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NOTICE SECTION

Notice of Hearing Development

Notice is hereby given that pursuant to s. 560.04 (2) (j), Stats., the Wisconsin Department of Development will hold a hearing to consider a proposed order to repeal ss. DOD 6.20 to 6.23; to renumber ss. DOD 6.24; to renumber and amend ss. DOD 6.18 (5); to amend ss. DOD 6.01, 6.03 (16), 6.14 and 6.18 (1) to (4); to repeal and recreate s. DOD 6.15 and to create s. DOD 6.03 (1m), (1r), (4r) and (14r), 6.18 (4) (e) and (5) relating to the community development block grant portion of the Wisconsin development fund at the following place and time: **Department of Development, Room 908, 123 West Washington Avenue, Madison, Wisconsin at 10:00 A.M. on Thursday, January 11, 1996.**

Analysis Prepared by the Department of Development

Section 560.04 (2) (j), Stats., gives the Department of Development the authority to adopt the proposed order. The proposed order interprets s. 560.04 (2) (j), Stats., and relates to federal funding the department receives annually under section 107 (b) (5) of title I of the housing and community development act of 1974.

That federal funding supports the state administered community development block grant portion of the Wisconsin Development Fund. The rules contained in this proposed order relate primarily to the economic development and the public facilities economic development portion of the community development block grant program administered by the Department.

The substantive changes contained in the proposed rule include:

1. The scoring systems and the rating of applications in the current rule used to make funding determinations related to economic development and public facilities economic development applications are replaced by sets of determinations and considerations the Department is required to make under the proposed rule before it may fund applications under either of the programs. For the most part, the determinations and considerations treat all the issues raised by the minimum requirements in the current scoring systems. The significant differences include:

a. A broader view of benefit to low and moderate income persons which allows the low and moderate income requirement to be met by a project that provides job training, child care or transportation to low and moderate income persons as well as a project that creates or retains jobs for low and moderate income persons. This increased flexibility related to benefit for low and moderate income persons parallels a change in the federal rules that allows the state to use these alternative methods of measuring benefit to low and moderate income persons.

b. An examination of the public purpose of the project that considers for both economic development and public facilities economic development applications several items that can be found in the existing s. DOD 6.15 or elsewhere in the subchapter and which also looks at such new considerations for both programs as the extent of poverty, unemployment and other economic factors in the project area; the prospects for new investment and economic development in the project area; the amount of investment that is likely to result from the project; and the willingness of the business to work cooperatively with job service and private industry councils to provide job opportunities to persons with low to moderate income. For economic development projects, the public purpose examination also considers the availability of satisfactory collateral and personal guarantees to assure repayment.

2. Under current rules, public facilities economic development projects may be funded only out of CDBG funds that have been returned to the Department. The proposed rule authorizes the Department to assign up to 20% of each allocation for public facilities economic development grants.

3. Under current rules CDBG funds that have been returned to the Department may be used for public facilities economic development and public facilities projects. The proposed rule allows such funding to also be used for economic development projects.

4. Under current rules, the Department is required to announce the annual allocation of funds between economic development and public facilities by August of the prior year. The proposed rule eliminates that requirement.

5. Under current rules, the maximum amount that a business may receive under the economic development program is \$750,000. The proposed rule instead provides that the maximum amount that may be provided to a local government for the purpose of making a loan to any business is \$1 million.

6. Under current rules, the maximum amount available to assist any business under the public facilities economic development program is \$750,000. The proposed rule reduces the maximum amount that may be provided to a local government to assist a business under the public facilities economic development program to \$500,000. The total a local government may receive under the public facilities program in a year is reduced from \$1.5 million to \$1 million.

7. The proposed rule provides that any program income in the possession of a local government in excess of the limits for that local government must be paid to the Department within 30 days of the local government's receipt of those funds.

8. Under current rules the Department can waive the program income limits to the extent that the excess income will be applied to continue the activities that generated the income. The proposed rule establishes a formal process and criteria for increasing the program income limits in increments equal to 25% of a local government's original limits. Local governments that wish to retain 50% of the excess program income must apply to the Department. To make a determination, the Department must consider the following:

- a. Whether the local government complied with all of the state and federal requirements related to its use of program income.
- b. The number of loans made by the local government out of program income and the total dollar volume of those loans.
- c. The default rate on such loans made by the local government.
- d. The demonstrated need for the increase.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.14, Stats., the proposed rule will have no impact on small businesses. The initial regulatory flexibility analysis as required by s. 227.17 (3) (f), Stats., is as follows:

- a. *Types of businesses affected:* Businesses located within a local government eligible for CDBG funds from the state.
- b. *Description of reporting and bookkeeping procedures required:* None.
- c. *Description of professional skills required:* None.

Fiscal Estimate

The proposed order will produce a fiscal effect on the Department of Development as it is likely to change the amount of program income that will be returned to the Department. However, it is not possible to determine the amount of fiscal effect or even whether it will be a positive or negative fiscal effect. The total amount available to local governments under the community development block grant is not changed by the order as all program income returned to the department is redistributed as additional block grant funding to local governments.

Contact Person

Dennis Fay, General Counsel–608/266–6747

Text of Rule

Pursuant to the authority vested in the Department of Development by s. 560.04 (2) (j), Stats., the Department hereby repeals, renumbers, renumbers and amends, amends, repeals and recreates and creates rules interpreting s. 560.04 (2) (j), Stats., as follows:

SECTION 1. DOD 6.01 is amended to read:

DOD 6.01 **PURPOSE.** The purpose of subchapters I, II and III is to set forth the criteria the department will use in administering the federal funds in the Wisconsin development fund that the department receives pursuant to 42 USC 5301 to 5319, as it may be amended, and 24 CFR 570.480 to 570.496 Part 570.

SECTION 2. DOD 6.03 (1m), (1r), (4r) and (14r) are created to read:

DOD 6.03 (1m) "Business" means a business that benefits from a grant by the department to a local government under the economic development or public facilities economic development programs.

(1r) "CDBG funds" means community development block grant funds awarded to the department by the federal government pursuant to 42 USC 5301 to 5319 as it may be amended.

(4r) "Local government" means a unit of general purpose local government that is eligible to apply for and receive CDBG funds under s. DOD 6.02.

(14r) "Target population" means persons with low to moderate income.

SECTION 3. DOD 6.03 (16) is renumbered 6.03 (13r) and as renumbered is amended to read:

DOD 6.03 (13r) "Wisconsin Small cities development fund grant" means a grant available to an eligible applicants as provided in s. DOD 6.02 local government for the purpose of undertaking economic development projects, public facilities projects that support economic development and public facilities projects.

