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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 Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

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

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

EMERGENCY RULES NOW IN EFFECT

Department of Agriculture, Trade & Consumer Protection

Rule adopted creating **s. ATCP 139.04 (11)**, relating to prohibiting the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Finding of Emergency

(1) On June 2, 1995, the United States Environmental Protection Agency ("EPA") issued a final rule prohibiting the use of HC-12a, a hydrocarbon-based refrigerant containing liquified petroleum gas, as a refrigerant in mobile air conditioning systems. EPA prohibited HC-12a, and a predecessor product called OZ-12, because of safety risks associated with the use of flammable refrigerants in mobile air conditioning systems. According to EPA, the manufacturer of HC-12a did not provide adequate information to demonstrate that the product was safe when used in a mobile air conditioning system.

(2) Despite the current EPA rule, at least one company is currently engaged in manufacturing and distributing HC-12a for use in motor vehicle air conditioning systems. The Idaho manufacturer argues that EPA lacks jurisdiction to regulate the sale of its product. HC-12a is currently being offered, distributed or promoted for sale at wholesale and retail outlets in Wisconsin and surrounding states, for use as a refrigerant in mobile air conditioning systems.

(3) HC-12a is a highly flammable substance, as defined by the American Society of Testing and Materials (ASTM) standard test procedure for refrigerants, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of HC-12a or its predecessor, OZ-12, in mobile air conditioning systems is inconsistent with standards adopted by the Society of Automotive Engineers.

According to those standards, refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

(4) At least 13 states have enacted legislation prohibiting the sale of refrigerants for use in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

(5) HC-12a and other hydrocarbon-based refrigerants, when sold for use in motor vehicle air conditioning systems, present a serious risk to public health and safety for the following reasons:

(a) Motor vehicles and mobile air conditioning systems are not currently designed to use flammable refrigerants, or to prevent hazards associated with flammable refrigerants.

(b) Refrigerants in mobile air conditioning systems commonly leak into the engine compartments or passenger compartments of motor vehicles. Leaking refrigerant is often routed into the passenger compartment through the air distribution system from the evaporator. Hydrocarbon refrigerants, which are heavier than air, will tend to accumulate in low or confined spaces of a motor vehicle.

(c) Hydrocarbon refrigerants are flammable at low concentrations.

(d) Internal components of a motor vehicle provide many potential sources of ignition for flammable refrigerants. Passenger activities, such as smoking, may also create ignition sources.

(e) Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers. Automotive technicians who test for leaks, or who repair or service mobile air conditioning systems containing flammable refrigerants, are also at risk.

(6) The risk to public health and safety cannot be adequately addressed by product packaging or labeling, for the following reasons:

(a) The use of flammable hydrocarbon-based products in motor vehicle air conditioning systems is inherently hazardous. That hazard will not be materially altered by mere packaging or labeling.

(b) Use is hazardous to persons who are not aware that the refrigerant is present, and have not have seen or read the product label.

(c) Current product labels for HC-12a already contain a warning statement that the contents are under pressure and are extremely flammable. Current labels direct use by qualified personnel only, and list other cautions and instructions when recharging a mobile air conditioning system with this substitute refrigerant. These label statements do not materially alter the hazard inherent in the use for which the product is sold. There are few if any protective actions which a customer or technician could take to reduce the hazards associated with use of the product.

(d) There are no automotive industry standards which would allow a flammable refrigerant to be used in a motor vehicle air conditioning system as currently designed.

(7) Flammable hydrocarbon-based refrigerants, including HC-12a, OZ-12, and other refrigerants containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons, pose a serious risk to public health and safety when sold for use as refrigerants in mobile air conditioners. At this time, the public health and safety can only be protected by keeping these products out of the channels of commerce in this state. The department can and should adopt rules, under ss. 93.07(1) and 100.37(2), Stats., prohibiting the sale of such products in this state.

(8) Pending the adoption of rules according normal administrative rulemaking procedures, it is necessary to adopt

emergency rules under s. 227.24, Stats., to protect the public health, safety and welfare.

Publication Date: October 9, 1996
Effective Date: October 9, 1996
Expiration Date: March 8, 1997
Hearing Date: November 15, 1996

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules adopted creating s. DOC 309.05 (2)(d), relating to inmate mail.

Finding of Emergency

The Department of Corrections finds 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:

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

Publication Date: August 15, 1996
Effective Date: August 15, 1996
Expiration Date: January 12, 1997
Hearing Dates: January 10, 13 & 14, 1997
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (3)

Health and Social Services

(Community Services, Chs. HSS 30--)

1. Rules were adopted revising ss. HSS 55.70 to 55.76, relating to administration of child care funds.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public

assistance-related rules. They are for administration of health care funds. They will take effect on July 1, 1996.

Analysis

The Department's rules for county agency, tribal agency and other child care administrative agency administration of funds for child day care under s. 46.98, Stats., are revised by this order to bring the rules into compliance with statute changes made by 1995 Wis. Acts 27 and 289 and changes in federal regulations, including federal regulations for child care and development block grant funding, 45 CFR Parts 98 and 99, and at-risk child care, 45 CFR Part 257, since the rules were last revised in late 1991; to made policies relating to eligibility for low-income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

1. Income Eligibility

Income eligibility for low income child care is changed to be in compliance with changes made in s. 46.98 (4), Stats., by Act 289.

2. Costs Charged to Parents

Parent co-payment responsibilities are revised to be those established in state law based on family income and the cost of care.

3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to received low-income child care funds when the parents are in training or educational programs is modified so that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

4. Loss of Eligibility

A local agency is permitted to determine that a parent is no longer eligible for child care funds if the parent fails to make required co-payments or provides false information to the agency about income or other matters affecting eligibility.

5. Recovery of Funds

Rules are added in compliance with 1995 Wis. Act 27 to provide for recovery of funds from a parent if the parent was not eligible for child care funds, and for recovery of an overpayment made to a provider when the provider is responsible for the overpayment.

6. Reimbursement

Local agencies are permitted to reimburse parents under certain circumstances for the cost of health care services or to make funds available to parents for the purchase of child care services, and local agencies are directed when to reimburse child care providers on the basis of authorized units of service or for days of attendance.

7. Authorized Child Care Providers

Local agencies are permitted to make payments, under certain conditions, to child care providers who are not licensed or certified, including:

- a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.
- b. When child care is on-site and short-term for parents in training or education programs.
- c. When short-term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

8. Higher Rates for Higher Quality Care

Local agencies are required to pay higher for child care to providers who meet higher quality of care standards, as allowed under federal regulations.

9. Reimbursement Rate Categories

Reimbursement rates are required to two age categories and five provider types, a change from earlier policy.

10. Elimination of Rules for Respite Child Care

Rules for respite child care are eliminated, now that there is no longer a separate fund program. The 1995-97 state budget folded

funding for respite child care into general community aids allocations for counties.

