance, Office of the Commissioner of (CR 95–111):

S. Ins 3.39 – Relating to the requirements for Medicare supplement insurance sold in Wisconsin.

Natural Resources (CR 95–98):

S. NR 10.01 (1) (b) and (g) – Relating to the 1995 migratory game bird season.

Public Instruction (CR 95–84):

SS. PI 11.04 and 11.07 – Relating to collaborative agreements for multi-disciplinary team membership and transfer pupils with exceptional educational needs (EEN).

Revenue (CR 95–65):

SS. Tax 2.89, 2.96 and 3.03 – Relating to:
a) Extensions of time to file corporation franchise or income tax returns;
b) The dividends received deduction for corporations; and
c) The requirements for making estimated tax payments for short taxable years.

Transportation, Dept. of (CR 95–86):

SS. Trans 136.03, 138.04, 138.05, 138.09, 139.04, 141.07 & 142.07 and ch. Trans 154 – Relating to vehicle odometers, odometer disclosure, recordkeeping and titling by dealers and nonresidents.

University of Wisconsin System (CR 95–95):

Ch. UWS 17 – Relating to student nonacademic disciplinary procedures.

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.

Corrections, Dept. of (CR 95-92):

An order creating ch. DOC 316, relating to medical, dental and nursing co-payment charge to be paid by inmates and juveniles.
Effective 11-01-95.

Insurance, Office of the Commissioner of (CR 95-43):

An order amending s. Ins 6.63 and creating ch. Ins 28, relating to implementing the requirement of continuing education for insurance intermediaries.
Effective 12-01-95.

Natural Resources (CR 94-71):

An order affecting ss. NR 25.07 and 25.08, relating to quota allocation, quota transfers and commercial fishing for smelt on Lake Michigan and Green Bay.
Effective 11-15-95.

Natural Resources (CR 94-110):

An order amending s. NR 700.03 (intro.) and creating ch. NR 738, relating to the provision of temporary emergency water supplies to people with contaminated residential wells or water supplies when the source of the contamination is pollution from a site or facility subject to s. 144.442, Stats., or a hazardous substance discharge.
Effective 11-01-95.

Natural Resources (CR 95-28):

An order affecting ch. NR 45, relating to regulating public use of state parks, forests and other public lands and waters under the Department's jurisdiction.
Effective 01-01-96.

Natural Resources (CR 95-35):

An order affecting ch. NR 440, relating to incorporation of revisions and additions to the federal new source performance standards.
Effective 01-01-96.

Natural Resources (CR 95-56):

An order affecting ch. NR 30 and chs. NR 400 to 499, relating to clarification and cleanup changes in portions of those chapters.
Effective 01-01-96.

Psychology Examining Board (CR 95-68):

An order creating s. Psy 4.02 (5) and (6), relating to the biennial training requirement for psychologists.
Effective 11-01-95.

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