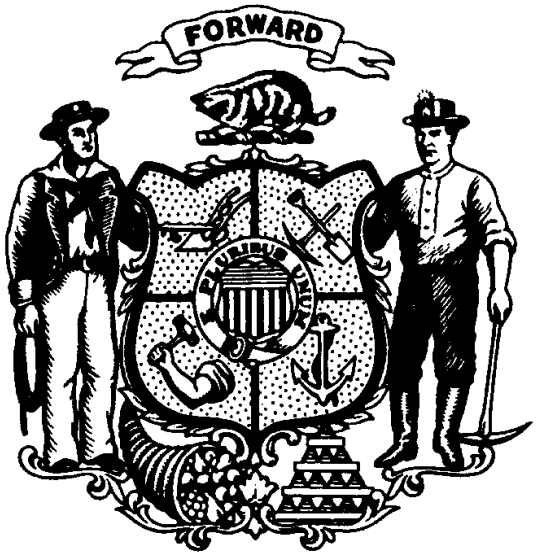
WISCONSIN ADMINISTRATIVE REGISTER

No. 481



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

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NOTICE SECTION

Notice of Hearing

Agriculture, Trade & Consumer Protection (Reprinted from Mid–January, 1996 Wis. Adm. Register)

Notice is hereby given that the state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule relating to price discrimination in milk procurement.

The emergency rule, which took effect on **January 1, 1996**, interprets s. 100.22, Stats., and amends ch. ATCP 100, Wis. Adm. Code.

Written Comments

The public is invited to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until **February 14, 1996** for additional written comments, which may be sent to the address given below.

Copies of Rule

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

Division of Trade & Consumer Protection
Telephone (608) 224–4936
Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
P.O. Box 8911
MADISON, WI 53708

Copies will also be available at the public hearing.

Hearing Information

The hearing is scheduled as follows:

February 1, 1996	**Room 106**
Thursday	**State Agriculture Bldg.**
Commencing at 10:00 a.m.	**2811 Agriculture Dr.**
Handicapped accessible	**Madison, WI**

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by contacting Judy Jung (608) 224–4972 or by contacting the TDD at the Department at (608) 224–5058.

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

Statutory authority: ss. 93.07 (1), 93.15 and 97.20 (4)

Statutes interpreted: ss. 93.15, 97.20 and 100.22

This emergency rule prohibits a dairy plant operator from discriminating between milk producers in the amount paid for milk unless the discrimination is based on a difference in milk quality, is justified by a difference in procurement costs, or is justified in order to meet a competitor's price. This emergency rule establishes standards which a dairy plant operator must meet in order to establish a defense based on milk quality, cost–justification or meeting competition.

This emergency rule also spells out enforcement standards and procedures. The Department may require a dairy plant operator to file documentation justifying discriminatory prices, and may take enforcement action against an operator who fails to provide adequate justification. The Department may ask the Attorney General or a district attorney to prosecute a violator in court, and may take action against a violator's dairy plant license.

Each year, Wisconsin's 27,000 dairy farmers sell nearly $3 billion worth of milk to dairy plant operators. Milk sales represent the primary or exclusive source of income for thousands of Wisconsin farm families. Currently, many dairy plant operators appear to be discriminating between milk producers in the amount paid for milk. Many operators appear to be paying higher prices to large producers which cannot be fully justified on the basis of milk quality or differences in procurement cost. Discrimination in milk prices may injure small milk producers and competing dairy plant operators, and may contribute to unwarranted concentration in the dairy industry.

Section 100.22, Stats., currently prohibits a dairy plant operator from discriminating between milk producers in the amount paid for milk if the discrimination injures producers or competition. However, the law affords the following defenses:

* An operator may justify discriminatory prices based on measurable differences in milk quality. Milk quality premiums, if any, must be based on a pre–announced premium schedule which the operator makes available on equal terms to all producers. The operator must also comply with minimum testing requirements under s. ATCP 80.26.

* An operator may pay discriminatory prices if the operator can justify the price differences based on differences in procurement costs.

* An operator may pay discriminatory prices in order to "meet competition."

The Department may investigate violations of s. 100.22, Stats., and may request the Attorney General or a county district attorney to prosecute violations in court; however, investigation and prosecution are currently hampered by a lack of clear standards in the law. For example, there are no standards for what constitutes "cost–justification" or "meeting competition." Prior to the emergency rule, there were no rules interpreting s. 100.22, Stats.

Price Discrimination Prohibited

This emergency rule prohibits a dairy plant operator from doing either of the following if the operator's action injures competition or injures any producer:

* Discriminating between producers in the milk price paid to those producers. "Milk price" means a producer's average gross pay per hundredweight, less hauling charges.

* Discriminating between producers in the value of services which the operator furnishes to those producers but does not include in the payroll price.

Defenses

Under this emergency rule, a dairy plant operator may defend against a milk price discrimination charge by proving any of the following, based on documentation which the operator possessed at the time of the alleged discrimination:

* That the discrimination between producers was based on an actual difference in milk quality. Among other things, the operator must show that the milk quality premiums were based on a pre–announced premium schedule that was available on equal terms to all producers, and that the operator tested the milk according to current rules.

* That the discrimination between producers was fully justified by differences in procurement costs between producers. The rule spells out the relevant costs which the operator may consider, and the method by which the operator must calculate the comparative costs for each producer.

* That the discrimination between producers was justified in order to meet competition. A dairy plant

operator may not claim this defense unless the operator proves all of the following:

* The operator offered the discriminatory milk price or service in response to a competitor's prior and continuing offer to producers in the operator's procurement area.

* The operator's discriminatory milk price or service did not exceed the competitor's offer.

* The operator offered the discriminatory milk price or service only in that part of the operator's procurement area which overlapped the competitor's procurement area.

Demanding Justification for Discriminatory Prices

Under this emergency rule, the Department may require a dairy plant operator to file documentation justifying an apparent discrimination in prices between producers. A dairy plant operator must file the documentation within 14 days after the operator receives the Department's demand, or by a later date which the Department specifies in its demand. The Department may extend the filing deadline for good cause shown.

Failure to Justify Discrimination

Under this emergency rule, if the Department finds that a dairy plant operator has not adequately justified the operator's discriminatory milk prices, the Department may give the dairy plant operator written notice of that finding. A notice is not a prerequisite to an enforcement action against the violator; however, the notice is open to public inspection under subch. II of ch. 19, Stats.

Injury to Producer

This emergency rule provides that, in an administrative or court enforcement action, evidence that a complaining producer was paid less than another producer shipping milk to the same dairy plant during the same pay period is presumptive evidence that the complaining producer has been injured.

Calculating Milk Procurement Costs

Under this emergency rule, if a dairy plant operator wishes to justify price discrimination between producers based on a difference in procurement costs between those producers, the operator must calculate procurement costs per hundredweight as follows:

STEP 1: Calculate the operator's average total cost, per producer per pay period, for all of the following:

* Dairy farm field service costs.

* Costs to test dairy farm milk shipments.

* Producer payroll expenses.

* Dairy farm license fees and other routine expenses incurred in connection with the licensing and regulation of dairy farms.

* Other costs which the Department allows in writing before the discrimination occurs.

STEP 2: Calculate the operator's average total cost, per producer per pay period, for milk collection and hauling services. An operator may calculate a separate average cost for producers with every–other–day pickup versus producers with every day pickup. An operator may not include:

* Collection or hauling costs which are charged to a producer.

* Costs which the hauler incurs before the first farm and after the last farm on the hauling route.

STEP 3: Add the above costs. To obtain the procurement cost per hundredweight for each producer, divide the sum by the producer's average milk production in hundredweights per pay period. When comparing procurement costs between volume pay classes, each class member's production is considered to be the same as the class average.

Dairy Plant Operator May Charge Procurement Costs to Producers

Nothing in this rule prohibits a dairy plant operator from charging each producer for the full cost of procuring that producers' milk. For example, a dairy plant operator may charge each producer the actual cost, per hundredweight, of hauling that producer's milk; however, a dairy plant operator may not shift hauling charges or other procurement costs between producers in a manner that discriminates between producers.

Fiscal Estimate

This emergency rule interprets s. 100.22, Stats., relating to price discrimination in milk procurement. This emergency rule will not increase DATCP's costs of administering this program, but will facilitate compliance and enforcement of s. 100.22, Stats. There will be nominal one–time costs associated with the rule–making, including costs to print, mail and hold a hearing on the emergency rule.

Initial Regulatory Flexibility Analysis

This emergency rule interprets s. 100.22, Stats., which prohibits price discrimination in milk procurement. This emergency rule applies to approximately 180 dairy plants that purchase milk from Wisconsin's approximately 27,000 dairy farmers. Some of the dairy plants and virtually all of the dairy farmers are small businesses as defined under s. 227.114 (1) (a), Stats.

This emergency rule prohibits a dairy plant operator from discriminating between milk producers in the amount paid for milk unless the discrimination is based on a difference in milk quality, is justified by a difference in procurement costs, or is justified in order to meet a competitor's price. This emergency rule establishes standards which a dairy plant operator must meet in order to establish a defense based on milk quality, cost–justification or meeting competition.

This emergency rule also spells out enforcement standards and procedures. The Department may require a dairy plant operator to file documentation justifying discriminatory prices, and may take enforcement action against an operator who fails to provide adequate justification. The Department may ask the Attorney General or a district attorney to prosecute a violator in court, and may take action against a violator's dairy plant license.

This rule requires dairy plant operators, many of whom are "small businesses," as defined by s. 227.114 (1) (a), Stats., to justify discriminatory milk prices; however, that justification is already required by s. 100.22, Stats. This rule does not add to current statutory requirements, but merely clarifies those requirements.

Effective enforcement of s. 100.22, Stats, and this emergency rule may result in a reduction of milk volume premiums to large dairy farmers, most of whom fall within the statutory definition of "small businesses"; however, effective enforcement may also result in increased payments to small dairy farmers, most of whom are also "small businesses".

Notice of Hearings

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection will hold public hearings on a proposed Department rule related to the Soil and Water Resource Management program (chapter ATCP 50, Wis. Adm. Code).

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **March 15, 1996,** for additional written comments. An interpreter for the hearing–impaired will be available upon request for this hearing. Please make reservations for a hearing interpreter by **February 9, 1996,** by writing or calling Don Houtman at the phone number or address given below or by calling the Department's TTY number **(608) 224–5058.**

Copies of Rule & Contact Person

Copies of the proposed rule are available free of charge from:

Don Houtman, (608) 224–4625
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708–8911

Hearing Information

All locations are handicapped accessible.

Five hearings are scheduled:

February 26, 1996
Monday
County Board Room
Jackson Co. Courthouse
307 Main Street
BLACK RIVER FALLS
WISCONSIN

Informational meeting commencing at **2:30 p.m.**, followed by the first hearing of the day. A second hearing of the day will commence at **6:30 p.m.**

February 27, 1996
Tuesday
County Board Mtg. Room
Law Enforcement Center
Rusk Co. Courthouse
311 East Miner Ave.
LADYSMITH, WI

Informational meeting commencing at **10:00 a.m.**, followed by the hearing.

February 29, 1996
Thursday
Meeting Room
Co. Hwy. Dept. Bldg.
1313 Holland Ave.
APPLETON, WI
(Use East Entrance, Please)

Informational meeting commencing at **1:00 p.m.**, followed by the hearing.

March 4, 1996
Monday
Room 208
Jefferson Co. Courthouse
320 South Main St.
JEFFERSON, WI

Informational meeting commencing at **2:30 p.m.**, followed by the first hearing of the day. A second hearing of the day will commence at **6:30 p.m.**

March 5, 1996
Tuesday
Meeting Room
Iowa Co. Sheriff's Office
1205 N. Bequette St.
(Hwy 18 & 23 intersection)
DODGEVILLE, WI

Informational meeting commencing at **2:30 p.m.**, followed by the hearing.

Written comments will be accepted until **March 15, 1996.**

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

Statutory authority: ss. 92.05 (3) (c) and 93.07 (1)

Statute interpreted: ch. 92

This rule repeals and recreates ch. ATCP 50, Wis. Adm. Code, related to the Wisconsin Soil and Water Resource Management Program under ch. 92, Stats. This rule incorporates major changes made in the program by 1991 Wis. Act 309. This rule also reorganizes and clarifies current rules.

GENERAL OVERVIEW

The Department of Agriculture, Trade & Consumer Protection ("Department") administers Wisconsin's Soil and Water Resource Management Program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion and enhance water quality. This rule spells out program standards and procedures.

The Department administers the program in cooperation with county land conservation committees, the Land and Water Conservation Board ("LWCB"), the Department of Natural Resources ("DNR"), and other state and federal agencies. The Department coordinates soil and water management efforts by these agencies. The Department also distributes funds to county land conservation committees, landowners, land users and others to support cost–effective soil and water resource management practices.

County Programs

This rule establishes standards for county soil and water resource management programs. County programs must include the following elements:

- A county soil erosion control plan, and a program to implement that plan.
- A program to ensure that recipients of farmland preservation tax credits meet minimum soil and water conservation standards.
- A plan to abate nonpoint source pollution in priority watersheds and priority lake areas, and a program to implement that plan.
- An annual year–end report which includes a summary of county accomplishments, a summary of how staff time was used, a cropland soil erosion status report, and a financial report.
- An annual workplan and grant application which describes the county's proposed activities for the coming year, and requests state funding for those activities. A grant application may request funding for county staff and support costs, as well as for cost–share grants and incentive payments to landowners and land users.
- A program to receive, distribute and account for soil and water resource management grants.
- Procedures to ensure that landowner practices funded by state grant moneys are properly designed, constructed and installed.
- A recordkeeping and recording system.
- A program of information and education for landowners and land users.

Grants to Counties

The Department distributes soil and water resource management grants to county land conservation committees. The grants are used to fund county soil and water conservation staff. They are also used to fund county cost–share grants and incentive payments to landowners and land users.

The Department distributes these grants according to an annual grant allocation plan. The Department prepares the annual plan based on available funding, Department funding priorities, and annual workplans and grant applications from the counties. The LWCB reviews the Department's annual grant allocation plan.

This rule spells out standards and procedures for distributing grants to county land conservation committees. It includes standards and procedures for all of the following:

- County Workplans and Grant Applications.
- Annual Grant Allocation Plans.
- Grant Contracts with Counties.
- Grant Payments to Counties.

Cost–Share Grants and Incentive Payments to Landowners and Land Users

Under the Soil and Water Resource Management Program, a county land conservation committee may use state grant funds to make cost–share grants and incentive payments to landowners and land users. The Department may also make direct cost–share grants to landowners and land users for some purposes, such as manure management systems needed to comply with a DNR notice of discharge.

A "cost–share grant" reimburses a landowner for part of the cost of installing specific practices identified in the grant. An "incentive payment" means a payment made to a landowner if the landowner complies with specified soil and water resource management standards (the method of compliance is left to the landowner).

This rule spells out standards and procedures related to cost–share grants and incentive payments, including:

- General criteria for awarding cost–share grants and incentive payments.
- Practices eligible for cost–share grants.
- Cost–share rates and maximum payments.
- Design and construction standards.
- Contracts with landowners and land users.
- Verifying compliance by landowners and land users.

Agricultural Engineering Practices and Nutrient Management Planning; Qualified Personnel

Under 1991 Wis. Act 309, the Department is required to certify county land conservation committee staff and others who design, review or approve

agricultural engineering practices under the Soil and Water Resource Management Program. This rule spells out certification standards and procedures. The standards and procedures are similar to those used by the United States Department of Agriculture, Natural Resource Conservation service (USDA).

Under this rule, no funds may be provided for the development or implementation of a nutrient management plan unless that plan is developed by a nutrient management planner who meets the minimum qualifications specified under this rule. Nutrient management planners who have professional qualifications or affiliations spelled out under this rule are presumed to be qualified. This rule does not establish a state certification program for nutrient management planners.

County, Town and Municipal Ordinances

Currently, a county, town or municipality may adopt a manure storage ordinance under s. 92.16, Stats., or a shoreland management ordinance under s. 92.17, Stats. No county, town or municipality may adopt a shoreland management ordinance under s. 92.17, Stats., without the Department's approval. This rule spells out general standards for local manure storage ordinances and shoreland management ordinances. It also spells out the procedure for obtaining the Department's approval of a shoreland management ordinance.

Accounting, Recordkeeping and Program Reviews

This rule requires a county to maintain an accounting and recordkeeping system which accounts for the receipt, handling and disposition of all funds received from the Department under ch. 92, Stats. The rule spells out specific recordkeeping requirements for cost–share grants and incentive payments to landowners and land users. The Department may review and audit county records as necessary.

COUNTY SOIL EROSION CONTROL PLAN

This rule prohibits the Department, after January 1, 1998, from awarding grants to any county land conservation committee that lacks an approved soil erosion control plan. The Department must approve or disapprove a plan after the LWCB reviews the plan. Counties that have already filed approved plans (about 55 counties to date) need not file new plans under this rule. The Department, in consultation with the Land and Water Conservation Board, may waive the requirement of a soil erosion control plan for an individual county if the Department finds that cropland soil erosion is not a significant problem in that county.

Plan Components

Under this rule, a county soil erosion control plan must include all of the following:

- A general inventory of land in the county, including soil types, surface topography, watershed areas, and land uses.
- Estimated rates of soil erosion in the county.
- An identification of areas having especially high soil erosion rates.
- Soil erosion control goals, including standards for lands enrolled in the farmland preservation program (see below).
- An identification of practices needed to achieve soil erosion control goals.
- A long–term strategy for implementing needed erosion control practices (see below).

Soil Erosion Control Strategy

Under this rule, a county's long–term soil erosion control strategy may include activities that are contingent on funding. A county strategy may include the following activities, among others:

- Funding cost–effective erosion control practices.
- Providing technical assistance to landowners and land users.
- Developing and administering farm conservation plans (see below).
- Providing information and education to landowners and land users.
- Developing and implementing soil and water conservation ordinances under s. 92.11, Stats., or shoreland management ordinances under s. 92.17, Stats.
- Coordinating soil and water conservation activities with federal, state and local agencies.

FARMLAND PRESERVATION COMPLIANCE PROGRAM

County Soil and Water Conservation Standards

Under current law, a county land conservation committee must adopt soil and water conservation standards applicable to farmland owners who claim farmland preservation tax credits under subch. IX of ch. 71, Stats. Standards must be approved by the LWCB. Failure to comply with a standard may disqualify a landowner from receiving farmland preservation tax credits. The Department must review all county soil and water conservation standards at least once every 5 years.

This rule requires a county land conservation committee to adopt, as a soil and water conservation standard, a requirement that cropland soil erosion not exceed "T–value" (the state soil erosion goal under s. 92.025, Stats.) The committee may adopt other standards which it deems appropriate, subject to LWCB approval. Standards must be incorporated into farm conservation plans (see below).

Adopting and Approving Standards

Under this rule, a county land conservation committee must hold a public hearing before it adopts or amends a soil and water conservation standard. At least 45 days prior to the public hearing, the committee must submit the proposed standard or amendment to the Department for preliminary review and comment. The Department must return its comments, if any, within 30 days.

A county land conservation committee, after holding a public hearing, must submit its final draft standard or amendment to the Department for approval by the LWCB. The Department must give its recommendation to the LWCB within 30 days, and the LWCB must then approve or disapprove the proposed standard or amendment within 90 days.

If a county land conservation committee fails to adopt the "T–value" standard required under this rule, owners of farmland in that county may not claim farmland preservation tax credits under ch. 71, Stats. If a county land conservation committee adopts, but the LWCB does not approve, additional soil and water conservation standards, a landowner need not comply with those standards in order to obtain farmland preservation tax credits.

Farm Conservation Plans

Under current law, a county land conservation committee must prepare a farm conservation plan for every farm in the county whose owner claims farmland preservation tax credits. Under this rule, a farm conservation plan must include all of the following:

- A map delineating each farmland field covered by the plan.
- The current erosion rate for each farmland field covered by the plan.
- Recommended practices to achieve and maintain compliance with county soil and water conservation standards in fields that currently fail to comply.
- A compliance deadline of not more than 5 years, and a requirement that there be sufficient annual progress to meet that compliance deadline.