Publication Date: June 29, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Extension Through: January 26, 1997

2. Rules adopted revising ss. HSS 55.55 to 55.63, relating to certification of child care providers.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for certified child care. They will take effect on July 1, 1996.

Analysis

The Department's current rules for certification of family day care providers, in-home day care providers and school-age day care programs are amended by this order to bring the rules into compliance with recent statute changes, in particular the changes made by 1995 Wis. Act 289 in establishing Wisconsin Works (W-2), a new system of assistance for families with dependent children which will replace Aid to Families with Dependent Children (AFDC), and to add needed protections for children, reduce or eliminate unnecessary requirements and clarify the authority of certifying agencies.

Key changes include:

1. Provisional Certification

Modifying standards for provisional certification so that no training is required, in compliance with Act 289 changes in the statutes.

2. Limited Certification

Deleting the category of limited certification, in compliance with Act 289 changes in the statutes.

3. Training for Regular Certification

Deleting the optional requirement to add 5 hours of initial training for regular certification, in order to standardize regulation statewide.

4. Criminal Records Check

Adding requirements for state criminal records checks and FBI criminal record check under certain circumstances, as required by Act 289 changes in the statutes.

5. Certification Fee

Permitting counties and tribal agencies to charge certification fees, as allowed under Act 289, not to exceed licensing fees for family day care centers plus the cost of criminal record checks.

6. Acceptance of Certification

Providing that certification issued by one certifying agency is to be accepted as valid by other certifying agencies.

7. Certification Exemption

Exempting specified child care arrangements from certification because those arrangements are short-term.

8. Sanction Authority

Giving sanction authority to certifying agencies when there is danger to the health, safety or welfare of children in care.

9. School-Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

- Physical exams for children and staff (replaced by a health history requirement).
- 75 square feet of outdoor space per child.
- Daily outdoor activities.
- A place for rest or relaxation.
- Ongoing communication with the child's parent.
- Making copies of the certification standards available to all parents.

10. Parochial and Private Schools

Deleting rules related to certification of parochial and private schools since those programs can become licensed in order to receive public child care funding.

11. Parent Checklist

Deleting the rules requirement that parents in certified family day care and in-home day care complete and return a checklist of basic certification standards but permitting counties and tribes to continue to require it.

12. Other New or Changed Rules

- Clarifying what is acceptable supervision and limiting the number of hours a provider can provide child care per day.
- Requiring TB tests for all certified providers.
- Requiring proper hand washing for child care providers and children.
- Changing the water testing requirement when a public water supply is not available to be a one-time test prior to or within 3 months of initial certification.
- Requiring certified providers to report relevant information to the certifying agency.
- Prohibiting consumption of alcoholic beverages or controlled substances on the premises during hours of operation.
- Prohibiting discrimination.

Publication Date: June 29, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Extension Through: January 26, 1997

3. Rules adopted repealing s. HSS 55.76 (5), created as an emergency rule relating to the administration of child care funds and required co-payments.

Finding of Emergency

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

Congress has just enacted welfare reform legislation which makes major changes to the federal welfare system, in many cases replacing federal entitlements with block grants to the states. The Governor has directed the creation of a Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. Under these circumstances, it is necessary to withdraw the schedule for child care co-payments and the phase-in co-payment formula which were implemented by emergency rule on July 1 of this year. This will avoid the administrative problems and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

Publication Date: August 13, 1996
Effective Date: August 13, 1996
Expiration Date: November 28, 1996
Extension Through: January 26, 1997

EMERGENCY RULES NOW IN EFFECT

Health and Family Services

(Medical Assistance, Chs. HSS 100–)

Rules adopted revising **chs. HSS 101, 105 and 107**, relating to Medical Assistance coverage of school-based medical services.

Exemption From Finding of Emergency

The Legislature in s. 9126 (7m) of 1995 Wis. Act 27 directed the Department to promulgate rules required under s. 49.45 (39), Stats., as created by Act 27, by using emergency rulemaking procedures, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis

The 1995–97 Budget Act, 1995 Wis. Act 27, created s. 49.45 (39), Stats., which requires the Department of Health and Social Services to reimburse school districts and Cooperative Educational Service Agencies (CESAs) for Medical Assistance school-based services. This rule-making order describes the covered services: speech, language, audiology and hearing services; occupational therapy; physical therapy; nursing services; psychological services, counseling and social work; developmental testing and assessments; transportation; and certain durable medical equipment. The order also explains the recordkeeping collaboration with other health care providers required of school-based service providers.

Publication Date: June 15, 1996
Effective Date: June 15, 1996
Expiration Date: November 12, 1996
Hearing Dates: June 26, 27, 1996
Extension Through: January 10, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services

(Health, Chs. HSS 110–)

1. Rules adopted revising **chs. HSS 172, 175, 178, 195 to 198**, relating to permits and permit fees.

Finding of Emergency

The Department of Health & 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:

The Department and agent local government health departments regulate campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations, under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department's rules are in chs. HSS 172, 175, 178, 195, 196, 197 and 198, Wis. Adm. Code. None of these facilities may operate without receiving a permit from the Department or an agent local government health department. A permit is evidence that a facility complies with the Department's rules on the date of issuance of the permit. All permits except those for bed and breakfast

establishments are one-year permits. A facility is charged a permit fee. Permit fee revenues support the regulatory program.

In 1993 the Budget Act for 1993–95 directed the Department to establish permit fees by rule beginning July 1, 1994. Until then the fees had been set by statute.

This rulemaking order increases permit fees effective July 1, 1996, by about 10% for campgrounds; recreational and educational camps; swimming pools that serve the public; restaurants; hotels, motels and tourist rooming houses; bed and breakfast establishments; and food vending operators and commissaries. It also increases preinspection fees for restaurants; hotels, motels and tourist rooming houses; bed and breakfast establishments; and food vending commissaries.

The fees are increased to cover higher costs for these regulatory programs.

The rules are being promulgated as emergency rules to protect public health and safety. The fee increases will take effect on July 1, 1996, which is the beginning of a new permit period. Raising the fees as provided in this order will enable the Department to avoid running a deficit in program revenue and so avoid having to reduce inspections of food-serving, lodging and recreational facilities and taking longer to respond to foodborne and waterborne disease outbreaks.

The fees established by this order do not apply to facilities regulated by local health departments granted agent status under s. 254.69, Stats. Permit fees for those facilities are established by the local health departments, pursuant to s. 254.69 (2) (d), Stats.

Publication Date: June 8, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Hearing Date: August 28, 1996
Extension Through: January 26, 1997

2. Rules adopted revising **ch. HSS 172**, relating to public swimming pools.

Finding of Emergency

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

The Department and agent local government health departments regulate the operation of public swimming pools under the authority of s. 257.47, Stats, to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department rules are in ch. HSS 172, Wis. Adm. Code. No public swimming pool may operate without having a permit from the Department or an agent local government health department.

This rulemaking order clarifies and updates the definition of public swimming pool, updates requirements for lifeguards and adds rescue tubes as required lifeguard equipment.

