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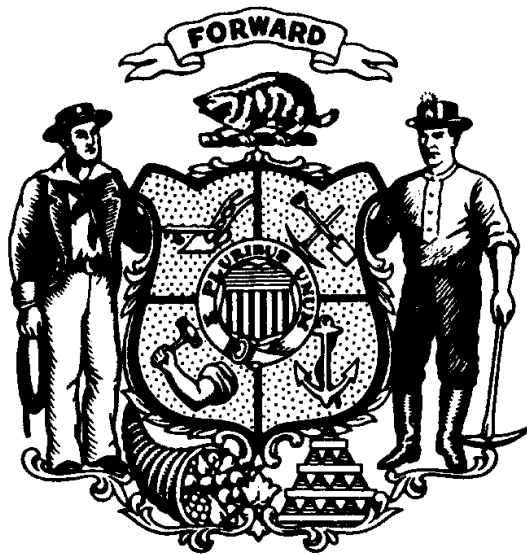
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WISCONSIN ADMINISTRATIVE REGISTER

No. 485



Publication Date: May 14, 1996
Effective Date: May 15, 1996

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

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 (2)

Department of Agriculture, Trade & Consumer Protection

1. 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

2. Rules were adopted creating **s. ATCP 21.15**, relating to potato late blight.

FINDING OF EMERGENCY

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection finds, pursuant to s. 224.24 (1), Stats., that an emergency rule is necessary to preserve the public peace, health, safety or welfare. The following circumstances justify the emergency rule:

1) In recent years, new forms of the highly virulent "Irish potato famine" fungus, *Phytophthora infestans*, have caused increasingly devastating losses to potato and tomato growers in the United States and Canada. The fungus causes a disease of potato plants which is commonly known as "late blight."

2) The National Association of State Departments of Agriculture reports that late blight epidemics in 1992, 1993 and 1994 were the worst in decades, and that some individual farm losses have amounted to hundreds of thousands of dollars in a single year. The University of Wisconsin estimates that Wisconsin growers lost up to \$10 million in 1994 and \$6 million in 1995 due to late blight.

3) The potato industry is one of Wisconsin's most important agricultural industries. In 1995, Wisconsin was the 3rd leading state in the nation in potato production. Cash receipts to Wisconsin potato growers totalled over \$150 million in 1995. Potatoes are an important food source for the people of Wisconsin and other states. Potato production also supports important processing and distribution industries in Wisconsin. The uncontrolled spread of late blight would have a devastating impact on Wisconsin potato growers, and would seriously affect the public health, safety and welfare.

4) Late blight appears on potato plant leaves, stems and tubers. It causes foliar lesions which are followed by severe defoliation in wet weather. It can also reduce marketable yield by directly infecting and rotting potato tubers. Once late blight appears, it spreads rapidly and can cause total crop loss.

5) Late blight fungal spores can be carried to other plants by many things, including wind, rain, machinery, workers, wildlife and infected seed potatoes. The University of Wisconsin reports that spores can be transported over 25 miles by storms.

6) There are very few registered fungicides in the United States that are effective in controlling the new forms of late blight fungus.

7) Because of the lack of registered fungicides, and the ease with which the late blight fungus spreads, potato growers must mitigate the spread of the disease by removing sources of the overwintering inoculum. Among other things, potato growers must properly dispose of potato cull piles and potato plants which germinate from waste potatoes.

8) If individual potato growers fail to implement necessary cultural practices to mitigate the spread of late blight, that failure will have a potentially devastating impact on other growers and on the Wisconsin potato industry as a whole.

9) In order to ensure that growers take adequate steps to mitigate the spread of late blight, it is necessary to adopt rules that spell out critical problems and establish sanctions for growers who fail to comply. Because of the imminent threat of harm to the potato industry, rules are urgently needed prior to the 1996 planting and growing season.

10) Under normal rulemaking procedures, it is not possible for the Department to adopt rules prior to the 1996 planting and growing season. Pending the adoption of permanent rules, the following emergency rules are needed to protect the public health, safety and welfare, and to mitigate the spread of late blight during the 1996 planting and growing season.

Publication Date: May 1, 1996
Effective Date: May 1, 1996
Expiration Date: September 28, 1996
Hearing Date: May 30, 1996

[See Notice this Register]

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 Date: February 13, 16 & 22, 1996

EMERGENCY RULES NOW IN EFFECT

Development

Rule adopted amending **ss. DOD 6.18 (1) and 6.32 (2)**, relating to the community development block grant portion of the Wisconsin development fund.

FINDING OF EMERGENCY

The Department of Development finds that an emergency exists and that the attached rule is necessary to the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

On the evening of January 5, 1996, a fire broke out at Stella Foods' cheese processing and packaging plant in the Village of Lena, Wisconsin, resulting in more than \$15 million in property damage, more than \$10 million in business interruption losses, and the loss of more than 300 full-time equivalent jobs for that small rural community. As a result of the fire, 70 percent of Stella Foods' plant was destroyed, all dairy and cheese processing ground to a halt, and approximately 350 dairy farmers had to find alternative facilities to receive and process their dairy products.

The scope of the Stella Foods fire and resulting damages was exacerbated by the lack of adequate water supply and pressure to fight the fire. To address various water supply, waste water treatment and insurance needs, and to persuade Stella Foods to reconstruct the Lena plant and rehire more than 300 former employees, the Village of Lena needs to replace its 50-year old 40,000 gallon water tank with a new 300,000 gallon water tank at an estimated cost of approximately \$890,000, and to upgrade its current waste water treatment plant at an estimated cost of approximately \$900,000. Adoption of these emergency rules will allow the Department of Development to provide the Village of Lena with the financial assistance to address the foregoing problems.

Publication Date: April 3, 1996
Effective Date: April 3, 1996
Expiration Date: August 31, 1996
Hearing Date: May 8, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Emergency Response Board

1. 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

Hearing Date: March 28, 1996

2. Rules adopted revising **ch. ERB 4**, relating to a fee for transporting hazardous material.

FINDING OF EMERGENCY

The State Emergency Response Board finds that an emergency exists and that the attached 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 necessary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce.

This emergency rule is being promulgated to allow continuation of the Wisconsin hazardous materials transportation registration program established in s. 166.20(7g), Stats. The State Emergency Response Board (SERB) promulgated a rule, **ch. ERB 4**, to implement the program. The original rule had a sunset date of June 30, 1995. A revised **ch. ERB 4** was promulgated December 1, 1995, but was superseded by statutory changes to s. 166.20(7g), Stats., enacted in the Department of Transportation (DOT) biennial budget.

The emergency rule will enable the DOT to collect registration fees for the billing period July 1, 1995 through June 30, 1996. This was agreed upon as a necessary step by several agencies including SERB, Division of Emergency Government and DOT in consultation with Legislative Council and Joint Committee For Review of Administrative Rules staff. Through this collection, DOT will meet the statutory requirement to collect an annual registration fee for the transport of hazardous materials. These fees are deposited to the State Transportation Fund to partially offset the DOT appropriations funding the level A and level B hazardous materials emergency response teams in Wisconsin. The legislature has supported the emergency response team system in Wisconsin by adopting legislation to authorize teams and fund them through a combination of fees and the State Transportation Fund.

The SERB, the Department of Military Affairs—Division of Emergency Government and the Department of Transportation are jointly developing a permanent rule to reflect the statutory fee structure enacted by the legislature

in the DOT 1995–97 biennial budget. It is expected a revised permanent rule will be promulgated later this year.

Publication Date: February 23, 1996

Effective Date: February 23, 1996

Expiration Date: July 22, 1996

Hearing Date: April 2, 1996

EMERGENCY RULES NOW IN EFFECT

Department of Employment Relations

A rule was adopted creating **s. ER 29.03 (8) (bm)**, relating to the rate of pay as a result of voluntary demotions by employees who are notified they may be subject to layoff.

FINDING OF EMERGENCY

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

Many state agencies are undergoing reorganizations, either at the directive of the Governor and State Legislature or on their own initiative. These organizational changes are occurring to promote efficient and effective administration of state agencies, improve delivery of services and improve coordination of similar programs. Numerous permanent positions in the classified civil service are being restructured because of a reduction in force due to a lack of work or funds or owing to material changes in duties organization. Incumbents of those positions will soon face critical career decisions and alternatives that involve new duties, classification and/or physical location of their work site.

This emergency rule allows employees who have been notified that they are "at risk" of layoff to maintain their current rate of pay if they voluntarily demote under certain circumstances within an agency. "At risk" means the employee has received written notification that layoffs may occur in the agency and the employee's position may be affected by they layoffs. The employee may be allowed to retain his/her present rate of pay only if the demotion is to a position no more than three pay ranges or counterpart pay ranges lower than the pay range of the position from which the employee is demoting.

If the option of maintaining the employee's pay rate is not available to the employee and the agency, employees will be forced to choose between options that may result in a reduction in pay, transfer or demotion to a less desirable location or position, or the employee may eventually be laid off. These consequences may adversely affect employee morale, undermine the efficient use of human resources and reduce the benefits of the agency reorganization. Retention of an employee's current rate of pay can be used by the agency as an incentive for employees to move to positions they might otherwise not choose.

For these reasons and because employee layoffs may occur before the Department could promulgate permanent rule, the Department believes a finding of emergency is warranted to preserve the welfare of individual employees and the civil service system.

Publication Date: March 18, 1996

Effective Date: March 18, 1996

Expiration Date: August 15, 1996

Hearing Date: May 3, 1996

EMERGENCY RULES NOW IN EFFECT

Wisconsin Gaming Commission

A rule was adopted amending **s. WGC 24.13 (1) (d)**, relating to simulcasting fees.

FINDING OF EMERGENCY

The Wisconsin Gaming Commission finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace,

health, safety or welfare. A statement of the facts constituting the emergency is:

The previous fee of \$50 per performance made simulcasting cost prohibitive, and as a result, prevented the expansion of employment and residual economic benefits. The emergency rule will allow for the increased economic activity.

Publication Date: March 1, 1996
Effective Date: March 1, 1996
Expiration Date: July 29, 1996
Hearing Date: April 15, 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 Date: 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

EMERGENCY RULES NOW IN EFFECT (4)

Health and Social Services

(Health, Chs. HSS 110--)

1. 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
Extension Through: May 31, 1996

2. 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 for 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
Extension Through: July 2, 1996

3. 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
Hearing Date: March 1 & 8, 1996

4. 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
Hearing Date: March 1 & 8, 1996

EMERGENCY RULES NOW IN EFFECT (4)

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

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

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 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. 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

4. Rules were adopted revising **chs. HSS 201 and 206**, relating to pay for performance demonstration project under the AFDC program.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature in s. 12 (2) and (3) of 1995 Wis. Act 12 permitted the Department to promulgate the rules required under s. 49.193 (3m) and (9m), 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 March 1, 1996.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Under s. 49.19, Stats, families inquiring about the Aid to Families with Dependent Children (AFDC) program are immediately encouraged to apply for assistance without exploring possible alternatives to welfare. Once determined eligible, many families come to consider the AFDC program a program of long-term financial support, sometimes spanning generations. Yet AFDC was originally meant to be a temporary, emergency program.

Wisconsin has obtained approval from the Food and Consumer Service of the U.S. Department of Agriculture and from the Administration for Children and Families of the U.S. Department of Health and Human Services to conduct a Pay for Performance (PFP) demonstration project beginning March 1, 1996. The major objective of the Pay for Performance demonstration project is to focus on freedom from public assistance by encouraging immediate attachment to the work force and helping families explore alternatives to AFDC before becoming dependent on AFDC. The demonstration project will be conducted statewide except in Dane, Dodge, Jefferson and Waukesha counties. In those counties individuals may be assigned to a control group which will be exempt from the demonstration project requirements to permit evaluation of the demonstration project. Statutory authority for the Department to operate two related demonstration projects, Self-Sufficiency First and Pay for Performance, was included in 1995 Wis. Act 12. Under the federal government's terms and conditions of approval for demonstration project, the Department is now calling the combined project Pay for Performance.

The first component of the Pay for Performance demonstration project encourages alternatives to AFDC through services of a financial planning resource specialist (FPRS) and up-front job search. This component is directed at helping applicants identify alternatives to AFDC, facilitating immediate orientation and referral to the Job Opportunities and Basic Skills (JOBS) program and requiring job search before receiving AFDC. Cooperation is made an AFDC eligibility requirement. An individual who fails without good cause to cooperate with these requirements will be ineligible to receive AFDC benefits for himself or herself and his or her family.