Under this rule, a county land conservation committee may grant a variance from a compliance schedule. The committee must keep a record of each variance, including the reason for the variance. As part of its annual report to the Department, a committee must report any compliance schedule variances granted during the preceding year.

Monitoring Compliance

Under current law, a county land conservation committee must monitor whether landowners claiming farmland preservation tax credits are complying with county soil and water conservation standards. Under this rule, a monitoring system must include both of the following:

- A system by which farm owners certify compliance to the committee, in response to an annual or other periodic request by the committee.
- A system for monitoring compliance by means of field inspections, aerial photographs, remote sensing or other methods which the committee considers reliable. The committee must monitor each landowner's compliance at least once every 6 years, and more frequently if necessary.

Issuing Notices of Noncompliance

Under current law, a county land conservation committee must issue a notice of noncompliance if the committee determines that a landowner is violating a farm conservation plan or approved soil and water conservation standards. Under this rule, the committee may also issue a notice of noncompliance if a landowner fails to certify compliance as requested, or refuses to permit an inspection to determine compliance. Under current law, a landowner who receives a notice of noncompliance is not eligible for farmland preservation tax credits.

COUNTY REPORTS AND GRANT APPLICATIONS

Annual Report

Under current rules, a county land conservation committee is required to make a number of different year−end reports to the Department. This rule combines those year−end reports into a single annual report, simplifies the reporting procedure, and eliminates unnecessary reporting requirements.

This rule requires a county land conservation committee, by April 15 of each year, to file its year−end report for the preceding calendar year. The report must include all of the following:

- An annual summary of program activities and accomplishments.
- A report on cropland soil erosion. The report must include all of the following:
  - A summary of the methods, if any, which the committee is currently using to monitor cropland soil erosion and identify serious soil erosion problems.
  - A description of the systems, if any, which the committee is currently using to collect, analyze, store, update and retrieve soil erosion data.
  - The committee's estimate of the current number of cropland acres in the county, the current number of cropland acres under farm conservation plans, and the current number of acres enrolled in the farmland preservation program.
  - The approximate number of cropland acres for which the committee has reliable current estimates of soil erosion. The report shall briefly describe the methods used to obtain those estimates.
  - The approximate number of cropland acres for which the committee believes that the current rate of soil erosion is not more than T−value; more than T−value, but not more than twice T−value; more than twice T−value, but not more than 3 times T−value; more than 3 times T−value; or not reasonably determinable based on available data.
  - An assessment of the county's progress toward achieving compliance with the statewide soil erosion goal under s. 92.025, Stats.
  - An identification of key soil erosion problems and data needs.
- A financial report, which must include all of the following:
  - The amount of grant money which the county land conservation committee received from the Department during the preceding year, and the purposes for which the committee received that money.
  - The amount of grant money which the county land conservation committee spent during the preceding calendar year, and the purposes for which it spent that money.
  - The amount of grant money remaining in county accounts at calendar year−end.

Annual Grant Application

Under this rule, as under current rules, a county land conservation committee must annually apply to the Department for soil and water resource management grants. This rule provides that, by April 15 of each year, a county land conservation committee must file with the Department its application for funding for the next calendar year. (The Department, in cooperation with DNR, will distribute application forms before January 1 for return by April 15.)

In its annual grant application, a county land conservation committee must identify all of the following:

- The soil and water resource management activities which the county proposes to undertake under this chapter during the next calendar year.
- The total amount of county staff time projected for the county's proposed activities, and the projected allocation of staff time by activity.
- The amount of funding requested for staff salaries, fringe benefits, training and support, in order to carry out the county's proposed activities.
- The amount of funding requested for cost−share grants and incentive payments to farmers. The committee shall identify, in its funding request, any amounts which the county proposes to retain as reimbursement of direct county costs incurred in connection with the cost−share grants or incentive payments.
- The nature and amount of any other funding requested in connection with the county's proposed activities.
- Any information which the committee wishes to provide in support of its grant application.

GRANTS TO COUNTIES AND OTHERS

Counties Eligible for Grants

To be eligible for a grant from the department under ch. 92, Stats., a county land conservation committee must do all of the following:

- Submit an approved soil erosion control plan (see above).
- Establish soil and water resource management standards for lands enrolled in the farmland preservation program (see above).
- Submit an annual workplan and grant application (see above).

Grant Allocation Criteria

Under this rule, the Department must first consider the need for county staff and project continuity when preparing its annual grant allocation plan. The Department must also consider all of the following:

- The relative severity and priority of the soil erosion and water quality problems addressed.
- The extent to which the funded activities will address and resolve high−priority problems.
- The relative cost−effectiveness of funded activities in addressing and resolving high−priority problems.
- The availability of alternative measures to address and resolve high−priority problems.
- The extent to which funded activities are part of a systematic and comprehensive approach to soil erosion and water quality problems.
- The completeness of the county grant applications and supporting data.
- The demonstrated cooperation and commitment of the counties, including their commitment of staff and financial resources.
- The demonstrated ability of the counties to manage and implement funded projects.
- The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.

Annual Grant Allocation Plan

Under current law, the Department must allocate grants to county land conservation committees and others according to an annual grant allocation plan that is reviewed by the LWCB. Under this rule, the Department must issue a preliminary allocation plan to DNR, the LWCB and every county land conservation committee by September 1 of each year. After obtaining the recommendations of the LWCB, the Department must issue its final allocation plan by December 31 of each year.

Under this rule, the Department's annual grant allocation plan must specify all of the following:

- The total amount appropriated to the Department for possible allocation under the plan, including grant appropriations under s. 20.115 (7) (c), (qd) and (km), Stats.
- The total amount allocated under the plan.
- The total amount allocated for basic annual staffing grants (see below). The plan must also specify the amount allocated to each county, and the reasons for any differences in allocations between counties.
- The total amount allocated for shoreland management grants (see below). The plan must also specify the amount allocated to each county, the amounts allocated directly to farmers, and the reasons for the allocations.
- The total amount allocated for nonpoint pollution abatement grants to landowners and land users to comply with DNR notices of discharge or notices of intent (see below). The plan must also specify:
  - The subtotal amount allocated to comply with DNR notices of discharge or notices of intent outside priority watershed and priority lake areas.
  - The subtotal amount allocated for use in each county, if known.
  - The subtotal amount allocated for use in priority watersheds or priority lake areas, and the subtotal amount allocated for use in each priority watershed or priority lake area.
  - The reasons for the allocations.
- The total amount allocated for other grants, including grants related to farmland preservation compliance, animal waste management and erosion control, and other soil and water resource management projects (see below). The plan must also specify:
  - The subtotal amounts allocated for each purpose.

- The amount allocated to each county and to each grant recipient other than a county.
- The reasons for the allocations.

Basic Annual Staffing Grants to Counties

Under current law and this rule, the Department must award grants to county land conservation committees to pay for county personnel needed to operate county soil and water resource management programs. The Department awards these grants from the appropriation under s. 20.115 (7) (c), Stats. A county must match the Department's total grant with an equal commitment of county funds for soil and water resource management administrative and technical operating costs. A county need only match the total amount of the grant, and need not match the grant on an item−by−item basis.

Under this rule, a county may use a basic annual staffing grant for any of the following purposes, subject to the terms of the grant:

- Salaries and fringe benefits for county staff.
- Training for county staff.
- The following staff support costs identified in an approved grant application:
- Travel expenses, including mileage charges, vehicle leases or purchases, meals, lodging and other necessary costs.
- Personal computers, software, printers and related devices.
- Office supplies, including paper, copies, printing and postage.
- Office equipment and furnishings, including desks, chairs, calculators, drafting equipment, and file cabinets.
- Field equipment.
- Information and education materials which county staff provide in connection with their soil and resource management activities under this rule.
- Other staff support costs approved by the Department.

Under this rule, the Department may award different amounts to different counties, based on the Department's assessment of funding needs and priorities. A county may use its grant award to fund staff engaged in a variety of soil and water resource management programs, including farmland preservation compliance, erosion control, animal waste management, shoreland management, nonpoint source pollution abatement and others; however, the amount awarded to a county may depend, in part, on the Department's concurrence with the county's proposed workplan. The Department may also earmark a portion of the grant for a specific purpose, such as staff training.

Subject to the availability of funds, the Department must award at least the following amounts to the following counties:

- $12,000 to a county that has a county conservationist operating under an agreement between the Department and the county land conservation committee.
- $7,000 to a county that does not have a county conservationist operating under an agreement between the Department and the county land conservation committee.

In addition to awarding a basic annual staffing grant to each county land conservation committee, the Department may earmark portions of other, more specialized, grants to pay for county land conservation committee staff costs which are directly related to those grants (see below).

Shoreland Management Grants

Under current law and this rule, the Department may award cost−share grants to farmers, or may award grants to county land conservation committees to finance cost−share grants or incentive payments to farmers, to implement practices required by a shoreland management ordinance under s. 92.17, Stats. A county land conservation committee may reallocate grant funds to a town or municipality for distribution to farmers covered by a town or municipal ordinance.

The Department awards shoreland management grants from the appropriation under s. 20.115 (7) (qd), Stats. Under this rule, a county land conservation committee may use a shoreland management grant for any of the following purposes, subject to the terms of the grant:

- Cost−share grants or incentive payments to farmers.
- Costs to record cost−share agreements with the county register of deeds.
- Reimbursement for county technical assistance provided in connection with a cost−share grant or incentive payment (see below).

Nonpoint Pollution Abatement Grants

Under current law and this rule, the Department may award cost−share grants to farmers, or may award grants to counties to finance cost−share grants to farmers, to construct manure management systems needed to comply with a DNR notice of discharge under ch. 147, Stats., or for other management practices needed to comply with a DNR notice of intent under s. 144.025 (2), Stats. The Department may award grants for projects within or outside a priority watershed or priority lake area.

For projects outside priority watershed or priority lake areas, the Department may award these grants from the moneys remaining in the appropriations under s. 20.115 (7) (c) and (qd), Stats., after the Department makes basic annual staffing grants and shoreland management grants to counties (see above). For projects within priority watersheds or priority lake areas, the Department may award these grants from the appropriation under s. 20.115 (7) (km), Stats.

Under this rule, a county land conservation committee may use grant funds for any of the following purposes, subject to the terms of the grant:

- Cost−share grants to farmers.
- Costs to record cost−share agreements with the county register of deeds.
- Reimbursement for county technical assistance provided in connection with a cost−share grant (see below).

Farmland Preservation Compliance Grants

Under current law and this rule, the Department may award grants to county land conservation committees to promote compliance with county soil and water conservation standards on lands enrolled in the farmland preservation program. The Department may award these grants from the moneys remaining in the appropriations under s. 20.115 (7) (c) and (qd), Stats., after the Department makes basic annual staffing grants, shoreland management grants, and nonpoint pollution abatement grants (see above).

Under this rule, a county may use grant funds for any of the following purposes, subject to the terms of the grant:

- Incentive payments to farmland owners who comply with county soil and water conservation standards.
- Cost−share grants to farmland owners for specific practices identified in farm conservation plans.
- Costs to record cost−share agreements with the county register of deeds.
- Reimbursement for county technical assistance provided in connection with an incentive payment or cost−share grant (see below).
- Other county staffing costs approved by the Department.

Grants for Other Soil and Water Resource Management Projects

Under current law and this rule, the Department may award grants to county land conservation committees to implement other soil and water resource management projects, including the following:

- Animal waste management activities begun under s. 92.15, 1985 Stats.
- Projects to implement county erosion control plans.
- Other projects designated by the Department.

The Department may award these grants from the moneys remaining in the appropriations under s. 20.115 (7) (c) and (qd), Stats., after the Department makes basic annual staffing grants, shoreland management grants, nonpoint pollution abatement grants, and farmland preservation compliance grants (see above).

Under this rule, a county land conservation committee may use grant funds for any of the following purposes, subject to the terms of the grant:

- Cost−share grants or incentive payments to farmers.
- Costs to record cost−share agreements with the county register of deeds.
- Reimbursement for county technical assistance provided in connection with a cost−share grant or incentive payment (see below).

County Technical Assistance; Reimbursement

Under this rule, whenever the Department awards a grant to a county land conservation committee to fund cost−share grants or incentive payments to farmers, the Department may earmark part of the grant to reimburse the

county for technical assistance provided in connection with those cost–share grants or incentive payments. Technical services may include any of the following:

- Technical assistance to farmers receiving cost–share grants, including help in designing cost–shared practices.
- Certification that cost–shared practices are designed, constructed, installed and maintained according to this rule.
- Certification that the recipients of incentive payments have complied with applicable requirements for the receipt of those payments.
- Project administration and supervision.
- Other services approved by the Department.

The Department may not reimburse a county, for technical assistance related to a cost–share grant or incentive payment, an amount which exceeds 15 percent of the eligible project cost. Nor may the Department reimburse a county for technical services that are reimbursed under the county's basic annual staffing grant.

Grant Contracts and Payments

Under this rule, the Department must enter into a grant contract with every county land conservation committee to which it awards a grant. The Department must enter into a similar contract with every other person to whom it makes a direct grant.

The Department's contract with a county land conservation committee must include all of the following:

- The purpose for which the grant is awarded.
- The total amount of the grant.
- Subtotal amounts designated for specific uses, such as cost–share grants or incentive payments to landowners and land users, county staffing, or reimbursement of specified county services.
- A general description of the types of projects for which cost–share funding is awarded, including aggregate project costs and amounts awarded for each type of project.
- The responsibilities of the Department and the land conservation committee under the contract.
- Deadlines for implementing the contract.
- Other terms and conditions specified by the Department.

Under this rule, the Department must pay the entire grant in a single payment. The Department must make the payment to the county land conservation committee by April 15th of the contract year, or within 30 days after the grant contract is signed, whichever is later.

Under this rule, whenever a county land conservation committee retains grant funds for more than 90 days, the committee must place the funds in an interest–bearing account and use the interest to further the goals of the Soil and Water Resource Management Program. If a committee fails to spend grant funds in the year scheduled, the Department must normally deduct the amount of the unspent funds from the next year's grant allocation.

Under current law and this rule, a county receiving grant funds must agree to maintain its support for soil and water resource management programs. The Department may withhold grant payments from a county that breaches this or other terms of a grant contract. All contracts are contingent on the availability of legislative appropriations to fund the contracts.

COST–SHARE GRANTS TO LANDOWNERS AND LAND USERS

Eligible Practices and Costs

Under current law and this rule, the Department or a county land conservation committee may award a cost–share grant to a landowner or land user for eligible practices which will achieve priority soil or water resource management goals in the most practical and cost–effective way.

Under this rule, the Department or a county land conservation committee may award cost–share grants for the following eligible practices, or for other practices which the Department specifically approves, if those practices comply with conditions specified in this rule:

- Manure storage systems.
- Manure storage system abandonment.
- Barnyard runoff control systems.
- Access roads and cattle crossings.
- Cattle mounds.
- Conservation tillage.
- Contour farming.
- Critical area stabilization.
- Diversions.
- Field windbreaks.
- Filter strips.
- Grade stabilization structures.
- Heavy use area protection.
- Intensive grazing management.
- Livestock fencing.
- Livestock watering facilities.
- Milking center waste control systems.
- Nutrient and pesticide management.
- Relocating or abandoning an animal feeding operation.
- Roofs.
- Roof runoff systems.
- Sediment basins.
- Streambank and shoreline protection.
- Strip–cropping.
- Subsurface drains.
- Terrace systems.
- Underground outlets.
- Waste transfer systems.
- Water and sediment control basins.
- Waterway systems.
- Well abandonment.
- Wetland development and restoration.

This rule specifies, for each of the eligible practices identified above, the costs that are eligible for reimbursement under a cost–share grant.

Design, Construction and Maintenance Standards

Under this rule, cost–shared practices must comply with specific design, construction and maintenance standards, including applicable standards contained in the "Natural Resources Conservation Service Field Office Technical Guide" published by USDA. Practices must be maintained for a period of time specified in this rule.

Cost–Share Contracts

Under this rule, the Department or committee must enter into a written contract with the recipient of a cost–share grant before making any payments to that grant recipient. The cost–share grant contract must include all of the following:

- The name and address of the grant recipient. If the recipient is not the landowner, the contract must also include the name and address of the landowner.
- The purpose for the cost–share grant.
- The total amount of the cost–share grant.
- The location of the land on which the cost–shared practice is to be installed, and a specific legal description of the land if the cost–share grant is for more than $1,000.
- Design specifications for the cost–shared practice.
- The total cost of the cost–shared practice, and the percentage of that cost that will be funded under the cost–share grant.
- A timetable for constructing and installing the cost–shared practice.
- An agreement that the grant recipient will maintain the cost–shared practice for the period of time required under this rule, and will repay the full amount of the cost–share grant if the cost–shared practice is not maintained.
- If the contract provides for a cost–share grant of more than $1,000, an agreement that the contract runs with the land, and is binding on subsequent owners or users of the land for the term of the maintenance period.
- Other standard terms specified under this rule (see below).

Standard Contract Terms

Under this rule, a cost–share contract must include the following standard terms:

● Before the Department or a county land conservation committee makes any cost–share payment to a landowner or land user, it must determine that the cost–shared practice is designed, constructed and installed according to standards specified in this rule and the cost–share contract. Certain cost–shared practices must be reviewed by a professional engineer registered under ch. 443, Stats., an "agricultural engineering practitioner" certified under this rule, or a "nutrient management planner" who is qualified under this rule.

● The Department or the county land conservation committee must pre–approve, according to a procedure specified in the contract, any construction changes that may affect the terms or amount of the cost–share grant.

● The Department or county land conservation committee may make partial payments for properly completed portions of a cost–shared practice, but may not distribute more than 75 percent of the cost–share grant before the cost–shared practice is completed in full.

● Neither the Department nor a county land conservation committee may make a cost–share payment for any portion of a cost–shared practice until the cost–share grant recipient does one of the following:

● Provides proof that the grant recipient has paid in full for the construction and installation of that portion of the cost–shared practice.

● Authorizes the Department or committee to make the cost–share payment by means of a multi–party check that includes the primary contractors as co–payees, and either deposits in an approved escrow account sufficient funds to pay for the remaining costs to construct and install the cost–shared practice, or provides proof of payment in full for the grant recipient's portion of the cost–shared practice.

● The Department or county land conservation committee must record a cost–share contract with the county register of deeds within 30 days after the practice is installed and certified, and before the Department or committee makes any cost–share payment under the contract. This recording requirement does not apply to cost–share contracts for less than $1,000, or for contracts which include only the following practices:

● Contour farming.

● Contour strip–cropping.

● Field strip–cropping.

● Conservation tillage.

● Nutrient management.

● Pesticide management.

● Other practices jointly identified by the Department and the LWCB.

Payments Made Only to Grant Recipient

Under this rule, neither the Department nor a county land conservation committee may make a cost–share grant payment to anyone other than the grant recipient, except with the recipient's authorization. A grant recipient must authorize the use of multi–party checks (e.g., checks which name contractors or lenders as co–payees).

Paying for Construction Services Provided by Grant Recipient

Under this rule, the Department or a county land conservation committee may reimburse a cost–share grant recipient for services which he or she provides in connection with the construction or installation of a cost–shared practice if the Department or committee finds both of the following:

● The grant recipient is competent to perform the services.

● The grant recipient will provide the services at an equal or lower cost than other service providers.

Cost Containment Procedures

Under this rule, the Department must use at least one of the following procedures to contain the cost of a cost–shared practice:

● Make cost–share payments based on the average cost of a cost–shared practice, regardless of its actual cost.

● Establish an acceptable cost range for a cost–shared practice.

● Require the grant recipient to obtain competitive bids for a cost–shared practice, using bidding procedures specified by the Department. Bidding procedures must comply with this rule. The Department may make cost–share payments based on the low bid cost of the practice, whether or not the grant recipient selects the low bidder.

● Specify a maximum amount which the Department will pay for a cost–shared practice, regardless of the cost of that practice.

● Use an employe or agent of the Department to design, construct or install a cost–shared practice if, by doing so, the Department can minimize public costs related to the practice.

● Use other cost containment procedures which the Department approves.

Under this rule, a land conservation committee must develop cost containment procedures for its cost–shared practices under this rule. The county's procedures must be reasonably consistent with the cost–containment procedures used by the Department under this rule.