Section 254.47 (1), Stats., directs the Department to define "public swimming pool," in rule, for purposes of the regulatory program. The current rule definition has not been changed for many years and has some resulting ambiguity, one reason being that some types of facilities are called by new names.

The requirements under s. HSS 172.05 (2) (a)3. for lifeguard certification have to be modified due to changes in American Red Cross and the American Heart Association courses. The rules changes will ensure that all lifeguards are qualified to fulfill their duties as specified in ch. HSS 172. The exception under s. HSS 172.05 (2) (c) to lifeguard certification for persons holding a current American Red Cross Water Safety Instructor certificate is removed. This is because the American Red Cross Water Safety Instructor certification course no longer includes course work in lifesaving methods. The change, however, will allow persons currently certified under the old program to the use of that certification until it expires.

New lifeguard training incorporates use of rescue tubes. These tubes are therefore made required equipment when lifeguards are provided.

These changes are needed to protect the health and assure the safety of persons using public swimming pools.

Publication Date: June 22, 1996
Effective Date: June 22, 1996
Expiration Date: November 19, 1996
Hearing Date: August 28, 1996
Extension Through: January 17, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Economic Support, Chs. HSS 200-)

Rules adopted creating s. HSS 201.135, relating to time limits on benefits for AFDC recipients participating in the JOBS program.

Exemption From Finding of Emergency

The Legislature in s. 275 (3) of 1995 Wis. Act 289 directed the Department to promulgate the rule required under s. 49.145 (2) (n), stats., as created by Wis. Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency. The rule will take effect on October 1, 1996.

Analysis Prepared by the Department of Workforce Development

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wis. Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145 (2) (n), Stats., as created by 1995 Wis. Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141 (2) (b), Stats., as created by 1995 Wis. Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to count toward the 60-month limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which proves that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the Federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively

participating in the Job Opportunities and Basic Skills (JOBS) Training Program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria county or tribal economic support agency would use to determine whether an extension of the 60 month time limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

Publication Date: September 30, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 19, 1996

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

(Uniform Dwellings, Chs. ILHR 20-25)

Rules adopted revising chs. ILHR 20 and 21, relating to one- and two-family dwellings constructed in flood hazard zones.

Finding of Emergency

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

The Federal Emergency Management Agency (FEMA) has informed some municipalities that it will no longer allow variances to a local ordinance that prohibits the construction of homes in flood fringe areas where the foundation extends below the base flood elevation. FEMA regulations allow this type of construction in some locations but require the construction to meet a suitable building code. The Uniform Dwelling Code, which regulates new home construction in Wisconsin, has never addressed this issue. FEMA's actions have halted some residential projects, causing serious financial hardship for those affected Wisconsin builders and residents.

The proposed rules add requirements to the Uniform Dwelling Code for construction in flood fringe areas in order to meet FEMA requirements. The primary source of these rules is the National Building Code published by Building Officials and Code Administrators International, Incorporated (BOCA).

Publication Date: May 8, 1996
Effective Date: May 8, 1996
Expiration Date: October 5, 1996
Hearing Date: July 17, 1996
Extension Through: February 1, 1997

EMERGENCY RULES NOW IN EFFECT**Industry, Labor & Human Relations****[Workforce Development]****(Labor Standards, Chs. ILHR 270–279)**

Rules adopted revising **ch. ILHR 272**, relating to the minimum wage.

Finding of Emergency

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

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employees in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employees would be subjected to confusion and uncertainty in the calculation and payment of wages.

Publication Date: August 28, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: December 17, 1996

EMERGENCY RULES NOW IN EFFECT**Commissioner of Insurance**

Rule adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in 1996–97 premium rates for the health insurance risk-sharing plan.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e), Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (“HIRSP”) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP’s operating and administrative costs. This rule adjusts the premium rates for the period of October 1, 1996 through June 30, 1997, based upon a recalculation of costs and subsidy payments for the 1996–1997 fiscal year. This adjustment represents a 12% reduction in premium payments for the both the non-subsidized major medical and medicare plans for person under age 65. The rates for low-income persons entitled to a premium reduction under s. Ins 18.07 (5) (b) are not affected.

Publication Date: September 4, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 8, 1996

EMERGENCY RULES NOW IN EFFECT (6)**Natural Resources****(Fish, Game, etc., Chs. NR 1--)**

1. Rules were adopted revising **chs. NR 10 and 11**, relating to the 1996 deer hunting seasons.

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. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and to minimize deer nuisance problems, thereby protecting the public peace, health, safety or welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify our rules will result in the failure to provide hunting opportunity and comply with administrative rules.

Publication Date: May 3, 1996
Effective Date: August 12, 1996
Expiration Date: January 9, 1997
Hearing Date: June 11, 1996

2. Rules adopted revising emergency rules relating to the 1996 deer hunting seasons

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. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and to minimize deer nuisance problems, thereby protecting the public peace, health, safety or welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify our rules will result in the failure to provide hunting opportunity and comply with administrative rules.

Publication Date: August 9, 1996
Effective Date: August 12, 1996
Expiration Date: January 9, 1997
Hearing Date: September 12, 1996

3. Rules adopted revising **ch. NR 10**, relating to the 1996 migratory game bird season.

Finding of Emergency

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

Publication Date: September 3, 1996
Effective Date: September 3, 1996
Expiration Date: January 31, 1997
Hearing Date: October 14, 1996

4. Rules adopted amending **s. NR 25.05 (1) (e)**, relating to sport and commercial fishing for yellow perch in Lake Michigan.

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 facts constituting the emergency is:

The yellow perch population in Lake Michigan is rapidly declining. This decline reflects six consecutive years of extremely poor reproduction. Commercial harvests of adult yellow perch must be limited immediately in order to maximize the probability of good reproduction in the near future.

Publication Date: October 1, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 11, 1996

5. Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: November 18, 1996
Effective Date: November 18, 1996
Expiration Date: See section 12m, 1996 Wis. Act 296
Hearing Date: January 14, 1997

[See Notice this Register]

6. Rules adopted revising **chs. NR 25 and 26**, relating to the Lake Superior fisheries management plan.

Finding of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already

made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: November 18, 1996
Effective Date: November 28, 1996
Expiration Date: April 27, 1997
Hearing Date: December 17, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 11**, relating to dispute resolution concerning children with exceptional educational needs between school boards and parents.

Finding of Emergency

Wisconsin is required under state and federal law to provide a due process hearing system for the resolution of special education disputes between parents and school districts. 1996 Wis. Act 431 will significantly revise that process and will require the department rather than school districts to conduct the due process hearings. Although the Act outlines the process, it does not fully describe the manner in which hearings are to be initiated, the manner in which hearing officers will be appointed, their qualifications and duties. The current rules addressing those issues will not apply under the new statutory process. It is, therefore, necessary to adopt an emergency rule addressing these issues so that the due process hearing system will remain available to parents and districts when the Act becomes effective.