For an individual who becomes an AFDC recipient after fulfilling the applicant job search requirements, there is a second component of the Pay for Performance demonstration project. This requires the JOBS case manager to design an employability plan for the recipient that focuses on employment at the earliest opportunity and requires the recipient to participate in a set number of hours of participation in JOBS program activities or work to maintain AFDC eligibility. Failure, without good cause, to maintain participation as assigned will result in sanctions in the next possible month based on the number of hours missed without good cause multiplied by the federal minimum wage. Failure to participate in at least 25% of the assigned hours will result in no AFDC benefits being paid for that month and a reduction to \$10 in food stamp benefits.

These are the rules for the implementation of the Pay for Performance demonstration project.

Publication Date: March 1, 1996
Effective Date: March 1, 1996
Expiration Date: July 29, 1996
Hearing Date: April 16, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Industry, Labor & Human Relations

**(Building & Heating, etc., Chs. ILHR 50-64)
 (Multi-Family Dwellings, Ch. ILHR 66)**

1. 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
Extension Through: May 9, 1996

2. Rule adopted delaying the effective date of a rule revision to portions of **chs. ILHR 50 to 64 and 66**, relating to energy efficiency.

Note: A lawsuit has been filed challenging the validity of this emergency rule action.

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:

1. On August 8, 1995, the Department adopted revised rules relating to ventilation and energy conservation in public buildings and places of employment. The purpose of these rules was to improve indoor air quality in buildings and to comply with the federal Energy Policy Act of 1992 which requires all states to revise their commercial building codes to meet or exceed the American Society of Heating, Refrigerating and Air-Conditioning Engineers/Illuminating Engineering Society (ASHRAE/IES) standard 90.1-1989. The rules went into effect on April 1, 1996.

2. Information has been recently provided to the Department that indicates that two of the provisions of the rules will cause excessive costs for building owners without commensurate benefit.

3. The emergency rule is being promulgated to avoid economic hardship caused by imposing unnecessary building construction and operating costs on building owners and operators.

EMERGENCY RULE ANALYSIS

The emergency rule will delay the effective date of the Energy Conservation related and Heating, Ventilating and Air Conditioning related rules for one year to give the Department and its advisory committee time to study the effect of the rules and make any necessary changes.

Publication Date: April 6, 1996
Effective Date: April 6, 1996
Expiration Date: September 3, 1996
Hearing Date: May 28, 1996

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT**Industry, Labor & Human Relations****(Unemployment Compensation, Chs. ILHR 100-150)**

Rules adopted creating s. **ILHR 127.035**, relating to a limited waiver of work search requirement.

FINDING OF EMERGENCY

The department of industry, labor and human relations finds that an emergency exists within the state of Wisconsin 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:

Under s. 108.04(2)(b), Stats., the requirements for searching for work, as a condition of eligibility for unemployment insurance benefits, are to be prescribed by rule of the department. The statute further provides that the department may by general rule waive those requirements under certain conditions to be stated by the department. ILHR 127.02(2) allows the department to waive a claimant's work search requirement if she or he has been laid off from work but has a reasonable expectation of reemployment by an employer within 12 weeks after the week in which a claim is filed for unemployment insurance benefits.

On or about January 6, 1996, the Stella Foods plant in Lena, WI burned down. As a result, most of the workers were temporarily laid off. The company committed to rebuilding and reopening the plant. 35% of the plant was reopened after cleaning and about half the workers were recalled. The other 65% of the plant is being rebuilt. The company originally expected to be able to recall all or most workers within approximately 12 weeks. As a result, a work search waiver was granted to these claimants. Due to the vagaries of construction scheduling, especially during the winter months in Wisconsin, the rehire dates will be later than originally anticipated. The company expects to be able to open a line in part of the new construction in June or July of 1996 and will recall additional workers at that time. The company expects to be able to recall all workers by Labor Day.

Lena's population is approximately 590. The Stella Foods plant is a major employer in the Lena/Oconto Falls labor market, providing approximately 10% of all jobs in that labor market. Half of the jobs available with the plant remain unfilled. This constitutes 5% of all the jobs in that labor market. The unemployment rate in Oconto county before this fire was already 7.6%.

The department believes that the number of affected employees and the nature of the labor market in the Lena/Oconto Falls area makes it very unlikely that any substantial number of affected Stella Foods employees would be able to obtain suitable alternative work as a result of customary work search activities.

The existing permanent rule relating to work search requirements does not provide for waiver of the requirements in these circumstances. The department believes that it is necessary to promulgate this emergency rule in order to avoid wasting administrative funds and to avoid the hardship for other employers in the Lena/Oconto Falls area which will occur if this number of employees in this small labor market area are required to repeatedly canvass such other employers in order to comply with customary work search requirements. Other employers' hiring of those temporarily laid off due to the fire could also impose a hardship on other unemployed individuals in the labor market who do not have any such assurance of being recalled to their former jobs.

Publication Date: April 15, 1996
Effective Date: April 15, 1996
Expiration Date: September 12, 1996
Hearing Date: May 28, 1996

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT**Insurance**

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
Hearing Date: March 1, 1996

EMERGENCY RULES NOW IN EFFECT (2)**Natural Resources****(Fish, Game, etc., Chs. NR 1--)**

1. Rules were adopted amending s. **NR 20.03 (1) (q) 2. b.** and creating s. **NR 20.036**, relating to sturgeon spearing in Lake Winnebago.

FINDING OF EMERGENCY

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

Department Fisheries staff have recently shown that due to increasing spearing pressure and increasing spearer success rates the Winnebago lake sturgeon population, particularly the mature female portion, is experiencing overexploitation. Improvements in system water quality along with optimal weather conditions have provided clear water and optimal spearing conditions in recent years resulting in three of the four highest harvests on record in recent years resulting in three of the four highest harvests on record since 1990. To prevent the possible overharvest of sturgeon during the 1996 spearing season, an Emergency Order is required.

Publication Date: February 2, 1996
Effective Date: February 2, 1996
Expiration Date: July 1, 1996
Hearing Date: March 12, 1996

2. Rules were adopted revising ss. **NR 1.15 (2) (a), 10.104 and 10.28**, relating to deer hunting permits.

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. There is great public interest in white-tailed deer and their management in Wisconsin. Failure to adopt these rules would require that the 1996 antlerless deer quotas be based upon existing overwinter population goals that do not reflect the public interest in deer management. There has been more than a year of comprehensive public involvement in developing this rule.

Publication Date: April 15, 1996
Effective Date: April 15, 1996
Expiration Date: September 12, 1996
Hearing Date: May 20, 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
Extension Through: July 3, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Department of Transportation

1. Rule was adopted amending **s. Trans 6.04 (1) (e)**, relating to the administration of the federal section 18 program.

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is that without a Governor's certification that the intercity bus service needs of the state are being adequately met, many small urban and rural transit systems will see sharp, unplanned reductions in the amount of financial assistance they receive in 1996. These cuts may result in service reductions, fare increases and the need for local governments to cover a higher share of operating losses than has been budgeted.

Publication Date: March 13, 1996
Effective Date: March 13, 1996
Expiration Date: August 10, 1996
Hearing Date: April 17, 1996

2. Rules adopted creating **Ch. Trans 258**, relating to seed potato overweight permits.

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through normal procedure, the Department finds an emergency exists for the following reasons: (1) seed potatoes are transported to market between late February and April. Promulgation of an administrative rule through the normal process would not be timely for this planting season; (2) the Department believes the Legislature intended the provisions of 1995 Wis. Act 163 to be effective during this spring planting season. In order to promulgate rules in time for this spring growing season, this emergency process must be employed. The statute does not specify truck configurations, such as trailer length, axle spacing and weight distribution, but delegates responsibility to the Department. Without specified configurations vehicles that will impose damage to the roadway will be eligible for permits; and (3) the statute confers authority to identify an alternate route through rule but does not specify the alternate route. A suitable alternate route should be in place prior to the issuance of permits to allow diversion of permitted loads if any of the low weight bridges along the primary route manifests overstress. Closure of any of those bridges would substantially impede movement of other legal weight traffic in an area with few alternate routes.

Publication Date: April 3, 1996
Effective Date: April 3, 1996
Expiration Date: August 31, 1996
Hearing Date: May 13, 1996

STATEMENT OF SCOPE OF PROPOSED RULES

Agriculture, Trade & Consumer Protection:

Subject

Evaluation of Laboratories that analyze milk and water. (Ch. ATCP 77)

Preliminary objectives:

These rules will repeal portions of ch. HSS 165, Wis. Adm. Code, Laboratory Certification, and create Ch. ATCP 77, Wis. Adm. Code, Milk and Water Laboratories. This rule implements the provisions of 1995 Wis. Act 27 which shifts the administration and performance of the evaluation of milk and water laboratories from the Wisconsin Department of Health and Social Services, Division of Health, to the Wisconsin Department of Agriculture, Trade and Consumer Protection

Preliminary policy analysis:

This rule will help to focus evaluation efforts for milk and water laboratories to better serve the needs of the State and the customers of the evaluation program and will equitably assess fees necessary for the recovery of costs of the program.

The primary customers of the laboratory evaluation program are Wisconsin dairy plants which sell milk into interstate commerce. As a prerequisite to the interstate shipment of milk, dairy plants must comply with testing requirements to assure the quality and safety of the milk supply. Testing must be performed in laboratories that are approved by the shipping state.

The safety of public and private water supplies is measured in part by effective laboratory testing of water. The water laboratory evaluation program provides assurance to the state and laboratory customers that water testing is performed appropriately and accurately.

This rulemaking proposes to increase and more equitably distribute fees. The laboratory evaluation program is totally funded by user fees. The proposed rule seeks to apportion fees equitably to offset the costs of the program. The objective is to have the fee more closely reflect the cost of evaluation for individual laboratories.

Policy alternatives:

Policy alternatives relate primarily to the funding of the laboratory evaluation program and the assessment of fees. These alternatives are rather limited because 1995 Wis. Act 27 requires the department to promulgate rules to offset the cost of the certification of laboratories.

Currently, the laboratory evaluation program is totally funded by user fees. Funding could be shifted to include general purpose revenue (GPR). However, since the benefits of the laboratory evaluation program accrue primarily to the dairy industry by fulfilling requirements for interstate sale of milk, a shift toward greater GPR funding does not seem appropriate.

Laboratory evaluation fees could remain at the current level. If fees remain at the current level and the laboratory evaluation program continues to be totally funded by the program revenue (PRO) generated by these fees, the laboratory evaluation program will become increasingly under funded and will cease to operate.

Laboratory evaluation fees could be increased and reapportioned in a more equitable manner. This approach is the most prudent from a management perspective and best meets the needs of this program's primary customer, Wisconsin's dairy industry.

Statutory authority:

The department proposes to develop rules governing the evaluation and certification of milk and water laboratories under authority of ss. 93.07 (1), 93.12 (5) and (7), Stats. The rules would interpret s. 93.12, Stats.

Staff time required:

The department estimates that it will use approximately 0.5 FTE staff time to develop this rule. This includes research, drafting, preparing relating documents, holding public hearings, coordinating advisory council discussions, and communicating with affected persons and groups. The department will assign existing staff to develop this rule.

Department of Industry, Labor and Human Relations

Subject:

Ventilation and Energy Conservation (Chs. ILHR 50 to 64 and 66)

Description of the objective of the rules:

The objective of the first proposed rule is to delay the effective date of recently adopted energy conservation-related and heating, ventilating and air conditioning-related rules for one year, to April 1, 1997. This will allow the Department and an advisory committee time to study the effect of those rules and make any necessary changes. The first proposed rule is identical to an emergency rule which was adopted on April 2, 1996, and which initiated this same delay.

The objective of the second, subsequent proposed rule is to improve indoor air quality and bring Wisconsin into compliance with the requirement in the federal Energy Policy Act of 1992 that all states revise their commercial building codes to meet or exceed standard number 90.1-1989 by the American Society of Heating, Refrigerating and Air Conditioning Engineers/Illuminating Engineering Society.