COST–SHARE RATES AND MAXIMUM PAYMENTS

Cost–Share Rates; General

This rule specifies the maximum percentage rate (cost–share rate) at which the Department or a county land conservation committee may reimburse a landowner or land user for eligible practices identified in this rule. For most eligible practices, the maximum cost–share rate is 70 percent, or 80 percent if the practice is required to comply with a shoreland management ordinance. For certain practices and situations, this rule specifies different maximum cost–share rates (see below).

Nutrient and Pesticide Management Practices; Cost–Share Rates

Under this rule, the maximum cost–share rate for nutrient and pesticide management practices is 50 percent, or 80 percent if the practice is required in order to comply with a shoreland management ordinance.

Intensive Grazing Practices; Cost–Share Rates

Under this rule, the maximum cost–share rate for intensive grazing practices is 50 percent, or 80 percent if intensive grazing practices are required in order to comply with a shoreland management ordinance.

Manure Storage Systems; Cost–Share Rates

For manure storage systems, this rule specifies maximum cost–share rates as follows:

● 70 percent for the first $20,000 of eligible manure storage system costs. If there is "economic hardship," the maximum rate is 85 percent (90 percent if the system is required in order to achieve compliance with a shoreland management ordinance).

● 50 percent for eligible costs over $20,000. If there is "economic hardship," the maximum rate is 75 percent (90 percent if the system is required in order to achieve compliance with a shoreland management ordinance).

Manure storage systems are also subject to a maximum payment cap (see below).

Barnyard Runoff Control Systems; Cost–Share Rates

A "barnyard runoff control system" may include any of several eligible practices used to control barnyard runoff. The maximum cost–share rate for most of those practices is 70 percent. But if there is "economic hardship," the maximum cost–share rate is as follows:

● 85 percent of the first $20,000 of eligible practices (90 percent if the system is required in order to achieve compliance with a shoreland management ordinance).

● 75 percent for eligible costs over $20,000 (90 percent if the system is required in order to achieve compliance with a shoreland management ordinance).

Cropping Practices; Cost–Share Rates

For certain cropping practices, this rule specifies cost–share limits in terms of maximum payments per acre. These maximum payments range from one annual payment of $7.50 per acre for field strip–cropping to 3 annual payments of $18.50 per acre for high residue management systems. In addition, the Department or county land conservation committee may pay up to 50 percent of necessary costs to remove obstructions or install subsurface drains.

Economic Hardship

Under this rule, the Department or a county land conservation committee may pay a higher cost–share rate for a manure storage system or barnyard runoff control system (see above) if the Department or committee makes a finding of "economic hardship." To make a finding of "economic hardship," the Department or committee must find all of the following:

● That the practice is required in order to comply with a notice of discharge issued under ch. 147, Stats., or with a shoreland management zoning ordinance enacted under s. 92.17, Stats.

● That the grant recipient has a debt−to−asset ratio of more than 60 percent as verified by a signed statement from a certified public accountant.

● That the grant recipient will be able to pay the balance of the proposed costs of the practice, as verified by a signed statement from an accredited financial institution or a certified public accountant.

● That the practice is the least expensive way to attain compliance with the notice of discharge or the shoreland management zoning ordinance.

Maximum Payments

Under this rule:

● No cost−share grant may exceed $25,000 without the Department's approval.

● The total of all government payments for a manure storage system may not exceed $35,000, or $45,000 if there is "economic hardship."

● No cost−share grant to relocate an animal feeding operation may exceed 70 percent of the estimated cost to install a manure management system or related practices needed to resolve or prevent water quality problems at the abandoned site or at the new site, whichever site cost is less. No more than $5,000 of the cost−share grant may be used to transport livestock from the abandoned facility to the new facility.

● A cost−share grant for intensive grazing management may not include more than $2,000 for a watering system.

Engineering Design Services; Additional Payment

The Department or a county land conservation committee, in addition to paying the cost−share percentage allowed under this rule, may reimburse a cost−share grant recipient for engineering services needed to design the cost−shared practice. The amount paid as reimbursement for engineering services may not exceed 15% of the eligible project cost.

INCENTIVE PAYMENTS TO LANDOWNERS AND LAND USERS

Incentive Payment Contracts

Under current law and this rule, the Department or a county land conservation committee may award an incentive payment to a landowner or land user who achieves compliance with specified soil and water resource management standards. Under this rule, the Department or committee must enter into a written contract with each person to whom the Department or committee offers incentive payments. The contract must include all of the following:

● The name and address of the person receiving the incentive payment. If the recipient is not the landowner, the contract shall also include the name and address of the landowner.

● The purpose for the incentive payment.

● The amount of the incentive payment. No annual incentive payment may exceed $1,000 except with the Department's specific authorization.

● The location of the land to which the incentive payment applies.

● The specific conditions which the landowner or land user must meet in order to qualify for the incentive payment, including any soil or water resource management standards which the recipient must meet.

● Other conditions specified by the Department or the county land conservation committee.

Payments Made Only to Contracting Landowner or Land User

Under this rule, no incentive payment may be made to any person other than the contracting landowner or land user except with specific written authorization of that landowner or land user.

Verifying Compliance

Under this rule, the Department or a county land conservation committee must verify by inspection or other reliable methods that the person receiving an incentive payment has met all of the conditions required under the contract for the receipt of that incentive payment.

AGRICULTURAL ENGINEERING PRACTITIONER; CERTIFICATION

Certification Program

Pursuant to s. 92.18, Stats., this rule establishes a program to certify county land conservation committee staff and other persons who review and approve agricultural engineering practices for funding purposes under this rule or s. 144.25, Stats. The certification program is similar to a certification program administered by USDA, Natural Resources Conservation Service.

The certification program applies to persons who review and approve agricultural engineering practices listed in this rule. Certified persons may also design and oversee construction of agricultural engineering practices for which they are certified. Certified state and county employes need not be registered as professional engineers when engaged in the activities for which they are certified.

Who Must be Certified

This rule prohibits any person, other than a professional engineer registered under ch. 443, Stats., from certifying any of the following for funding purposes under this rule or s. 144.25, Stats., unless the Department certifies that person as an agricultural engineering practitioner:

● That an agricultural engineering practice is designed in compliance with this chapter or s. 144.25, Stats.

● That an agricultural engineering practice is constructed according to approved design specifications.

Applying for Certification

Under this rule, a person who wishes to be certified as an agricultural engineering practitioner must apply to the Department or a county land conservation committee. A person may apply orally or in writing. The Department or committee must promptly refer the application to a Department field engineer. Within 30 days, the Department field engineer must rate the applicant and issue a decision granting or denying the application.

Certification Rating

The Department field engineer must rate an applicant using the rating form shown in Appendix A to this rule. The field engineer must rate the applicant based on the applicant's demonstrated knowledge, training, experience, and record of appropriately seeking assistance. For the purpose of rating an applicant, a field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant.

For each type of agricultural engineering practice, the rating form identifies 5 job classes requiring progressively more complex planning, design and construction. Under this rule, the field engineer must identify the most complex of the 5 job classes for which the applicant is authorized to certify each of the following:

● That the practice is properly designed.

● That the practice is properly constructed according to design specifications.

Under this rule, a successful applicant may not certify any agricultural engineering practice in a job class more complex than that for which he or she is certified.

Appealing a Certification Decision

A field engineer must issue a certification decision in writing, and must include a complete rating form (see above). An applicant may appeal a certification decision or rating by filing a written appeal with the field engineer. The field engineer must meet with the appellant in person or by telephone to discuss the matters at issue.

If the appeal is not resolved, the Department must schedule an informal hearing before a qualified Department employe other than the field engineer. After the informal hearing, the presiding officer must issue a written decision which affirms, modifies or reverses the field engineer's action. If the applicant disputes the presiding officer's decision, the applicant may request a formal contested case hearing under ch. ATCP 1 and ch. 227, Stats.

Reviewing Certification Ratings

Under this rule, a Department field engineer must review the certification rating of every agricultural engineering practitioner at least once every 3 years. A field engineer must also review a certification rating at the request of the person certified. A field engineer may not reduce a rating without good cause, and all reductions must be in writing.

Suspending or Revoking Certification

Under this rule, the Department may suspend or revoke a certification for cause. The Department may summarily suspend a certification, without prior notice or hearing, if the Department makes a written finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare. An order of suspension or revocation must be signed by the secretary or the secretary's designee.

NUTRIENT MANAGEMENT PLANNER; QUALIFICATIONS

Under this rule:

● No funding may be provided for the development of a nutrient management plan unless the plan is developed by a nutrient management planner who meets qualifications specified under this rule.

● No funding may be provided for the implementation of a nutrient management plan unless the plan is approved by a nutrient management planner who meets qualifications specified under this rule.

A nutrient management planner is qualified under this rule if he or she is knowledgeable and competent in all of the following areas:

● Compliance with applicable technical standards published by USDA.

● Soil testing.

● Calculating nutrient needs on a field–by–field basis.

● Crediting manure, residual legume nitrogen and other nutrient sources on a field–by–field basis.

● Using conservation plans.

● Compliance with federal and state laws related to nutrient management.

Under this rule, a nutrient management planner is presumed to be qualified if he or she is at least one of the following:

● Included in the registry of environmental and agricultural professionals published by the National Alliance of Independent Crop Consultants.

● Recognized as a certified crop advisor by the American Society of Agronomy, Wisconsin Certified Crop Advisors Board.

● Registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American Registry of Certified Professionals in Agronomy, Crops and Soils.

● The holder of other credentials which the Department deems equivalent to those specified above.

TRAINING FOR COUNTY STAFF

Under this rule, the Department must appoint a Training Advisory Committee to advise the Department on training activities. The committee must include representatives of all of the following:

● The Wisconsin Department of Natural Resources

● The United States Department of Agriculture, Natural Resources Conservation Service.

● The University of Wisconsin–Extension.

● The Statewide Association of Land Conservation Committees.

● The Statewide Association of Land Conservation Committee Staff.

The Department, in consultation with the Training Advisory Committee and county land conservation committees, may do any of the following to ensure adequate training of county staff:

● Determine training needs and priorities.

● Identify training opportunities and resources.

● Make training recommendations.

● Approve training programs funded under this chapter.

● Coordinate the delivery of training.

● Provide training and assess fees to cover training costs.

● Issue training guidelines for certified agricultural engineering practitioners.

● Distribute training funds to counties.

ORDINANCES

Manure Storage Ordinances

A county, town or municipality may currently enact a manure storage ordinance under s. 92.16, Stats. The Department may adopt rules for manure storage ordinances. Under this rule, a manure storage ordinance must include all of the following provisions:

● The authority of the county, town or municipality to adopt the ordinance.

● The findings that prompted the county, town or municipality to adopt the ordinance, and the purpose for the ordinance.

● Provisions, if any, related to the initial applicability and severability of the ordinance.

● The effective date of the ordinance.

● Definitions of significant terms used in the ordinance.

● Provisions which prohibit any person from constructing a manure storage system unless that person does all of the following:

● Obtains a permit from the county, town or municipality that adopts the ordinance.

● Develops a nutrient management plan that complies with standards specified under this rule.

● Complies with specified standards for the design and construction of manure storage systems.

● Provisions related to ordinance administration, including inspection and enforcement authority, appeal procedures, and penalties for violating the ordinance.

● Provisions, if any, for monitoring the adequacy of manure storage systems.

● Conditions, if any, under which the county, town or municipality may require the abandonment of a manure storage system.

● Provisions, if any, related to the abandonment of a manure storage system.

Under this rule, a manure storage ordinance may prohibit any person from abandoning a manure storage system unless that person does all of the following:

● Obtains a permit for the abandonment.

● Does all of the following according to standards specified in this rule:

● Removes and properly disposes of all accumulated wastes in the manure storage pond.

● Removes any concrete or synthetic liner.

● Removes any soil saturated with waste from the manure storage facility.

● Removes at least 2 feet of soil from the bottom and sides of a facility without a constructed liner.

● Removes or permanently plugs the waste transfer system serving the manure storage facility.

● Fills the excavated area to a level above grade with clean fill and grades the former manure storage site to drain water away from the site.

● Covers all disturbed areas with topsoil, seeds the areas with a grass mixture, and mulches the seeded area.

This rule does not require a county, town or municipality to obtain Department approval of a proposed manure storage ordinance; however, a county, town or municipality may ask the Department to review a proposed ordinance for compliance with this rule.

Shoreland Management Ordinances

A county, town or municipality may currently enact a shoreland management ordinance under s. 92.17, Stats. The Department must approve shoreland management ordinances, and may adopt guidelines for shoreland management ordinances. Under this rule, the Department may approve a shoreland management ordinance that includes all of the following:

● The authority of the county, town or municipality to adopt the ordinance.

● The findings that prompted the county, town or municipality to adopt the ordinance, and the purpose for the ordinance.

● Provisions, if any, related to the initial applicability and severability of the ordinance.

● The effective date of the ordinance.

● Definitions of significant terms used in the ordinance.

● A description of the activities and geographical areas regulated under the ordinance, including maps of the areas at a scale of 1:24,000 (one inch per 2,000 feet) or larger.

● Required soil and water resource management standards or practices. This rule does not mandate specific standards or practices, but ordinance requirements should be reasonably consistent with Department guidelines.

● The procedure for developing a conservation plan, and the local authority authorized to approve the plan.

● Provisions related to ordinance administration, including inspection and enforcement authority, appeal procedures, and penalties for violating the ordinance.

This rule spells out the procedure for obtaining the Department's approval of a shoreland management ordinance or amendment. The Department must seek the recommendations of the DNR and the LWCB before it approves an ordinance or amendment, except that the Department

may summarily approve an ordinance amendment which presents no significant legal or policy issues under this rule.

ACCOUNTING, RECORDKEEPING AND PROGRAM REVIEWS

Accounting and Recordkeeping; General

Under this rule, a county land conservation committee must establish and maintain an accounting and recordkeeping system to account for the receipt, handling and disposition of all funds the county receives under the program.

Cost–Share Grants; Records

Under this rule, a land conservation committee must keep a record of every cost–share grant which it awards to a landowner or land user. The committee must keep the record for at least 3 years after it makes the last cost–share payment, or for the required life of the cost–shared practice, whichever is longer. The record must include all of the following:

- A copy of the cost–share contract.
- Proof that the grant recipient has met the terms of the contract.
- A record of all cost–share payments made to the grant recipient, including the date and amount of each payment.

Incentive Payments; Records

Under this rule, a county land conservation committee must keep a record of every incentive payment which it awards to a landowner or land user. The committee must keep the record for at least 3 years after it makes the last incentive payment. The record must include all of the following:

- A copy of the required contract.
- Proof that the landowner or land user has met the terms of the contract.
- A record of all incentive payments made to the recipient, including the date and amount of each payment.

Department Review

Under this rule, the Department may review the activities of a county land conservation committee under the Soil and Water Resource Management Program. The Department may do any of the following in connection with its review:

- Require the committee to provide information requested by the Department, including information from the single organization–wide financial and compliance audit.
- Inspect and copy records.
- Inspect activities and practices funded under this rule.

WAIVERS

The Department may grant a waiver from any standard or requirement under this rule if the Department finds that the waiver is necessary to achieve the objectives of this rule. A waiver must be in writing, signed by the Department secretary.

Fiscal Estimate

The proposed rule repeals and recreates ch. ATCP 50, Wis. Adm. Code, interpreting ch. 92, Stats., regarding the state's Soil and Water Resource Management Program. The proposed rule incorporates changes to ch. 92, Stats., made by 1991 Wis. Act 309. It also incorporates changes being made by the Department to reduce application, reporting and other paperwork requirements imposed on county land conservation committees.

The proposed rule establishes requirements for certifying agricultural engineering practitioners. Costs associated with the certification program, approximately ten percent of one Full–Time Employe (FTE), can be absorbed by the Department.

The proposed rule could increase the allocation of state funds to some county land conservation committees and some farmers. The proposed rule changes the method of allocating funds to county land conservation committees and does allow the Department to allocate them more funds in support of county land conservation department staff and department operations. The proposed rule also increases grants to farmers who qualify for economic hardship treatment. The proposed rule does not increase funding for the program; therefore, any increases in some grants must result in decreases in other grants or fewer grants allocated.

The proposed rule will neither increase nor decrease state costs. In a very small way, it may reduce costs to local governments through the reallocation of state funds and the reduction of paperwork.

Environmental Assessment

The Department has prepared an environmental assessment on this rule. The public may comment on the environmental assessment, which will be available at the hearings. The assessment concludes that this rule will have no adverse impact on the environment. Alternatives to this rule will not meet program goals and responsibilities as effectively as the proposed rule. No environmental impact statement is necessary under s. 1.11 (2), Stats.

Initial Regulatory Flexibility Analysis

Businesses Affected

The adoption of the proposed changes to the administrative rule for the Soil and Water Resource Management Program, ch. ATCP 50, Wis. Adm. Code, will have a small effect on some small businesses in Wisconsin. The types of businesses affected include:

1) Farmers and other landowners and land users who receive notices of discharge through the regulatory animal waste management program under ch. NR 243, Wis. Adm. Code;

2) Farmers and other landowners and land users in counties, cities, villages and towns that adopt shoreland management ordinances under ss. ATCP 50.34 and 50.112;

3) Farmers and other landowners and land users in counties who participate in the program and receive grants from the Department; and

4) Agricultural cooperatives and other agribusinesses that select to participate in nutrient management planning and implementation activities under ss. ATCP 50.38 (3) and 50.102.

Notices of Discharge

Farmers, landowners or land users who receive notices of discharge through the regulatory animal waste management program under ch. NR 243, Wis. Adm. Code, can be affected by the proposed changes to this rule. Farmers could have the beneficial impact of being eligible for the economic hardship provision of the rule. In addition, there are several conservation practices added to the list of those eligible for funding. The addition of more conservation practices to the list of those eligible for funding expands the farmers' options for meeting the terms of their notice of discharge.

It is estimated that currently there are approximately 25 grants issued per year at an average cost to the farmer of $9,857 per grant. The state cost–share rate for practices under this program is 70% for most practices. If a farmer is eligible for economic hardship, the state cost–share rate will be raised to 85%, an increase of 15%, for manure storage and barnyard runoff control practices. The farmers' share will be reduced to 15% of the total cost for these practices, lowering their cost from an average of $9,857 per grant to an average of $4,929 per grant. The economic hardship provision also imposes a maximum grant limit of $45,000 for all manure storage practices, as opposed to the $35,000 limit currently imposed on those not eligible for the economic hardship provision.

Economic hardship is determined by analyzing the farmer's debt–to–asset ratio. If farmers have debt–to–asset ratios greater than 60%, they qualify for the economic hardship provisions. The Department's farmer assistance program staff estimate that up to 30% of Wisconsin's dairy farmers could have debt–to–asset ratios greater than 60%. If the current trend of funding 25 grants per year continues, up to 8 farmers could be eligible for economic hardship grants per year.

The addition of conservation practices to the list of those eligible for funding expands farmers' options for meeting the requirements of their notices of discharge. The conservation practices added as a result of this proposed rule and their estimated average costs are:

1) Manure storage abandonment at $7,000;
2) Cattle mounds at $5,000;
3) Intensive grazing management at $7,000;
4) Livestock watering facilities at $2,000;
5) Roof structures for barnyard areas at $35,000;
6) Well abandonment practices at $1,500;
7) Wetland restoration practices at $2,500; and
8) Milking center waste control systems at $3,500.

Agricultural Shoreland Management

Farmers and other landowners and land users in counties, cities, villages and towns that adopt shoreland management ordinances under s. 92.17, Stats., also will be affected by the proposed changes to the rule. There is no

state requirement that a local unit of government adopt a shoreland management ordinance; they may do so at their discretion. If a local unit of government adopts an ordinance, approved by the Department, those farmers, landowners and land users subject to the ordinances will be prohibited from performing certain practices on shoreland areas and may be eligible for cost–share grants to perform or install alternative shoreland management practices.