Publication Date: June 25, 1996
Effective Date: June 25, 1996
Expiration Date: November 22, 1996
Hearing Dates: September 9 & 10, 1996
Extension Through: January 20, 1997

2. Rules were adopted revising **ch. PI 11**, relating to the handicapping condition of significant developmental delay.

Finding of Emergency

1995 Wis. Act 298 adds an alternative category of significant developmental delay for the identification of disabled preschoolers when the diagnosis is not clear. The Act becomes effective July 1 and requires the department to conduct inservice training for early childhood special education teachers and directors and pupil services personnel in identifying children with significant development delay to ensure that only children meeting the criteria established by the department by rule are so identified.

In order to establish identification criteria under the significant developmental delay category and in order to conduct the required training sessions prior to the 1996-97 school year, rules must be in place as soon as possible.

Publication Date: July 31, 1996
Effective Date: July 31, 1996
Expiration Date: December 28, 1996
Hearing Dates: September 9 & 10, 1996
Extension Through: February 25, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Transportation

1. Rules adopted revising **ch. Trans 269**, relating to transportation of garbage or refuse 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 peace, safety and welfare. A statement of the facts constituting the emergency is: Interstate status of this portion of I-39 that had been USH 51 became effective upon completion of signage. Signage was completed on August 23, 1996. Without this emergency rule in place, overweight movement of garbage, which had been allowed, will no longer be allowed on this highway segment, while overweight movement of scrap will be allowed. This will force garbage trucks to move on surface streets, creating safety hazards for other traffic and creating economic hardship for garbage haulers (and municipalities which pay for garbage and refuse hauling), as there are no nearby detours paralleling this stretch of highway.

Publication Date: September 9, 1996
Effective Date: September 9, 1996
Expiration Date: February 6, 1997
Hearing Date: October 30, 1996

2. Rules adopted revising **ch. Trans 76**, relating to general transportation aids.

Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles*, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

Publication Date: October 25, 1996
Effective Date: October 25, 1996
Expiration Date: March 24, 1997
Hearing Date: December 16, 1996

3. Rules adopted revising **ch. Trans 117**, relating to occupational driver's license.

Finding of Emergency

1995 Wis. Act 269 rewrote state law regarding the issuance of occupational licenses. That Act goes into effect on November 1, 1996. Absent this emergency rule making, the Department will lack rule authority necessary to administer the new law. This emergency rule will permit the Department to issue occupational licenses until the permanent rule establishing procedures for issuing occupational licenses are in place. Therefore, the Department of Transportation finds that an emergency exists and that the rule is necessary.

Publication Date: November 1, 1996
Effective Date: November 1, 1996
Expiration Date: March 31, 1997
Hearing Date: November 26, 1996

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Wage Rates, Chs. ILHR 290-294)

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

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

1995 Wis. Act 213 made a number of major changes to the laws which require the department to determine prevailing wage rates for state and local public works projects. In place of a case-by-case investigations, the Department of Workforce Development is required to conduct an annual survey of employers and issue prevailing wage rate determinations for all trades or occupations in all areas of the state throughout the year based on the survey data. The statutes also provide that members of the public, employers, local governmental units and state agencies may ask the DWD to review prevailing wage rate determinations under a number of specified circumstances.

This emergency rule establishes deadline and appeal criteria for the process that will be used to compile the 1996 survey results and consider requests for review. The use of an emergency rule for this purpose will benefit the public, employers local governments units and state agencies by giving them clear information as to the procedures to be followed, and it will also help the DWD to meet the statutory requirement that prevailing wage rates be compiled and issued promptly.

Publication Date: December 11, 1996
Effective Date: December 11, 1996
Expiration Date: May 10, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection gives notice, pursuant to s. 227.135, Stats., that it proposes to develop an administrative rule as follows:

Subject:

Chs. ATCP 55–57 – Relating to meat and poultry inspection. The Department may renumber and reorganize these rules.

Description of policy issues:

Preliminary objectives:

Update and reorganize current state rules related to meat and poultry inspection and safety. Among other things, the Department proposes to incorporate new federal requirements related to pathogen reduction and “hazard analysis — critical control point” systems. The Department must modify its rules so that Wisconsin’s program is “equal to” the federal program. The rules will change the current program, which relies heavily on visual inspection, to incorporate more scientific methods and process controls aimed at targeting and reducing harmful bacteria.

Preliminary policy analysis:

The Department administers Wisconsin’s meat and poultry inspection program under s. 97.42, Stats., and other applicable laws. The state program, which is partially funded by federal dollars, must be “equal to” the federal program administered by the U.S. Department of Agriculture. Under the current program, Department inspectors perform antemortem and postmortem inspections of all carcasses slaughtered at state plants, and periodically inspect processing operations. Inspectors rely heavily on visual inspection to determine whether meat and poultry is wholesome. Inspectors also monitor compliance with specific rules related to slaughter, processing and sanitation. Meat and poultry establishments — especially smaller establishments which have limited “quality control” systems — rely heavily on Department inspectors to assure compliance with safety and quality standards.

At the direction of Congress, the U.S. Department of Agriculture recently adopted final draft rules which will change federal and state programs related to meat and poultry inspection. The federal rules will require meat and poultry establishments to play a more active role in designing and implementing food safety and quality control systems that are appropriate and effective for their operations. The federal rules will increase flexibility by using performance standards, rather than specific design standards, where appropriate. They will also reduce reliance on traditional visual inspection, and increase use of lab testing and other scientific tools to identify and prevent food safety hazards, especially bacterial hazards.

The four major elements of the federal rules are:

✓ **Hazard Analysis and Critical Control Point, HACCP** — Under the federal rules, every plant must develop and implement its own systematic plan (known as a “Hazard Analysis — Critical Control Point” plan, or “HACCP (plan)”) that systematically addresses all of the significant hazards associated with its products. The effectiveness of the HACCP plan must be demonstrated by the plant and verified by government inspectors.

✓ **Mandatory E. coli testing in slaughter plants** — Under the federal rules, every slaughter plant must regularly test carcasses for generic *E. coli* to verify the effectiveness of the plant’s procedures for preventing and reducing fecal contamination. Fecal contamination is the major source of product contamination with harmful bacteria like *E. coli* 0157:H7 and *Salmonella*.

✓ **Pathogen Reduction Performance Standards for Salmonella** — All slaughter plants and plants producing raw ground products must ensure that their *Salmonella* contamination rate is below the current

national baseline incidence. This is a “first ever” regulatory performance standard for a pathogen on raw meat and poultry. The new standard is designed to ensure progress in reducing harmful bacteria.

✓ **Sanitation Standard Operating Procedures (SOPs)** — Every meat and poultry establishment must adopt and implement a written plan for meeting its sanitation responsibilities. Effective sanitation in slaughter and processing plants is essential to preventing direct adulteration of meat and poultry products.