Description of existing policies relevant to the rules and of new policies proposed to be included in the rules and an analysis of policy alternatives:

The Department's current policy is to protect public health, safety, and welfare by enforcing statewide minimum requirements for energy conservation and heating, ventilating, and air conditioning in public buildings and places of employment. The policy included in the first proposed rule is essentially to continue enforcing the rules relating to this subject that were in place prior to April 1, 1996, rather than to enforce the recently adopted rules that were to take effect on April 1, 1996.

The most immediate policy alternative to this proposal would be to not delay enforcement of the recently adopted rules after the 150-day emergency rule period. This alternative would improve indoor air quality and bring Wisconsin into compliance with the federal

Energy Policy Act of 1992 sooner than April 1, 1997. However, information that has recently been provided to the Department indicates that the recently adopted rules would cause excessive costs for building owners without commensurate benefit. Delaying the rules for 1 year will allow the Department and an advisory committee to fully assess the concerns, study the rules further, prepare an environmental assessment and an economic impact analysis for the rules, determine the most appropriate final version of the rules, and plan the corresponding best course of action.

Statutory authority for the rules:

Section 101.02 (1) and (15), Stats.

Estimate of the amount of time that state employees will spend to develop the rules and of other resources necessary to develop the rules:

Relatively little state employee time would be needed to develop the first rule that is proposed now, since this rule would be identical to an emergency rule which is already in effect. However, recent events, including a lawsuit that has been filed against the Department in reaction to the emergency rule, indicate that extensive, complex testimony may be received during the public hearing stage for promulgating this rule. Substantial time would be needed to compile and analyze such testimony, particularly if issues are raised that relate to the environmental assessment and economic impact analysis which are planned for the second, subsequent rule. This could lead to significant, time consuming changes to the first rule.

Substantially more time would be needed for the second, subsequent rule, because it is expected that at least 5 advisory committee meetings will be held, an environmental assessment and an economic impact analysis will be conducted, extensive rule drafting may be necessary, and considerable public hearing testimony may be presented.

The total state employee time needed for both rules combined is estimated as follows.

Administrative time:	200 hours
Code Consultant time:	1000 hours
Program Manager time:	900 hours
Program staff time:	500 hours
Word Processor time:	<u>200 hours</u>
TOTAL TIME:	2800 hours

Commissioner of Insurance:

Subject:

Life Insurance (S. Ins 2.80)

Statement of the objective of the proposed rule:

The rule creates guidelines for insurers on 1) the valuation of reserve liabilities for life insurance policies issued with nonlevel premiums or benefits, and 2) the valuation of reserve liabilities for universal life policies with secondary guarantees. The rule also creates new tables of select mortality factors and rules for their use by insurers in the valuation of all types of life insurance policies.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Implementation of the rule will modify the techniques insurance company actuaries use in estimating reserve liabilities. It is not expected to involve any added costs or functions to OCI. The alternative to this rule is to do nothing. The significance of this rule is that it may prevent future solvency related problems for insurers by not allowing unrealistic reserving assumptions. The impact will be to clarify reserving rules for certain life insurance products.

Statement of the statutory authority for the rule:

S. 601.41 (3), Stats.

Estimate of the amount of time that state employees will spend to develop the rule and description of other resources necessary to develop the rule:

Because the rule has been developed by the NAIC and made available for use by the states all that is needed is administrative duties, estimated at 40 hours.

Commissioner of Insurance:

Subject:

Exempting certain attorneys from passing the title examination prior to licensing. (s. Ins 6.59)

Statement of the objective of the proposed rule:

This change would allow attorneys licensed in Wisconsin who have taken at least 6 hours of Continuing Legal Education dealing with Wisconsin title insurance law within the previous 1 year period to apply for a title insurance license without passing the title insurance test.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, all applicants for title insurance must pass the title test prior to applying for a title insurance license. The agency could continue to require everyone to pass the title test.

Statement of statutory authority for the rule:

S. 628.04, Stats.

Estimate of the amount of time that state employees will spend to develop the rule and a description of other resources necessary to develop the rule:

The agency is estimate to require 40 hours of staff time and no other resources.

Commissioner of Insurance:

Subject:

Risk based capital requirements for insurers. (ch. Ins 51)

Statement of the objective of the proposed rule:

The objective of this proposed rule is to establish additional standards of minimum capital and surplus for life, life and health and property and casualty insurers with certain exceptions such as town mutuals, HMOs, LSHOs and mortgage guarantee insurers. The

additional standards are expected to include criteria which are designed to identify the degree of risk assumed by an insurer, such as for investments, operations, and cash flow. Minimum capital and surplus standards will be designed to reflect the degree of risk identified by those criteria. In addition the rule will identify possible actions which the office may take based on the status of an insurer under the criteria and standards.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The proposed rule will supplement and not replace existing standards for minimum capital and surplus for insurers. The office currently has standards for operating insurers which reflect the premium volume assumed by the insurer by line of business and which permit the office to adjust the capital and surplus requirements based on an individual assessment of the status of the insurer. The proposed rule will provide an additional and more refined set of criteria and standards.

Statement of the statutory authority for the rule:

The rule will be proposed under the office's statutory authority under ss. 611.19, 611.24, 613.19, 613.24, 614.19, and chs. 620 and 623, Stats.

Estimate of the amount of time that state employees will spend to develop the rule and a description of other resources necessary to develop the rule:

The time estimated to complete development of the rule (exclusive of time for preparation for and execution of procedures for promulgation) 100 hours.

Natural Resources:

Subject:

Sturgeon spearing on Lake Winnebago. (Ch. NR 20)

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

We anticipate proposing revisions to the current season, size limits, and registration/possession rules for lake sturgeon in the Lake Winnebago system.

Groups likely to be interested include Sturgeons for tomorrow, Paynes Point Hook and Spear Fishing Club, various other sporting groups in and around Lake Winnebago and the Fox River Valley, and the interested sturgeon spearers around the state.

Statutory authority:

S. 29.174, Stats.

Anticipated time commitment:

27 hours.

Natural Resources:

Subject:

Special size and bag limits for waters within the Lac du Flambeau reservation. (s. NR 20.035)

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The department recommends establishing an 18 inch minimum length limit for walleye, a daily bag limit of three walleye, and a 40 inch minimum length limit for muskellunge for waters within the boundaries of the Lac du Flambeau reservation.

Statutory authority:

S. 29.174, Stats.

Anticipated time commitment:

56 hours.

Natural Resources:

Subject:

Landfill location, performance and design criteria, and request Board approval to develop guidance and proceed with the development of a mitigation and mitigation banking program for department regulatory programs. (Chs. NR 103, 299 & 504)

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

1) Amend ch. NR 103 to allow the department to evaluate the significance of wetland functional values and project impacts at the same time practicable alternatives are considered for projects affecting ≤ 0.10 acres of wetland. This change would allow the balancing of scope of alternatives with the quality of the wetland.

2) Amend ch. NR 103 to define "artificial wetlands" and identify those artificially created landscape features that may resemble a wetland in plant species composition but should be considered a wetland subject to the standards under ch. NR 103.

3) Amend ch. NR 103 to identify a wetland delineation protocol that mirrors the Corps of Engineers (COE) delineation process.

4) Amend ch. NR 299 to eliminate the mandatory publication of a public notice for individual water quality certifications that are granted.

5) Amend ch. NR 299 to clarify the terms "substantial interest that may be affected".

6) Amend ch. NR 299 to provide the department the ability to request additional information from a petitioner(s) to better document and substantiate an objection based on fact.

7) Amend ch. NR 299 to limit the ability to request a contested case hearing under ch. NR 299 when another hearing opportunity already exists under state law or Wis. Adm. Code.

8) Amend ch. NR 504 to add a special section to limit the scope of practicable alternatives analysis to on-site alternatives that avoid/minimize wetland impacts for landfill expansions.

9) Request Board approval to develop guidance and training for issues associated with the implementation, administration and consistent application of ch. NR 103.

10) Request Board approval to develop a mitigation and mitigation banking program.

Statutory Authority:

SS. 144.025, 147.01, 144.43 to 144.47, Stats.

Anticipated time commitment:

204 hours.

Department of Transportation:**Subject:**

Licensing of driver schools and instructors. (Ch. Trans 105)

Description of the objective of the rule:

To clarify ambiguous sections of the rule and create new sections dealing with:

- Age and driving experience of instructors
- Instructor medical standards
- Instructor driving record
- Procedure for handling complaints against instructors and schools
- Methods for maintaining electronic records of students
- Instructor preparation (training to become instructor)
- Surety bond for schools.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, no minimum age is set for driving instructors except that they need two years of driving experience to accompany a driver with an instruction permit. The Department is considering setting a minimum age.

Current medical standard for instructors are not well defined. The Department is seeking to be more specific in the standards.

Interpretation of the present driving record standard for instructor's is somewhat unclear. The Department intends to clarify the minimum safe driving record that an instructor must obtain to be a licensed instructor.

The current rule has no process to deal with complaints against schools and instructors. The Department seeks to establish guidelines for dealing with complaints.

Currently, paper records are required of all students who contract with a school for driving instruction. The Department would like to modernize the requirements that schools maintain records of students.

Training for potential instructors is not uniformly available around the state. The Department seeks to enact a meaningful training program requirement.

Driver schools collect fees in advance from students. The Department proposes a surety bond be required of schools to ensure that students' contracts will be honored.

Statutory authority for the rule:

ss. 85.16(1), 343.02, 343.06, and 343.60 to 343.73, Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

It is estimated that state employees will spend 200 hours completing the rule. This includes research, drafting and hearing from the public.

Department of Transportation:**Subject:**

Occupational driver's license. (Ch. Trans 117)

Description of the objective of the rule:

1995 Wis. Act 269 modifies the procedure in which occupational licenses are issued.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, courts order issuance of an occupational driver's license except for occupational license for commercial motor vehicle drivers. Under 1995 Wis. Act 269, all persons eligible for an occupational driver's license will apply directly to the Department. The amendments will affect those provisions of the rule that will no longer be applicable under the Act.

Statutory authority for the rule:

ss. 85.16 (1) and 343.02, Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

It is estimated that state employees will spend 150 hours completing the rule. This includes research, drafting and hearing from the public.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Please check the Bulletin of Proceedings--Administrative Rules Book for further information on a particular rule.

Industry, Labor & Human Relations:

On May 1, 1996, the Wisconsin Department of Industry, Labor & Human Relations submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule affects chs. ILHR 63 & 64, relating to ventilation and energy conservation.

Date of public hearing: May 28, 1996

Name and organizational unit of agency contact: Safety and Buildings Division.

Natural Resources:

On April 22, 1996, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule affects ch. NR 233, relating to regulation of effluent limitations and pretreatment standards for the pesticide chemicals industry.

Date of public hearing: June 12, 1996

Name and organizational unit of agency contact: Randy Case, Bureau of Wastewater Management.

Natural Resources:

On April 22, 1996, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule affects ch. NR 235, relating to regulation of effluent limitations and pretreatment standards for the organic chemicals, plastics and synthetic fibers industry.

Date of public hearing: June 12, 1996

Name and organizational unit of agency contact: Randy Case, Bureau of Wastewater Management.

Department of Transportation:

On April 19, 1996, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule affects ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Date of public hearing: Will be scheduled at a later date.

Name and organizational unit: Division of Infrastructure Development, Highway Operations.

Revenue:

On April 16, 1996, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed affects s. Tax 11.83, relating to the Wisconsin sales and use tax treatment of motor vehicles.

Date of public hearing: The department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats.

Name and organizational unit of agency contact: Mark Wipperfurth, Division of Income, Sales and Excise Tax.

Revenue:

On May 1, 1996, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule amends ch. Tax 18, relating to assessment of agricultural property. The proposed rule provides definitions and procedures to assess agricultural land based on its value in agricultural use, beginning in 1998.

Date of public hearing: The date(s) for the public hearing(s) have yet to be decided.

Name and organization unit of agency contact: The Division of State and Local Finance, Office of Assessment Practices, is primarily responsible for promulgation of the proposed rule. If you have questions regarding this proposed rule, you may contact Gregory Landretti at (608) 266-8202.

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection (Reprinted from April 30, 1996 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed Department rule, relating to animal health, specifically farm-raised deer, tuberculosis control and poultry disease reporting requirements (proposed chs. ATCP 10, 11 and 12, 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 **May 28, 1996**, for additional written comments. An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **May 6, 1996** either by writing to Lynn Jarzombek, P.O. Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4883. TTY users call (608) 224-5058.