It is estimated that on an annual basis, 5 to 25 grants will be issued to local governmental units per year under the shoreland management program. Grants will range from $2,500 for basic information and education projects to $100,000 for full–scale implementation projects. It is assumed that the median grant given by the local jurisdiction to farmers will be approximately $7,500 per farm operator. Under the agricultural shoreland management program, the state's cost–share rate for any conservation practices can be as high as 80%. If the farmers qualify for economic hardship, the state's rate for barnyard runoff control practices would be 90%. If these assumptions are correct, the median cost for a farm operator will be $1,500 per grant or $750 per grant under the economic hardship provision. It is estimated that the economic hardship provision for this program could affect up to 30% of the grant recipients, if they install barnyard runoff control practices.

Nutrient Management Planning

Agricultural cooperatives and other agribusinesses that elect to participate in nutrient management planning under s. ATCP 50.102 will be affected by the proposed rule. Their participation, however, is totally voluntary and at their discretion. The proposed rule encourages state and local units of government to work with and through agribusinesses and agricultural cooperatives to provide nutrient management planning and implementation services to farm operations.

Under the existing rule, nutrient management grant funds may be used only for soil testing and the nutrient analysis of manure and other organic waste. Under the proposed changes, nutrient management planning is added to the activities eligible for funding. If they choose to participate, agricultural cooperatives and other agribusinesses could expand their economic opportunities by providing these services rather than providing only agricultural goods to farmers.

The Department anticipates spending approximately $100,000 annually on nutrient management projects throughout the state. Under the proposed changes to this rule, approximately $50,000, or half the total amount, could be spent on cost–sharing to prepare nutrient management plans. These cost–share funds will be made available to farmers or land conservation committees who will contract with agribusinesses to perform nutrient management planning services. It is anticipated that about 70 grants per year will be made for nutrient management planning through agribusinesses.

The proposed rule establishes a procedure for authorizing qualified nutrient management planners to perform work funded under this program. This system will make it easier and more efficient for farmers and land conservation committees to find qualified nutrient management planners. Additionally, the quality of nutrient management plans provided to farmers will be assured.

New Conservation Practices

The proposed rule adds several new conservation practices to the list of those eligible for funding. Farmers and other landowners and land users in counties who participate in the Soil and Water Resource Management Program and receive grants from the Department are eligible for funding of these new practices, making it easier for them to reach their conservation goals. The new practices, estimated average costs, and state cost–share rates are:

1) Manure storage abandonment practices are added at an estimated average cost of $7,000, with a state cost–share rate of 70%.

2) Cattle mound practices are added at an estimated average cost of $5,000, with a state cost–share rate of 70%.

3) Intensive grazing management practices are added at an estimated average cost of $7,000, with a state cost–share rate of 50%.

4) Livestock watering facilities are added at an estimated average cost of $2,000, with a state cost–share rate of 70%.

5) Roof structures for barnyard runoff control are added at an estimated average cost of $35,000, with a state cost–share rate of 70%.

6) Well abandonment practices are added at an estimated average cost of $1,500, with a state cost–share rate of 70%.

7) Wetland restoration practices are added at an estimated average cost of $2,500, with a state cost–share rate of 70%.

8) Milking center waste control systems are added at an estimated average cost of $3,500, with a state cost–share rate of 70%.

If any of these practices is a component of a manure storage system or a barnyard runoff control system and the farmer qualifies for the economic hardship provisions under the proposed rule, the state's share of the cost will increase from 70% to 85% of the total. If any of these practices is a component of a manure storage system or a barnyard runoff control system and the farmer qualifies for the economic hardship provisions under the proposed rule and is participating in the Shoreland Management program, the state's share of the cost will increase from 80% to 90% of the total.

Required Procedures

The proposed rule requires no unusual or additional reporting, record–keeping or other procedures of the affected small businesses. Under the proposed rule, only those certified by independent organizations recognized by the Department as having expertise in nutrient management planning will be authorized to receive funding for nutrient management planning.

Farming operations affected by the proposed changes will have to maintain financial records for all expenditures for which they will claim reimbursement from their grant, or with which they meet their share of the costs. These records will have to be reported to the Department or to county land conservation departments on forms provided by the Department along with receipts and other proofs of payment. This has been standard procedure for all soil and water resource management grant recipients, including small businesses, under the current rule. To accommodate small business participation, technical assistance is provided at the local level and forms are simplified.

Required Professional Skills and Special Accommodations

There are no professional skills required of small businesses affected by the general grant provisions of the proposed rule. County land conservation department staff and U.S. Natural Resources Conservation Service staff are available in all counties throughout the state to provide the needed technical assistance to farmers who are required to install practices or perform management activities to correct soil erosion and water pollution problems. These same staff provide assistance to farmers regarding the financial forms and the reporting that may be required.

If agricultural cooperatives and other agribusinesses elect to participate in nutrient management planning activities, their staff will have to be technically capable of preparing nutrient management plans, testing soil and analyzing manure and other organic wastes for nutrients. To assist in this and to help assure quality control on nutrient management activities, the Department will conduct a nutrient management information and education program and a nutrient management training program. In addition, the Department in cooperation with other agencies has developed nutrient management planning forms in both paper and automated formats. The proposed rule also sets standards for the nutrient management plans. The training programs, clear program standards and simplified forms will help accommodate small businesses and encourage their participation in this program.

The requirements and procedural provisions of the proposed rule have minimal impact on small businesses. The proposed rule will help in the state's efforts to improve water quality and prevent soil erosion. The proposed rule impacts small businesses primarily in a beneficial manner by providing more state funds to them to help offset the cost of required activities and to encourage participation in discretionary activities. Because the impacts are minimal, no special accommodations are being made for small businesses, other than those mentioned above.

Notice of Proposed Rule
Chiropractic Examining Board

Notice is hereby given that pursuant to ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 446.02 (9) (a), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Chiropractic Examining Board will adopt the following rules as proposed in this notice, without public hearing unless, within 30 days after publication of this notice on **February 1, 1996**, the Chiropractic Examining Board is petitioned for a public hearing by

25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Dept. of Regulation & Licensing

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

Statute interpreted: s. 446.02 (9) (a)

In this proposed rule−making order, the Chiropractic Examining Board amends s. Chir 9.03 (6) to permit colleges of chiropractic to report the identity of chiropractic preceptors on a schedule consistent with the academic calendar of the various colleges, rather than requiring reports at potentially unreasonable or uninformative intervals.

Text of Rule

SECTION 1. Chir 9.03 (6) is amended to read:

Chir 9.03 (6) Provides a list to the board once every ~~3 months~~ trimester or academic quarter of the chiropractors in Wisconsin who will be acting as preceptors in the program.

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 and Licensing
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearings
Corrections, Dept. of

Notice is hereby given that pursuant to ss. 301.08 (1) (c) 2., 304.073 (3) and 301.074 (5), Stats., and interpreting ss. 301.08 (1) (c) 2., 304.073 (2) and 304.074 (2), Stats., as created by 1995 Wis. Act 27, the Department of Corrections will hold public hearings to consider the creation of ss. DOC 328.03 (2), (19) and (22), 328.043, 328.044, 328.045, 328.046, 328.047, 328.048, 328.049, 328.05, 328.04 (3) (n), and amendment of ss. DOC 328.05 (1) (d) and (11), relating to supervision fees charged to probationers and parolees, and emergency rules now in effect on the same subject (rules related to vendor supervision and exemptions are not included in emergency rules).

Hearing Information

The public hearings will be held:

February 13, 1996
Tuesday
9:00 a.m.
Room 120
State Office Bldg.
141 N.W. Barstow
WAUKESHA, WI

February 16, 1996
Friday
9:00 a.m.
Secretary's Conference Rm.
Dept. of Corrections
149 East Wilson St.
MADISON, WI

February 22, 1996
Thursday
10:00 a.m.
Auditorium Room 101
Wood Co. Court House
400 Market St.
WISCONSIN RAPIDS, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

These proposed rules regulate the collection of supervision fees, as required, under ss. 301.08 (1) (c) 2., 304.073 (3) and 304.074 (5), Stats.

Currently, offenders on probation or parole pay no supervision fee. Through this rule, the Department will charge offenders on probation and parole a supervision fee. Offenders under administrative or minimum supervision and supervised by the Department will pay a fee sufficient to cover the cost of supervision. Offenders under administrative or minimum supervision and supervised by a vendor will pay a fee sufficient to cover the cost of supervision and administration of the vendor contract. Offenders under medium, maximum, or high−risk supervision will pay a supervision fee based on the ability to pay.

These proposed rules create an exemption for an offender who is under medium, maximum, or high−risk supervision and who meets certain conditions. The conditions for obtaining an exemption are unemployment, the pursuit of a full−time course of instruction, undergoing treatment, a statement from a physician that excuses an offender from work for medical reasons and the offender is unable to be employed because of the medical condition. There are no exemptions for clients under administrative or minimum supervision.

These rules create an exception for an offender who is supervised by another state under an interstate compact from paying a Wisconsin supervision fee. An offender who is serving a concurrent sentence of prison and probation or parole is not required to pay the supervision fee while in prison.

These rules authorize the Department to contract with a vendor to provide monitoring of an offender. Offenders who are on monitoring are required to pay a fee sufficient to cover the cost of monitoring, supervision by the Department and cost of administering the contract.

These rules require the Department to establish the rate for supervision and monitoring fees and to provide the offender with the supervision fee schedule.

These rules require offenders to comply with the procedures of the Department or vendor for payment of the supervision or monitoring fee. These rules require the Department to provide the offender with a copy of the procedures for paying the supervision or monitoring fee. These rules permit an offender to pay the supervision fee in monthly installments or in a lump sum.

These rules permit the Department to take certain action for the offender's failure to pay the supervision or monitoring fee. The actions include counseling, wage assignments, review of supervision level, recommendation for revocation of probation or parole and any other appropriate means of obtaining the supervision or monitoring fee.

Text of Rules

SECTION 1. DOC 328.03 (2) is renumbered DOC 328.03 (3).

SECTION 2. DOC 328.03 (2) is created to read:

DOC 328.03 (2) "Administrative supervision" has the meaning given in s. 301.08 (1) (e) 1, Stats.

SECTION 3. DOC 328.03 (3) is renumbered DOC 328.03 (4).

SECTION 4. DOC 328.03 (4) is renumbered DOC 328.03 (15).

SECTION 5. DOC 328.03 (15) is renumbered DOC 328.03 (14).

SECTION 6. DOC 328.03 (17) is renumbered DOC 328.03 (16).

SECTION 7. DOC 328.03 (18) is renumbered DOC 328.03 (17).

SECTION 8. DOC 328.03 (19) is renumbered DOC 328.03 (18).

SECTION 9. DOC 328.03 (19) is created to read:

DOC 328.03 (19) "High risk supervision" means an offender who presents risks that carry extreme consequences, where plans are developed

to reduce or eliminate this risk and plans are implemented within a set of guidelines while retaining flexibility and staff judgment.

SECTION 10. DOC 328.03 (22) is renumbered DOC 328.03 (23).

SECTION 11. DOC 328.03 (22) is created to read:

DOC 328.03 (22) "Minimum supervision" has the meaning given in s. 301.08 (1) (c) 1. b., Stats.

SECTION 12. DOC 328.03 (23) is renumbered DOC 328.03 (24).

SECTION 13. DOC 328.03 (24) is renumbered DOC 328.03 (25).

SECTION 14. DOC 328.03 (25) is renumbered DOC 328.03 (26).

SECTION 15. DOC 328.03 (26) is renumbered DOC 328.03 (27).

SECTION 16. DOC 328.03 (27) is renumbered DOC 328.03 (28).

SECTION 17. DOC 328.03 (28) is renumbered DOC 328.03 (29).

SECTION 18. DOC 328.03 (29) is renumbered DOC 328.03 (30).

SECTION 19. DOC 328.03 (30) is renumbered DOC 328.03 (31).

SECTION 20. DOC 328.03 (31) is renumbered DOC 328.03 (32).

SECTION 21. DOC 328.03 (32) is renumbered DOC 328.03 (33).

SECTION 22. DOC 328.03 (33) is renumbered DOC 328.03 (34).

SECTION 23. DOC 328.03 (34) is renumbered DOC 328.03 (35).

SECTION 24. DOC 328.043 is created to read:

DOC 328.043 Administrative and minimum supervision offender supervised by the department. (1) OFFENDER PAYMENT. An offender who is under administrative or minimum supervision and who is supervised by the department shall pay a supervision fee.

(2) SUPERVISION FEE. The department shall set the fee for supervision including all of the following:

(a) Set a supervision fee that is sufficient to cover the cost of supervision.

(b) Determine the monthly cost of supervision.

(c) Determine the supervision fee for the number of months on supervision.

(d) Provide for an increase in the supervision fee if the cost of supervision increases.

(e) Establish a priority system for payment of fees or costs owed by the offender.

(f) Provide the offender with a copy of the fee schedule.

(3) REPORTING AND VERIFICATION OF SUPERVISION FEE. In reporting and verifying the supervision fee, all of the following shall occur:

(a) The offender shall maintain a record of payments.

(b) The department shall record all supervision fees paid by the offender.

(c) The offender shall have access to a copy of the record of payments to verify receipt of payment.

(d) The department shall advise the offender of nonpayment of supervision fees.

(e) The offender shall provide documentation of the offender's payment record to the agent for purposes of comparing the offender's records to the records of the department.

(f) The department shall audit the record of payment of supervision fee.

SECTION 25. DOC 328.044 is created to read:

DOC 328.044 Administrative and minimum supervision offender supervised by a vendor. (1) OFFENDER PAYMENT. An offender who is under administrative or minimum supervision and who is supervised by a vendor shall pay a supervision fee.

(2) SUPERVISION FEE. The department shall set the fee for supervision including all of the following:

(a) Set a fee that is sufficient to cover the cost of supervision and the administration of the vendor contract. The cost of supervision shall include the cost of supervision by the vendor and by the department.

(b) Determine the monthly cost of supervision.

(c) Determine the supervision fee for the number of months on supervision.

(d) Provide for an increase in the supervision fee if the cost of supervision or the cost of administering the vendor contract increases.

(e) Establish a priority system for payment of fees or cost owed by the offender.

(f) Provide the offender with a copy of the fee schedule.

(3) REPORTING AND VERIFICATION OF SUPERVISION FEE. In reporting and verifying the supervision fee, all of the following shall occur:

(a) The offender shall maintain a record of payments.

(b) The offender shall report any problems with the vendor's record of payments to the vendor according to the vendor's procedures.

(c) The vendor shall record all supervision fees paid by the offender.

(d) The offender shall have access to a copy of the record of payments to verify receipt of payments.

(e) The vendor shall provide the offender's agent a report of payment of the supervision fee paid by the offender by the 15th of the month following the month in which the payment is due.

(f) The vendor shall permit the department to audit the vendor's records related to payment of supervision fee by offenders of the department as needed.

SECTION 26. DOC 328.045 is created to read:

DOC 328.045 Medium, maximum and high risk supervision by the department. (1) OFFENDER PAYMENT. An offender on medium supervision as defined under s. DOC 328.04 (4) (b) or maximum supervision as defined under s. DOC 328.04 (4) (a) or high risk supervision shall pay a supervision fee.

(2) SUPERVISION FEE. The department shall set the fee for supervision including all of the following:

(a) Set the supervision fee based on an offender's ability to pay with the goal of receiving at least $1 per day.

(b) Determine the monthly cost of supervision.

(c) Determine the supervision fee for the number of months on supervision.

(d) Provide for an increase in the supervision fee if the cost of supervision increases or if there is a change in the offender's ability to pay.

(e) Provide an exemption from paying the supervision fee for an offender who falls within one or more of a sub. (3) category.

(f) Establish a priority system for payment of fees or costs owed by the offender.

(g) Provide the offender with a copy of the fee schedule.

(3) SUPERVISION FEE EXEMPTIONS. (a) An offender who meets one or more of the following conditions may not be required to pay the supervision fee:

1. Has used all reasonable and appropriate means to gain employment as determined by the agent, but has been unable, to gain employment which provides the offender sufficient income to make payment of supervision fee.

2. Is a student in a school designed to fit the student for gainful employment and is unable to be employed. The educational institution shall certify the offender's status to the department.

3. Is undergoing psychological, chemical or medical treatment approved by the department and is unable to be employed. The treatment provider shall certify the offender's status to the department.

4. Has a statement from a physician approved by the department excusing the offender from work for medical reason and the offender is unable to be employed because of the medical condition. The physician shall certify the offender's status to the department.

(b) An offender who meets one or more of the exemption criteria but who the department determines has the ability to pay will not receive an exemption.

(c) The agent shall make a determination concerning an offender's exemption from the supervision fee within 10 working days of receiving an offender for control and supervision or within 10 working days of a change in the offender's financial status.

(d) The agent's supervisor shall review all decisions to exempt an offender from the payment of the supervision fee.

(4) REPORTING AND VERIFICATION OF SUPERVISION FEE. In reporting and verifying payment of the supervision fee, all of the following shall occur:

(a) The offender shall maintain a record of payments.

(b) The department shall record all supervision fees paid by an offender.

(c) The offender shall have access to a copy of the record of payments to verify receipt of payments.

(d) The department shall advise the offender of nonpayment of supervision fees.

(e) The offender shall provide documentation of the offender's payment record to the agent for purpose of comparing to the records of the department.

(f) The department shall audit the records of payment as needed.

SECTION 27. DOC 328.046 is created to read:

DOC 328.046 Vendor monitoring. (1) MONITORING OF AN OFFENDER BY A VENDOR. Pursuant to s. 304.073, Stats, the department may contract with a vendor to provide monitoring of an offender. When an offender is monitored by a vendor, face−to−face contact is not required.

(2) MONITORING FEE. An offender who is on monitoring shall pay a fee for the cost of monitoring. The department shall set the fee for monitoring including all of the following:

(a) Set a monitoring fee sufficient to cover the cost of monitoring, supervision by the department and cost of administering the contract.

(b) Determine the monthly cost of monitoring.

(c) Determine the monitoring fee for the number of months on monitoring.

(d) Provide for an increase in the monitoring fee if the cost of monitoring increases.

(e) Establish a priority system for payment of fees or costs owed by the offender.

(f) Provide the offender with a copy of the fee schedule.

(3) REPORTING AND VERIFICATION OF MONITORING FEE. In reporting and verifying the supervision fee, all of the following shall occur:

(a) The offender shall maintain a record of payments. The offender shall report any problems with the record of payments to the vendor according to the vendor's procedures.

(b) The vendor shall record the monitoring fee paid by the offender.

(c) The offender shall have access to a copy of the record of payments to verify receipt of payments.

(d) The vendor shall provide the offender's agent a report of payment of monitoring fee paid by the 15th of the month following the month in which the payment is due.

(e) The vendor shall permit the department to audit the vendor's records related to payment of monitoring fee by offenders of the department as needed.

SECTION 28. DOC 328.047 is created to read:

DOC 328.047 Collection of supervision fee or monitoring fee. In collecting the supervision or monitoring fee, all of the following shall occur:

(1) The department shall provide the offender with a copy of the supervision fee payment procedures.

(2) The offender shall pay the appropriate supervision fee to the department according to the procedures established by the department.

(3) The offender who is supervised by the department may pay the supervision fee in any of the following ways:

(a) In monthly installments.

(b) In a lump sum payment at the beginning of supervision.

(c) In a lump sum payment for any remaining months of supervision.

(4) The offender who is supervised or monitored by a vendor shall pay the appropriate supervision or monitoring fee according to procedures established by the department.

(5) The department shall establish a supervision fee schedule including all of the following:

(a) A grace period for the initial month of supervision.

(b) A deadline for payment for each subsequent month of supervision.

(c) A deadline for the final payment to be 30 days before discharge.

(6) If an offender fails to pay a supervision or monitoring fee, the agent may take action under s. DOC 328.048.

(7) The offender supervised by the department shall pay the supervision fee in the manner established by the department.

(8) The vendor shall reimburse the department for its allotment of the supervision fee according to the contract.

(9) The department shall credit those moneys to the appropriation account under s. 20.410 (1) (ge) or (gf), Stats.

SECTION 29. DOC 328.048 is created to read:

DOC 328.048 Department action when an offender fails to pay supervision or monitoring fee. The department may use any of the following actions in any order when an offender fails to pay the supervision or monitoring fee:

(1) Counseling.

(2) Wage assignment for either of the following reasons:

(a) To sanction.

(b) To effectuate collection of the supervision fee.