SECTION 4. DOD 6.14 is amended to read:

DOD 6.14 Applicability. Sections DOD 6.01, 6.02, 6.03 ~~(1), (1m), (1r), (2), (3), (4) (4r) (5), (6), (8), (14r), (15)~~ and (16) and the provisions of this subchapter except for s. DOD 6.16 ~~(f)~~ apply to the economic development program. Sections DOD 6.01, 6.02, 6.03 ~~(1), (1m), (1r), (2), (3), (4r) (6), (8), (10), (14r) (15)~~ and (16) and the provisions of this subchapter except for ss. DOD 6.16 ~~(7) 6.15~~ and 6.18 ~~(1) to (2) (a) and (3), (4) (a), (e) and (d) and (5) to (6)~~ apply to the public facilities economic development program.

SECTION 5. DOD 6.15 and 6.16 are repealed and recreated to read:

DOD 6.15 Economic development program. (1) The department may award a grant under the economic development program upon receipt and consideration of an application from an eligible local government if the department determines all of the following:

- (a) The project serves a public purpose.
- (b) The local government has a community development plan as required by 42 USC 5301 to 5319.
- (c) The project costs are reasonable.
- (d) All sources of project financing will be committed prior to the disbursement of the grant.
- (e) The project is financially feasible.
- (f) The business that will benefit from the economic development grant has the economic ability to repay the funds.
- (g) The project will likely retain or create jobs in this state.
- (h) The percentage of jobs retained or created that are made available to persons in the target population will likely exceed the percentage specified in the application manual.
- (i) Financing for the project is unavailable from any other source on reasonably equivalent terms.
- (j) The business that will benefit from the economic development grant will contribute at least 50% of the total cost of the project from private funding sources.

(k) The project includes job training, child care or transportation activities under 24 CFR 570.483 (b) (2) (v) designed to benefit low and moderate-income persons, job creation or retention activities under 24 CFR 470.483 (b) (4) designed to benefit low and moderate-income persons or other activities under 24 CFR Part 570 that meet the national objectives of benefit to low and moderate-income persons through job creation.

(2) To make a determination under sub. (1) (a), the department shall consider all of the following:

- (a) The extent of poverty, unemployment and other economic factors in the area of the project.
- (b) The prospects for new investment and economic development in the area.

(c) The amount of investment that is likely to result from the project.

(d) The total cost per job created or retained.

(e) The amount of wages and benefits to be provided by the business.

(f) The willingness of the business to work cooperatively with local job service offices and private industry councils to identify and offer job opportunities to persons in the target population.

(g) The availability of satisfactory collateral and personal guarantees to assure repayment of the economic development grant.

(h) Whether the award will provide the business with an unreasonable competitive advantage over other similar Wisconsin businesses in the vicinity of the project.

(i) Whether the project will involve relocation of a business and displacement of jobs from one local government in Wisconsin to another local government in Wisconsin.

(3) The amount of funds requested for each job to be created or retained may not exceed \$20,000. The amount awarded shall depend upon the department's consideration of the factors in sub. (2).

DOD 6.16 Public facilities economic development program. (1) The department may award a grant under the public facilities economic development program upon receipt and consideration of an application from an eligible local government if the department determines all of the following:

(a) Each of the items in s. DOD 6.15 (1) (a), (c), (d), (e), (g) and (h).

(b) The local government has a citizen participation plan as required under 24 CFR 570.486 (a).

(c) The local government will contribute at least 25% of the total cost of the project from funding sources other than the federal or state government.

(2) To make a determination under sub. (1) (a), the department shall consider each of the items in s. DOD 6.15 (2) (a) to (f), (h) and (i).

(3) The amount of public facility economic development program funds requested by an eligible local government for each job created or retained may not exceed \$10,000. The amount awarded shall depend upon the department's consideration of the factors set forth in sub. (2).

SECTION 6. DOD 6.18 (1) to (4) (a) are amended to read:

DOD 6.18 (1) Out of each annual ~~allotment grant of federal Wisconsin development CDBG funds administered by the department from the federal government~~, the department may set aside up to 75% for the economic development program, up to 20% for the public facilities economic development program, or and up to 75% for the public facilities competition program administered under subch. I. ~~The department shall announce the amount of the set aside no later than August 1 of the preceding year.~~ The department shall report semiannually to the chairs of the economic development standing committees of the legislature on the status of the program. ~~Funds in Program income received by the department's revolving loan fund, consisting of department from repayments from of prior economic development program awards, shall be used allocated for economic development, public facilities economic development or public facilities program awards.~~

(2) (a) The maximum amount ~~available of CDBG funds that may be awarded to any local government for the purpose of making a loan to any a~~ business under the economic development program ~~is shall be \$750,000 \$1 million. The maximum amount available to any business during any 5 year period shall be \$1 million.~~ The maximum aggregate amount available of CDBG funds ~~that may be awarded under the economic development program to any local government, including any amount loaned to a business, is shall be~~ 1.5 million per calendar year.

(b) The maximum amount ~~available to assist any of CDBG funds that may be awarded to any local government for the benefit of a business under the public facilities economic development program is \$750,000~~ shall be \$500,000. The maximum aggregate amount available of CDBG funds that may be awarded to any local government under the public facilities economic development program ~~is \$1.5~~ shall be \$1 million per calendar year.

(3) ~~Each recipient of eligible local government that is awarded economic development program funds may retain a cumulative amount of program income from all grants awarded after January 1, 1987 subject to subs. (4), and (5) and (6) for the purpose of establishing to establish and capitalize an economic development revolving loan fund. The recipient of funds A local government that establishes an economic development revolving loan fund must comply shall administer and use the fund in accordance with all of the requirements established by the federal government under 24 CFR 570.489 (f) and the procedures established by the department.~~

(4) (a) ~~Retained Subject to pars. (am) to (e) and subs. (5) and (6), retained cumulative program income from grants awarded after January 1, 1987 may not exceed:~~

1. \$100,000 for ~~an applicant a local government~~ with a population of 1,000 or less.
2. \$150,000 for ~~an applicant a local government~~ with a population of more than 1,000 but less than 2,000.
3. \$250,000 for ~~an applicant a local government~~ with a population of 2,000 or more but less than 4,000.
4. \$500,000 for ~~an applicant a local government~~ with a population of 4,000 or more but less than 10,000.
5. \$750,000 for ~~an applicant a local government~~ with a population of 10,000 or more.

SECTION 7. DOD 6.18 (4) (am) is created to read:

DOD 6.18 (4) (am) As an alternative to the cumulative program income limits in par. (a) a local government may elect to retain program income from grants received prior to January 1, 1987 in excess of the limits in par. (a). A local government shall make the election on a form prescribed by the department. Any local government that makes the election under this paragraph, may not retain program income generated after the effective date of this rule from grants received on January 1, 1987 or thereafter except as provided in sub. (5).