The Department proposes to modify its current rules to incorporate the new federal requirements. This may have far-reaching implications for meat and poultry establishments, and for the Department’s inspection program. Large meat and poultry establishments are fairly well equipped to implement the more sophisticated quality control systems required under the federal rules, but smaller plants may experience greater difficulty. Within the limits imposed by federal rules, the Department will attempt to accommodate the concerns of the smaller, state-inspected plants.

In addition to incorporating the new federal requirements, the Department proposes to consolidate and reorganize the rules currently contained in chs. ATCP 55–57, Wis. Adm. Code. The Department plans to update the current rules, and revise them for consistency with the new federal rules. The Department will consult with an advisory council that includes industry representatives and food safety experts.

Policy alternatives:

Policy alternatives are limited. By law, Wisconsin’s meat and poultry inspection program must be “equal to” the federal program. Wisconsin’s rules must be revised for consistency with federal rules. Within the limits imposed by federal law, the Department will attempt to accommodate the needs and concerns of state-inspected meat and poultry establishments.

If the Department fails to maintain a meat and poultry inspection program that is “equal to” the federal program, the U.S. Department of Agriculture must withdraw funding for the state inspection program and must take over the inspection of all Wisconsin meat and poultry establishments. This may have an adverse effect on state-inspected establishments, which are typically smaller than federally-inspected plants.

Statutory authority:

The Department is proposing this rule under authority of ss. 93.07(1) and 97.42 (4), Stats.

Staff time required:

The Department estimates that it will require at least 1.0 FTE staff time to develop this rule. This includes research, drafting, preparing related 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.

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection gives notice, pursuant to s. 227.135, Stats., that it proposes to develop an administrative rule as follows:

Subject:

Ch. ATCP 77 – Relating to certification of laboratories that test milk, food or water for compliance with public health standards.

Description of policy issues:

Preliminary objectives:

Establish standards for certifying laboratories that test food, milk or water for compliance with public health standards.

Under 1995 Wis. Act 27 (Biennial Budget Act), the Legislature gave the Department of Agriculture, Trade and Consumer Protection

("Department") responsibility for certifying laboratories that analyze milk, water or food for compliance with public health standards. The Legislature transferred this responsibility from the former Department of Health and Social Services ("HSS"), now named the Department of Health and Family Services.

The primary customers of the laboratory evaluation program are the Wisconsin dairy plants that 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 certified by the Department.

Various federal, state and local laws also require public health testing of water supplies and food products. Under s. 93.12, Stats., laboratories that test to determine compliance with such laws must also be certified by the Department. Certification helps to ensure that public health testing is appropriate and accurate.

This rule will spell out standards that the Department will use to certify laboratories under this program. The rule will repeal portions of ch. HSS 165, Wis. Adm. Code, and will recreate the rules under ch. ATCP 77, Wis. Adm. Code. In the process, the Department plans to update and clarify the existing lab certification rules.

The Department is currently in the process of adopting rules, under ch. ATCP 77, that will establish laboratory certification fees. Those rules will take effect on February 1, 1997. This rule will complete the implementation of the lab certification program by establishing clear substantive standards for lab certification. Clear standards will facilitate compliance, and will improve the evaluation and certification of public health laboratories.

Policy alternatives:

* Eliminate the laboratory certification program. This is not an option under current state law, or under the Interstate Milk Shippers program.

* Continue to operate the lab certification under old HSS rules. This would be very confusing for lab customers, who would have difficulty locating and understanding the rules. The Department proposes to reorganize, clarify and update the old rules, and publish them under ch. ATCP 77. This will improve program administration and assist customers.

* Operate the certification program without rules. This would give no notice to laboratories of the standards which they are expected to meet, and could result in arbitrary or inconsistent administration.

Statutory authority:

The Department proposes to develop this rule under the authority of ss. 93.07 (1), and 93.12 (5), Stats. The rule 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 related documents, holding public hearings, and communicating with affected persons and groups. The Department will assign existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection gives notice, pursuant to s. 227.135, Stats., that it proposes to develop an administrative rule as follows:

Subject:

Ch. ATCP 125 – Relating to mobile home parks.

Description of policy issues:

Preliminary objective:

Current Department rules under ch. ATCP 125 regulate mobile home park rental practices, to ensure fair treatment of tenants. Current rules also prohibit anticompetitive and monopoly practices in the sale of mobile homes and related services. The Department proposes to modify ch. ATCP 125 to accommodate current trends and practices in the mobile home industry without injuring competition or reducing protection for tenants.

Preliminary policy analysis:

More than 160,000 Wisconsin citizens live in mobile home parks. Mobile home park tenants have invested thousands of dollars in their homes which rest on leased property. Park-tenant relations were the subject of major controversy in the early 1970's. The Department originally adopted ch. ATCP 125 in 1972, and amended it in 1976 and 1987. The Department adopted the rules under s. 100.20, Stats., to address unfair mobile home park practices. Among other things, ch. ATCP 125 addresses:

- ① Rental Agreements
- ② Tie-in sales and monopoly practices.
- ③ Security deposits.
- ④ Reselling and relocating mobile homes.
- ⑤ Terminating tenancies.
- ⑥ Unfair rental practices.

The Department's rulemaking authority under s. 100.20, Stats., though substantial, is limited to business practices. Since mobile home park tenants are not engaged in business, the Department has no authority to regulate their conduct directly. (The Legislature has enacted laws to regulate tenant conduct, and has provided remedies for mobile home park operators and other landlords.) Nor does the Department have authority to regulate rent levels, overhaul underlying property laws, or change rights and duties that the state Legislature has created under ch. 704, Stats., or s. 710.15, Stats.

Chapter ATCP 125 provides important basic protection for mobile home park residents. The current rules complement ch. ATCP 134, Wis. Adm. Code, chapter 704, Stats., and s. 710.15, Stats. The current rules also bolster state antitrust laws by prohibiting anticompetitive and monopoly practices.

Wisconsin courts have upheld the current rules, and the rules have worked reasonably well since 1972. However, in recent years, the manufactured housing industry nationwide has been undergoing significant changes in the way it does business. Examples of these changes include:

- ① Mobile home park tenants are buying "manufactured houses" and attaching the houses to a concrete foundation on the mobile home park site.
- ② Mobile home park operators are offering long-term leases.
- ③ Owners of new mobile home parks in some other states recover development costs up front by requiring the initial tenants to purchase their home from the owner at a price which includes development costs.
- ④ Due to inflation and other factors, mobile home park tenants have been paying higher rents.

Chapter ATCP 125 affects several hundred thousand rental transactions and several billion dollars in mobile home value. The Department believes it should modify the rule only where there is a compelling need for change, no loss of protection for tenants, and no loss of free and open competition in the mobile home market.

The Department proposes to meet with representatives of the manufactured housing industry, mobile home park owners, mobile home park tenants, and public representatives. The Department will ask these interested parties to propose and review possible amendments to ch. ATCP 125, and recommend improvements. Items for discussion may include:

- ① Definitions of "site" and "mobile home."
- ② Security deposit limits.
- ③ Selling practices.
- ④ Lease terms.
- ⑤ Utility services.
- ⑥ Park rules.
- ⑦ Unfair rental practices.
- ⑧ Tenant financial protections.