(3) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or approved custody.

(4) Issue a recommendation for revocation of parole or probation for the offender's failure to pay the supervision or monitoring fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the supervision or monitoring fee but the offender fails to pay the fee.

(5) Any other appropriate means of obtaining the supervision fee.

SECTION 30. DOC 328.049 is created to read:

DOC 328.049 Exceptions. The following offenders are not required to pay a supervision fee:

(1) A probationer or parolee who is supervised by another state under an interstate compact adopted pursuant to s. 302.25, Stats.

(2) An offender who is serving a concurrent sentence of prison, probation or parole and is in prison.

SECTION 31. DOC 328.05 is created to read:

DOC 328.05 Refund of supervision or monitoring fee when offender has paid in advance. (1) The department may not make any refund to an offender for a partial month of supervision or monitoring.

(2) On the request of an offender, the department shall refund any supervision or monitoring fee for any month paid in advance when no supervision occurred during the month.

(3) The offender supervised or monitored by a vendor shall obtain a refund for payment of any supervision or monitoring fee according to the vendor's procedures.

SECTION 32. DOC 328.04 (3) (n) is created to read:

DOC 328.04 (3) (n) Pay supervision or monitoring fee and comply with the department's or vendor's procedures as may be required.

SECTION 33. DOC 328.05 (1) (d) is amended to read:

DOC 328.05 (1) (d) The agent believes that management is necessary to ensure compliance with the ~~client's~~ offender's existing financial obligations, including paying the supervision or monitoring fee.

SECTION 34. DOC 328.05 (11) is amended to read:

DOC 328.05 (11) An agent may seek a wage assignment against ~~a client~~ an offender if it is necessary to assure timely collection of restitution and court costs ~~and~~, to control the ~~client's~~ offender's earnings and to collect the supervision fee.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

Offenders who are supervised by the Department are required as of January 1, 1996, to pay fees for the costs of this supervision.

This rule identifies the duties and responsibilities of the Department in connection with methods and means of fee collection.

For offenders who are classified as requiring medium or higher levels of supervision, there will be an increased workload, but it is believed that these costs can be absorbed within the agency·s budget. There will be $50,000 to $60,000 in direct costs for coupon books and lockbox services. The Department will be reimbursed from the fees.

For offenders who are classified as requiring minimum or administrative supervision, and who are supervised pursuant to s. 301.08 (1) (c) permitting vendor monitoring, the Department·s costs cannot be absorbed by existing staff.

A s. 16.515, Stats., request was submitted by the Department, and approved by the Joint Committee on Finance requesting $269,700 and 10.00 PRS Full Time Employes (FTE) in FY 96 and $695,400 and 18.00 PRS FTE

in FY 97. Correctional staff will carefully review reports from the vendor and take any followup action that is required. Salary and other costs associated with the staff will be supported through supervision fees.

The rule permits exemptions for certain offenders who are classified as requiring medium and above supervision. The exemptions include unemployment, certain medical conditions, and full time education or treatment. It is not known how many offenders may be granted exemptions, but it is expected that there will not be a significant fiscal impact for the Department.

Contact Person

Gloria J. Thomas, (608) 267–1732
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, WI 53707–7925

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

Written Comments

Written comments on the proposed rules received at the above address no later than **February 29, 1996**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing
Dept. of Development

Notice is hereby given that pursuant to s. 560.032, Stats., the Department of Development will hold a hearing to consider an emergency rule which repeals and recreates ch. DOD 13, Wis. Adm. Code, which provides for a volume cap on private activity bonds at the following place and time:

Hearing Information

February 12, 1996
Monday
10:00 a.m.

Room 908
Dept. of Development
123 West Washington Ave.
MADISON, WI

Analysis Prepared by the Dept. of Development

Section 560.032, Stats., requires the Department of Development to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This order complies with this statutory mandate by establishing a volume cap allocation system for calendar year 1996.

Without this order, the availability of the annual volume cap for Wisconsin would be uncertain.

The private activity bonding available under the volume cap in Wisconsin during 1995 is approximately $254 million. The volume cap for 1996 is based upon Wisconsin's 1995 population and should be slightly more than the cap available in 1995. Of the total, the rules provide under this order that $105 million will be allocated to the Wisconsin Housing and Economic Development Authority (WHEDA), $10 million will be allocated to the State Building Commission, $25 million will be allocated to the Department of Development to be distributed to local issuers for multi–family housing and the remainder, approximately $114 million, will be allocated to the Department of Development to be distributed to local issuers for a variety of economic development projects.

On September 1, any unused volume cap gets put into one category in the Department of Development and may be used for any of the purposes described.

This order is substantially the same as the rule currently in effect for 1995 with the following exceptions:

1. The allocation for multi–family housing is reduced from $45 million to $25 million.

2. The Department will charge a fee to each issuer equal to three one hundredths of one percent of the amount of bonds sold by that issuer during the calendar year to recover the cost of the Department's service.

3. The language in s. DOD 13.03, is changed from the 1995 version to make it clear that any WHEDA or Building Commission allocation for which bonds have not been issued by September 1 shall be transferred to the Department of Development.

Since the allocation was created for multi–family housing, there has been an average of $20 million requested each year for multi–family housing. After September 1 in each year, under either the proposed or current rules, all of the remaining allocation goes into one general allocation administered by the Department of Development and is available for all eligible projects including WHEDA and multi–family housing projects.

Since any unused allocation for multi–family housing is not transferred to the Department allocation until September 1, for many potential users there is insufficient time remaining to actually sell bonds prior to the close of the calendar year as required by the applicable federal law and Department administrative rule. The changes will make it more likely that Wisconsin takes advantage of the entire allocation made available to it during each calendar year.

The provision for the fee will have the businesses which make use of volume cap pay the state's cost for administration of the volume cap program.

Like the 1995 rule, the proposed rule provides for an allocation formula that will address the bonding needs of the state and local issuing authorities. It will also provide for the efficient and effective use of the state's annual volume cap allocation, and thus, will provide all eligible issuers with the opportunity to obtain an allocation. Finally, it provides for flexibility in making adjustments to the formula as needed.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.114, Stats., the proposed rules should have a minimal, if any, impact on small business. The initial regulatory flexibility analysis required by s. 227.17 (3) (f), Stats., is as follows:

a. Types of businesses affected: The proposed rule does not alter the ability of small businesses to make use of private activity bonding.

b. Description of reporting and bookkeeping procedures required: The proposed rule produces no changes to reporting or bookkeeping requirements.

c. Description of professional skills required: The proposed rule produces no changes to the professional skills required.

Fiscal Estimate

There is not likely to be any change in the workload of either the Department of Development or local governments. The fee to be charged under the proposed rule will produce approximately $40,000 for the Department which approximates its cost of administering the volume cap program. The fees are likely to be paid primarily by the businesses that are the beneficiaries of the bond allocations and rarely by the local governments that issue the resolutions to authorize the bonding, so there should be minimal fiscal effect upon local government.

Contact Person

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

Copies of Rule

Copies of the emergency rule may be obtained upon request from Dennis Fay.

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

Notice is hereby given that pursuant to ss. 46.27 (2) (h) 2. and 46.277 (5r), Stats., as created by 1995 Wis. Act 27, the Department of Health and

Social Services will hold a public hearing to consider the amendment of s. HSS 73.01, Wis. Adm. Code, and the creation of ss. HSS 73.03 (3m), (8m) and (17m) and 73.10, Wis. Adm. Code, relating to conditions of hardship for granting an exception to a limitation on use of community long−term support funds to pay for services to residents of community−based residential care facilities (CBRFs), and the emergency rules now in effect on the same subject.

Hearing Information

February 13, 1996
Tuesday
Beginning at 1 p.m.

Conference room within Rm. 472
State Office Building
1 W. Wilson Street
MADISON, WI

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Social Services

The 1995−97 State Budget, 1995 Wis. Act 27, created ss. 46.27 (3) (f) and 46.277 (3) (c), Stats., to require counties beginning January 1, 1996, to limit the amount of spending for services received by residents of community−based residential facilities (CBRFs) from the annual allocations received for the provision of long−term community support services to no more than 25% of each allocation for the calendar year. Act 27 also added provisions in ss. 46.27 and 46.277, Stats., that prohibit counties from using funds from an allocation that exceed the maximum allowable to pay for services for a CBRF resident in the case of a person initially applying for services unless the Department grants an exception for the person on hardship grounds under conditions specified by rule.

Through this rulemaking order, the Department is establishing conditions of hardship on the basis of which it will make exceptions to the limitations on spending for services to CBRF residents from the annual allocations for community long−term support services.

Contact Person

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

John Lorimer, (608) 267−9091 or,
if you are hearing impaired, (608) 267−9880 (TDD)
Bureau of Long−Term Support
Division of Community Services
P.O. Box 7851
Madison, WI 53707

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

Written Comments

Written comments on the proposed rules received at the above address no later than **February 20**, **1996** will receive the same consideration as testimony presented at the hearing.

Fiscal Estimate

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

Sections 46.27 (3) (f) and 46.277 (3) (c), Stats., as created by 1995 Wis. Act 27, limit spending from the appropriations for community long−term support programs under s. 46.27, Stats., and ss. 46.27 (11) and 46.277, Stats., for services provided to residents of community−based residential facilities (CBRFs) to 25% of each appropriation. A county may exceed that limit only if the Department grants an exception in the case of an applicant for services who meets conditions that the Department specifies by rule to avoid hardship to the person. These are the rules prescribing those conditions.

All costs to the Department and counties for administration of this exception to the 25% limit on spending of community long−term support funds for services to CBRF residents were taken into consideration when the Legislature passed the bill that became Act 27.

Initial Regulatory Flexibility Analysis

These rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to county departments that administer the Community Options Program (COP) under s. 46.27, Stats., and to county departments and private non−profit agencies with which the Department contracts to provide home and community−based services under a Medical Assistance Waiver.

Notice of Hearings

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

Notice is hereby given that pursuant to ss. 49.45 (2) (a) 23. and 50.034 (2), Stats., as created by 1995 Wis. Act 27, the Department of Health and Social Services will hold public hearings to consider the creation of ch. HSS 89, Wis. Adm. Code, relating to assisted living facilities.

Hearing Information

The public hearings will be held:

February 15, 1996
Thursday
From 1 p.m. to
3 p.m.

Room 30B
Chippewa Valley Tech. College
620 W. Clairemont Ave.
EAU CLAIRE, WI

February 20, 1996
Tuesday
From 1 p.m. to
3 p.m.

Room 120
State Office Building
141 Northwest Barstow Street
WAUKESHA, WI

February 21, 1996
Wednesday
From 1 p.m. to
3 p.m.

Room B139
State Office Building
1 West Wilson Street
MADISON, WI

February 22, 1996
Thursday
From 1 p.m. to 3 p.m.

Room 450
North Central Technical College
100 Campus Drive
WAUSAU, WI

The hearing sites are fully accessible to people with disabilities.

For the Eau Claire hearing, persons attending may park without charge in the visitors' parking lot in front of the building or in any student parking lot on the south side of Clairemont Avenue (there is a skywalk across Clairemont Avenue to the college building). Reserved parking for people with disabilities is on the west side of the building. People with disabilities may also park in any space in the visitors' parking lot in front of the building.

Analysis Prepared by the Dept. of Health & Social Services

The 1995−97 State Budget, 1995 Wis. Act 27, created s. 50.034, Stats., which establishes a new category of residential care facility called assisted living facility, effective July 1, 1996.

An assisted living facility is a place where 5 or more adults reside which consists of independent apartments and which provides each resident with up to 28 hours of supportive, personal and nursing services per week. An assisted living facility is not a nursing home, as defined in s. 50.01 (3), Stats., or a community−based residential facility, as defined in s. 50.01 (1g), Stats., but may be part of a multiple use facility that includes a nursing home or community−based residential facility. Section 50.034 (1), Stats., as created by 1995 Wis. Act 27, provides that every assisted living facility must be either registered or certified by the Department of Health and Social Services.

This order creates rules for certification of assisted living facilities for the purpose of establishing their eligibility for Medical Assistance (MA) reimbursement and rules for registration of assisted living facilities which are

not certified. The rules specify requirements for operation of an assisted living facility, including requirements related to the building, services to residents, fee schedule information, and service and risk agreements between the facility and its residents. The rules also contain standards and procedures specific to registration or certification of a facility, and for approval of the partial conversion of a nursing home or community–based residential facility to assisted living.

Contact Person

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

Wendy Fearnside, (608) 266–5456 or,
if you are hearing impaired, (608) 267–9880 (TDD)
Bureau on Aging
P.O. Box 7851
Madison, WI 53707

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

Written comments on the proposed rules received at the above address no later than **March 1**, **1996** will receive the same consideration as testimony presented at a hearing.

Fiscal Estimate

This order implements s. 50.034 (2), Stats., as created by 1995 Wis. Act 27, by creating rules for regulation of assisted living facilities.

These rules will not affect the expenditures or revenues of state government or local governments. All costs for state administration of this regulatory program were taken into consideration by the Legislature when it passed the 1995–97 budget bill. Local governments are not likely to operate assisted living facilities and are not involved in the administration of this regulatory program.

Initial Regulatory Flexibility Analysis

These are the first rules for a new type of regulated residential care facility for adults, called an assisted living facility. An assisted living facility is a place where 5 or more adults reside which consists of independent apartments and which provides each resident with up to 28 hours of supportive, personal and nursing services per week. Regulation of assisted living facilities will begin under these rules when the rules take effect, which will be July 1, 1996, or later. There are now facilities in operation in Wisconsin that meet the definition of assisted living facility but they are regulated as community–based residential facilities (CBRFs) under subch. I of ch. 50, Stats., and ch. HSS 3. They will likely be converted to assisted living facilities after July 1, 1996, along with wings of hospitals and nursing homes and possibly motels and other types of residences. In addition, some brand new facilities specifically designed as assisted living facilities are under construction. Some of the assisted living facilities will likely be operated as small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

The proposed rules for assisted living facilities are much less stringent than either the current rules (ch. HSS 3) or planned new rules (ch. HSS 83) for community–based residential facilities.

The proposed rules require every assisted living facility to have a written schedule of fees, to enter into a written service agreement with each resident, and to enter into a written risk agreement with each resident. A registered assisted living facility must immediately report to the Department a change in ownership or its discontinuation of operations. A certified assisted living facility must report to the Department any change which may affect its compliance with the rules, including a change in ownership, management, the building or discontinuation of facility operations. A certified facility must also have a contract with the county agency which administers the Medical Assistance community long–term support waivers under ss. 46.27 (11) and 46.277, Stats., if it receives those funds for particular residents, and must comply with applicable requirements in the Department's Medicaid Community Waivers Manual.

No special types of professional skills are necessary for compliance with these rules, except that nursing services and supervision of delegated nursing services are to be provided consistent with professional standards. The skills required are similar to those needed for operating a community–based residential facility or other long–term care facility or in managing housing for the elderly or for disabled people.

Notice of Hearings

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

Notice is hereby given that pursuant to s. 51.44 (5) (a), Stats., the Department of Health and Social Services will hold public hearings to consider the revision of ch. HSS 90, Wis. Adm. Code, relating to early intervention services for children in the age group birth through 2 who are found to be developmentally delayed or to have a diagnosed condition which will likely result in developmental delay.

Hearing Information

The public hearings will be held:

February 14, 1996	**Room B155**
Wednesday	**State Office Building**
From 2 p.m. to	**1 West Wilson Street**
4 p.m.	**MADISON, WI**
February 22,1996	**Room 405**
Thursday	**North Central Tech. College**
From 3:30 p.m. to	**100 Campus Drive**
5:30 p.m.	**WAUSAU, WI**

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Social Services

These are amendments to the Department's rules for operation of a statewide system of services, called the Birth to 3 Program, under s. 51.44, Stats., for children with disabilities. The amendments provide that fees will be charged for services, except for core services, based on the family's ability to pay. The amendments also clarify requirements and modify procedures based on experience in implementing the rules since the last revision in mid–1993, and add marriage and family therapists as a new type of qualified personnel authorized to provide early intervention services to eligible children and their families.

Contact Person

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

Donna Miller, (608) 267–5150 or,
if you are hearing–impaired, (608) 267–9880 (TDD)
Birth to 3 Program
P.O. Box 7851
Madison, WI 53707

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

Written comments on the proposed rules received at the above address no later than **March 1**, **1996** will receive the same consideration as testimony presented at a hearing.

Fiscal Estimate

Except for the establishment of fees for services, these rule changes will not affect expenditures or revenues for either the Department or counties.

Although the Birth to 3 Program does not currently allow fees to be charged for services, fees are permitted under federal regulations except for core services.

Based on a fiscal study of Birth to 3 Program participants conducted by the Department in 1994, it is assumed that approximately 32% of the 3,500 families now receiving services under the program will have an ability to pay fees under the existing family support fee schedule. This schedule has been developed in accordance with the Department's Uniform Fee System and will be used to assess fees under the Birth to 3 Program. Fees collected under the family support schedule currently average about $100 per family per year. If it is assumed that $100 a year will be collected from 1,120 families (32% x 3,500) receiving services under the Birth to 3 Program, counties could collect up to $112,000 annually.

With a fee system in place, counties would also be able to access private insurance. The fiscal study data indicate that approximately 330 families have private insurance but deny access. Costs for the three primary services provided under the Birth to 3 Program in which a fee can be charged –– occupational therapy, physical therapy and speech therapy –– are nearly $4.300 per child. The experience of counties suggests that insurance will cover only one–half of this amount. Thus, it is possible that counties could capture as much as $709,500 annually in increased insurance revenues.

The revenues that could be collected from families and private insurance as a result of allowing fees will offset county costs associated with the program.

Initial Regulatory Flexibility Analysis

These rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to the Department and to county agencies administering the Birth to 3 Program. County agencies may contract with some medical and other service providers organized as small businesses to provide some early intervention services, in which case the small business providers, like other public and private providers of services to eligible children and their families, must comply with rules for provision of services, including procedural safeguards such as obtaining parents' consent before services are provided and keeping confidential any personally identifiable information about a child and the child's parents and other family members.

Notice of Hearing

Health & Social Services (Economic Assistance, Chs. HSS 200––)

Notice is hereby given that pursuant to s. 49.19 (11s) (b) 5., Stats., as created by 1995 Wis. Act 12, and s. 49.50 (2), Stats., the Department of Health and Social Services will hold a public hearing to consider the amendment of s. HSS 201.30 (1) and creation of s. HSS 201.303, relating to participation of Aid to Families with Dependent Children (AFDC) recipients in the AFDC Benefit Cap Demonstration Project, and emergency rules now in effect on the same subject.

Hearing Information

The public hearing will be held:

February 16, 1996
Friday
Beginning at 10 a.m.

Room B155
1 W. Wilson Street
State Office Building
Madison, WI

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Social Services

Under s. 49.19, Stats., a family can apply and be determined eligible for the Aid to Families with Dependent Children (AFDC) program. If a family is determined eligible, the AFDC benefit amount is based, in part, on family size. The maximum amount of AFDC benefits a family can receive currently increases when an additional child is born.

On January 1, 1996, Wisconsin implemented the AFDC Benefit Cap Demonstration Project, authorized under s. 49.19 (11s), Stats., as created by 1995 Wis. Act 12. The purpose of this demonstration is to test whether eliminating increases in the AFDC grant when an additional child is born will encourage families on welfare to delay having more children until they are financially able to support them. Emergency rules for the AFDC Benefit Cap demonstration project were published on December 27, 1995, and were effective on January 1, 1996.

Under the demonstration project, a family will not receive an automatic increase in the AFDC grant when an additional child is born. The project began on January 1, 1996. The benefit cap will first apply for children born on or after November 1, 1996, provided that their parents have been recipients for more than 10 months. A child born to a recipient more than ten months after first receipt of benefits will be counted in the family size for AFDC assistance standard purposes but not for purposes of benefit determination. An exception will be made for a child born as a result of rape or incest. A child not counted for purposes of benefit determination will be counted for Medical Assistance and food stamp purposes, and the family will be entitled to receive other social service assistance for the child.

The rules describe how the Department will choose AFDC recipients who must participate in the demonstration, and outline the Department's responsibilities in administering the demonstration project.