SECTION 8. DOD 6.18 (4) (b) to (d) are amended to read:

(b) All program income ~~from grants received by a local government~~ in excess of ~~these amounts~~ the limits in par. (a) ~~or (am), if the local government makes the election under par. (am), shall be returned paid to the state department within 30 days of receipt. The department shall use such program income to fund eligible economic development, public facilities economic development and public facilities activities, except that the department may waive this requirement to the extent such income is applied to continue the activities from which the income was derived.~~

(c) A ~~recipient of economic development program funds which will generate local government that will generate and retain~~ program income in excess of the amounts allowed in this section ~~from grants awarded prior to January 1, 1987 is par. (a), or (am) if the local government makes the election under par. (am), shall not be eligible to retain the excess~~ program income ~~from grants awarded after January 1, 1987, except as provided in par. (b) sub (5).~~

(d) All program income ~~from grants awarded prior to January 1, 1987 shall be retained used by the recipient a local government in accordance with 24 CFR Part 570.489 (e) (2) and (f) and the local government's original contract provisions with the department. The department may require the recipient to return any program income from grants awarded prior to January 1, 1987 if funds are not being spent in accordance with federal program regulations and contractual provisions or if program recordkeeping and reporting procedures are not being met.~~

SECTION 9. DOD 6.18 (4) (e) is created to read:

DOD 6.18 (4) (e) The department may require a local government to return program income if any of the following occurs:

1. The local government fails to use such funds in accordance with the requirements established by the federal government and the department.
2. The local government fails to comply with the recordkeeping and reporting requirements established by the federal government and the department.
3. The local government fails to make any economic development loans with the revolving loan fund for a period of two consecutive years and after receiving a notice from the department, fails to make any economic development loans for a period of 6 months.
4. The local government discontinues its economic development program following the close out of its most recent contract with the department.

SECTION 10. DOD 6.18 (5) is renumbered (6) and as renumbered is amended to read:

DOD 6.18 (6) Any ~~municipality establishing local government that establishes~~ an economic development revolving loan fund pursuant to this subchapter shall report annually to the department on the use of such a fund on forms and at such times as prescribed by the department.

SECTION 11. DOD 6.18 (5) is created to read:

DOD 6.18 (5) (a) Any local government that desires to retain program income in excess of the limits established under sub. (4) (a) or (am), shall submit an application to the department setting forth such information as may be required by the department to justify the retention of 50% of the program income in excess of the limits.

(b) When evaluating applications under par. (a), the department shall consider the following factors:

1. Whether the local government has complied with the administrative, underwriting, recordkeeping and other requirements established by the federal government and the department.
2. The total number and amount of loans made by the local government using program income in the revolving loan fund.
3. The default rate on loans made by the local government using program income in the revolving loan fund.
4. The demonstrated need for an increase above the local government's program income limit.

(c) Any increase above a local government's original program income limit shall be made in increments equal to 25% of the limit established under sub (4) (a) or (am).

(d) Local governments authorized by the department to retain excess program income may keep 50% of the excess program income received, subject to the program income limits in par. (c). The balance of such program income shall be paid to the department within 30 days of receipt.

SECTION 12. DOD 6.20 to 6.23 are repealed.

SECTION 13. DOD 6.24 is renumbered 6.20.

Notice of Hearing Development

Notice is hereby given that pursuant to s. 560.14 (5) (b), Stats., the Wisconsin Department of Development will hold a hearing to consider the adoption of a proposed order to repeal ss. DOD 15.03 (4), 15.035 (4) and 15.04 (4) to (6) and (9); to renumber ss. DOD 15.03 (5) to (7), 15.04 (3), (7) and (8), 15.05, 15.06, 15.07 and 15.08; to renumber and amend ss. DOD 15.05 (1) and 15.06 (1) and (2); to repeal and recreate ss. DOD 15.03 (3) and 15.035 (3); and to create ss. DOD 15.03 (5) (e), 15.04 (3), 15.045, 15.05 and 15.07 (3) relating to the community-based economic development program at the following place and time: **Department of Development, Room 908, 123 West Washington Avenue, Madison, Wisconsin at 10:00 A.M. on Tuesday, January 9, 1996.**

Analysis Prepared by the Department of Development

Section 560.14 (5) (b), Stats., gives the Department the authority to adopt the proposed order which interprets s. 560.14, Stats. 1995 Wis. Act 27 created a new program within the Community-Based Economic Development Program for grants to promote regional economic development. The primary purpose of the proposed order is to create the process by which the Department will make grants for regional economic development activities and establish the criteria the Department will consider when comparing applications for regional economic development grants.

Eligible applicants for the regional economic development grants are community-based economic development organizations that jointly apply with a political subdivision in the region where the economic development activity will occur. The proposed economic development activity must be unique, must be consistent with the economic development policy of the political subdivision, must be likely to stimulate investment or create or retain jobs in the region and must be supported by other cash or in-kind contribution.

The criteria that will be used to compare applicants include, the level of economic distress in the region, the amount of investment that is likely to result, the impact on the economy of the region, the relationship of the proposed activities to other economic development efforts in the region, and all of the other criteria that are common to the existing Community-Based Economic Development Programs.

Grants for regional economic development in any fiscal year may equal no more than the greater of \$100,000 or 10% of the fiscal year funding for the entire Community Based Economic Development Program.

The other substantial change contained in the proposed rule relates to the criteria the Department must consider before making any of the various grants under the Community-Based Economic Development Program. In place of the separate sets of criteria contained in the current rules, the proposed order substitutes, to the extent statutory authority allows, a single set of criteria which the Department will employ to examine applications for each of the grant types (i.e.: business assistance grants under s. DOD 15.03, economic diversification planning grants under s. DOD 15.035, business incubator grants under s. DOD 15.04 and the new regional economic development grants under the proposed s. DOD 15.045). This movement toward a single set of criteria is part of an overall effort to produce greater consistency in the Department's economic development grant determinations to the extent that the governing statutes allow.

Other proposed changes include the elimination of the 7% limitation on administrative expense for incubator grants which is contained in the proposed to be repealed s. DOD 15.04 (9) and the addition of another eligible use for business assistance grants under s. DOD 15.03 which provides that funds may be expended for development or implementation of a plan which substantially meets the intent of the section.

Fiscal Estimate

Adoption of the order will produce no fiscal effect on the Department of Development. The order does provide for the shifting of up to the greater of \$100,000 or 10% of each fiscal year appropriation from the other Community Based Economic Development Program categories to the regional economic development grants. The total amount available to local governments and community-based organizations under the Community Based Economic Development Program is not changed by the proposed order.