The Department believes that some changes in these areas may be justified. These changes may facilitate the development of affordable

housing, while at the same time protecting the interests of tenants and competing sellers.

Policy alternatives:

● **Do nothing.** Although the current rules have worked reasonably well since 1972, some park operators and mobile home sellers suggest that portions of the current rules are outdated, and may impose unnecessary limits on manufactured housing development. If true, this may limit the number of affordable housing alternatives available to Wisconsin consumers. A failure to update the current rules may also erode protection for consumers, in that the rules may fail to keep pace with current industry practices.

● **Repeal ch. ATCP 125.** Chapter ATCP 125 currently prohibits unfair mobile home park practices and provides important protection for more than 160,000 Wisconsin residents. Repeal would eliminate that protection.

Statutory authority:

The Department is considering amendments to ch. ATCP 125 mobile home park rules under authority of s. 100.20 (2), Stats.

Staff time required:

The Department estimates that it will use approximately .5 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public discussions, and communicating with affected persons and groups. The Department will assign existing staff in Madison and Green Bay to develop this rule.

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection gives notice, pursuant to s. 227.135, Stats., that it proposes to develop an administrative rule as follows:

Subject:

Ch. ATCP 134 – Relating to residential rental practices.

Description of policy issues:

Preliminary objective:

Update and clarify current landlord–tenant rules under ch. ATCP 134, Wis. Adm. Code, based on consensus recommendations of a landlord–tenant advisory council that includes landlord, tenant and public representatives.

Preliminary policy analysis:

Over one–fourth of all Wisconsin residents, and about one–half of Madison and Milwaukee residents, live in rental housing. Landlord–tenant relations were the subject of major legislative controversy in the 1970’s. When legislative efforts to address the landlord–tenant issue failed, the Legislature directed the Department to conduct a study. The Department’s study identified a number of problems and abuses, some of which could be addressed by rule. In 1980, the Department adopted rules under s. 100.20, Stats., to address unfair rental practices identified in its study. The rules are contained in ch. ATCP 134, Wis. Adm. Code (Residential Practices). Among other things, the current rules address:

- Rental disclosures.
- Security deposits and earnest money deposits.
- Repair promises and performance.
- Unfair rental practices and lease provisions.

The Department’s rulemaking authority under s. 100.20, Stats., though substantial, is limited to business practices. Since tenants are not engaged in business, the Department has no authority to regulate their conduct directly. (The Legislature has enacted laws to regulate tenant conduct, and has provided remedies for landlords.) Nor can the Department regulate rent levels, overhaul underlying property laws, or change rights and duties which the Legislature has specifically established under ch. 704, Stats.

Chapter ATCP 134 supplements ch. 704, Stats., and provides important basic protection for tenants. The rules have been upheld in the courts, and have worked reasonably well for 17 years. However, there may be areas in which the current rules can be clarified or improved. Because the rules affect millions of rental transactions, the

Department believes that they should be modified with care, and only when there is a compelling need for change. In order to preserve harmonious landlord–tenant relations, it also important to seek consensus between landlords and tenant groups.

The Department proposes to convene an advisory council that includes landlord, tenant and public representatives. The Department will ask the advisory council to review possible amendments to ch. ATCP 134, and recommend changes on which there is reasonable consensus. Items for discussion may include:

- Surrender of premises
- Documentation of repair promises
- Definition of “form provision”
- “Common sense” measurement of heating standards
- Procedures for returning security deposits
- Landlord entry to perform requested repairs
- Landlord recovery of eviction costs
- Definition of “security deposit”

The Department believes that some changes in these areas may be justified. Clarifications may reduce unnecessary conflict between landlords and tenants, without harming their legitimate interests.

Policy alternatives:

■ **Do nothing.** Although the current landlord–tenant rules have worked reasonably well for 17 years, the lack of clarity in some areas may result in some unnecessary problems.

■ **Repeal ch. ATCP 134.** Ch. ATCP 134 currently prohibits unfair rental practices and provides important protection for millions of Wisconsin residents. Repeal would eliminate that protection. Radical changes to ch. ATCP 134 could also re–ignite the landlord–tenant controversy of the 1970’s, which was largely resolved by the adoption of ch. ATCP 134.

Statutory authority:

The Department is considering amendments to ch. ATCP 134 under authority of s. 100.20 (2), Stats.

Staff time required:

The Department estimates that it will use approximately 1.0 FTE staff time to develop this rule. This includes research, drafting, preparing related 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.

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection gives notice, pursuant to s. 227.135, Stats., that it proposes to develop an administrative rule as follows:

Subject:

Ch. ATCP 141 – Relating to the cherry marketing order amendments.

Description of policy issues:

Preliminary objectives:

○ Make clarifying amendments to the current cherry marketing order.

○ Revise assessment collection language to be consistent with current industry practices.

Preliminary policy analysis:

Under ch. 96, Stats., the Department may adopt agricultural marketing orders by rule. Under a marketing order, producers of an agricultural commodity pay assessments to support research and market promotion related to that commodity. Marketing order funds are administered by a semi–autonomous marketing board elected by producers. Marketing orders must be approved in a referendum of affected producers.

The Department has adopted a Cherry Marketing Order under ch. ATCP 141, Wis. Adm. Code. The Cherry Marketing Order is administered by a Cherry Marketing Board elected by cherry producers. Under the marketing order, the Department conducts an

advisory referendum of cherry producers once every 4 years. The advisory referendum is intended to determine whether producers support the continuation, amendment or repeal of the marketing order.

The Department conducted an advisory referendum of cherry producers in March 1996. Roughly one-third of the voting producers favored continuation of the current marketing order, one-third favored amendments, and one-third favored repeal. After considering the results of this referendum, the producer-elected Cherry Marketing Board petitioned the Department to make certain amendments to the Cherry Marketing Order.

The Department is proposing to amend the Cherry Marketing Order, based on the recommendations of the Cherry Marketing Board. Among other things, the amendments would clarify the definitions of "producer" and "handler," and would update assessment collection procedures to conform to current industry practice. The amendments, which must be adopted by normal rulemaking procedures under ch. 227, Stats., must also be approved in a producer referendum before they take effect.

Policy alternatives:

○ Do not change the current marketing order. This would be contrary to the recommendation of the producer-elected Cherry Marketing Board.

○ Repeal the Cherry Marketing Order. This would be contrary to the recommendation of the producer-elected Cherry Marketing Board.

Statutory authority:

The Department proposes to amend ch. ATPC 141 under authority of ss. 96.05, 96.08 and 96.15, Stats.