Contact Person

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

Mike McKenzie, (608) 261–6971 or,
if you are hearing impaired, (608) 267–9880 (TDD)
Division of Economic Support
P.O. Box 7935
Madison, WI 53707

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

Written comments on the proposed rules received by Mike McKenzie at the above address no later than **February 23, 1996** will receive the same consideration as testimony presented at the hearing.

Fiscal Estimate

All costs to the Department and local governments for operation of the AFDC Benefit Cap demonstration project are included in the 1995–1997 biennial Budget Act, 1995 Wis. Act 27. There are no additional costs for state government or local governments from promulgation of these rules.

Initial Regulatory Flexibility Analysis

These rules relate to county and tribal administration of a federal–state program. They will not directly impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Health & Social Services (Economic Support, Chs. HSS 200––)

Notice is hereby given that pursuant to ss. 49.02 (7m) and 49.029 (2), Stats., as created by 1995 Wis. Act 27, the Department of Health and Social Services will hold a public hearing to consider emergency orders published on December 27 and 28, 1995, and effective on January 1, 1996, that repeal and recreate ch. HSS 211, Wis. Adm. Code, relating to tribal medical relief programs funded by block grants, and ch. HSS 230, Wis. Adm. Code, relating to county relief programs funded by block grants.

Hearing Information

February 13, 1996
Tuesday
1 p.m. to 3 p.m.

Conference room within Rm. 802
131 W. Wilson Street
MADISON, WI

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Social Services

HSS 211–Tribal Medical Relief Programs

These are rules for the administration of tribal medical relief programs funded by relief block grants under subch. II of ch. 49, Stats., as affected by 1995 Wis. Act 27.

Section 49.02 (7m), Stats., as created by Act 27, directs the Department to promulgate rules for use of relief block grants and specifies that the rules are to include procedures that tribal governing bodies are to follow in obtaining block grants, procedures that they are to follow in making eligibility determinations, standards for waiver of certain eligibility requirements, and procedures for a relief applicant or recipient to appeal an adverse eligibility determination.

Section 49.029, Stats., as created by Act 27, directs the Department to promulgate rules for distribution of medical relief block grant funds to eligible tribal governing bodies.

As provided in s. 9426 (13) of 1995 Wis. Act 27, tribal medical relief programs funded by block grants replaced the Relief to Needy Indian Persons (RNIP) program on January 1, 1996. Department rules were necessary for implementation of these programs funded by block grants, in particular because of the appeal provisions in the rules and the formula for distributing relief block grant funds to eligible tribal governing bodies.

A public hearing on replacement permanent rules was held on December 5, 1995. Some suggestions received during public review of the rules were incorporated in the emergency rules published later that month. Section 227.24(4), Stats., requires the Department to hold a public hearing on the emergency rules after they are published.

HSS 230–County Relief Programs

These are rules for the administration of county relief programs funded by relief block grants under subch. II of ch. 49, Stats., as affected by 1995 Wis. Act 27. Section 49.02 (7m), Stats., as created by Act 27, directs the Department to promulgate rules for use of relief block grants and specifies that the rules include procedures that county relief agencies are to observe in obtaining block grants, procedures that they are to follow in making eligibility determinations, procedures by which a county relief agency may waive certain eligibility requirements and procedures for a relief applicant or recipient to appeal agency eligibility determinations.

The rules included in this order apply to all Wisconsin counties, including Milwaukee county which, under s. 49.025, Stats., will receive a relief block grant that is to be used only to provide health care services to dependent persons, whereas the other counties are eligible for block grants that can be used to provide cash grants as well as health care services to dependent persons.

As provided in s. 9426 (13) of 1995 Wis. Act 27, county relief programs funded by block grants replaced county–administered general relief on January 1, 1996. Department rules were necessary for implementation of county relief programs funded by block grants, in particular for the appeal provisions in the rules. Because of the length of the rulemaking process, the permanent rules will not likely take effect until April 1, 1996.

The Department through this order published these rules as emergency rules for the period January 1, 1996 until the permanent rules take effect so that county relief programs will be operated in a fair and clear manner statewide for the benefit of applicants for assistance and recipients of assistance.

A public hearing on the replacement permanent rules was held on November 30, 1995. Some suggestions received during public review of the rules were incorporated in the emergency rules published at the end of December 1995. Section 227.24 (4), Stats., requires the Department to hold a public hearing on the emergency rules after they are published.

Contact Person

To find out more about the hearing or to request copies of the rules, write or phone:

John Verberkmoes, (608) 266–5666 or,
if you are hearing impaired, (608) 267–9880 (TDD)
Division of Economic Support
P.O. Box 7935
Madison, WI 53707

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

Written Comments

Written comments on the rules received at the above address no later than **February 20**, **1996** will receive the same consideration as testimony presented at the hearing.

Fiscal Estimate

These rules will not affect the expenditures or revenues of state government or local governments. All costs for state, county and tribal administration of these programs were taken into consideration during legislative deliberations leading to the enactment of 1995 Wis. Act 27.

Notice of Public Hearings

Industry, Labor & Human Relations (Unemployment Compensation, Chs. ILHR 100–150)

Notice is given that pursuant to ss. 101.02 (1), 108.14 (2) and 227.11 (2), Stats., the Department of Industry, Labor & Human Relations proposes to hold public hearings to consider the amendment of rules under ch. ILHR 140, Wis. Adm.Code, relating to unemployment insurance appeals.

Hearing Information

February 15, 1996
Thursday
12:30 p.m.

Milwaukee
State Office Bldg. Rm. 312
819 N. Sixth St.

February 16, 1996
Friday
12:30 p.m.

Madison
Ste. A, Hearing Room D
(Madison UI)
1801 Aberg Ave.

February 16, 1996
Friday
1:00 p.m.

Appleton
Ste. B, Hearing Room
(Fox Valley UI Hearing Office)
2900 N. Mason St.

Copies of Rules

A copy of the rules to be considered may be obtained from the State Department of Industry, labor & Human Relations, Division of Unemployment Insurance, 201 E. Washington Avenue, P.O. Box 8942, Madison, WI 53707, by calling (608) 266–3189 or at the appointed times and places the hearings are held.

Written Comments

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments may be submitted to the Department at the above address no later than **February 29, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult

at the hearing, please call (608) 266–3189 or Telecommunication Device for the Deaf (TDD) at 1–800–947–3529 at least 10 days prior to the hearing dates. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1), 108.14 (2), 227.11 (2)

Statutes interpreted: ss. 108.09, 108.10, 108.101, 108.105

Chapter ILHR 140 is long overdue in its need for revision. Several of its sections are in conflict with the statutes or out of conformity the Federal Unemployment Compensation Tax Act (FUTA). Chapter ILHR 140 does not proceed in an orderly fashion and has, therefore, been renumbered.

Section ILHR 140.01 explains that an appeal is a request for a hearing. The term "appeal" is thereafter substituted throughout the chapter wherever "request for hearing" previously appeared as an amendment to the respective section. The section also identifies who has appeal rights.

Section ILHR 140.01 (2) conforms the rule to s. 108.09 (2r), Stats., which redefined a timely appeal with regard to the effective date of a postmark. The timeliness of an appeal transmitted by a fax machine is established in that same section.

Section ILHR 140.02 further defines a representative's authority to act in behalf of a party as previously and briefly described in former ILHR 140.17. It also prohibits a disbarred or suspended attorney from acting as a representative.

Section ILHR 140.04 eliminates any need for a party to establish probable good cause prior to a right to a hearing on whether a party's late appeal was late for a reason beyond that party's control. This change reflects a federal Department of Labor interpretation that a hearing is desirable in all such cases.

Section ILHR 140.05 allows an administrative law judge to determine that a party has decided to withdraw its appeal based on the actions or words of that party. Previously, the party was required to submit a request for withdrawal in writing. With the increased use of telephone hearings, parties may indicate their intention to withdraw orally or by leaving a hearing room with the intention not to proceed with their appeal.

Section ILHR 140.07 allows the administrative law judge to schedule prehearing conferences when it appears the result would be more orderly and efficient hearing process.

Section ILHR 140.09 allows the administrative law judge to declare other materials confidential and closed to inspection in addition to the specific records already defined in the section.

Section ILHR 140.10 conforms to s. 108.14 (2m), Stats., which permits attorneys to issue subpoenas without first making such a request from the Department.

Section ILHR 140.11 establishes that parties to a telephone hearing must provide the identity and telephone number of its representative prior to the hearing. The section also explains when the judge will place telephone calls to the parties and that the parties must wait at least one hour to be called in the event the judge is delayed or unable to call at the scheduled time.

Section ILHR 140.12 deletes the requirement that stipulations contain a certification statement and only requires standard legal practice, which requires that the stipulations be in writing and signed by the parties.

Sections ILHR 140.15 and 140.16 are repealed because they duplicate the language of s. 108.09 (4), Stats.

Section ILHR 140.18 substitutes the term "evidence" for the more restrictive term "testimony" and deletes a specific reference to investigative reports and rationale in lieu of language that refers to a standard of reasonable probative value.

Section ILHR 140.19 states that the Department is not authorized to make any assignment of a claimant's unemployment insurance benefits for purposes of paying a representative's fees consistent with s. 108.13, Stats.

Section ILHR 140.20 (3) provides that the parties will be notified of the time limit for filing a petition for commission review within the appeal tribunal decision.

Section ILHR 140.21 substitutes the term "disability" for the term "handicap".

Section ILHR 140.22 increases the fees for reimbursing interpreters utilized at hearings from $24 to $35 per half day.

Section ILHR 140.23 (2) increases the cassette fee from $5 to $7 for hearing tapes.

Section ILHR 100.02 (16m) and ILHR 132.001 (2) simply adjust definitions of words and phrases that are, respectively archaic and unused.

Initial Regulatory Flexibility Analysis

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

All businesses with employes covered by the Unemployment Insurance Laws.

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

None beyond those required by current law.

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

None.

Fiscal Estimate

Chapter ILHR 140 identifies the procedures for unemployment insurance appeals. Most of the proposed changes to the rule refine and clarify these procedures and have no fiscal effect; however, the following two items will have a minor fiscal effect:

1. Testimony at Unemployment Insurance hearings is either tape recorded or transcribed by a reporter. After a hearing, either participating party may request a copy of the hearing transcript. If the hearing testimony was recorded on a recording machine, the Department may furnish a copy of the hearing tape in lieu of a transcript. The fee the Department can charge is $5.00 per cassette tape or portion of a cassette tape (most hearings average two tapes). Chapter ILHR 140 raises the fee the Department can charge to $7.00 per cassette tape. The last fee increase for copies of tapes was in 1983. In 1994, 1,807 cassette tape copies were made. At $5.00 per tape, the fees amount to about $9,035. (The Department may waive the fee if the party is unable to pay). At $7.00 per tape, the 1,807 tapes will bring an additional $3,614 of fee income or $12,649 for 1994. the number of tapes copied in 1994 is average for the past few years.

2. Increasing the reimbursement paid for interpreter services from $24 per half day to $35 per half day puts ch. ILHR 140 into conformity with State Statute 814.67 (1) (b) 2.

This rule applies to a situation that rarely occurs.

1) A party in a hearing has to show up at the hearing with an interpreter they arranged for.

2) The party needing the interpreting services has to request the Department reimburse them for the expense of the interpreter.

When this occurs, the Department can pay $35.00 per half day of interpreting service. Federal law requires all Unemployment Insurance hearings be fair and impartial. When known in advance that interpreters are needed at a hearing, the Department already schedules appropriate interpreters and pays for them out of the Department budget. In the rare case where the hearing office is not aware of the need for interpreting services until the hearing starts, the hearing is rescheduled at a later date. The change is not anticipated to have a significant fiscal effect on the cost of administering the Unemployment Insurance Program.

Notice of Public Hearing

Industry, Labor & Human Relations (Worker's Compensation, Chs. Ind 80–85)

Notice is given that pursuant to s. 102.15 (1), Stats., the Department of Industry, Labor and Human Relations proposes to hold public hearings to consider the creation of s. Ind 80.62, Wis. Adm. Code, relating to the Uninsured Employers Fund.

Hearing Information

February 19, 1996
Monday
10:00 a.m.

Madison
Room 265
General Executive Facility 1 (GEF 1)
201 E. Washington Ave.

Copies of Rule

A copy of the rule to be considered may be obtained from the State Department of Industry, Labor & Human Relations, Division of Worker's Compensation, 201 E. Washington Ave., P.O. Box 7901, Madison, WI 53707, by calling (608) 266−1340 or at the appointed time and place the hearing is held.

Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested reworking in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing may be submitted no later than **February 23, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Richard D. Smith at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstance which may make communication or accessibility difficult at the hearing, please call (608) 266−1340 or Telecommunication Device for the Deaf (TDD) at Wisconsin Communications Telecommunications Relay System (TRS) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Proposed Rule

Statutory Authority: s. 102.15 (1)

Statutes Interpreted: ss. 102.80 to 102.87

Sections 102.80 (3) (a) and 102.81 (1) (a), Stats., provide that the uninsured employers fund program described in this rule is effective on the first day of July after the Secretary of the Department of Industry, Labor and Human Relations certifies that the fund has a $4 million cash balance. Currently, revenue comes into the fund primarily from penalties against uninsured employers and from interest on the fund's cash balance. (After the fund begins making payments, reimbursement from uninsured employers for payments made from the fund may be the primary revenue source.) The Department expects certification to occur in early 1996. For injuries on or after the first day of July after certification of the $4 million fund balance (expected to be July 1, 1996) employes of uninsured employers are eligible to apply to the fund for worker's compensation benefits.

Currently, the Department may impose serious penalties against an employer who is uninsured for worker's compensation purposes. However, injured workers have few effective remedies to receive benefits if their employers are uninsured. For workers injured after July 1, 1996 it is anticipated that the uninsured employers fund will provide an effective source of workers' compensation benefits.

Ind 80.62 clarifies the Department's procedures for handling claims for compensation to injured workers from the uninsured employers fund. The Department intends to select an experienced third−party administrator as its agent for handling individual claims. Except as described in the rule, the Department or its agent will have the same rights and responsibilities for administering worker's compensation claims as any other insurance carrier authorized to do business in Wisconsin.

This rule also defines the financial standards and actuarial principles which the department will use to monitor the solvency of the fund and to determine if the Secretary should file a certificate of insolvency under s. 102.80 (3) (ag), Stats. It also requires quarterly reporting to the Governor and the legislature. The Department developed this program over the past five years with extensive participation from the Council on Worker's Compensation. More recently, the Department has developed several scenarios projecting the assets and liabilities of the fund into the future. Despite the Department's attention to modeling different scenarios, all observers agree that the Department must pay careful attention to the fund's assets and liabilities. At some future date, if the Department Secretary, after consulting with the Council on Worker's Compensation, believes the fund's assets are (or within three months, will become) insufficient to meet its obligations to pay benefits, the rule provides that the Department will stop accepting and paying new applications for benefits as described in s. 102.80 (3) (ag), Stats.

Initial Regulatory Flexibility Analysis

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

The rule will affect employers who operate illegally without proper worker's compensation insurance coverage.

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

None. Employers operating illegally are subject to penalty enforcement actions and are liable to reimburse the UEF for any UEF benefits payments made to injured workers. This rule relates, in part, to the UEF reimbursement process.

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

None.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

There is no cost experience for this program upon which to base costs. Therefore, estimates have been made using the experience of actuarial consultants and insurance company administrators. After at least one year of actual claims experience, program costs will be more predictable. Claims management functions will be handled by a third party administrator to be hired by the department; an actuarial advisor will be used and stop−loss reinsurance will be purchased to protect against large claims bankrupting the fund. The following assumptions were made regarding claims workload and claim costs.

First year of operation − 200 − 300 claims

Second year of operation − 200 claims

One−half the claims will be for medical expense only

Average claim cost will be: $5,640 indemnity costs, $6,700 medical costs, $5,000 medical only claims

The following costs will be paid from s. 20.445 (1) (sm) Uninsured employer fund.

1) Estimated costs per claim:

	First Year	**Following Years (200 claims)**
Medical portion−$6,700 X 150=	$1,005,000	$670,000
Indemnity portion−$5,640 X 150=	846,000	$664,000
Medical only claims−$5,000 x 150=	$750,000	$500,000
Total first year claim cost:	$2,601,000	$1,834,000

2) Stop−Loss Reinsurance Costs:

Without information regarding the number of employes who may be working for an uninsured employer it is difficult to estimate the amount of risk involved with this program. It is assumed that net reinsurance costs will range between $22,500 and $27,000 per year for claim costs of $350,000 or more.

The following costs will be paid from s. 20.445 (1) (hp) WC Administration Assessment

1) Third Party Administrator Costs:

$650 per claim @ 300 claims per year = $195,000 per year

2) Actuary Services Costs:

10 hrs. per quarter @ $200 per hr. = $2,000 X 4 qtrs. = $8,000 per yr.

Long−Range Fiscal Implications

The ability of the uninsured employers funds to remain solvent will be dependent upon the collection of uninsured employer penalties and reimbursements to the fund by employers responsible for claim costs.

Notice of Hearing

Industry, Labor & Human Relations (Worker's Compensation, Chs. Ind 80–85)

Notice is given that pursuant to ss. 102.28 92) (b) and 102.15 (1), Stats., the Department of Industry, Labor and Human Relations proposes to hold a public hearing to consider the revision of s. Ind 80.60 (4), Wis. Adm. Code, relating to self–insurance application fees.

Hearing Information

February 19, 1996
Monday
10:00 a.m.

Madison
Room 265,
General Executive Facility 1 (GEF 1)
201 E. Washington Ave.

Copies of Rules

A copy of the rules to be considered may be obtained from the State Department of Industry, Labor and Human relations, Division of Worker's Compensation, 201 E. Washington Ave., P.O. Box 7901, Madison, WI 53707, by calling (608) 266–1340 or at the appointed time and place the hearing is held.

Written Comments

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **February 23, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Richard D. Smith at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

The hearing is held in a accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266–1340 or Telecommunication Device for the Deaf (TDD) at Wisconsin Communications Telecommunications Relay System (TRS) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of the Proposed Rules

Statutory Authority: ss. 102.15 (1) and 102.28 (2) (b)

Statute Interpreted: s. 102.28 (2) to (8)

Current fees do not generate enough revenue to cover the Department's cost of reviewing the financial soundness and safety practices of applicant–employers. Therefore, the Self–Insurer's Advisory Council recommended that the Department increase fees to those employers applying for self–insurance under the Worker's Compensation Act. The purpose of this change is, first, to have fees accurately reflect the cost to the Department of reviewing those applications and, second, to have the costs to each employer–applicant more closely reflect the actual cost associated with reviewing each individual application.

Under the proposed rule, the Department will charge an employer for any fee–for–service expertise for which the Department incurs an expense in reviewing an application. Increasingly, special expertise is needed to competently evaluate financial and loss control data.

The proposed rule also requires the Department to develop a flat fee for initial applications based on the estimated average cost to the Department, including staff time, supplies and services, and information technology. For renewal applications, the rule establishes a flat fee of $200 and provides that the remainder of the renewal fee will be based on the same formula used in s. 102.75 (1), Stats., for the general annual assessment of insurers and self–insured employers. Under the formula, self–insured employers will pay a proportional share of the self–insurance program administration cost based on their share of indemnity payments.

The rule also allows the Department to bill the renewal applicants through the general worker's compensation administrative assessment, issued to all self–insured employers and insurance carriers. This will simplify bookkeeping for both the Department and self–insured employers.

Finally, the rule allows the Department to request updated information related to the application for self–insurance as needed. In today's economy, market changes can occur rapidly. To assure the continuing financial soundness of self–insured employers the Department often needs more timely information than what is provided once a year in the renewal application.

Initial Regulatory Flexibility Analysis

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

There are approximately 175 non–public self–insured employers. None are small businesses.

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

There are no new requirements. Combining the application–fee invoice with the general assessment invoice will reduce bookkeeping for the Department and employers.

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

There are no new requirements.

Fiscal Estimate

The fee changes will not increase the total amount of revenue received by the Department for administration of worker's compensation laws and administrative rules. However, these fee changes will increase the self–insurer's share of the total revenue received by the Department for administration of worker's compensation laws and administrative rules. The current fee structure generates an insufficient amount of revenue to offset the costs of administering the Department's self–insurance program.