Text of Rule

Pursuant to the authority vested in the Department of Development by s. 560.14 (5) (b), Stats., the Department of Development adopts rules interpreting s. 560.14 (4), Stats., as follows:

SECTION 1. DOD 15.03 (3) is repealed and recreated to read:

DOD 15.03 (3) An application by a community-based organization for a grant under this section shall be in such form as the department may require and shall include information relevant to all the applicable criteria in s. DOD 15.05 (1).

SECTION 2. DOD 15.03 (4) is repealed.

SECTION 3. DOD 15.03 (5) to (7) are renumbered (4) to (6).

SECTION 4. DOD 15.03 (5) (e) is created to read:

DOD 15.03 (5) (e) Development or implementation of a plan which substantially meets the intent of this section.

SECTION 5. DOD 15.035 (3) is repealed and recreated to read:

DOD 15.035 (3) An application by a political subdivision for a grant under this section shall be in such form as the department may require and shall include information relevant to all the applicable criteria in s. DOD 15.05 (1).

SECTION 6. DOD 15.035 (4) is repealed.

SECTION 7. DOD 15.04 (3) is renumbered 15.04 (2).

SECTION 8. DOD 15.04 (3) is created to read:

DOD 15.04 (3) An application by a community based organization for a grant under this section shall be in such form as the department may require and shall include information relevant to all the applicable criteria in s. DOD 15.05.

SECTION 9. DOD 15.04 (4), (6) and (9) are repealed.

SECTION 10. DOD 15.04 (7) and (8) are renumbered 15.04 (4) and (6).

SECTION 11. DOD 15.045, is created to read:

DOD 15.045 Regional economic development grants. (1) The department may make a grant under this section to a community-based economic development organization for regional economic development activity if all of the provisions of s. 560.14 (4) (a), Stats., apply.

(2) Before awarding a grant under this section, the department shall consider all of the following:

(a) Each of the factors in s. DOD 15.05 (1) (a).

(b) The prospects for new investment and economic development in the region.

(c) The amount of investment that is likely to result from the economic development activity.

(d) The likely impact of the economic development activity on the economy of the region.

(e) The likelihood that one or more businesses will relocate outside the region if the economic development activity does not occur.

(f) The size of the region affected by the economic development activity.

(g) The likelihood that the economic development activity will enhance other economic development efforts, compliment an existing development zone, development opportunity zone or enterprise development zone project, or build upon other economic development activities in the region.

(h) The likelihood that the economic development activity will result in increased spending in the region by persons who reside outside the region.

(3) An application for a grant under this section shall be in such form as the department may require and shall include information relevant to the criteria in subs. (1) and (2).

SECTION 12. DOD 15.05 is renumbered 15.06 and as renumbered, 15.06 (1) is amended to read:

DOD 15.06 (1) Out of each annual appropriation under s. 20.143 (1) (fg), Stats., the department shall set aside an amount equal to the greater of \$100,000 or 10% for grants under s. DOD 15.045, no less than 25% for grants made under ss. DOD 15.03 and 15.035 and no less than 25% for grants made under s. DOD 15.04. Following the receipt and examination of applications, the department shall determine that part of the remainder of the appropriation that shall be used for grants under ss. DOD 15.03 and 15.035 and that part that shall be used for grants under s. DOD 15.04.

SECTION 13. DOD 15.05 is created to read:

DOD 15.05 Grant considerations. (1) Before making a determination under ss. DOD 15.03, 15.035 or 15.04, the department shall consider all of the following:

(a) The level of economic distress in the area, as measured by the following factors:

1. The unemployment rate in the area.

2. The percentage of persons in the area with low to moderate income.

3. The percentage of households in the area receiving aid to families with dependent children under s. 49.19, Stats.

4. The number of persons in the area permanently laid off because of a major business closing subject to s. 109.07, Stats.

5. The extent to which the property values in the area are declining.

6. The extent to which the population in the area is declining.

(b) The need and demand for the project.

(c) The need for state financial assistance.

(d) The qualifications of the persons who will be managing and operating the project.

(e) The level of community support, including financial support, for the project.

(f) The viability of the project.

(g) The likelihood that the project will result in the creation or retention of jobs.

(h) The likelihood that the project will result in business development.

(i) Whether the project is located in or near an area that has been designated as a development zone under s. 560.71, Stats., a development opportunity zone under s. 560.795, Stats., or an enterprise development zone under s. 560.797, Stats.

(j) To the extent applicable, the factors listed in 15.05 (2).

(2) In addition to the factors in sub. (1) the department shall consider the factors in pars. (a) and (b) before making a grant to a community-based organization under s. DOD 15.04.

(a) The potential of the business incubator or technology-based incubator to help start businesses.

(b) The potential of the business incubator or technology-based incubator to provide employment opportunities.

(3) In addition to the factors in subs. (1) and (2), the department shall consider the factors in pars. (a) to (d) before making a grant to a community-based organization for a revolving loan fund under s. DOD 15.04 (1) (d).

(a) The need and demand for a tenant revolving loan fund.

(b) Local bank support for and participation in the tenant revolving loan fund.

(c) The availability of local professionals to participate in tenant revolving loan fund activities.

(d) The operating plan for the tenant revolving loan fund.

SECTION 14. DOD 15.06 is renumbered 15.07 and as renumbered, 15.07 (1) and (2) are amended to read:

DOD 15.07 (1) The department shall prepare an application manual ~~manuals for grants under ss. DOD 15.03, 15.035, 15.04, and 15.045~~ which it may update as needed. The ~~manual manuals~~ shall contain the application procedures, requirements and instructions for funding under this chapter ~~and shall be made available to potential applicants at least 2 months before the annual competition.~~

(2) The department shall hold ~~an annual competition~~ ~~competitions~~ for grants under s. ~~DOD 15.03, an annual competition for grants under s. DOD 15.035 and an annual competition for grants under s. DOD 15.04 ss. DOD 15.03, 15.035, 15.04 and 15.045.~~ The competition for grants under s. DOD 15.04 shall be divided into 4 categories for s. DOD 15.04 (1) (a), (b), (c) and (d) grant determinations.

SECTION 15. DOD 15.07 (3) is created to read:

DOD 15.07 (3) The department may make a grant under ss. DOD 15.03, 15.035, 15.04 or 15.045 after examining the application and any other information it deems relevant if, based upon the applicable criteria in ss. DOD 15.045 and 15.05, the application submitted by the applicant compares favorably to other applications received during the fiscal year. The department shall fund only those proposals which, in its judgement, effectively address the applicable criteria even if the department's determination results in the expenditure of less than the total funding allocated for such grants under s. DOD 15.06 (1).