Hearing Information

Four hearings are scheduled:

May 14, 1996 Tuesday Commencing at 6:00 p.m.	Board Room Dept. of ATCP 2811 Agriculture Dr. MADISON, WI <i>Handicapped accessible</i>
May 15, 1996 Wednesday Commencing at 10:00 a.m.	Room 135 Mid-State Tech. College 933 Michigan Ave. STEVENS POINT, WI <i>Handicapped accessible</i>
May 15, 1996 Wednesday Commencing at 6:00 p.m.	Dept. of ATCP 927 Loring Ave. ALTOONA, WI <i>Handicapped accessible</i>
May 16, 1996 Thursday Commencing at 6:00 p.m.	Room E106 Univ. of Wis. Ctr.-Manitowoc 705 Viebahn St. MANITOWOC, WI <i>Handicapped accessible</i>

Written comments will be accepted until **May 28, 1996**.

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

Statutory Authority: ss. 93.07 (1) and (2), 93.21 (5), 95.55 (3), 95.68 (8), 95.69 (8), and 95.71 (8)

Statutes Interpreted: ss. 93.07 (10), 93.21 (5), 95.25 (2m) and (4m), 95.55, 95.68, 95.69 and 95.71

This rule modifies current animal health rules under chs. ATCP 10–12, Wis. Adm. Code. Among other things, this rule does the following:

- Interprets and implements 1995 Wis. Act 79, which regulates keepers of “farm–raised deer.” Act 79 transfers regulatory authority from the Department of Natural Resources (DNR) to the Department of Agriculture, Trade and Consumer Protection, and requires keepers of “farm–raised deer” to register with the Department.
- Modifies current procedures under the Department’s tuberculosis control program. The rule incorporates new USDA regulations related to branding and slaughter shipment of bovine tuberculosis reactors. Pursuant to 1995 Wis. Act 79, it also requires owners of tested animals to provide adequate restraints for safe testing.
- Requires veterinarians to report certain poultry diseases to the Department. This will strengthen poultry disease controls and make it possible for Wisconsin producers to export poultry meat to Russia, under an agreement between Russia and the U.S. government.

BOVINE TUBERCULOSIS CONTROL

Tuberculosis Testing; Bovine Animals

Under 1995 Wis. Act 79, a person who owns or possesses bovine animals must provide animal handling facilities to ensure the safety of animals tested for bovine tuberculosis, and to ensure the safety of persons conducting the tests. This rule incorporates this new statutory requirement.

Bovine Tuberculosis Reactors; Branding and Slaughter

In September, 1995, the United States Department of Agriculture, Animal and Plant Health Inspection Service (federal bureau), changed its regulations related to branding and slaughter shipment of bovine animals identified as “reactors” on bovine tuberculosis tests. This rule amends current state rules to make them consistent with the new federal regulations.

Under current state rules, a reactor must be branded on the left jaw with the letter “T” unless it is shipped directly to slaughter in a vehicle that is sealed by the Department. Under this rule, a reactor must be branded on the hip (not the jaw), near the tailhead, with the letter “T.” A reactor need not be branded if all of the following apply:

- Its left ear is spray painted yellow and tattooed with the letters “TB.”
- A state or federal veterinarian accompanies the reactor as it is shipped to slaughter, or the reactor is shipped to slaughter in a vehicle sealed by the Department or the federal bureau. If the animal is shipped in a sealed vehicle, the seal may only be removed by the Department or the federal bureau.

“FARM–RAISED DEER” AND OTHER CERVIDAE

Persons Keeping “Farm–Raised Deer”; Registration

Under 1995 Wis. Act 79, persons keeping “farm–raised deer” in this state must register with the Department. This rule implements the new registration requirement.

This rule, like 1995 Wis. Act 79, defines “farm–raised deer” to include farm–raised fallow deer, caribou, reindeer, sambar, caribou, sambar, Philippine sambar, visayan deer, barasingha, Schomburgk’s deer, thamin or brow antlered deer, sika deer, Thorold’s deer, red deer, wapiti and elk. “Farm–raised deer” do not include north american moose, white–tail deer or mule deer.

Under this rule, a person who “keeps farm–raised deer” must obtain a registration certificate from the Department. This includes any person who owns, rents, leases or serves as the custodian of “farm–raised deer.” A registration application must identify both the owner and the custodian of the “farm–raised deer.” Thus, if the owner and custodian are different persons, they need only complete one registration between them.

Under this rule, a person keeping “farm–raised deer” at more than one location may do either of the following:

- Obtain a separate registration certificate, and pay a separate registration fee, for each location. A keeper may not move “farm–raised deer” between separately–registered locations without an interstate health certificate or certificate of veterinary inspection, unless the deer are exempt under current exemptions to the requirements for intra–state movement. If disease is detected at one location, animals at other locations will not be considered part of the same herd, and will not be treated as exposed animals unless a traceback shows that suspect or reactor animals have actually moved between the locations.
- Register multiple locations under one registration certificate, and pay only one registration fee. If a keeper registers multiple locations under one registration, the keeper may freely move “farm–raised deer” between those locations without an interstate health certificate or certificate of veterinary inspection. But if disease is detected at one location, all of the “farm–raised deer” at all of the locations are automatically considered to be part of a single exposed herd.

A registration certificate expires on December 31 annually; however, there is no requirement for annual renewal after December 31, 1998.

This rule establishes an annual registration fee of \$50 for persons who keep 15 or fewer “farm–raised deer,” and \$100 for persons who keep more than 15 “farm–raised deer.” If the Department certifies a herd as an accredited tuberculosis–free herd, the keeper of that herd must register but is not required to pay a fee. The annual registration fee does not apply after December 31, 1998.

To register with the Department, a keeper of “farm–raised deer” must submit a registration application on a form provided by the Department. The application must include all of the following information:

- The name, address and telephone number of the owner of the “farm–raised deer.”
- The name, address and telephone number of the custodian of the “farm–raised deer,” if the custodian is anyone other than the owner.
- The location at which the “farm–raised deer” will be kept, including the county, township, section and fire number assigned to the location.
- The number of “farm–raised deer” being kept.
- The species, age and sex of the “farm–raised deer” being kept. Age may be specified as fawn, yearling or adult.
- If the herd is certified by the Department as an accredited tuberculosis–free herd, the accreditation number assigned to the herd.

Under this rule, the Department must grant or deny a registration application within 30 days after the Department receives a complete application. The Department may deny, suspend or revoke a registration for cause, including any of the following:

- Violations of applicable requirements under ch. 95, Stats. (animal health), or chs. ATP 10–12, Wis. Adm. Code.
- Preventing a Department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a Department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a Department subpoena.
- Paying a registration fee with a worthless check.

Under this rule, a person who keeps “farm-raised deer” must keep a record of all of the following, and must retain that record for at least 2 years:

- The name and address of each person from whom that keeper purchases or receives “farm-raised deer.”
- The name and address of each person to whom the keeper sells or delivers “farm-raised deer.”
- The official identification of every “farm-raised deer” which the keeper purchases, receives, sells or delivers.
- The date on which the keeper receives or delivers each “farm-raised deer.”
- The location at which the keeper receives each “farm-raised deer,” or to which the keeper delivers each “farm-raised deer.”

A person keeping “farm-raised deer” must make these records available to the Department for inspection and copying by the Department upon request.

“Farm–Raised Deer” and Other Cervidae: Disease Control

Current rules spell out tuberculosis testing requirements, import requirements, intrastate movement requirements and herd certification requirements related to tuberculosis in “cervidae.” In the current rules, “cervidae” are defined as members of the family of animals which includes deer, elk, moose, caribou, reindeer and the sub–family musk deer.

The current definition of “cervidae” is different from the new statutory definition of “farm-raised deer.” This rule amends the definition of “cervidae” to include all “farm-raised deer.” Rules which currently apply to cervidae will also apply to “farm-raised deer” except where this rule creates a specific exemption for “farm-raised deer.”

Under this rule, whenever a veterinarian issues an interstate health certificate or certificate of veterinary inspection for farm-raised deer shipped from a location in this state, the certificate must include the registration number of the person who is registered to keep those deer at that location.

Cervidae: Tuberculosis Testing

This rule requires the owner or custodian of a cervid to restrain the cervid for tuberculosis testing by one of the following means:

- Providing animal handling facilities that will safely restrain the cervid and protect the safety of the person conducting the test. The rule spells out minimum standards for animal handling facilities.
- Adequately tranquilizing the cervid to permit safe testing. The tranquilizer must be administered at the owner’s expense. Department staff will not administer the tranquilizer. A person authorized to conduct a TB test may determine that a cervid is not adequately tranquilized, and may require additional tranquilization before conducting the test.
- Transporting the cervid, under a permit issued by the Department, directly to an approved isolation and testing facility. Once a cervid is transported to an approved isolation and testing facility, it may not be removed until it tests negative for bovine tuberculosis and the owner or custodian obtains an interstate health certificate or certificate of veterinary inspection. If the cervid tests positive on the bovine tuberculosis test, it may not be moved except to slaughter.

Tuberculosis Reactors: Identification and Slaughter

Under current state rules, a cervid classified as a tuberculosis reactor must be branded on the left jaw with the letter “T” unless it is shipped directly to slaughter in a vehicle that is sealed by the Department. Under this rule, a reactor must be branded on the hip (not the jaw), near the tailhead, with the letter “T.” A reactor need not be branded if all of the following apply:

- Its left ear is spray painted yellow and tattooed with the letters “TB.”
- A state or federal veterinarian accompanies the reactor as it is shipped to slaughter, or the reactor is shipped to slaughter in a vehicle sealed by the Department or the federal bureau. If the animal is shipped in a sealed vehicle, the seal may only be removed by the Department or the federal bureau.

Livestock Markets, Dealers and Truckers

Under ch. 95, Stats., and current rules, livestock market operators, dealers and truckers must be licensed by the Department, and must comply with Department rules. Pursuant to 1995 Wis. Act 79, this rule defines “livestock” to include “farm-raised deer.”

Under this rule, a person who handles “farm raised deer” as a market operator, dealer or trucker must be licensed as a livestock market operator, dealer or trucker, and must comply with Department rules related to livestock markets, dealers and truckers. Among other things, a livestock market operator, dealer or trucker must record the receipt and disposition of all “farm-raised deer” handled by that market operator, dealer or trucker.

Identifying Cervidae and “Farm–Raised Deer”

Under this rule, a veterinarian who does any of the following to a cervid must identify that cervid with an official eartag unless the cervid already bears an official individual identification:

- Vaccinates, identifies or tests a cervid in order to complete an interstate health certificate, certificate of veterinary inspection, or other official document or certification related to that cervid.
- Tests a cervid for certain diseases specified in this rule.
- Under this rule, a person keeping “farm-raised deer” in this state must identify, with an official eartag, each “farm-raised deer” which that person receives from or delivers to another person.

Under this rule, livestock markets and dealers receiving “farm raised deer” must identify the deer with official eartags unless the deer already bear official individual identification or are backtagged for slaughter. No livestock dealer or market operator may deliver a farm-raised deer to another person unless that deer bears an official individual identification, or unless that deer is backtagged and shipped directly to slaughter.

This rule also requires livestock markets, dealers, truckers and slaughter establishments to backtag all “farm–raised deer” which they receive for slaughter, or for sale or shipment to slaughter. Persons receiving “farm–raised deer” for slaughter, or for sale or shipment to slaughter, must record the receipt and disposition of those “farm–raised deer.”

ANIMAL HEALTH QUARANTINES

This rule clarifies the Department’s authority to issue animal health quarantines. Current rules provide that the Department may issue quarantines to “control” contagious, infectious or communicable diseases of domestic animals. This rule clarifies that the Department may issue quarantines to prevent, suppress, control or eradicate contagious, infectious or communicable diseases which may affect domestic or exotic animals in this state, or to prevent animals from being moved or commingled pending further testing, diagnosis or traceback related to suspected disease.

POULTRY DISEASE REPORTING

Under current rules, a veterinarian or diagnostic laboratory must report to the Department whenever the veterinarian or laboratory diagnoses or finds evidence of certain animal diseases. Reportable poultry diseases currently include avian influenza, *mycoplasma gallisepticum*, pullorum, salmonellosis, and any disease that is foreign or exotic to Wisconsin. This rule adds the following diseases to the current list of poultry diseases that must be reported to the Department:

- Avian infectious encephalomyelitis
- Infectious laryngotracheitis
- Ornithosis (psittacosis)
- Paramyxovirus infections of poultry other than Newcastle Disease
- Viscerotropic velogenic Newcastle Disease.