As proposed in the administrative rule, each employer submitting an application for exemption from the duty to insure will be charged a flat fee. The fee amount is to be determined by the Department and is to be based upon the average cost to the Department for processing the application and determining the whether or not the employer is an acceptable risk.

An employer exempt from the duty to insure will be charged a $200 flat fee for each annual renewal, plus an assessed amount for the balance of the program's administration costs not funded by the flat fee. The assessment amount to be collected from all self–insurers will be distrusted on the basis of total first closed indemnity amounts paid in the previous calendar year. This change in the renewal fee will likely increase the amount each self–insurer will pay for their share of the program's administration costs. The self–insurer's renewal fee and assessment will be combined with the Department's worker's compensation administrative assessment issued to all self–insurers and insurance carriers. The intent of the proposed changes is to have self–insurers fund the administration of their program and not have these costs subsidized by the insurance carriers.

Long–Range Fiscal Implications

The proposed changes will increase the amount paid by self–insurers for administration of their programs, and will stop the subsidization of these administrative costs by insurance carriers. The changes redistribute the sources of funding for the administration of self–insured employer programs, resulting in a more fair and equitable sharing of these costs.

Notice of Hearings

Natural Resources (Environmental Protection−− Solid & Hazardous Waste, Chs. NR 500−− (Environmental Protection−− Investigation & Remediation, Chs. NR 700−−)

Notice is hereby given that pursuant to ss. 144.43 to 144.44, 144.442, 144.76 and 227.11 (2), Stats., interpreting ss. 144.43 to 144.441, 144.442, 144.443 to 144.47 and 144.76, Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 518.02 (3) and revisions to ch. NR 718, Wis. Adm. Code, relating to remediation of soil contamination through landspreading.

Analysis

Distinctions between landspreading of contaminated soil as proposed to be regulated in ch. NR 718 and as it is currently regulated in ch. NR 518 include:

1. Landspreading in compliance with ch. NR 718 is limited to single application of contaminated soil at a landspreading facility.

2. Chapter NR 718 provides a self−implementing process for landspreading of some contaminated soils. Specifically, no approval is required when the rule provisions are followed for certain petroleum−contaminated soils.

3. Chapter NR 718 does not require that a review fee be assessed to the responsible party.

4. Chapter NR 518 will continue to regulate operations where contaminated soil is landspread more than one time.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearings will be held on:

February 26, 1996	**Council Chambers**
Monday	**Rhinelander City Hall**
At 9:00 a.m.	**135 South Stevens St.**
	RHINELANDER, WI
February 26, 1996	**Room 202**
Monday	**Green Bay City Hall**
At 3:00 p.m.	**100 North Jefferson St.**
	GREEN BAY, WI
February 28, 1996	**Room 403**
Wednesday	**N. Central Voc. Tech. School**
At 9:00 a.m.	**100 Campus Drive**
	WAUSAU, WI
February 28, 1996	**Room 2550**
Wednesday	**Eau Claire Co. Courthouse**
At 3:00 p.m.	**721 Oxford Ave.**
	EAU CLAIRE, WI
February 29, 1996	**Room 511, GEF#2**
Thursday	**101 South Webster St.**
At 9:00 a.m.	**MADISON, WI**
February 29, 1996	**Auditorium**
Thursday	**Havenswood State Forest**
At 3:00 p.m.	**6141 North Hopkins**
	MILWAUKEE, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Lawrence J. Lester at (608) 266−7596 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments & Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Lawrence J. Lester
Bureau of Solid & Hazardous Waste Management
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **March 15, 1996**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [SW−9−96] and fiscal estimate may be obtained from Mr. Lester.

Fiscal Estimate

Background

Chapter NR 718 was created to address the storage, transportation, treatment and disposal of contaminated soil, and certain other solid wastes, generated at Emergency and Remedial Response Program (ERR) response actions conducted in accordance with the requirement of chs. NR 700 to 726. When ch. NR 718 became effective on May 15, 1995, the landspreading of all solid waste was regulated by the Solid Waste Program of the Bureau of Solid and Hazardous Waste Management under ch. NR 518. As of June 15, 1995, single−application landspreading of contaminated soil excavated during response actions conducted in accordance with chs. NR 700 to 726 is overseen by district Emergency and Remedial Response (ERR) program staff. The proposed amendment to ch. NR 718 is intended to codify this change and maintain a single point of contact for cleanup actions where single−application landspreading is being pursued as a remedial option.

Fiscal Impact to State Government

The amendment to ch. NR 718 does not create additional regulatory workload. No state fiscal impact is anticipated as a result of the amendment of ch. NR 718.

Long−Range Fiscal Implications

No long−range fiscal impact is anticipated.

Notice of Hearing

Dept. of Transportation

Notice is hereby given that pursuant to ss. 85.16 (1) and 343.02, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider amendments proposed to ch. Trans 112, Wis. Adm. Code, relating to medical standards for driver licensing.

Hearing Information

February 19, 1996	**Room 88**
Monday	**Hill Farms State Trans. Bldg.**
At 9:30 a.m.	**4802 Sheboygan Ave.**
	MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building. Interpreters for people with hearing impairments or English language translators may be requested by calling (608) 266–0194, ten days before the public hearing.

Written Comments

Written comments can be submitted to:

Bureau of Driver Services
Dept. of Transportation, Room 351
P. O. Box 7920
Madison, WI 53707–7920

Copies of Proposed Rule

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

Medical Review Section, (608) 266–2327
DOT Division of Motor Vehicles, Room 351
Hill Farms State Transportation Building
4802 Sheboygan Ave.
Madison, WI 53702

Hearing–impaired individuals may contact the Department using TDD (608) 266–0396.

Analysis Prepared by the Dept. of Transportation

Statutory authority: ss. 85.16 (1) and 343.02

Statutes interpreted: ss. 343.06 (1) (e), 343.12 (2), 343.14 (2) (i), and 343.16

General Summary of Proposed Rule:

The purpose of the proposed rule is to clarify the administrative interpretation of ch. 343, Stats., of the Department of Transportation (Department) in relation to the issuance of motor vehicle operator licenses to persons whose medical condition may affect their ability to exercise reasonable control over a motor vehicle. Chapter Trans 112 establishes medical standards and a medical review process, including licensing categories, which define functional ability levels. This chapter was created in 1990 from an assortment of other rule chapters in an effort to simplify existing regulations governing medical review procedures. This proposed rulemaking continues that effort and makes changes necessitated by changes to federal motor carrier and commercial driver license regulations.

This proposed rulemaking provides that most commercial motor vehicle operators must meet the physical requirements of 49 CFR 391.41. Previously, these physical requirements did not apply to drivers who did not operate in interstate commerce or to employes of governmental units. The Federal Highway Administration now requires these requirements be met by all drivers with limited exceptions (the governmental unit employe exception is maintained). Those exceptions for grandfathered drivers, governmental unit employes, school bus drivers, seasonal beekeeping drivers, farm custom harvester employes and certain farm drivers would be adopted in this rulemaking.

This proposed rule repeals the requirement that the Department conduct a "michigan" survey of a driver with an alcohol problem prior to determining whether to require alcohol assessment. The Department has found the Michigan tool to be ineffective.

Other amendments add or change medical terms and eliminate duplicative material.

Initial Regulatory Flexibility Analysis

This proposed rule has no significant impact on small businesses.

Fiscal Estimate

This proposed rule has no fiscal impact on Department operations or on any units of local government.

Contact Person

For further information, contact Linda Kuhn, (608) 266–7361 or Linda Sunstad, (608) 266–0194.

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 Journal 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

Department of Agriculture, Trade & Consumer Protection

Rules were adopted amending **ch. ATCP 100 (note)** and creating **s. ATCP 100.76 (3m)** and **subchapter VI of ch. ATCP 100**, relating to price discrimination in milk procurement.

FINDING OF EMERGENCY

1) Each year, Wisconsin's approximately 27,000 dairy farmers sell approximately $3 billion worth of milk to dairy plant operators. Milk sales represent the primary or exclusive source of income for thousands of Wisconsin farm families.

2) Currently, many dairy plant operators appear to be discriminating between milk producers in the amount paid for milk. Many operators appear to be paying higher prices to large producers which cannot be fully justified on the basis of milk quality or differences in procurement cost. Discrimination in milk prices may injure small milk producers and competing dairy plant operators, and may contribute to unwarranted concentration in the dairy industry.

3) Recently, discrimination in milk prices has reached historic highs, with some dairy plants paying volume premiums of up to 70 cents to 90 cents per hundredweight. In order to pay volume premiums at this level, a dairy plant operator must reduce the price paid to other producers. This affects the livelihood of many smaller milk producers, and may affect their ability to continue farming.

4) The state of Wisconsin Department of Agriculture, Trade and Consumer Protection is responsible for enforcing s. 100.22, Stats., which prohibits dairy plant operators from discriminating between milk producers in the prices paid to those producers. However, a dairy plant operator may defend a discrimination in prices if the operator can prove that the discrimination is based on differences in milk quality, is justified on the basis of differences in procurement costs, or is justified in order to meet competition.

5) The Department recently completed a survey of dairy plant pricing programs. The Department presented the survey results to the Board of Agriculture, Trade and Consumer Protection on November 14, 1994. The survey suggests that many dairy plant operators are paying discriminatory prices which cannot be justified on the basis of differences in milk quality or procurement costs. Many of the surveyed dairy plant operators claimed that their discriminatory prices were justified in order to meet prices offered by competitors. Many operators stated that they were willing to reduce their discriminatory payments to levels that could be cost−justified if their competitors would do the same. But compliance by an individual dairy plant operator may put that operator in an untenable competitive position unless the operator's competitors also comply.

6) Enforcement of s. 100.22, Stats., is hampered by the lack of clear standards in the law. For example, there are no clear standards of cost−justification or "meeting competition." Currently, there are no rules interpreting s. 100.22, Stats. Clarifying rules would facilitate compliance and enforcement.

7) Effective January 1, 1996, federal milk marketing orders will be modified to incorporate a new system of milk component pricing. Dairy plant operators will be making changes to their payment schedules and computer programs in order to implement the new component pricing system. Although the marketing order changes do not address the issue of discrimination in milk pricing, they provide an opportunity for all dairy plant operators to modify their pay programs to comply with s. 100.22, Stats. Simultaneous compliance by dairy plant operators would minimize competitive losses by individual dairy plant operators who choose to comply.

8) In order to promote prompt and effective compliance with s. 100.22, Stats., and to minimize continuing harm to dairy plant operators and smaller milk producers, it is necessary to adopt rules interpreting s. 100.22, Stats., before January 1, 1996. Failure to adopt rules by January 1, 1996 will reduce the chance of securing industry−wide compliance with s. 100.22, Stats., and may therefore result in continuing harm to milk producers and competition.

9) The Department cannot adopt interpretive rules by normal rulemaking procedures by January 1, 1996. Pending the adoption of rules by normal rulemaking procedures, it is therefore necessary to adopt emergency rules to protect the public welfare.

Publication Date: **January 1, 1996**
Effective Date: **January 1, 1996**
Expiration Date: **May 30, 1996**
Hearing Date: **February 1, 1996**

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules were adopted revising **ch. DOC 328**, relating to the procedure and timing for collecting fees charged for supervision.

EXEMPTION FROM FINDING OF EMERGENCY

In section 6360 in 1995 Wis. Act 27, the Legislature directed the Department to promulgate rules required under ss. 304.073 (3) and 304.074 (5), Stats., for supervision fees charged to probationers and parolees, by using the emergency rule−making procedures under s. 227.24, Stats., but without having to make a finding of emergency. These rules will remain in effect until replaced by permanent rules.

ANALYSIS PREPARED BY THE DEPARTMENT OF CORRECTIONS

This rule−making order implements ss. 301.08 (1) (c), 304.073 and 304.074, Stats., establishing the procedure and timing for collecting fees charged for supervision.

Currently, offenders on probation or parole pay no supervision fee. Through this emergency rule making order, the Department will charge offenders on probation and parole a supervision fee. Offenders under

administrative or minimum supervision and supervised by the Department will pay a fee sufficient to cover the cost of supervision. Offenders under medium, maximum, or high risk supervision will pay a supervision fee based on the ability to pay.

These rules exempt an offender who is supervised by another state under an interstate compact from paying a Wisconsin supervision fee. An offender who is serving a concurrent sentence of prison and probation or parole is not required to pay the supervision fee while in prison.

These rules authorize the Department to contract with a vendor to provide monitoring of an offender. Offenders who are on monitoring are required to pay a fee sufficient to cover the cost of monitoring, supervision by the Department and cost of administering the contract.

These rules require the Department to establish the rate for supervision and monitoring fees and to provide the offender with the supervision fee schedule.

These rules require offenders to comply with the procedures of the Department or vendor for payment of the supervision or monitoring fee. These rules require the Department to provide the offender with a copy of the procedures for paying the supervision or monitoring fee. These rules permit an offender to pay the supervision fee in monthly installments or in a lump sum.

These rules permit the Department to take certain action for the offender's failure to pay the supervision or monitoring fee. The actions include counseling, wage assignments, review of supervision level, recommendation for revocation of probation or parole and any other appropriate means of obtaining the supervision or monitoring fee.

Publication Date: **December 21, 1995**
Effective Date: **January 1, 1996**
Expiration Date: **May 30, 1996**
Hearing Dates: **February 13, 16 & 22, 1996**
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Department of Development

1. Rules were adopted revising **ch. DOD 15**, relating to the Community–Based Economic Development Program.

FINDING OF EMERGENCY

The Department of Development 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:

1995 Wis. Act 27 created a new program within the Community–Based Economic Development Program that provides funding for regional economic development activity. (See s. 560.14 (4), Stats., which was created by the Act.) Section 560.14 (5) (b), Stats., requires that the Department adopt rules containing criteria for evaluating applications for funding under this program before it may award a grant.

The Department already has several proposed projects before it that will create substantial new employment and investment. To avoid the loss of these economic development opportunities, this order creates a rule so that the Department has the authority to make up to $100,000 available to support regional economic development. The emergency order will preserve the welfare of Wisconsin citizens by insuring that the jobs are created and the investments are made.

Publication Date: **November 27, 1995**
Effective Date: **November 27, 1995**
Expiration Date: **April 26, 1996**
Hearing Date: **January 9, 1996**

2. Rules were adopted revising **ch. DOD 13**, relating to volume cap on private activity bonds.

FINDING OF EMERGENCY

The Department of Development 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:

Section 560.032, Stats., has been interpreted by the Legislature and legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Development expires at the end of each calendar year.

To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1996 is in process, but because of the length of the rule–making process will not be effective until March 1, 1996.

Without this emergency rule, which is effective January 2, 1996, there will be several months during which Wisconsin will be unable to take advantage of the approximately $260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of this federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investments occur.

Publication Date: **January 2, 1996**
Effective Date: **January 2, 1996**
Expiration Date: **May 31, 1996**
Hearing Date: **February 12, 1996**
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

Rules adopted creating **ch. ERB 5**, relating to a grant for local emergency planning committees.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in section 10(m) of 1995 Wis. Act 13 directed the Board to promulgate rules under s. 166.20 (2) (bg), Stats., as created by this Act, to establish an amount that may be an eligible cost for computers in an emergency planning grant under s. 166.21 (2) (bm), Stats., but without having to make a finding of emergency. The rule will remain in effect until replaced by permanent rules, but not to exceed the time authorized under s. 227.24 (1) (c) and (2), Stats.

ANALYSIS

Statutory Authority: ss. 166.20 (2) (b), (bg), 166.21 (2), 227.11 (2) (a)

Statutes Interpreted: ss. 166.20 (2) (bg), (br), 166.21 (1), (2), (3)

Plain Language Summary

The computer grant rule establishes guidelines for the computer grant to county Local Emergency Planning Committees. The rule requires the State Emergency Response Board to establish grant procedures to implement this rule. The rule allows Local Emergency Planning Committees to purchase computer equipment under this grant for specific use within the county emergency management program to comply with state and federal planning requirements.

The rule requires that matching costs for computer equipment are to be based on a 4–year grant cycle. For one year of the 4–year grant cycle, up to a maximum of $6,000 of the cost of computer equipment shall be eligible for reimbursement. For each of the remaining 3 years of the 4–year grant cycle,

up to a maximum of $2,000 of the cost of the computer equipment shall be eligible for reimbursement.

Publication Date: December 5, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996

EMERGENCY RULES NOW IN EFFECT

Wisconsin Gaming Commission

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
Hearing Dates: January 8, February 5, 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 revising **ch. HSS 73**, relating to an exception to limits on use of community long–term support funds for services used by CBRF residents.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 9126 (5) (c) of 1995 Wis. Act 27 directed the Department to promulgate the rules required under ss. 46.27 (2) (h) 2 and 46.277 (5r), Stats., as created by Act 27, by using emergency rule–making procedures but without having to make a finding of emergency. These are the rules. They will take effect on January 1, 1996.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The 1995–97 Budget Act, 1995 Wis. Act 27, created ss. 46.27 (3) (f) and 46.277 (3) (c), Stats., to require counties, beginning January 1, 1996, to limit the amount of spending for services received by persons who reside in community–based residential facilities (CBRFs) from the annual allocations received for the provision of long–term community support services to no more than 25% of each allocation for the calendar year. Act 27 also added provisions in ss. 46.27 and 46.277, Stats., that prohibit counties from using funds from an allocation that exceed the maximum allowable to pay for services for a person who resides in a CBRF or intends to reside in a CBRF and is initially applying for services unless the Department grants an exception for the person on hardship grounds under conditions specified by rule.

Through this rule–making order the Department is establishing conditions of hardship on the basis of which it will make exceptions to the limitations on spending for services provided to CBRF residents from the annual allocations for community long–term support services.

Publication Date: December 27, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996
Hearing Date: February 13, 1996
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (6)

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**
Hearing Dates: **November 13 & 17, 1995**

3. Rules were adopted revising **ss. HSS 122.06 and 122.07**, relating to review of projects concerning new nursing home designs.

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 capital expenditure by or on behalf of a nursing home that exceeds $1,000,000 is subject to prior review and approval by the Department under subch. II of ch. 150, Stats. An approved project has a maximum cost per bed limit computed under s. HSS 122.07 (1) (c).

The Legislature in s. 10 of 1993 Wis. Act 290 directed the Department to study the issue of the relationship between the design and construction of nursing homes and the formula for determining approvable proposed bed costs under s. HSS 122.07 within the context of health care cost containment.

The Department on January 31, 1995 submitted its report to the Legislature on nursing home design and construction in relation to the formula for determining maximum bed costs. While the study dealt primarily with traditional nursing home designs, the Department stated in the report that its Division of Health was developing rules to permit the study of new nursing home designs which increase capital costs per bed but decrease operating costs. The rules would increase the maximum cost per bed for projects that will permit study of the impact of nursing home design and management approaches on the health of nursing home residents and the cost of care. New nursing home designs may exceed the maximum costs per bed but reduce operating costs.

The Department is publishing the necessary rules by emergency order because of the length of the permanent rulemaking process and also the length of the Department's project approval process which cannot begin until the rules are in effect. An emergency order will give the Department the opportunity to act now to improve care for nursing home residents and possibly lower the overall costs of care.

This order creates rules which will increase the cost per bed maximum for two or three pilot projects that will demonstrate new nursing home designs.

The rules establish conditions for the announcement and acceptance of applications, criteria for review of applications and a selection process when

there are more applicants that meet the requirements for project approval than can be approved.

Publication Date: November 29, 1995
Effective Date: November 29, 1995
Expiration Date: April 28, 1996
Hearing Date: January 18, 1996

4. Rules were adopted creating **ch. HSS 182**, relating to lead poisoning prevention grants.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 9126 (27x) (b) of 1995 Wis. Act 27 directed the Department to promulgate rules required under s. 254.151, 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. They will take effect on publication in the Milwaukee Journal Sentinel.