SECTION 16. DOD 15.07 and 15.08 are renumbered 15.08 and 15.09.

Notice of Hearing Board of Nursing

Notice is hereby given that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b), 227.11 (2), 441.01 (3) and 441.16 (3), Stats., and interpreting s. 441.16 (4), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to repeal and recreate N 8.08 (1), relating to requirements for malpractice insurance coverage for advanced practice nurse prescribers.

Hearing Information

January 11, 1996
Thursday
2:15 p.m.

Room 179A
1400 E. Washington Ave.
Madison, Wisconsin

Appearances At The Hearing

Interested persons are invited to present information at the hearing. Persons 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 the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **January 26, 1996** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 441.01 (3) and

441.16 (3)

Statute interpreted: s. 441.16 (4)

In this proposed rule-making order, the Board of Nursing repeals and recreates s. N 8.08 (1), to better define the requirements for malpractice insurance coverage for advanced practice nurse prescribers (APNPs). The current rule specifies merely that APNPs must "maintain in effect malpractice insurance in an amount not less than the amount set forth in s. 655.23 (4), Stats." The rule fails to specify that the insurance policy must provide individual coverage rather than shared coverage. In shared

coverage, the policy limits apply to malpractice incidents, regardless of the number of individual insured parties who are involved. The current rule also does not account for APNPs who practice in employment settings where they are covered under the patient compensation fund, and APNPs who are employed by state and local governmental subdivisions and who are therefore immune from personal liability while so employed.

Paragraph (a) provides that APNPs who are not covered by an employer's policy and who are not exempt must maintain personal liability malpractice insurance.

Paragraph (b) applies to APNPs who are employed by a health care provider which is not covered under the patients compensation fund. Such an APNP must have individual coverage; or, where the APNP is covered under the employer's shared group policy, must certify that he or she shall not prescribe independently except under the supervision of an individual physician who, as such, has patient compensation fund coverage; or, where the APNP is covered under the employer's group policy which provides qualifying individual coverage for the APNP, must certify that the APNP will not prescribe independently other than as the employe of that health care provider, or as otherwise exempted from liability or covered under the patients compensation fund.

Paragraph (c) provides that an APNP who is employed by a health care provider covered under the patient compensation fund must certify that he or she shall not prescribe independently except as an employe of the covered health care provider, or as otherwise exempted from liability or individually covered by qualifying malpractice insurance.

Paragraph (d) provides that an APNP who is employed by an exempt governmental subdivision must certify that he or she shall not prescribe independently except as an employe of that subdivision, or as otherwise covered by the patients compensation fund or individually covered by qualifying malpractice insurance.

Text of Rule

SECTION 1. N 8.08 (1) is repealed and recreated to read:

N 8.08 Malpractice insurance coverage. (1) Advanced practice nurse prescribers shall maintain in effect malpractice insurance as follows:

(a) An advanced practice nurse prescriber who engages in independent prescribing other than as the employe of a group practice under par. (b) 3., as the employe of a health care provider, as defined in s. 655.001 (8), Stats., under par. (c), or as the employe of a governmental subdivision, as defined at s. 180.0103, Stats., shall maintain personal liability malpractice coverage in an amount not less than the amounts set forth in s. 655.23 (4), Stats.

(b) An advanced practice nurse prescriber who practices as the employe of a health care provider, where the employing health care provider is a partnership under s. 655.002 (1) (d), Stats., a corporation under s. 655.002 (1) (e), Stats., or a cooperative sickness care association under s. 655.002 (1) (f), Stats., shall submit to the board one of the following:

1. Evidence that the nurse maintains personal liability coverage in the amounts specified in s. 655.23 (4), Stats.

2. Evidence that the nurse has malpractice coverage under a group liability policy providing shared employe coverage for the nurse in the amounts set forth in s. 655.23 (4), Stats. An advanced practice nurse prescriber covered under such a group policy shall certify on forms provided by the board that the nurse does not and shall not engage in any prescribing practice other than under the direction and supervision of a physician.

3. Evidence that the nurse has malpractice insurance coverage under a group liability policy providing individual coverage for the nurse in the amounts set forth in s. 655.23 (4), Stats. An advanced practice nurse prescriber covered under such a group policy shall certify on forms provided by the board that the nurse does not and shall not engage in independent prescribing other than as the employe of the group practice, as the employe of a health care provider under par. (c), or as the employe of a governmental subdivision under par. (d).

(c) An advanced practice nurse prescriber who practices as the employe of a health care provider, where the employing health care provider practices in his or her individual capacity under s. 655.002 (1) (a), (b) or (c), Stats., where the employing health care provider is an ambulatory surgery center under s. 655.002 (1) (g), Stats., where the employing health care provider is a hospital under s. 655.002 (1) (h), Stats., where the employing health care provider is an affiliate of a hospital under s. 655.002 (1) (i), Stats., where the employing health care provider is a hospital-connected nursing home under s. 655.002 (1) (j), Stats., or where the employing health care provider and its employes otherwise qualify for coverage under s. 655.005 (2), Stats., shall certify on forms provided by the board that the advanced practice nurse

prescriber does not and shall not engage in independent prescribing other than as the employe of such health care provider, as the employe of a group practice under par. (b) 3., or as the employe of a governmental subdivision under par. (d).

(d) An advanced practice nurse prescriber who practices exclusively as the employe of a governmental subdivision, as defined under s. 180.0103 (10), Stats., shall certify on forms provided by the board that the advanced practice nurse prescriber does not and shall not engage in independent prescribing other than as the employe of such governmental subdivision, as the employe of a group practice under par. (b) 3., or as the employe of a health care provider under par. (c).

Note: Forms are available from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 480.06, Stats., and interpreting ss. 480.01, 480.02, 480.14 and 480.16, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create ch. RL 127, relating to the sale of real estate at an auction.

Hearing Information

**January 29, 1996
Monday
10:00 A.M.**

**Room 180
1400 East Washington Ave.
Madison, WI**

Appearances at the Hearing:

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

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

Written comments must be received by **February 12, 1996** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 227.11 (2) and 480.06

Statutes interpreted: ss. 480.01, 480.02, 480.14 and 480.16

In this proposed rule-making order, the Department of Regulation and Licensing sets forth the conditions under which a registered auctioneer or auction company may negotiate the sale of real estate, manage or call an auction of real estate and complete contractual and conveyance forms relating to an auction.

Section RL 127.01 sets forth the authority for the proposed rules. These rules are based on the definition of "auction," "auction company" and "auctioneer" in s. 480.01, Stats., and the rules interpret s. 480.02 (2) (j), Stats., relating to the applicability of ch. 480, Stats., to real estate licensees and other licensees.