By requiring that these diseases be reported, the Department will comply with export certification requirements negotiated between the federal bureau and the Russian Federation. This will permit Wisconsin poultry meat producers to continue exporting poultry meat to Russia.

Fiscal Estimate

The complete fiscal note is available on request. See the April 30, 1996 *Wisconsin Administrative Register*, page 7 for a summary.

Initial Regulatory Flexibility Analysis

See the April 30, 1996 *Wisconsin Administrative Register*, page 8.

Notice to Dept. of Development

Notice of the proposed rule has been delivered to the Department of Development, as required by s. 227.114 (5), Stats.

Copies of the Rule

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

Animal Health Division, (608) 224–4883
Wis. Dept of Agriculture, Trade & Consumer Protection
P. O. Box 8911
Madison, WI 53708–8911

Notice of Hearings

***Agriculture, Trade &
Consumer Protection***
**(Reprinted from April 30, 1996
Wis. Adm. Register)**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed Department emergency rule related to animal health, specifically, farm–raised deer, tuberculosis control and poultry disease reporting requirements (proposed chs. ATCP 10, 11 and 12, Wis. Adm. Code).

Written Comments on Emergency Rule

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. An interpreter for the hearing–impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **May 6, 1996** either by writing to Lynn Jarzombek, P.O. Box 8911, Madison, WI 53708–8911, or by calling (608) 224–4883. TTY users call (608) 224–5058.

Hearing Information

Four hearings are scheduled:

May 14, 1996
Tuesday
Commencing
at 6:00 p.m.

Board Room
Dept. of ATCP
2811 Agriculture Dr.
MADISON, WI
Handicapped accessible

May 15, 1996
Wednesday
Commencing
at 10:00 a.m.

Room 135
Mid-State Tech. College
933 Michigan Ave.
STEVENS POINT, WI
Handicapped accessible

May 15, 1996
Wednesday
Commencing
at 6:00 p.m.

Dept. of ATCP
927 Loring Ave.
ALTOONA, WI
Handicapped accessible

May 16, 1996
Thursday
Commencing
at 6:00 p.m.

Room E106
Univ. of Wis. Ctr.-Manitowoc
705 Viebahn St.
MANITOWOC, WI
Handicapped accessible

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

Statutory Authority: ss. 93.07 (1) and (2), 93.21 (5), 95.55 (3), 95.68 (8), 95.69 (8), and 95.71 (8)

Statutes Interpreted: ss. 93.07 (10), 93.21 (5), 95.25 (2m) and (4m), 95.55, 95.68, 95.69 and 95.71

This rule modifies current animal health rules under chs. ATCP 10-12, Wis. Adm. Code. Among other things, this rule does the following:

- Interprets and implements 1995 Wis. Act 79, which regulates keepers of "farm-raised deer." Act 79 transfers regulatory authority from the Department of Natural Resources (DNR) to the Department of Agriculture, Trade and Consumer Protection, and requires keepers of "farm-raised deer" to register with the Department.
 - Modifies current procedures under the Department's tuberculosis control program. The rule incorporates new USDA regulations related to branding and slaughter shipment of bovine tuberculosis reactors. Pursuant to 1995 Wis. Act 79, it also requires owners of tested animals to provide adequate restraints for safe testing.
 - Requires veterinarians to report certain poultry diseases to the Department. This will strengthen poultry disease controls and make it possible for Wisconsin producers to export poultry meat to Russia, under an agreement between Russia and the U.S. government.

BOVINE TUBERCULOSIS CONTROL

Bovine Tuberculosis Reactors; Branding and Slaughter

In September, 1995, the United States Department of Agriculture, Animal and Plant Health Inspection Service (federal bureau), changed its regulations related to branding and slaughter shipment of bovine animals identified as "reactors" on bovine tuberculosis tests. This rule amends current state rules to make them consistent with the new federal regulations.

Under current state rules, a reactor must be branded on the left jaw with the letter "T" unless it is shipped directly to slaughter in a vehicle that is sealed by the Department. Under this rule, a reactor must be branded on the hip (not the jaw), near the tailhead, with the letter "T." A reactor need not be branded if all of the following apply:

- Its left ear is spray painted yellow and tattooed with the letters "TB."
- A state or federal veterinarian accompanies the reactor as it is shipped to slaughter, or the reactor is shipped to slaughter in a vehicle sealed by the Department or the federal bureau. If the animal is shipped in a sealed vehicle, the seal may only be removed by the Department or the federal bureau.

"FARM-RAISED DEER" AND OTHER CERVIDAE

Persons Keeping "Farm-Raised Deer;" Registration

Under 1995 Wis. Act 79, persons keeping "farm-raised deer" in this state must register with the Department. This rule implements the new registration requirement.

This rule, like 1995 Wis. Act 79, defines "farm-raised deer" to include farm-raised fallow deer, caribou, reindeer, sambar, sundra sambar, Philippine sambar, visayan deer, barasingha, Schomburgk's deer, thamin or brow antlered deer, sika deer, Thorold's deer, red deer, wapiti and elk. "Farm-raised deer" do not include north american moose, white-tail deer or mule deer.

Under this rule, a person who “keeps farm-raised deer” must obtain a registration certificate from the Department. This includes any person who owns, rents, leases or serves as the custodian of “farm-raised deer.” A registration application must identify both the owner and the custodian of the “farm-raised deer.” Thus, if the owner and custodian are different persons, they need only complete one registration between them.

Under this rule, a person keeping “farm-raised deer” at more than one location may do either of the following:

- Obtain a separate registration certificate, and pay a separate registration fee, for each location. A keeper may not move “farm-raised deer” between separately-registered locations without an interstate health certificate or certificate of veterinary inspection, unless the deer are exempt under current exemptions to the requirements for intra-state movement. If disease is detected at one location, animals at other locations will not be considered part of the same herd, and will not be treated as exposed animals unless a traceback shows that suspect or reactor animals have actually moved between the locations.
- Register multiple locations under one registration certificate, and pay only one registration fee. If a keeper registers multiple locations under one registration, the keeper may freely move “farm-raised deer” between those locations without an interstate health certificate or certificate of veterinary inspection. But if disease is detected at one location, all of the “farm-raised deer” at all of the locations are automatically considered to be part of a single exposed herd.

A registration certificate expires on December 31 annually.

This rule establishes an annual registration fee of \$50 for persons who keep 15 or fewer “farm-raised deer,” and \$100 for persons who keep more than 15 “farm-raised deer.”

To register with the Department, a keeper of “farm-raised deer” must submit a registration application on a form provided by the Department. The application must include all of the following information:

- The name, address and telephone number of the owner of the “farm-raised deer.”
- The name, address and telephone number of the custodian of the “farm-raised deer,” if the custodian is anyone other than the owner.
- The location at which the “farm-raised deer” will be kept, including the county, township, section and fire number assigned to the location.
- The number of “farm-raised deer” being kept.
- The species, age and sex of the “farm-raised deer” being kept. Age may be specified as fawn, yearling or adult.
- If the herd is certified by the Department as an accredited tuberculosis-free herd, the accreditation number assigned to the herd.

Under this rule, the Department must grant or deny a registration application within 30 days after the Department receives a complete application. The Department may deny, suspend or revoke a registration for cause, including any of the following:

- Violations of applicable requirements under ch. 95, Stats. (animal health), or chs. ATCP 10–12, Wis. Adm. Code.
- Preventing a Department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a Department subpoena.
- Paying a registration fee with a worthless check.

Under this rule, a person who keeps “farm-raised deer” must keep a record of all of the following, and must retain that record for at least 2 years:

- The name and address of each person from whom that keeper purchases or receives “farm-raised deer.”
- The name and address of each person to whom the keeper sells or delivers “farm-raised deer.”
- The official identification of every “farm-raised deer” which the keeper purchases, receives, sells or delivers.
- The date on which the keeper receives or delivers each “farm-raised deer.”
- The location at which the keeper receives each “farm-raised deer,” or to which the keeper delivers each “farm-raised deer.”

A person keeping “farm-raised deer” must make these records available to the Department for inspection and copying by the Department upon request.

“*Farm-Raised Deer*” and *Other Cervidae; Disease Control*

Current rules spell out tuberculosis testing requirements, import requirements, intrastate movement requirements and herd certification requirements related to tuberculosis in “cervidae.” Rules which currently apply to cervidae will also apply to “farm-raised deer” except where this rule creates a specific exemption for “farm-raised deer.”

Under this rule, whenever a veterinarian issues an interstate health certificate or certificate of veterinary inspection for farm-raised deer shipped from a location in this state, the certificate must include the registration number of the person who is registered to keep those deer at that location.

Cervidae; Tuberculosis Testing

This rule requires the owner or custodian of a cervid to restrain the cervid for tuberculosis testing by one of the following means:

- Providing animal handling facilities that will safely restrain the cervid and protect the safety of the person conducting the test. The rule spells out minimum standards for animal handling facilities.
- Adequately tranquilizing the cervid to permit safe testing. The tranquilizer must be administered at the owner’s expense. Department staff will not administer the tranquilizer. A person authorized to conduct a TB test may determine that a cervid is not adequately tranquilized, and may require additional tranquilization before conducting the test.
- Transporting the cervid, under a permit issued by the Department, directly to an approved isolation and testing facility. Once a cervid is transported to an approved isolation and testing facility, it may not be removed until it tests negative for bovine tuberculosis and the owner or custodian obtains an interstate health certificate or certificate of veterinary inspection. If the cervid tests positive on the bovine tuberculosis test, it may not be moved except to slaughter.

Tuberculosis Reactors; Identification and Slaughter

Under current state rules, a cervid classified as a tuberculosis reactor must be branded on the left jaw with the letter “T”, unless it is shipped directly to slaughter in a vehicle that is sealed by the Department. Under this rule, a reactor must be branded on the hip (not the jaw), near the tailhead, with the letter “T.” A reactor need not be branded if all of the following apply:

- Its left ear is spray painted yellow and tattooed with the letters “TB.”
- A state or federal veterinarian accompanies the reactor as it is shipped to slaughter, or the reactor is shipped to slaughter in a vehicle sealed by the Department or the federal bureau. If the animal is shipped in a sealed vehicle, the seal may only be removed by the Department or the federal bureau.

Livestock Markets, Dealers and Truckers

Under ch. 95, Stats., and current rules, livestock market operators, dealers and truckers must be licensed by the Department, and must comply with Department rules. Pursuant to 1995 Wis. Act 79, this rule defines “livestock” to include “farm-raised deer.”

Under this rule, a person who handles “farm raised deer” as a market operator, dealer or trucker must be licensed as a livestock market operator, dealer or trucker, and must comply with Department rules related to livestock markets, dealers and truckers. Among other things, a livestock market operator, dealer or trucker must record the receipt and disposition of all “farm-raised deer” handled by that market operator, dealer or trucker.

Identifying Cervidae and “Farm-Raised Deer”

Under this rule, a veterinarian who does any of the following to a cervid must identify that cervid with an official eartag unless the cervid already bears an official individual identification:

- Vaccinates, identifies or tests a cervid in order to complete an interstate health certificate, certificate of veterinary inspection, or other official document or certification related to that cervid.
- Tests a cervid for certain diseases specified in this rule.

Under this rule, a person keeping “farm-raised deer” in this state must identify, with an official eartag, each “farm-raised deer” which that person receives from or delivers to another person.

Under this rule, livestock markets and dealers receiving “farm raised deer” must identify the deer with official eartags unless the deer already bear official individual identification or are backtagged for slaughter. No livestock dealer or market operator may deliver a farm-raised deer to another person unless that deer bears an official individual identification, or unless that deer is backtagged and shipped directly to slaughter.

This rule also requires livestock markets, dealers, truckers and slaughter establishments to backtag all “farm-raised deer” which they receive for slaughter, or for sale or shipment to slaughter. Persons receiving “farm-raised deer” for slaughter, or for sale or shipment to slaughter, must record the receipt and disposition of those “farm-raised deer.”