ANALYSIS

These rules implement the requirement in s. 254.151, Stats., as amended by 1995 Wis. Act 27, that the Department establish criteria by rule for the award of grants to fund educational programs, including programs for health care providers, about the dangers of lead poisoning or exposure to lead; to fund lead poisoning or lead exposure screening, care coordination and follow–up services, including lead inspections, for or on behalf of children under the age of 6, not covered by third–party payers; to fund administration and enforcement activities of local health departments that, under s. 254.152, Stats., are designated by the Department to be its agents for administration and enforcement of ss. 254.11 to 254.178, Stats.

The grant program was established in mid–1994. The requirement that the Department's criteria for awarding grants be set out in rules was added by Act 27 in mid–1995. The amount available in the appropriation for grant awards is $879,000 for each year of the 1995–97 biennium.

The rules identify who may apply or a grant, describe the application process, provide for preliminary review of applications by the Department for compliance with format and content requirements set out in the relevant request for proposals (RFP), provide for evaluation of applications by one or more review committees appointed by the Department and specify 14 criteria for use in that final review, note that the Department will award grants based on the recommendations of the review committee or committees and taking into consideration other specified factors and describe the awards process and conditions that are imposed when grants are awarded.

Publication Date: December 5, 1995
Effective Date: December 5, 1995
Expiration Date: May 4, 1996
Hearing Date: January 16, 1996

5. A rule was adopted creating **s. HSS 110.05 (3m)**, relating to authorized actions of emergency medical technicians–basic.

FINDING OF EMERGENCY

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

Actions that emergency medical technicians (EMTs) are authorized to carry out in providing emergency medical care in prehospital and interfacility settings are now specified in s. 146.50 (6m), Stats. A recent session law, 1993 Wis. Act 251, repealed that statute effective January 1, 1996 and directed the Department to have rules in place on that date that specify what those actions are. The Department has separate chapters of rules for licensing EMTs–basic, EMTs–intermediate and EMTs–paramedic. This emergency order amends ch. HSS 110, which includes rules for licensing EMTs–basic, to specify the actions that EMTs–basic may carry out.

Through a separate rulemaking order, the Department is revising the whole of ch. HSS 110, its rules for licensing ambulance service providers and EMTs–basic, to specify the authorized actions of EMTs–basic and, at the request of the new Emergency Medical Services Board under s. 146.58, Stats., to update the entire chapter. The proposed permanent rules have already been reviewed by the Legislative Council and the public and will soon be submitted to the presiding officers of the Legislature for review by standing committees but will not take effect until April 1, 1996 at the earliest. Therefore the Department, in order to have the rules that specify the authorized actions of EMTs–basic in effect by January 1, 1996, when s. 146.50 (6m), Stats., will be repealed, is publishing the authorized actions subsection of the proposed permanent rules by this emergency order. This must be done because s. 146.50 (6n), which takes effect on January 1, 1996, provides that an EMT–basic may undertake only those actions that are authorized in rules promulgated by the Department. If those rules are not in effect on that date, ambulance services will not be able to provide emergency medical services using EMTs–basic and consequently there will be reduced availability of emergency medical services and a threat to public safety.

Publication Date: December 26, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996

6. Rules adopted creating **ss. HSS 111.04 (2m)** and **112.04 (3m)**, relating to authorized actions of emergency medical technicians–intermediate and paramedic.

FINDING OF EMERGENCY

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

Actions that emergency medical technicians (EMTs) are authorized to carry out in providing emergency medical care in prehospital and interfacility settings are now specified in s. 146.50 (6m), Stats. A recent session law, 1993 Wis. Act 251, repealed that statute effective January 1, 1996 and directed the Department to have rules in place on that date that specify what those actions are. The Department has separate chapters of rules for licensing EMTs–basic, EMTs–intermediate and EMTs–paramedic. This emergency order amends ch. HSS 111, rules for licensing EMTs–intermediate, and ch. HSS 112, rules for licensing EMTs–paramedic, to specify the actions that EMTs–intermediate and EMTs–paramedic may carry out.

Through separate permanent rulemaking orders, the Department is revising chs. HSS 111 and 112 in their entirety in order to specify the authorized actions of EMTs–intermediate and EMTs–paramedic and, at the request of the new Emergency Medical Services Board under s. 146.58, Stats., to update the chapters. However, those rulemaking orders have not yet been transmitted to the Legislative Council for review and therefore will not likely take effect until July 1, 1996 at the earliest. Consequently, the Department, in order to have the rules that specify the authorized actions of EMTs–intermediate and EMTs–paramedic in effect by January 1, 1996, when s. 146.50 (6m), Stats., will be repealed, is publishing the authorized actions subsections of the proposed revised permanent rules by this emergency order. This must be done because s. 146.50 (6n), Stats., which takes effect on January 1, 1996, provides that EMTs–intermediate and EMTs–paramedic may undertake only those actions that are authorized in rules promulgated by the Department. If those rules are not in effect on that date, ambulance services will not be able to provide emergency medical services using EMTs–intermediate or EMTs–paramedic and consequently

there will be reduced availability of emergency medical services and a threat to public safety.

Publication Date: December 27, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996

EMERGENCY RULES NOW IN EFFECT (3)

Health & Social Services

(Economic Support, Chs. HSS 200–)

1. Rules adopted revising **ch. HSS 230**, relating to county relief programs funded by block grants.

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:

These rules for the administration of county relief programs funded by relief block grants under subch. II of ch. 49, Stats., as affected by 1993 Wis. Act 27. Section 49.02 (7m), Stats., as created by Act 27, directs the Department to promulgate rules for use of relief block grants and specifies that the rules include procedures that county relief agencies are to observe in obtaining block grants, procedures that they are to follow in making eligibility determinations, procedures by which a county relief agency may waive certain eligibility requirements and procedures for a relief applicant or recipient to appeal agency eligibility determinations.

The rules included in this order apply to all Wisconsin counties, including Milwaukee county which, under s. 49.025, Stats., will receive a relief block grant that is to be used only to provide health care services to dependent persons, whereas the other counties are eligible for block grants that can be used to provide cash grants as well as health care services to dependent persons.

As provided in s. 9426 (13) of 1995 Wis. Act 27, county relief programs funded by block grants will take the place of county–administered general relief on January 1, 1996. Department rules are necessary for implementation of county relief programs funded by block grants, in particular for the appeal provisions in the rules. Section 9126 (13) of Act 27 directed the Department to submit proposed rules to the Legislative Council no later than October 1, 1995. The proposed rules were submitted to the Legislative Council for review on September 29, 1995 and were taken to public hearing on November 30, 1995. They will soon be submitted to the presiding officers of the Legislature for review by standing committees after which they will be filed and prepared for publication but will not likely take effect until April 1, 1996.

The Department through this order is publishing these rules as emergency rules to be effective from January 1, 1996 until the permanent rules take effect so that county relief programs will be operated in a fair and clear manner statewide for the benefit of applicants for assistance and recipients of assistance.

Publication Date: December 27, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996
Hearing Date: February 13, 1996
[See Notice this Register]

2. Rules adopted revising **ch. HSS 211**, relating to tribal medical relief programs.

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:

These are rules for the administration of tribal medical relief programs funded by relief block grants under subch. II of ch. 49, as affected by 1995 Wis. Act 27.

Section 49.02 (7m), Stats., as created by Act 27, directs the Department to promulgate rules for use of relief block grants and specifies that the rules are to include procedures that tribal governing bodies are to follow in obtaining block grants, procedures that they are to follow in making eligibility determinations, standards for waiver of certain eligibility requirements, and procedures for a relief applicant or recipient to appeal an adverse eligibility determination.

Section 49.029, Stats. as created by Act 27, directs the Department to promulgate rules for distribution of medical relief block grant funds to eligible tribal governing bodies.

As provided in s. 9426 (13) of 1995 Wis. Act 27, tribal medical relief programs funded by block grants will take the place of the Relief to Needy Indian Persons (RNIP) program on January 1, 1996. Department rules are necessary for implementation of these programs funded by block grants, in particular because of the appeal provisions in the rules and formula for distributing relief block grant funds to eligible tribal governing bodies.

Publication Date: December 28, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996
Hearing Date: February 13, 1996
[See Notice this Register]

3. Rules adopted revising **ch. HSS 201**, relating to a benefit cap pilot project under the AFDC program.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 12 (1) of 1995 Wis. Act 12 permitted the Department to promulgate the rules required under s. 49.19 (11s), Stats., as created by Act 12, by using emergency rulemaking procedures but without having to make a finding of emergency. They will take effect on January 1, 1996.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

Under s. 49.19, Stats., a family can apply and be determined eligible for the Aid to Families with Dependent Children (AFDC) program. If a family is determined eligible, the AFDC benefit amount is based, in part, on family size. The maximum amount of AFDC benefits a family can receive currently increases when an additional child is born.

On January 1, 1996, Wisconsin will implement the AFDC Benefit Cap Demonstration Project, authorized under s. 49.19 (11s), Stats., as created by 1995 Wis. Act 12. The purpose of this demonstration is to test whether eliminating the increase in the AFDC grant when an additional child is born will encourage families on welfare to delay having more children until they are financially able to support them.

Under the demonstration project, a family will not receive an automatic increase in the AFDC grant when an additional child is born. Starting on January 1, 1996, a child born to a current or new recipient more than ten month after first receipt of benefits will be counted in the family size for AFDC assistance standard purposes but not for purposes of benefit determination. An exception will be made for a child born as a result of rape or incest. The benefit cap will first apply to children born on or after November 1, 1996. A child born on or after that date, although not counted in the family size for the purpose of determining the amount of the grant, will be counted for Medical Assistance and food stamp purposes, and the family will be entitled to receive other social service assistance for the child.

These are the rules for implementation of the AFDC Benefit Cap Demonstration Project. The rules describe how the Department will choose AFDC recipients who must participate in the demonstration, and outline the Department's responsibilities in administering the demonstration project.

Publication Date: December 27, 1995
Effective Date: January 1, 1996
Expiration Date: May 30, 1996
Hearing Date: February 16, 1996
[See Notice this Register]

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 (3)

Insurance

1. 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**
Hearing Date: **October 30, 1995**

2. Rules were adopted revising **s. Ins 3.25**, relating to credit life insurance.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule adjusts the rate charged for credit life insurance upward from 32¢ to 39¢ per hundred dollars of initial indebtedness and requires that credit life insurance in amounts less than $15,000 be issued without underwriting. This rate increase is necessary to provide adequate provisions for expenses of insurers.

A public hearing was held on the rule on September 27, 1995. The rule was sent to the Legislature on November 22, 1995 and there has been no comment or modification sought.

The permanent rule will be effective after publication, probably February 1, 1996. This emergency rule is identical to the permanent rule, only with an effective date of January 1, 1996. The January 1, 1996 effective date is necessary so that insurers and creditors can charge the new rates for the entire year.

Publication Date: **December 28, 1995**
Effective Date: **January 1, 1996**
Expiration Date: **May 30, 1996**

3. Rules adopted creating **s. Ins 18.13 (5)**, relating to cost–containment rules.

FINDING OF EMERGENCY

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

The rule permits the Health Insurance Risk–Sharing Plan (HIRSP) Board to create a network of providers that have agreed to give discounts in addition to the mandatory discount of 10%. This rule is necessary to implement cost–containment measures allowed by statute. These measures become necessary to help control costs that have threatened a funding crisis for the HIRSP program. That funding crisis poses a potentially deleterious effect upon HIRSP policyholders and the insurance industry.

Publication Date: **January 8, 1996**
Effective Date: **January 8, 1996**
Expiration Date: **June 6, 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**

3. 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**
Hearing Date: **January 11, 1996**

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. 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**

2. 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

Department of Revenue

Rules adopted revising **ch. Tax 18**, relating to the 1996 assessment of agricultural property.

FINDING OF EMERGENCY

The Wisconsin Department of Revenue 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 facts constituting the emergency is:

1995 Wis. Act 27, published July 28, 1995, changes the way agricultural land is valued for property tax purposes. Under the law, the assessed value of each parcel of agricultural land in 1996 is the same as the assessed value of that parcel in 1995. Buildings and improvements to agricultural land continue to be assessed at their full market value.

Since 1995 Wis. Act 27 affects assessments as of January 1, 1996, an emergency rule is necessary for the efficient and timely assessment of agricultural land in 1996.

In particular, the rule addresses the following needs:

– repealing obsolete terms defined by rule

– defining the terms "land devoted primarily to agricultural use", "other", and "parcel of agricultural land"

– providing instructions for assessing "agricultural land" and "other" land classifications in 1996.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of the rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: **December 6, 1995**
Effective Date: **December 6, 1995**
Expiration Date: **May 5, 1996**
Hearing Date: **January 25, 1996**

EMERGENCY RULES NOW IN EFFECT (2)

Department of Transportation

1. 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**

2. Rules were adopted revising **ch. Trans 131**, relating to the Motor Vehicle Inspection and Maintenance Program.

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is that Southeastern Wisconsin is currently unable to meet federal air quality standards. Southeastern Wisconsin is one of nine regions in the United States designated as areas with "severe" air pollution problems. This air quality problem results in all area residents breathing air that is not healthy.

Since motor vehicles are the largest contributor to the area's air quality problem, the Wisconsin Department of Transportation finds that an emergency exists regarding the public health. The enhanced I/M program resulting from the proposed rule is a necessary part of the state's plan to achieve the volatile organic compound (VOC) emission reductions required by the Clean Air Act. The program will account for over one–third of the VOC reductions required by Wisconsin's 15% VOC Reduction Plan. By implementing the changes proposed in the rule, the air quality in Southeastern Wisconsin area can be improved. If such improvement does not occur, other more costly controls on small business and industry would be required. By taking action at this time, the major and most cost effective measure is utilized to meet Wisconsin's clean air goal.

Publication Date: **December 4, 1995**
Effective Date: **December 4, 1995**
Expiration Date: **May 3, 1996**
Hearing Date: **January 11, 1996**

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

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

Public Instruction, Dept. of (CR 95–203):
SS. PI 35.03 and 35.06 – Relating to the Milwaukee parental private school choice program.

Transportation, Dept. of (CR 95–197):
Ch. Trans 104 – Relating to examination procedures for operator's license.

Transportation, Dept. of (CR 95–200):
Ch. Trans 310 – Relating to child restraint standards.

Transportation, Dept. of (CR 95–201):
S. Trans 4.06 (4) – Relating to the Urban Mass Transit Operating Assistance Program.

Administrative Rules Filed With The Revisor Of Statutes Bureau

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

Industry, Labor & Human Relations (CR 95−172):

An order affecting chs. Ind 72 and ILHR 272, relating to the minimum wage, subminimum wage licenses for rehabilitation facilities, and employment in home care premises.

Effective 03−01−96.

Natural Resources (CR 93−203):

An order affecting ch. NR 203, relating to changes to notice procedures and holding public informational hearings for nonsubstantive WPDES permit modifications.

Effective 03−01−96.

Natural Resources (CR 95−76):

An order affecting chs. NR 700, 708, 712, 714, 716, 718, 720, 722, 724, 726, 728, 738 and 750, relating to the assessment and collection of fees and the establishment of application review procedures for the contaminated land recycling program.

Effective 03−01−96.

Natural Resources (CR 95−100):

An order affecting ch. NR 50 and s. NR 190.09, relating to the outdoor recreation, snowmobile and lake planning grants.

Effective 03−01−96.

Natural Resources (CR 95−132):

An order affecting ss. NR 1.21, 1.212 and 1.213, relating to the administration of private forestry assistance.

Effective 03−01−96.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection (CR 94–175)

Ch. ATCP 81 – Cheese grading, packaging and labeling, and standard of identity and labeling requirements for Baby Swiss cheese.

Summary of Final Regulatory Flexibility Analysis:

These amendments to ch. ATCP 81, Wis. Adm. Code, regulate cheese grading, cheese packaging and labeling and incorporate a standard of identity for Baby Swiss cheese into the rule. The amendments are technical in nature and do not significantly change current rules.

Among other things, the rule amendments eliminate unsuitable "age" definitions for cheese and update various sections of the rule to be consistent with other rule requirements. The standard of identity for Baby Swiss cheese is currently contained in ch. ATCP 79, Wis. Adm. Code, and is recreated as ch. ATCP 81, Subch. IX, Wis. Adm. Code.

The rule amendments will not affect small businesses such as dairy plants and retail food establishments. New age labeling requirements will not impose significant costs. These amendments do not require any additional reporting or recordkeeping by small businesses. In addition, no other new procedures will be required. No additional knowledge or professional skills are needed to meet the requirements of these amendments.

Summary of Comments from Legislative Committees:

The rule was referred to the Assembly Committee on Consumer Affairs on July 24, 1995 and to the Senate Committee on Transportation, Agriculture and Local Affairs on July 26, 1995. The department received no comments or request for hearing from either committee.

2. Dentistry Examining Board (CR 95–054)

S. DE 12.01 (3) – Ability for a dentist to delegate remediable portions of an oral prophylaxis to an unlicensed person.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments reported.

3. Employe Trust Funds (CR 95–88)

Chs. ETF 10, 20 & 50 – Deadlines for requesting cancellation of applications for retirement annuities, disability annuities and lump sum payments other than separation benefits and to disclosure of beneficiary designations and other individual personal information.

Summary of Final Regulatory Flexibility Analysis:

The Legislative Council Staff made nine recommendations relative to clarify, grammar, punctuation and use of plain language. Most have been implemented. Recommendation (a) is unnecessary because the reference to sub. (3) has been deleted. In response to recommendation (d), the department added an reference to guardians rather than to authorized representatives of the participant. Only a guardian would be permitted to file a beneficiary designation on behalf of a participant. Therefore the department does not intent to notify anyone other than the participant or the participants guardian when a problem is identified in a beneficiary designation.

Summary of Comments:

No comments were reported.

4. Health & Social Services (CR 95–079)

Ch. HSS 88 – Licensed adult family homes.

Summary of Final Regulatory Flexibility Analysis:

Nearly two–thirds of the 269 family homes licensed by the Department are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Most licensed adult family homes were previously regulated under ch. HSS 3, rules that applied also to larger facilities. The proposed rules are designed specifically for these 3 and 4 resident homes and consequently many requirements are less stringent than requirements found in proposed ch. HSS 83 for CBRFs with 5 or more residents.

Residents of adult family homes require some assistance with daily living, at least supervision, although not nursing care on a regular basis. The proposed rules are intended to protect residents from harm and to promote their well-being. The rules are in the Department's judgment the minimum rules necessary to carry out these purposes insofar as this can be done through rules and enforcement of them.

No comments were received at public hearings on the proposed rules from operators of licensed adult family homes. Three comments were questions. No changes were made in the rules in response to the other 6 comments. These were: permit corporations to keep personnel records in their corporate offices rather than keep them at the home; define "nursing care" in a way different from referencing Board on Nursing rules; provide an exception for older homes to the minimum 100 square foot bedroom space for wheel chair–bound residents; allow only one type of smoke detector system; do not require licensee to both post HSS 88 and give a copy to each new resident; and make available a special handbook on the rules.

Summary of Comments of Legislative Standing Committees:

No comments were received.

5. Transportation (Dept.) (CR 95–86)

Chs. Trans 136, 138, 139, 141, 142 & 154 – Vehicle odometers disclosure, record keeping and titling by dealers and nonresidents.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse effect on small businesses beyond any effect imposed by the statutes. Less stringent requirements on small businesses were considered and found not appropriate.

Summary of Comments:

No comments were reported.

6. Transportation (Dept.) (CR 95−137)

Ch. Trans 278 − Proposed legislation establishing vehicle weight limit exceptions.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

7. Transportation (Dept.) (CR 95−145)

Ch. Trans 276 − Allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Summary of Final Regulatory Flexibility Analysis:

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly−designated routes.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 266. Relating to a Special Election for the Twenty−First Assembly District.

Executive Order 267. Relating to a Proclamation that the Flags of the United States and the State of Wisconsin be Flown at Half−Staff as a Mark of Respect for the late Officer Michael R. Baribeau of the Rice Lake Police Department.

Executive Order 268. Relating to a Proclamation that the Flags of the United States and the State of Wisconsin be Flown at Half−Staff as a Mark of Respect for the Late Trooper William J. Harris of the Wisconsin State Patrol.

Executive Order 269. Relating to a Proclamation that the Flags of the United States and the State of Wisconsin be Flown at Half−Staff as a Mark of Respect for the Late Sheriff Frederick C. Schram of the Richland County Sheriff's Department.

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