Section RL 127.02 states that a registered auctioneer or an auction company may manage or call an auction on real estate by virtue of being registered as an auctioneer or auction company.

Section RL 127.03 states that a registered auctioneer or an auction company who or which also holds a real estate license may prepare contracts or other documents necessary to transfer title to the real estate and may conduct other activities authorized by the real estate license; however, a registered auctioneer or auction company who or which does not hold a real estate license may not perform services which require a real estate license, such as preparing contracts or related forms, distributing to prospective buyers written information about the real estate or conditions affecting it which have not been provided by the owner or owner's agent, or negotiating separately from the actual calling of the auction. The distinction relating to distributing written information about the real estate or conditions affecting the real estate is based on the fact that real estate licensees have received education and training relating to inspecting and investigating for material facts and disclosing material adverse facts to prospective purchasers. Thus, their license authorizes and requires them to perform such activities. Registered auctioneers do not have similar training and education as a condition of their registration and they are not authorized to perform such duties.

Section RL 127.04 sets forth the type of contractual form which a registrant must use for agreeing to negotiate, manage or call an auction of real estate. This rule distinguishes between forms which may or may not be used, depending on whether the registered auctioneer or auction company is also a real estate licensee or is not a real estate licensee.

Section RL 127.05 sets forth the obligation of an auctioneer or auction company to determine whether the real estate to be auctioned is subject to an exclusive listing contract with a real estate broker and sets forth conditions on the auctioneer's or auction company's right to contract for services or receive and hold trust funds.

Section RL 127.05 forbids an auctioneer or auction company from soliciting an owner to sell real estate at an auction if the auctioneer or auction company knows that the real estate is subject to an exclusive real estate listing contract.

Text of Rule

SECTION 1. Chapter RL 127 is created to read:

Chapter RL 127

SALE OF REAL ESTATE AT AUCTION

RL 127.01 Authority. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.01, 480.14 and 480.16, Stats.

RL 127.02 Auction of real estate. (1) **AUCTIONEER.** An auctioneer may engage in, or advertise or otherwise hold himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of real estate at an auction, and may handle sales proceeds, down payments, earnest money deposits or other trust funds received by the auctioneer on behalf of the auctioneer's principal or any other person at or as a result of an auction of real estate.

(2) **AUCTION COMPANY.** An auction company may manage an auction of real estate or may have primary responsibility for handling sales proceeds, down payments, earnest money deposits or other trust funds

received by the auction company on behalf of the auction company's principal or any other person at or as a result of an auction of real estate.

RL 127.03 Limitations. (1) REGISTRANT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. A registrant who is licensed as a real estate broker and who conducts an auction of real estate listed for sale with the registrant, or a registrant who is licensed as a real estate broker or salesperson and who conducts an auction of real estate listed for sale with the registrant's real estate broker–employer may prepare contracts or other documents necessary to transfer title to the real estate or conduct any other activities requiring a real estate license under ch. 452, Stats., and chs. RL 11 to 26.

(2) REGISTRANT NOT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. (a) A registrant who is not licensed as a real estate broker or salesperson may:

1. Distribute written information describing real estate or the condition of real estate to be auctioned, provided that the information has been made available by the owner or a real estate licensee.

2. Provide access to real estate for the purpose of permitting prospective buyers to view the real estate.

3. Conduct inquiries in person, by telephone or by other media to determine whether the person being contacted is interested in bidding upon the real estate to be auctioned.

4. Perform other tasks relating to conducting an auction which do not require a real estate license under ch. 452, Stats.

(b) A registrant who is not licensed as a real estate broker or salesperson may not perform activities which require a real estate license under ch. 452, Stats., including but not limited to:

1. Preparing any contracts or other documents necessary to transfer title to real estate.

2. Distributing to prospective buyers written information about the real estate or conditions affecting the real estate which has not been provided by the owner or owner's agent.

3. Negotiating with a prospective buyer within the meaning of s. 452.01 (5m), Stats., other than by conducting an auction.

RL 127.04 Contract. A registrant shall have a written contract with the owner of real estate to be sold at an auction, or the owner's agent, which shall specify the terms and conditions upon which the auctioneer or auction company accepts the real estate for sale at auction. The following conditions apply:

(1) A registrant who is licensed as a real estate broker under ch. 452, Stats., shall use the appropriate approved listing contract form required under ch. RL 16, when contracting with the owner to conduct an auction of real estate, and shall include provisions which comply with ch. RL 124.

(2) A registrant who is licensed as a real estate salesperson shall use the appropriate approved listing contract form required under ch. RL 16, when

contracting with the owner to conduct an auction of real estate if the salesperson is employed by a real estate broker, and shall include provisions which comply with ch. RL 124.

(3) A registrant who is not licensed as a real estate broker under ch. 452, Stats., shall use a contract that complies with ch. RL 124.

RL 127.05 Real estate subject to exclusive listing contract. Prior to entering into any contract for the sale of real estate at an auction, the registrant shall determine whether the real estate is subject to an exclusive real estate listing contract. If the real estate to be sold at an auction is subject to an exclusive real estate listing contract between the seller and a real estate broker other than the registrant, the registrant:

(1) May only enter into a contract under s. RL 127.04, with the real estate broker holding the exclusive real estate listing contract on the real estate.

(2) May not receive any sales proceeds, down payments, earnest money deposits or other trust funds as a result of an auction of the real estate, unless the contract under sub. (1) authorizes the registrant to do so.

RL 127.06 Solicitation of owners with exclusive listing contract prohibited. A registrant may not solicit an owner to sell real estate at an auction if the registrant knows that the real estate is subject to an exclusive real estate listing contract.

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 Ave., Room 171
P.O. Box 8935
Madison, WI 53708

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

Employment Relations-Merit Recruitment & Selection

Rules adopted revising **ch. ER-MRS 22**, relating to layoff procedures for employees 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 employees. 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 employees 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 employees. 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 employees within the classified civil service. The current layoff procedures do not allow an affected employee 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 employees who might otherwise be retained by the State as being the most qualified employees, 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 employees 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 employees are entitled to by law.

Because employee 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 employees 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
Extension Through: January 7, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Wisconsin Gaming Commission

1. 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
Hearing Date: September 11, 1995

2. Rules were adopted creating **ch. WGC 45**, relating to licensing requirements for the conduct of a raffle.

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:

As a result of the passage of 1995 Wis. Act 27, s. 563.935, Stats., was created, and the amending of existing s. 563.93, Stats. These two statutes provide distinction between a Class A and a Class B raffle license authorized by the Wisconsin Gaming Commission's Office of Charitable Gaming. It has been determined that administrative rules must be promulgated to address the statutory changes.