POULTRY DISEASE REPORTING

Under current rules, a veterinarian or diagnostic laboratory must report to the Department whenever the veterinarian or laboratory diagnoses or finds evidence of certain animal diseases. Reportable poultry diseases currently include avian influenza, *mycoplasma gallisepticum*, pullorum, salmonellosis, and any disease that is foreign or exotic to Wisconsin. This rule adds the following diseases to the current list of poultry diseases that must be reported to the Department:

- Avian infectious encephalomyelitis
- Infectious laryngotracheitis
- Ormithosis (psittacosis)
- Paramyxovirus infections of poultry other than Newcastle Disease
- Viscerotropic velogenic Newcastle Disease.

By requiring that these diseases be reported, the Department will comply with export certification requirements negotiated between the federal bureau and the Russian Federation. This will permit Wisconsin poultry meat producers to continue exporting poultry meat to Russia.

Fiscal Estimate

The complete fiscal note is available on request. See April 30, 1996 *Wisconsin Administrative Register*, page 11 for a summary.

Initial Regulatory Flexibility Analysis

See April 30, 1996 *Wisconsin Administrative Register*, page 11.

Notice Sent to Dept. of Development

Notice of the proposed rule has been delivered to the Department of Development, as required by s. 227.114 (5), Stats.

Copies of the Emergency Rule

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

Animal Health Division, (608) 224-4883
Wis. Dept of Agriculture, Trade & Consumer Protection
P. O. Box 8911
Madison, WI 53708-8911

Notice of Hearing

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule related to "late blight," a serious plant disease which poses an imminent threat to Wisconsin's potato industry. The emergency rule, which took effect on May 1, 1996, interprets ss. 93.07 and 94.02, Stats., and amends ch. ATCP 21, Wis. Adm. Code.

Written Comments

The hearings will be held at the time and place shown below. 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 **June 12, 1996**, for additional written comments. An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by calling Jayne Krull at (608) 224-4596 or by contacting the TDD at the Department at (608) 224-5058.

Hearing Information

The hearing is scheduled as follows:

May 30, 1996
Thursday
7:00 p.m.
to 9:00 p.m.

Conf. Rooms A&B (lower level)
UW-Ext. City-County Bldg.
1516 Church St.
STEVENS POINT, WI
Handicapped accessible

Copies of Emergency Rule

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

Bureau of Plant Industry
Telephone (608) 224-4573
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
MADISON, WI 53708

Copies will also be available at the public hearing.

Summary Analysis

Statutory Authority: ss. 93.07 (1) and (12), 94.01 (1) and 227.24

Statutes Interpreted: ss. 93.07 (12) and 94.02 (1)

This emergency rule requires potato growers to take steps to control "late blight," a serious plant disease which poses an imminent threat to Wisconsin's potato industry. This rule is needed to prevent the spread of the disease during the 1996 planting and growing season, pending the adoption of "permanent" rules.

BACKGROUND

In recent years, new forms of the highly virulent "Irish potato famine" fungus, *Phytophthora infestans*, have caused increasingly devastating losses to potato growers in the United States and Canada. The fungus causes a disease of potato plants which is commonly-known as "late blight."

The National Association of State Departments of Agriculture reports that late blight epidemics in 1992, 1993 and 1994 were the worst in decades, and that some individual farm losses have amounted to hundreds of thousands of dollars in a single year. The University of Wisconsin estimates that Wisconsin growers lost up to \$10 million in 1994 and \$6 million in 1995 due to late blight.

The potato industry is one of Wisconsin's most important agricultural industries. In 1995, Wisconsin was the 3rd leading state in the nation in potato production. Cash receipts to Wisconsin potato growers totalled over \$150 million in 1995. Potatoes are an important food source for the people of Wisconsin and other states. Potato production also supports important processing and distribution industries in Wisconsin. The uncontrolled spread of late blight would have a devastating impact on Wisconsin potato growers, and would seriously affect the public health, safety and welfare.

Late blight appears on potato plant leaves, stems and tubers. It causes foliar lesions which are followed by severe defoliation in wet weather. It can also reduce marketable yield by directly infecting and rotting potato tubers. Once late blight appears, it spreads rapidly and can cause total crop loss.

Late blight fungal spores can be spread by many things, including wind, rain, machinery, workers, wildlife and infected seed potatoes. The University of Wisconsin reports that spores can be transported over 25 miles by storms. There are very few registered fungicides in the United States that are effective in controlling the new forms of late blight fungus. Because of the lack of registered fungicides, and the ease with which the late blight fungus spreads, potato growers must mitigate the spread of the disease by removing sources of the overwintering inoculum. Among other things, potato growers must properly dispose of potato cull piles and “volunteer” potato plants which germinate from waste potatoes.

A failure by individual potato growers to implement necessary cultural practices to mitigate the spread of late blight will have a potentially devastating impact on other growers, and on the Wisconsin potato industry as a whole. In order to ensure that growers take adequate steps to mitigate the spread of late blight, it is necessary to adopt rules that spell out critical practices and establish sanctions for growers who fail to comply. Because of the imminent threat of harm to the potato industry, rules are urgently needed prior to the 1996 planting and growing season.

This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The emergency rule spells out steps which potato growers must take to prevent the spread of late blight.

EMERGENCY RULE CONTENTS

Under this emergency rule, a person who owns or controls land on which potato “cull piles” are located must dispose of those cull piles by May 20, 1996. (“Cull piles” are piles of waste potatoes.) The person must dispose of the “cull piles” by one of the following methods:

- By feeding the cull potatoes to livestock so that they are completely consumed by May 20, 1996.
- By spreading the cull potatoes on fields and incorporating the cull potatoes into the soil.
- By depositing the cull potatoes in a licensed landfill with the written permission of the landfill operator.
- By another method which the Department approves in writing.

Under this emergency rule, whenever volunteer potato plants appear on land where cull potatoes were spread, or on land where potato plants were intentionally grown in a prior year, the person who owns or controls that land must immediately remove or kill those volunteer potato plants. Pesticides used to kill volunteer potato plants must be labeled for the crop in which the volunteer potatoes emerge, or for the site at which they emerge.

Under this emergency rule, the Department may issue pest quarantine and abatement orders to prevent or control late blight infestations, or to remedy violations of this emergency rule. If the Department finds any field infested with late blight, the Department may order the person owning or controlling that field to treat it, in a manner specified by the Department, in order to control or eliminate the infestation. Treatment by include pesticide applications specified by the Department.

Under this emergency rule, the Department may order the destruction of a potato crop infested with late blight if the Department finds that alternative measures will not adequately prevent or mitigate the spread of late blight.

Text of Emergency Rule

SECTION 1. Section ATCP 21.15 is created to read:

ATCP 21.15 Potato late blight. (1) DEFINITIONS. In this section:

- (a) “Cull pile” means a waste pile of harvested potatoes.
- (b) “Late blight” means the fungal disease *Phytophthora infestans*.
- (c) “Volunteer potato plants” means potato plants that germinate in places where they were not intentionally planted during the current calendar year, or that germinate from cull potatoes spread on land.

(2) DISPOSING OF CULL PILES. A person who owns or controls land on which potato cull piles are located shall dispose of those cull piles by May 20th of each year by one of the following methods:

- (a) By feeding the cull potatoes to livestock so that they are completely consumed by May 20.
- (b) By spreading the cull potatoes on fields and incorporating the cull potatoes into the soil.
- (c) By depositing the cull potatoes in a licensed landfill with the written permission of the landfill operator.
- (d) By another method which the department approves in writing.

(3) CONTROLLING VOLUNTEER POTATO PLANTS. Whenever volunteer potato plants appear on land where cull potatoes were spread, or on land where potato plants were intentionally grown in a prior year, the person who owns or controls that land shall immediately remove or kill those volunteer potato plants. Pesticides used to kill volunteer potato plants shall be labeled for the crop in which the volunteer plants emerge, or for the site at which they emerge.

(4) ENFORCEMENT. (a) The department may issue pest quarantine and abatement orders under ss. 94.01 and 94.02, Stats., and s. ATCP 21.03, to prevent or control late blight infestations, or to remedy violations of this section. (b) If the department finds any field infested with late blight, they may order the person owning or controlling that field to treat it, in a manner specified by the department, in order to control or eliminate the infestation. Treatment may include pesticide applications specified by the department.

(c) The department may order the destruction of a potato crop infested with late blight if the department finds alternative measures will not adequately prevent or mitigate the spread of late blight.

(d) The department may seek to prosecute violations of this section under s. 94.77, Stats.

Note: The university of Wisconsin–extension plant pathology department has developed integrated pest management procedures that help protect against late blight. Growers are urged to follow these IPM procedures. IPM procedures and late blight forecasting information are available from the UW–extension county agricultural agent, or through a UW–extension county agricultural agent, or through a UW–extension computer program called WISPLAN.

Fiscal Estimate

This rule clarifies integrated pest management control practices needed to mitigate the spread of a serious potato plant disease which poses an imminent threat to Wisconsin’s potato industry. It also reiterates existing Department authority to enforce these control measures. Because these are existing practices and authority, no significant increase in Department workload or costs is anticipated. There are no additional costs to local government.

Notice of Hearing

Banking, Commissioner of

Notice is hereby given that pursuant to s. 218.01 (5) (c), Stats., and interpreting s. 218.01, Stats., the Office of Commissioner of Banking will hold a public hearing at the time and place indicated below, to consider the revision of ch. Bkg 76, relating to sales finance companies.

Hearing Information

May 30, 1996
Thursday
At 10:00 a.m.

Room 531A
101 East Wilson St.
MADISON, WI

Analysis Prepared by the Office of Commissioner of Banking

Statutory authority: s. 218.01 (5) (c)

Statute interpreted: s. 218.01

Under s. 218.01 (5) (c), Stats., the Commissioner of Banking may make such rules and regulations as it shall deem necessary or proper for the effective administration and enforcement of sales finance companies. The proposed administrative rule change will, with the exception of s. Bkg 76.05, limit the scope of ch. Bkg 76 strictly to consumer credit transactions.

Section Bkg 76.05 requires a sales finance company to either refund the unearned portion of an insurance premium to the customer or require the sales finance company to notify the insurance agent that an account has been prepaid so that a refund can be paid to the customer or the customer's estate. Both "commercial" as well as "consumer" sales finance companies will be subject to the provisions under s. Bkg 76.05.

The repeal of s. Bkg 76.03 (2) will not have an adverse impact on consumer transactions because of the language found in s. Bkg 76.03 (1).

Specifically, s. Bkg 76.03 (2) states:

- For non-consumer credit transactions, retail sellers may contract for and receive a delinquency or late charge not to exceed 5% of the unpaid amount of the installment if the payment is not received within ten days after the due date.
- For the purposes of calculating late charges, payments must be applied first to the current installment with any additional funds then being applied to any late or delinquent installments.
- That late fees are prohibited from being charged or collected on a current installment that is paid on or before the 10th day after the due date even if a prior installment was not paid in full.
- That in regards to charging interest after maturity, retail sellers may charge interest on the unpaid balance of the retail contract at a rate not to exceed the greater of 12% per year

or

an amount determined by applying the annual rate assessed on the unpaid balance until paid in full. If the retail seller is charging interest after maturity, then the retail seller is prohibited from charging a late or delinquency fee on the final scheduled payment.

Repealing s. Bkg 76.03 (2) will allow the retail seller and the commercial customer to negotiate whatever arrangement they desire for the handling of late or delinquency charges. Typically, the commercial customer in this scenario is quite sophisticated and has access to a broad array of competitively-priced financial services. Commercial customers are not limited to a narrow range of borrowing options and, therefore, are not forced into accepting disadvantageous loans agreements.

The proposed administrative rule change also repeals s. Bkg 76.14, which sunsetted on June 30, 1991.

These revisions will provide clarity to the Office of Commissioner of Banking's (OCB) interpretation of the Wisconsin Consumer Act (WCA). The OCB is committed to the enforcement and regulation of the WCA to ensure that Wisconsin residents are protected from the unscrupulous acts of a retailer; however, commercial and consumer transactions are not the same type of transactions and should not be viewed in the same light. Due to the sophistication of the actors in commercial transactions, OCB believes that exempting commercial transactions from the substantive portions of ch. Bkg 76 will provide the appropriate level of regulation for commercial transactions.

Initial Regulatory Flexibility Analysis

This administrative rule will not have an effect on small business as defined by s. 227.114 (2), Stats.

Fiscal Estimate

The proposed administrative rule has no fiscal impact.