Staff time required:

The Department estimates that it will use approximately 0.05 FTE staff time to modify this rule. This includes research, drafting, preparing related documents, coordinating discussions with the marketing board, holding public hearings, communicating with affected producers, and conducting the referendum. The Department will use existing staff to develop this rule. Under s. 96.05 (6), Stats., and s. ATPC 140.13, Wis. Adm. Code, the Cherry Marketing Board must reimburse the Department for the estimated one-time cost of \$2,500 for the amendment process.

Commerce

Subject:

Ch. ILHR 47 – Relating to financial assistance to owners and operators of petroleum-contaminated properties.

Description of policy issues:

1. Description of the objective of the rule:

The objectives of this rule revision are to:

- a) Implement strategies for more effectively and efficiently remediating petroleum-contaminated properties.
- b) Create new mechanisms for the control of remediation and program costs.
- c) Implement improvements to the PECFA administrative and regulatory processes.
- d) Codify operating procedures and practices.

2. 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 Department implemented the administrative rule ch. ILHR 47 in order to control program costs and to establish necessary administrative and regulatory procedures. The initial rule incorporated operating practices and took initiatives to set caps on investigation activities, regulate consulting firms, establish services that consultants could provide, introduce price competition to remediations and further delineate eligible and non-eligible costs.

The code update will continue the technical and policy development of the PECFA program. The goals and objectives that formed the basis for the original rule remain current and the new rule development effort will concentrate on the same issues of remediation, cost control, administrative process improvement and the formulation of an administrative rule that provides real information to individuals and organizations conducting petroleum remediations.

The alternative to rule development is continued operation and administration using the current version of ch. ILHR 47. Although the current rule has helped achieve the objectives of the program, advances in remediation technology, experience with current trends in costs and the need to include new operating procedures in the administrative rule make an update to the code both timely and essential. The only alternative to rule development, at this point in time, would be a temporary delay in the rulemaking process. This alternative would serve to delay strategies that would make remedial actions more successful and less costly. Consequently, any delay reduces the public benefits that will be achieved through the rule revision.

Statutory authority for the rule:

The following sections of the statutes provide the basis for the PECFA program and the rulemaking process:

Section 101.143, Stats., Petroleum Storage Remedial Action; Financial Assistance affects ch. ILHR 47.

Section 101.144, Stats., Petroleum Storage Tank Discharges affects ch. ILHR 47.

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

It is estimated that the staff time needed to formulate and implement the rule revisions to ch. ILHR 47 will approximate the following:

Senior Managers' time	650 hours
Attorney's time	100 hours
Code Consultant's time	300 hours
Rules Coordination time	50 hours
Program Support time	75 hours

TOTAL TIME: 1,175 HOURS

Natural Resources

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

Subject:

Chs. NR 50 and 64 – Relating to All-Terrain Vehicles (ATVs) and snowmobiles.

Description of policy issues:

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

Codify methods of qualifications for snowmobile and ATV enforcement reimbursement, increase ATV capital and fringe benefit amounts. Impacted/interested groups, county sheriff's department patrols, Gov. Snowmobile Recreation Council, Off-Road Advisory Council, Snowmobile/ATV State Associations.

Explain the facts that necessitate the proposed change:

Uniformity with current rule pertaining to boat patrols. Without a code change, enforcement patrols have only had policy standards, no standing of law. Both the patrols and snowmobilers are concerned that a reasonable standard be developed to avoid inappropriate use of funds.

Statutory authority:

Section 227.11, Stats., interpreting s. 23.33 and ch. 350, Stats.

Estimate of anticipated time commitment:

The Department estimates the time commitment to be 48 hours. Two public hearings are proposed to be scheduled in March, 1997.

Public Instruction

Subject:

Ch. PI 35 – Relating to several changes to the Milwaukee private school choice program.

Description of policy issues:

Rationale for proposed rule development:

Due to 1995 Wis. Act 27, several changes have been made to the Milwaukee private school choice program under s. 119.23, Stats. The corresponding rules under ch. PI 35 must also be changed to comply with the statutes. The most significant modifications include:

- 1) Developing private school financial reporting requirements.
- 2) Determining costs allowed to be claimed by private schools and reimbursed by the Department.
- 3) Developing private school financial audit requirements.
- 4) Developing payment adjustments to be made at the end of the school year by the private schools or the Department.

Objective(s) of the proposed rule:

The objective of the rule is to clarify, simplify and update the administrative rule relating to the Milwaukee private school choice program under ch. PI 35.

Existing relevant policies to be included in the administrative rule:

The private schools participating under the Milwaukee private school choice program have reviewed and have had an opportunity to suggest changes or revisions regarding the policies to be included in the rule. (See rationale above.)

New policies to be included in the administrative rule:

All of the policies to be proposed in the rule are new policies.

Policy alternatives:

Alternatives to these policies could be the establishment of significant and direct regulatory oversight by the Department.

Statutory authority:

Section 227.11 (2) (a), Stats.

Estimate of staff time required:

Indeterminable. Numerous hours involving several Department staff have already been utilized in discussing possible rule changes with the affected private schools.

Revenue

Subject:

Notice is hereby given, pursuant to s. 227.135, Stats., that the Department of Revenue plans to promulgate administrative rules affecting s. Tax 11.15, relating to sales and use tax treatment of containers and other shipping and packaging materials.

Description of policy issues:

Objective of the proposed rule:

The objective of the proposed rule order is to correct s. Tax 11.15 due to changes in department policy with respect to:

- a) The purchase of storage tanks for resale that are leased in connection with the sale of fuel; and
- b) The use of containers for hay and silage in the business of farming.

Existing policies:

The proposed rule order reflects the Department of Revenue's existing policy of providing accurate information to taxpayers, practitioners, and Department employees regarding sales and use taxes as they apply to containers.

Specifically, the Department's policies with respect to containers are as follows:

a) Containers for hay and silage. Hay and silage are now considered to be grain and, therefore, qualify for exemption under s. 77.54 (3m), Stats.; and

b) Storage tanks leased for a nominal amount are considered resold. Therefore, storage tanks used solely for this purpose may be purchased without sales or use tax. There is no provision in the sales and use tax law that states rentals must be at fair market value for the resale exemption to apply.

Policy alternatives:

Do nothing. The rule will be incorrect in that it does not reflect changes in Department policies as they relate to containers for hay and silage and the rental of storage tanks.

Statutory authority:

Section 227.11 (2) (a), Stats.

Estimate of staff time required:

The Department estimates it will take approximately 25 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The Department will assign existing staff to develop the rule order.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

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

Corrections

Rule Submittal Date

Notice is hereby given that, pursuant to s. 227.14 (4m), Stats., on November 27, 1996, the Department of Corrections submitted to the Wisconsin Legislative Council Staff a proposed order creating ch. DOC 311, relating to observation status.

Analysis

Statutory authority: ss. 302.07, 302.08, 302.36 and 227.11 (2) (a), Stats.

Reason for rules; intended effects; requirements

These rules update the current rule, which has been in existence for 15 years. The Department is responsible for the physical safety of inmates and staff. Some inmates have mental or medical health conditions which may threaten the safety of inmates and others. The Department uses observation status, a nonpunitive measure, to remove these inmates from the general population.