The new rules are created to establish licensing criteria relating to the conduct of raffles authorized under a Class A or Class B raffle license. Without the promulgation of these rules, authorized raffles would be subject to inconsistencies, incorrect interpretations and mistakes contrary to the intent of the statute.

Publication Date: November 17, 1995
Effective Date: November 17, 1995
Expiration Date: April 16, 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
Hearing Dates: June 13 & 15, 1995
Extension Through: January 31, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Health and Social Services

(Health, Chs. HSS 110—)

1. 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
Extension Through: January 26, 1996

2. Rules adopted revising chs. HSS 152, 153 and 154, relating to estate recovery under certain aid programs.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 9126 (32g) (b) of 1995 Wis. Act 27 directed the Department to promulgate rules for implementation of s. 49.482 (5), Stats., as created by Act 27, using emergency rulemaking procedures, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1995 Wis. Act 27 created s. 49.482, Stats., to require the Department to file a claim against the estate of a person who received assistance under s. 49.48, Stats., and ch. HSS 152 in paying for treatment of chronic renal disease, under s. 49.483, Stats., and ch. HSS 154 in paying the medical costs of adult cystic fibrosis, or under s. 49.485, Stats., and ch. HSS 153 in paying for blood products and supplies used in the home treatment of hemophilia, or against the estate of the surviving spouse of a person who received the assistance.

Section 49.482 (5), Stats., as created by Act 27, requires the Department to promulgate rules that establish standards for determining whether the recovery of the assistance would work an undue hardship in individual cases. If an undue hardship is found to exist, the Department is directed to waive application of the recovery requirement in that case.

This rulemaking order contains standards on the basis of which the Department will decide if recovery of assistance from the estate of a recipient or the estate of the recipient's surviving spouse would constitute an undue hardship in individual cases. If an undue hardship is found to exist, the Department is directed to waive application of the recovery requirement in that case.

This rulemaking order contains standards on the basis of which the Department will decide if recovery of assistance from the estate of a recipient or the estate of the recipient's surviving spouse would constitute an undue hardship to an heir or beneficiary of the estate. The order also establishes the application and review processes for an undue hardship waiver and the applicant's appeal rights. The provisions are identical to those currently used for undue hardship waivers from estate claims made to recover Medical Assistance benefits.

Publication Date: October 31, 1995
Effective Date: November 1, 1995
Expiration Date: March 30, 1996

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
Extension Through: January 26, 1996

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
Hearing Date: November 15, 1995

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
Hearing Date: December 11, 1995

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 (2)

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.

1. 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
Extension Through: December 10, 1995

2. Rules adopted amending **ss. Ins 6.57 (4), 6.58 (5) (a) and 6.59 (4) (a)**, relating to the fees for listing insurance agents and renewal of corporation licenses and other licensing procedures.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: In the biennial budget passed by the legislature, the permissible fees collected by OCI were raised for certain activities. The implementation of the increased fees require a rule change. These increased fees were utilized in

preparing OCI's budget. Without the increased fees, OCI may not have the revenue needed to balance its budget. The normal rulemaking procedure has been started but, even without unforeseen delays, the changes will not take effect until near the end of the current fiscal year. Therefore, it is necessary to change the rules with an emergency rule in order to provide adequate and necessary revenues.

Publication Date: October 9, 1995
Effective Date: October 9, 1995
Expiration Date: March 8, 1996

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 (3)

State Public Defender

1. 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

2. 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

- Rules were adopted revising **ch. PD 6**, relating to payment of attorney fees.

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 to establish procedures for determining clients' ability to pay and for referring uncollected accounts to the department of administration for collection. The proposed rules also establish that the agency shall provide written notice to clients of the repayment obligation for the cost of legal representation. 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: November 20, 1995
Effective Date: November 20, 1995
Expiration Date: April 19, 1996

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: January 19, 1996

- 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

- 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

EMERGENCY RULES NOW IN EFFECT

Regulation and Licensing

Rules adopted amending s. **RL 2.02**, and creating **ch. RL 9**, relating to establishing a procedure for determining whether an applicant for credential renewal is liable for any delinquent taxes.

FINDING OF EMERGENCY

Under statutes created by 1995 Wis. Act 27, the Department of Regulation and Licensing must deny applications for license renewal filed by applicants who are liable for delinquent state taxes. These provisions first apply to applications submitted to the Department of Regulation and Licensing or to an examining board or affiliated credentialing board attached to the department to renew credentials that expire on or after January 1, 1996.

Section 440.03 (12), Stats., as created by 1995 Wis Act 27, requires the department to establish a procedure for making a determination concerning the liability of credential holders for delinquent taxes owed to this state. Newly created s. 440.08 (2r), Stats., provides that before granting an application to renew a credential issued under chs. 440 to 480, Stats., the department shall determine in accordance with the procedure established under s. 440.03 (12), Stats., whether the applicant for a credential renewal is liable for any delinquent taxes owed to this state. If the department determines that an applicant is liable for any delinquent taxes owed to this state, the department is required to deny the application, subject to the right of the applicant to have the denial reviewed at a hearing before the department.

Because the treatment of these provisions first apply to renewals applications that expire on or after January 1, 1996, and the department has determined that there are at least 40,000 credential holders whose credential will expire on January 1, 1996, preservation of the public peace, health, safety or welfare necessitates putting these rules into effect prior to the time it would take effect if the department complied with the notice, hearing and publication requirements set forth in ch. 227, Stats.

In this order the Department of Regulation and Licensing creates ch. RL 9 to establish a procedure for making the determination whether an applicant for credential renewal is liable for any delinquent taxes owed to this state and to describe the procedures available to a credential holder whose application for renewal is denied because the applicant is liable for delinquent state taxes.

The proposed rules define terms including "liable for any delinquent taxes owed to this state," the term used in ss. 440.03 (12) and 440.08, Stats., as created by 1995 Wis. Act 27. The rules describe the method to be used for determining whether an applicant for renewal is liable for delinquent taxes. Under the procedures, the name and social security number or federal employer identification number of an applicant is compared with information at the Wisconsin Department of Revenue to identify individuals and organizations liable for delinquent taxes. If an applicant is identified as owing taxes, a notice is mailed to the applicant stating that the application shall be denied unless delinquent taxes are paid within 10 days. If delinquent taxes are not paid following a notice of intent to deny or if an applicant fails to complete an application form, the department shall deny the renewal application.

The rules provide for an applicant who has been denied renewal because of liability for delinquent taxes to request a hearing. Procedural rules include

rules governing a notice of hearing, service of documents and the conduct of the hearing.