Text of Rule

SECTION 1. Bkg 76.01 is amended to read:

Bkg 76.01 (1) A retail seller may in addition to the finance charge bargain for and receive, in accordance with the requirements of ss. 422.202 (1) and 424.301, Stats., only those additional charges described therein, and in transactions other than extensions of consumer credit, the costs of collection authorized by s. 499.504, Stats. To the extent that any charge qualifies as an additional charge under this regulation it may be excluded from the finance charge.

SECTION 2. Bkg 76.01 (2) is created to read:

Bkg 76.01 (2) With the exception of s. Bkg 76.05, this chapter shall apply solely to consumer credit transactions as defined under s. 421.301 (10), Stats.

SECTION 3. Bkg 76.03 (2) is repealed.

SECTION 4. Bkg 76.04 (4) is amended to read:

Notwithstanding subs. (2) and (3), a retail seller may contract for and retain a minimum finance charge as provided in s. 422.209 (2), Stats. ~~in all consumer credit transactions or a minimum finance charge of \$15 as provided for s. 218.01 (6)(b)-7, Stats. in all other retail installment contracts.~~

SECTION 5. Bkg 76.14 is repealed.

Contact Person

Steven C. Little, Director of Licensed Financial Services
Business Phone: (608) 261-9540
Office of Commissioner of Banking
101 E. Wilson Street
P.O. Box 7876
Madison, WI 53707-7876

Notice of Hearing

Notice is hereby given that pursuant to s. 38.51 (3) and (10) (c), Stats., and interpreting s. 38.51 (10) (c), Stats., the Educational Approval Board will hold a public hearing at the time and place indicated below to consider the amendment and creation of permanent rules relating to:

- Definitions;
- Required disclosures in catalogs and enrollment agreements used by approved postsecondary educational institutions;
- The amount of bonding required of approved postsecondary educational institutions;
- Fees to accompany applications for initial approval of certain postsecondary educational institutions.; and
- Measurement of programs in credits by approved postsecondary educational institutions.

The hearing will continue until the agency has heard all interested people who indicate by 10:00 a.m. that they wish to speak.

Hearing Information

June 3, 1996
Monday
At 9:00 a.m.
Districts Room
Wis. Tech. College Sys. Board
310 Price Place
MADISON, WI

Written Comments

People who wish to present written information for the agency's consideration may do so whether they attend the hearing or not. Such comments should be mailed to:

Educational Approval Board
P.O. Box 7874
MADISON, WI 53707-7874

or delivered to the agency offices at:

Educational Approval Board
M & I Office Center
310 Price Place
MADISON, WI

Written comments must be received prior to **4:00 p.m.** on **June 3, 1996.**

Copies of the Proposed Rules

People who desire copies of the proposed rules or of the full fiscal estimate may obtain them from the Educational Approval Board at the location or mailing address given above. The telephone number is (608) 266-1996.

Summary Analysis of Proposed Rules

Statutory authority: s. 38.51 (3), (7) (c), (g) and (i) and (10) (c)
Statute interpreted: s. 38.51 (7) (c), (g) and (i) and (10) (b) and (c)

The proposed order affects postsecondary educational institutions subject to the authorization [approval] requirements of s. 38.51 (10) (a), Stats. It repeals the definition of "clock hour." The definition of "contact hour" is amended to be that of "hour," and the definition of "term" is amended to include a minimum as well as maximum length. The proposed order also creates definitions of "quarter," "semester," and "unearned charges." Other definitions are renumbered without changes to content.

The rule section which specifies required catalog content is amended to require a reference only to hours, rather than to clock hours, and to add the requirement that an educational institution disclose in conjunction with a program outline the type of credential (certificate, diploma, associate degree, baccalaureate degree, master's degree, or doctoral degree) which the institution awards upon a student's successful completion of the program. The order also creates a section requiring disclosure of school policy regarding advanced standing; the previous version of the requirement was inadvertently deleted when the Educational Approval Board made the last set of revisions to the catalog requirements. Finally, the order simplifies the information which a catalog must contain regarding transferability of credits.

The proposed order changes all references in s. EAB 5.065 (4) and (5) from "clock hours" and "contact hours" to simply "hours."

With respect to required content of enrollment agreements, the proposed order adds three items:

- 1) A disclosure regarding transferability of credits;
- 2) A disclosure of school policy concerning advanced standing for prior education and training; and
- 3) A disclosure regarding the credential which the school will award upon successful completion of the program in which a student is enrolling.

It also amends the requirement of disclosure of program length to permit stating the length of a resident program in credits if the Board has authorized the school to measure the program in credits.

The rule requiring approved schools to provide a surety bond is amended to change the required amount of bond from \$25,000 to an amount determined by formula. The \$25,000 amount has not been changed since the rule was adopted in 1972. The Board has found that using a formula tied to the highest total of unearned costs held by a school from all Wisconsin residents provides better protection for Wisconsin consumers. It also ensures that the bond required of a school is neither excessive nor inadequate in relation to the risk to Wisconsin students.

The proposed order also corrects an unintended omission from the revised fees adopted April 1, 1996. The Board has for a number of years reduced the application fee for a new program if the program is one which prepares students to meet the occupation licensing requirements of an agency of this state, and the occupational licensing agency has reviewed the program and found it to meet the licensing requirements. A paragraph including this fee reduction was inadvertently omitted from the new rule section regarding initial application fees, and is proposed in these changes.

Fiscal Estimate

Under the provisions of s. 38.51 (10) (c), Stats., fees paid by schools must cover all costs for examination and approval (licensing) of such schools. The proposed amendment would lower the fee for initial approval of a school with a program designed to meet the occupational licensing requirements of an agency of this state. The number of such new schools each year is small, and the Board estimates that its revenue from application fees will decrease by no more than \$1600 a year if the proposed rule is adopted.

Initial Regulatory Flexibility Analysis

The proposed rules will have an impact on those small businesses which are postsecondary schools. No professional skills would be needed to comply with the rules. Fees for some small businesses which submit applications for initial approval may decrease due to fee reduction given for certain types of programs.

Notice of Hearing

Health & Social Services (Health, Chs. HSS 110---

Notice is hereby given that pursuant to s. 150.03, Stats., the Department of Health and Social Services will hold a public hearing to consider the revision of ch. HSS 122, Wis. Adm. Code, relating to review of proposals that may add to the costs of long-term care provided by nursing homes and facilities for the developmentally disabled (FDDs), including proposals to add beds or make significant capital expenditures.

Hearing Information

May 29, 1996

Conference room within Rm. 218

Wednesday
12:00 p.m. to 2:00 p.m.

State Office Building
1 W. Wilson St.
Madison, WI

The public hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Social Services

The Department's rules for long-term care facility bed additions and capital expenditure review, ch. HSS 122, are revised by this order to make technical corrections in the rules, clarify certain requirements, make procedural changes based on experience with the rules since the last time they were revised, and implement changes to ch. 150, Stats., made by 1993 Wis. Act 290.

Specifically, the order modifies ch. HSS 122 to increase the project reviewability threshold from \$600,000 to \$1,000,000; to create definitions for "fixed equipment" and "moveable equipment"; to clarify how expenditures will be considered aggregated to meet the reviewability threshold; to increase 5 working day reviews by the Department to 10 working day reviews; to qualify renovation requests for under \$1,500,000 for an expedited review; to add a review criterion requiring that there be other adequate and available resources for residents being relocated; to apply only projected per diem capital rates for applications which do not involve new or redistributed beds; to clarify reimbursement practices; and to provide for an extension of the period of validity of approval for up to 6 months.

Contact Person

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

Connie Miller
Division of Health
P.O. Box 309
Madison, WI 53701-1808
608/266-0999 or
if you are hearing
impaired, 608/266-1511

If you are hearing or visually impaired, do not speak English or have other 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 **June 7, 1996**, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

These are amendments to the Department's rules for operation of the Resource Allocation Program under subch. II of ch. 150, Stats. The amendments do no more than make changes in the rules corresponding to changes made to ch. 150, Stats., by 1993 Wis. Act 290, clarify requirements, make procedural changes based on experience with the rules since the last time they were revised and make various technical corrections in the rules.

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

Initial Regulatory Flexibility Analysis

1. Types of businesses that would be affected by the proposed rules.

These rule changes apply to nursing homes and facilities for the developmentally disabled (FDDs). About 90 of the 472 nursing homes and facilities for the developmentally disabled in the state are small businesses as defined in s. 227.114(1)(a), Stats. However, only those homes and facilities that apply under ch. 150, Stats., for project approval will be affected by the HSS 122 changes. With the increase in the reviewability threshold, fewer facilities will be involved.

2. Reporting, bookkeeping and other procedures required for compliance.

There are no special reporting, bookkeeping, or other procedures being added which are required for compliance with the rules. The order brings the rules into conformity with recent statutory changes and makes technical corrections, procedural improvements and clarifications in the rules.

3. Types of professional skills necessary for compliance.

The rule changes do not require persons who work for facilities to have new professional skills in order to comply with the rules.

Notice of Hearing

Industry, Labor & Human Relations (Building & Heating, Chs. ILHR 50-64) (Multi-Family Dwellings, Ch. ILHR 66)

Notice is given pursuant to s. 101.02, Stats., the Department of Industry, Labor and Human Relations proposes to hold a public hearing to consider the revision of rules in chs. ILHR 50 to 64 and 66, Wis. Adm. Code, relating to ventilation and energy conservation.

Hearing Information

May 28, 1996
Tuesday
At 9:00 a.m.

Room 103, GEF #1
201 East Washington Ave.
MADISON, WI

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-9375 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 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

Statutory authority: s. 101.02 (1) and (15)

Statutes interpreted: s. 101.02 (15) and 101.12

The proposed rules would delay the effective date of recently adopted Energy Conservation-related and Heating, Ventilating and Air Conditioning-related rules for one year to give the Department and its advisory committee time to study the effect of the rules and make any necessary changes.

Copy of Rules

A copy of the rules to be considered may be obtained from:

Division of Safety & Buildings
Telephone (608) 266-9375
Dept. of Industry, Labor & Human Relations
201 East Washington Ave.
P.O. Box 7969
MADISON, WI 53707

A copy of the rules to be considered may also be obtained at the appointed time and place the hearing is held.

Written Comments

Interested people are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing may be submitted no later than **June 11, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Sam Rockweiler at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Initial Regulatory Flexibility Analysis

1. *Types of small businesses that will be affected by the rules:*
Buildings and owners of commercial buildings constructed under these proposed changes are expected to have somewhat lower costs for that construction.
2. *Reporting, bookkeeping and other procedures required for compliance with the rules:*
No new requirements.
3. *Types of professional skills necessary for compliance with the rules:*

No new requirements.

Fiscal Estimate

The Department currently regulates ventilation and energy efficiency in buildings. The proposed rules will delay changes in the rules so that additional code development can take place. The Department will be able to absorb any additional workload into its current programs.

Notice of Hearings

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

Notice is given that pursuant to s. 227.24, Stats., the Department of Industry, Labor and Human Relations proposes to hold public hearings to consider the adoption of s. ILHR 127.035, Wis. Adm. Code, relating to limited waiver of work search requirement.

Hearing Information

May 28, 1996
Tuesday
10:00 a.m.

Madison
GEF #1, Rm. 371X
201 E. Washington Ave.

May 28, 1996
Tuesday
2:00 p.m.

Green Bay
State Office Bldg., Rm. 623
200 N. Jefferson St.

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

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 hearings, or who wish to supplement testimony offered at the hearings may be submitted no later than **May 29, 1996**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Joyce Mahan at the address noted above. 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 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

Section 108.04 (2), Stats., provides that a claimant for unemployment insurance benefits must search for work. The statute authorizes the department of industry, labor and human relations to promulgate rules waiving the work search requirement under conditions to be stated by the department.

The department has promulgated permanent rules stating various conditions for a waiver of the work search requirement. That rule is ch. ILHR 127. The existing rule allows the department to waive a claimant's work search requirement if s/he has been laid off from work but has a reasonable expectation of reemployment by an employer within 12 weeks after the week in which s/he files a claim for unemployment insurance benefits. Due to the vagaries of construction scheduling, especially during the winter months in Wisconsin, the rehire dates will be later than originally anticipated. The existing rule does not provide for a longer waiver applicable to the situation of employees of a primary employer in a small labor market who are laid off due to a disaster at the employer's plant and who are unlikely to find alternative suitable work in their labor market because of their numbers and the nature of the labor market.