Publication Date: November 14, 1995
Effective Date: November 14, 1995
Expiration Date: April 13, 1996

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
Hearing Date: November 3, 1995

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

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

Accounting Examining Board (CR 95–138):

SS. Accy 3.04, 3.05, 3.055, 3.09, 3.11 and 4.035 – Relating to examinations, educational and graduation requirements, and late renewal.

Agriculture, Trade & Consumer Protection (CR 95–112):

Ch. ATCP 136 – Relating to recovering, reclaiming, recycling and selling refrigerant used in mobile air conditioners or trailer refrigeration equipment.

Industry, Labor and Human Relations (CR 94–132):

Chs. ILHR 2 and 13 – Relating to compressed natural gas.

Insurance, Office of the Commissioner of (CR 95–154):

S. Ins 3.25 – Relating to prima facie premium rates, basic loss ratios, guaranteed issue amounts of life insurance coverage, maximum age limitations, and reporting of experience data connected with credit life and credit accident and sickness insurance.

Public Instruction (CR 95–156):

S. PI 11.13 (4) and (5) – Relating to interim alternative educational settings for children with exceptional educational needs (EEN) who bring firearms to school.

Public Instruction (CR 95–181):

Chs. PI 17, 24, 27, 28, 30, 31, 34, 36, 37 and 38 – Relating to the elimination of obsolete rules.

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.

Agriculture, Trade & Consumer Protection (CR 94-175):

An order affecting chs. ATCP 79 and 81, relating to cheese grading, packaging and labeling, and standard of identity and labeling requirements for Baby Swiss cheese.
Effective 02-01-96.

Agriculture, Trade & Consumer Protection (CR 95-104):

An order affecting ss. ATCP 1.06, 21.14, 100.57, 140.15 & 161.23 and chs. ATCP 26, 27, 102, 105, 106, 107, 108, 130, 135, 137, 156 & 157, relating to nonsubstantive rule organization and drafting changes.
Effective 02-01-96.

Development (CR 95-150):

An order amending s. DOD 16.035 (title) and (3), relating to rural economic development program.
Effective 02-01-96.

Development (CR 95-151):

An order affecting ss. DOD 17.02 and 17.04, relating to the business development initiative program.
Effective 02-01-96.

Development (CR 95-152):

An order affecting ss. DOD 28.02, 28.03 and 28.04, relating to the health care provider loan assistance program.
Effective 02-01-96.

Development (CR 95-159):

An order affecting ch. DOD 12, relating to the Wisconsin development zone program.
Effective 02-01-96.

Development (CR 95-162):

An order affecting ch. DOD 14, relating to the minority business development finance program.
Effective 02-01-96.

Employe Trust Funds (CR 95-88):

An order affecting ss. ETF 10.633, 10.70, 10.82, 20.20, 50.31 and 60.51, relating to: deadlines for requesting cancellation of applications for retirement annuities, disability annuities, beneficiary annuities, and lump sum payments; and to disclosure of beneficiary designations and other individual personal information.
Effective 02-01-96.

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

An order affecting s. Ins 3.39, relating to the requirements for Medicare supplement insurance sold in Wisconsin.
Effective 01-01-96.

Natural Resources (CR 95-98):

An order repealing and recreating s. NR 10.01 (1) (b), (g) and (u), relating to the 1995 migratory game bird season.
Effective 03-01-96.

Revenue (CR 95-65):

An order affecting ss. Tax 2.89, 2.96 and 3.03, relating to:
1) Extensions of time to file corporation franchise or income tax returns;
2) The dividends received deduction for corporations; and
3) The requirements for making estimated tax payments for short taxable years.
Effective 01-01-96.

Securities, Office of the Commissioner of (CR 95-158):

An order affecting chs. SEC 2, 3, 4, 5, 7 and 9, relating to:
1) Securities registration exemptions;
2) Securities registration and disclosure standards and requirements;
3) Securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures;
4) Fee-related provisions; and
5) Securities licensing forms.
Effective 02-01-96.

Transportation, Dept. of (CR 95–86):

An order affecting chs. Trans 136, 138 & 154 and ss. Trans 139.04, 141.07 & 142.07, relating to vehicle odometers, odometer disclosure, recordkeeping and titling by dealers and nonresidents.
Effective 02–01–96.

PUBLIC NOTICE

Public Notice Health & Social Services (Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wis. Stats. This program, administered by the State's Department of Health and Social Services, is known as Medical Assistance (MA) or Medicaid. Federal statutes require that a state plan be developed which provides the methods and standards for paying for hospital services. A plan which describes the hospital reimbursement system is now in effect.

In order to carry out its Medical Assistance program authority and to implement Section 5240.8 of the Title XIX Inpatient Hospital State Plan, the Department is required to publish annually a list of hospitals in the state which serve a disproportionate share of Medicaid or low-income inpatients and therefore qualify for a disproportionate share (DSH) payment adjustment for inpatient hospital services. The hospitals listed below are receiving the listed DSH payment adjustment for all discharges on and after July 1, 1994:

DSH Payment

<u>Hospital Name, City, State</u>	<u>Adjustment %</u>
Parkside Lodge Of Wisconsin, Janesville, WI	3.52%
Milwaukee County Mental Health Complex, Milwaukee, WI	3.90%
Brown County Mental Health Center, Green Bay, WI	3.38%
St. Mary's Hill Hospital, Milwaukee, WI	3.01%
Libertas Hospital, Green Bay, WI	5.07%
Hayward Area Memorial Hospital, Hayward, WI	3.24%
The Children's Hospital, St. Paul, MN	4.39%
Miller Dwan Medical Center, Duluth, MN	3.20%
St. Paul Ramsey Medical Center, St. Paul, MN	3.77%
St. Joseph's Hospital, Chippewa Falls, WI	3.16%
St. Luke's Memorial Hospital, Racine, WI	3.44%
Northwest General Hospital, Milwaukee, WI	5.26%
John L. Doyne Hospital, Milwaukee, WI	4.30%
Children's Hospital of Wisconsin, Milwaukee, WI	5.50%
Charter Hospital of Milwaukee, Milwaukee, WI	4.53%
Sinai Samaritan Medical Center, Milwaukee, WI	5.21%
Gillette Children's Hospital, St. Paul, MN	4.26%
Mendota Mental Health Institute, Madison, WI	3.38%
Winnebago Mental Health Institute, Winnebago, WI	3.20%
Memorial Medical Center, Ashland, WI	3.37%
Midwest Rehabilitation Hospital, Waterford, WI	6.69%

Contact Information

For more information, interested parties may visit the Department's Bureau of Health Care Financing in Room 265 of the State Office Building at One West Wilson Street in Madison, or write:

Hospital Unit
Bureau of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309

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