The described situation presents problems for employers in the same labor market, for the laid off employees, for other unemployed workers in that labor market, and for the department. Specifically, if the work search requirement is not waived, the department will expend already limited resources in informing claimants of the requirement and in monitoring work searches, while the laid off employees will be required to repeatedly contact other employers in the small labor market in order to satisfy the work search requirement. These steps will be required even though the department is satisfied that such efforts are unlikely to result in alternative suitable work for the laid off employees, and that even if such jobs are taken by these laid off workers other unemployed workers without the same assurance of recall by their employer will be disadvantaged. Other employers in the labor market area will also incur hardship if this number of employees, who fully plan to return to Stella Foods when recalled, are required to repeatedly canvass such other employers in order to comply with customary work search requirements.

Section ILHR 127.035 will permit the department to waive the work search requirement where a layoff is the result of a disaster at the employer's plant. This rule requires that the waiver must be required by the employer. In most cases it is this employer's unemployment insurance account that will be charged for any benefits paid. The rule further requires, as a condition for waiver, that the department must determine that the usual work search activities will not be likely to result in suitable employment for any substantial number of laid off employees.

Fiscal Estimate

It is not anticipated that waiving the requirement for this group of 125 employees to search for work will have a major fiscal impact. Their employer has made a public commitment to call back to work all laid off because of the fire and expects to do additional hiring as soon various portions of the modernized plants are opened. The likelihood of any significant number of these workers being hired into other permanent jobs at comparable pay and benefits is small. The rule does not prohibit anyone who wishes to do so from searching for other work.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 71.80(1)(c), Stats., and interpreting ss. 71.04(8)(c) and 71.25(10)(c), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **May 15, 1996**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Contact Person

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

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 71.04(8)(c) and 71.25(10)(c)

SECTION 1. Tax 2.47 is repealed and recreated to prescribe the method of apportioning the net business income of interstate motor carriers, as required by ss. 71.04(8)(c) and 71.25(10)(c), Stats. The rule extends the application of the current 2-factor apportionment formula for motor carriers of property to interstate bus companies since the definition of "public utility" in ss. 71.04(8)(b) and 71.25(10)(b) includes any business entity providing service to the public and engaged in the transportation of persons for hire. For computing ton miles with respect to the carriage of persons, the rule provides that each person will be equivalent to 200 pounds. This is consistent with s. Tax 2.46, relating to the apportionment of net business income of interstate air carriers, which assumes an average weight of 150 pounds per person and 50 pounds for luggage. The repeal and recreation of the rule first applies to taxable years beginning on or after January 1, 1997.

Text of Rule

SECTION 1. Tax 2.47 is repealed and recreated to read:

Tax 2.47 APPORTIONMENT OF NET BUSINESS INCOMES OF INTERSTATE MOTOR CARRIERS. (ss. 71.04(8)(c) and 71.25(10)(c), Stats.) (1) DEFINITION. In this section, "ton mile" means the movement of one ton of persons or property, or both, the distance of one mile. For carriage of persons, each person shall be considered the equivalent of 200 pounds.

(2) GENERAL. For taxable years beginning on or after January 1, 1997, the apportionable income of an interstate motor carrier of persons or property, or both, doing business in Wisconsin, shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 factors:

- (a) The ratio of the gross receipts from carriage of persons or property, or both, first acquired for carriage in Wisconsin to the total gross receipts from carriage of persons or property, or both, everywhere.
- (b) The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.
- (3) SUBSTITUTION OF FACTORS. Whenever gross receipts data is not available the department may authorize or direct substitution of a similar factor, such as gross tonnage, and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor, such as revenue miles.
- (4) MERCANTILE AND MANUFACTURING BUSINESSES. This section does not apply to any mercantile or manufacturing business which engages in some interstate carriage as an incident of the mercantile or manufacturing business.

The rule contained in this order shall take effect for taxable years beginning on or after January 1, 1997.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Under current law, interstate bus companies apportion income to the state using the standard three-factor formula that most businesses use. Section Tax 2.47 is repealed and recreated to require interstate bus companies to apportion income to the state based on the two-factor formula currently applied to interstate motor carriers.

Under the rule, interstate bus companies will apportion income to the state based on the average of the ratio of gross receipts from the transport of customers in Wisconsin to these gross receipts everywhere, plus the ratio of ton miles of carriage in Wisconsin to these ton miles everywhere. "Ton mile" is defined in the rule to be the movement of one ton of persons or property, or both, the distance of one mile, with each person considered the equivalent of 200 pounds for carriage purposes.

Information from the 1994 tax filing season indicates that interstate bus companies have little or no net income subject to apportionment in the state. It is believed that the change in the tax rule could have a positive or negatives fiscal effect on individual interstate bus companies subject to tax in the state, but these changes are likely to be minimal. Thus, the impact on state tax revenues from the rule change is estimated to be minimal, but it is uncertain whether it will be positive or negative.

Notice of Hearings

Department of Transportation

Notice is hereby given that pursuant to ss. 85.16(1) and 348.07(4), Stats., interpreting s. 348.07(4), Stats., the Department of Transportation will hold a public hearing at the following locations to consider the revision of ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Hearing Information

May 29, 1996
Wednesday
1:00 p.m.
County Courthouse
County Boardroom
626 Main St.
Darlington, WI

May 30, 1996
Thursday
1:00 p.m.
Suring Village Hall
604 East Main Street
Suring, WI

May 31, 1996
Friday
1:00 p.m.
City Hall Forum
100 State Street
Beloit, WI

The hearing locations are accessible to persons with disabilities.

The public record on this proposed rule making will be held open until close of business, **May 31, 1996**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Mark Morrison, Regional Traffic Engineer, Room 601, P. O. Box 7916, Madison, Wisconsin, 53707-7916.

A copy of the proposed rule may be obtained upon request from the Wisconsin Department of Transportation, State Traffic Engineer, at the address noted above. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396.

NOTE: This hearing is being conducted at 2 locations in order to give the public greater opportunity to present its facts, arguments and opinions. The records from both locations will be combined into a single Hearing Record on which the Department will base its decisions. Individuals need only attend one of the public hearings for their testimony to be fully considered.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1) and 348.07(4)

STATUTE INTERPRETED: s. 348.07(4)

General Summary of Proposed Rule. This proposed rule amends s. Trans 276.07(7), Wis. Adm. Code, to add a segment of highway to the designated highway system established under s. 348.07(4), Stats. The actual highway segment that this proposed rule adds to the designated highway system is:

Hwy.	From	To
STH 32	STH 22 in Gillett	STH 64 S. of Mountain

This proposed rule also repeals s. Trans 276.07(8m), Wisconsin Administrative Code, which was no longer in effect as of 1-1-92 due to a sunset clause imposed after reconstructing a bridge. The actual highway segment that this proposed rule removes from the listing of designated highways is:

Hwy.	From	To
STH 37	STH 88 S. of Mondovi	USH 10 in Mondovi

Note: The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

This proposed rule also repeals s. Trans 276.09(1), Wis. Adm. Code, which effectively adds several highway segments to the designated highway system established under s. 348.07(4), Stats. The actual highway segments that this proposed rule adds to the designated highway system are:

Hwy.	From	To
USH 51	Illinois Line at Beloit	Broad Street in Beloit

STH 81	STH 11 S. of Brodhead	STH 213 in Beloit
STH 213	Broad Street in Beloit	STH 81 in Beloit
Broad Street	STH 213 in Beloit	USH 51 in Beloit

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07(2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

Note: 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this proposed rule will be to extend the provisions of s. 348.07(2)(f), (fm), (gm) and (gr), and s. 348.08(1)(e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 41 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to the office of the State Traffic Engineer, P. O. Box 7916, Madison, Wisconsin, 53707, telephone (608) 266-1675. For questions about this rule making, please call Mark Morrison, Regional Traffic Engineer at (608) 266-1675. Alternate formats of the proposed rule will be provided to individuals at their request.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1) and 348.07(4), Stats., the department of transportation hereby proposes to amend ch. Trans 276, Wis. Adm. Code, interpreting s. 348.07(4), Stats., relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways, as follows:

SECTION 1. Trans 276.07(7) is amended to read:

Route	From	To
STH 32	USH 41 N. of De Pere	STH 22 in Gillett 64 S. of Mountain

SECTION 2. Trans 276.07(8m) and 276.09(1) and (note) are repealed.

SECTION 3. Trans 276.09(2) and (3) are renumbered 276.09(1) and (2).

**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.

Chiropractic Examining Board (CR 95–232):

S. Chir 9.03 (6) – Relating to approved chiropractic college preceptorship programs.

State Emergency Response Board (CR 95–216):

Ch. ERB 5 – Relating to guidelines for the computer grant to committees as required by s. 166.20 (2) (bg), Stats.

Gaming Commission (CR 96–30):

S. WGC 24.13 (1) (d) – Relating to simulcasting fees.

Health & Social Services (CR 94–193):

Ch. HSS 62 – Relating to assessment and treatment of intoxicated drivers.

Health & Social Services (CR 95–229):

SS. HSS 201.30 (1) and 201.303 – Relating to participation of Aid to Families with Dependent Children (AFDC) recipients in the AFDC Benefit Cap Demonstration Project.

Natural Resources (CR 94–180):

SS. NR 1.15, 10.104 and 10.28 – Relating to deer management goals, quotas and units.

Natural Resources (CR 95–194):

S. NR 19.02 – Relating to requiring a handling fee for certain approvals required for hunting, trapping or fishing.

Natural Resources (CR 95–196):

SS. NR 10.01, 10.31 and 10.32 – Relating to the early goose hunt subzone.

Natural Resources (CR 96–22):

SS. NR 10.01, 10.02, 10.106, 10.145, 10.27, 10.29 and 10.40 – Relating to hunting and trapping.

Nursing, Board of (CR 95–187):

S. N 8.08 (1) – Relating to requirements for malpractice insurance coverage for advanced practice nurse prescribers.

Regulation & Licensing (CR 95–80):

Ch. RL 7 and Appendix I – Relating to the impaired professionals procedure.

Regulation & Licensing (CR 95–210):

Ch. RL 9 – Relating to establishing a procedure for determining whether an applicant for credential renewal is liable for any delinquent taxes.

Regulation & Licensing (CR 95–211):

Ch. RL 1 – Relating to procedures to review denials of credentials.

Tourism, Dept. of (CR 96-48):

SS. Tour 1.02, 1.03 and 1.05 – Relating to the Joint Effort Marketing Program.

Transportation, Dept. of (CR 94-202):

S. Trans 201.16 (2) (c) – Relating to on-private property political signs next to interstates and freeways.

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.

Health & Social Services (CR 92-216):

An order repealing ch. HSS 3 and creating ch. HSS 83, relating to Community-Based Residential Facilities (CBRF's) for adults.

Part effective 08-01-96.

Part effective 01-01-97.

Part effective 01-01-98.

Health & Social Services (CR 95-143):

An order repealing and recreating ss. HSS 110.01 to 110.10, relating to licensing of ambulance service providers, licensing of emergency medical technicians-basic (EMT's-Basic), and certification of emergency medical technicians-basic to perform defibrillation.

Effective 06-01-96.

Health & Social Services (CR 95-208):

An order amending s. HSS 73.01 and creating ss. HSS 73.03 (3m) and (8m) and 73.10, relating to conditions of hardship for granting an exception to a limitation on funding for Community-Based Residential Facility (CBRF) care in the case of a person initially applying for long-term community support services under the Community Options Program (COP) or a Medical Assistance (MA) home and community-based waiver (COP-waiver or CIP-II).

Effective 06-01-96.

Industry, Labor & Human Relations (CR 95-183):

An order affecting ss. ILHR 48.01 and 48.10, relating to labeling of oxygenated fuels.

Effective 06-01-96.

Industry, Labor & Human Relations (CR 95-199):

An order affecting chs. ILHR 51, 57 and 66, relating to the Uniform Multifamily Dwelling Code.

Effective 07-01-96.

Public Instruction (CR 95-157):

An order affecting ss. PI 3.03, 3.39, 3.55, 3.57, 3.58 and 4.08, relating to substitute teacher permits, special education program aide licenses, principal licenses and general education components.

Effective 06-01-96.

Regulation & Licensing (CR 95-163):

An order affecting chs. RL 80 to 86 and the Uniform Standards of Professional Appraisal Practice, relating to real estate appraisers.

Effective 07-01-96.

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