These rules prescribe the method used by the Department to maintain order and security in prisons when inmates' mental or medical health risk order and security. These rules broaden the category of inmates who may be placed in observation.

Inmates:

- 1) Who are mentally ill and dangerous to self or others;
- 2) Who have, or are suspected of having, a medical problem that requires separation from the population for treatment by a physician; or
- 3) Who refuse testing for communicable illness;
 - ➔ may be placed in observation status.

These rules define mental illness, dangerousness, and communicable disease. These rules:

- 1) State who may place an inmate in observation status;
- 2) Require an examination of an inmate placed in observation;
- 3) Provide for an appeals process and a review process; and
- 4) Provide for review of continued placement in observation and for review of dangerousness to self.

Agency Procedure for Promulgation

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is the Division of Adult Institutions.

Contact Person

Deborah Rychlowski, Office of Legal Counsel
Telephone (608) 266-8426

Insurance, Commissioner of

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on December 9, 1996.

Analysis

These changes will affect ss. Ins 8.40 to 8.68, Wis. Adm. Code, relating to small employer health insurance rule changes required by passage of "W-2" legislation (1995 Wis. Act 289).

Agency Procedure for Promulgation

The date for the public hearing is January 16, 1997.

Contact Person

To obtain a copy of the proposed rule, contact Meg Gunderson at (608) 266-0110 in OCI Central Files. For additional information, please contact Alice Shuman at (608) 266-9892 or e-mail at ashuman@mail.state.wi.us in the OCI Legal Unit.

Insurance, Commissioner of

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on November 25, 1996.

Analysis

These changes will affect s. Ins 2.80, Wis. Adm. Code, relating to valuation of reserve liabilities for life insurance.

Agency Procedure for Promulgation

The date for the public hearing is January 17, 1997, at 2:00 p.m.

Contact Person

To obtain a copy of the proposed rule, contact Meg Gunderson at (608) 266-0110 in OCI Central Files. For additional information, please contact Stephen Mueller at (608) 267-2833 or e-mail at smueller@mail.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On December 10, 1996, the Department of Natural Resources submitted a proposed rule [Board Order FM-2-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule will affect ch. NR 24, Wis. Adm. Code, relating to commercial clamming on the Wisconsin-Minnesota and Wisconsin-Iowa boundary waters and clamming on all waters.

Agency Procedure for Promulgation

A public hearing will be scheduled in February, 1997.

Contact Person

Karl Scheidegger, Telephone (608) 267-9426
Bureau of Fisheries Management and Habitat Protection

Natural Resources**Rule Submittal Date**

On December 10, 1996, the Department of Natural Resources submitted a proposed rule [Board Order FM-3-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule will affect ss. NR 20.02, 20.03 and 25.06, Wis. Adm. Code, relating to sport and commercial fishing for yellow perch in Green Bay.

Agency Procedure for Promulgation

A public hearing is scheduled for January 21, 1997.

Contact Person

William Horns, Telephone (608) 266-8782
Bureau of Fisheries Management and Habitat Protection

Natural Resources**Rule Submittal Date**

On December 10, 1996, the Department of Natural Resources submitted a proposed rule [Board Order WT-8-97] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule will affect ss. NR 120.14 and 120.18, Wis. Adm. Code, relating to nonpoint source pollution abatement for high residue management systems.

Agency Procedure for Promulgation

A public hearing is scheduled for January 13, 1997.

Contact Person

Robert Carnachan, Telephone (608) 264-6045
Bureau of Watershed Management

Natural Resources**Rule Submittal Date**

On December 10, 1996, the Department of Natural Resources submitted a proposed rule [Board Order SW-57-96] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule will affect s. NR 728.11, Wis. Adm. Code, relating to repeal of the sunset for s. NR 728.11 for recording affidavits to give notice of the existence of contamination from a hazardous substance discharge.

Agency Procedure for Promulgation

Public hearings are scheduled for January 21 and 23, 1997.

Contact Person

Pat McCutcheon, Telephone (608) 275-3241
ERF Unit, Southern District, DNR

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule prohibiting the sale of butane, propane, and other flammable refrigerants for use in mobile air conditioning systems. This rule creates s. ATCP 139.04 (11), Wis. Adm. Code.

Hearing Information

The Department will hold public hearings at the following locations and times:

<p>January 14, 1997 Tuesday 12:30 p.m. to 3:30 p.m.</p>	<p>Lecture Room #6201 Building 6 Northeast Wis. Tech. College 2740 W. Mason St. GREEN BAY, WI</p>
<p>January 16, 1997 Thursday 1:00 p.m. to 4:00 p.m.</p>	<p>Room 108 Education Building Western Wis. Tech. College 405 Eighth St. North LACROSSE, WI</p>
<p>January 17, 1997 Friday 10:00 a.m. to 2:00 p.m.</p>	<p>Central Conference Room Southeast Regional Office DATCP—Consumer Protect. Bureau 10930 W. Potter Rd. MILWAUKEE, WI</p>
<p>January 21, 1997 Tuesday 1:00 p.m. to 4:00 p.m.</p>	<p>Room E-101 (formerly Room 451) North Central Wis. Tech. College 1000 West Campus Dr. WAUSAU, WI</p>

Written Comments

Following the public hearings, the hearing record will remain open until January 31, 1997 to receive additional written comments. Written comments should be submitted to:

Tom Stoebig, Environment & Product Safety Section
 Wisconsin Consumer Protection Bureau
 2811 Agriculture Drive
 P.O. Box 8911
 Madison, WI 53708

Copies of the rule will be available at the public hearings, or may be obtained free of charge by writing to the above address or by calling (608) 224-4944.

An interpreter for the hearing-impaired will be available on request for this public hearing. Please make reservations for a hearing interpreter by January 10, 1997 either by writing to Jamie Tukiendorf, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911 (telephone 608-224-4924) or by calling the Department TDD at 224-5058.

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

Statutory authority: ss. 93.07 (1) and 100.37 (2)

Statute interpreted: s. 100.37

On October 4, 1996, the Department adopted a temporary emergency rule to ban flammable refrigerants in mobile air conditioning systems. The Department is now proposing an identical “permanent” rule. The proposed rule prohibits the sale of butane, propane, mixtures of propane and butane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners. The rule exempts refrigerants that are sold and properly labeled for uses approved by the U.S. Environmental Protection Agency, and which meet recognized industry standards related to flammability for those specific uses.

Background

The Department administers s. 100.45, Stats., which regulates the repair and servicing of mobile air conditioners and trailer refrigerant equipment. This program helps ensure the safe use and recovery of ozone-depleting refrigerants and their substitutes. The program complements a similar U.S. Environmental Protection Agency (“EPA”) program under the 1990 Clean Air Act Amendments.

Under federal law, domestic production of CFC-12 and other Class I ozone-depleting substances were phased out on January 1, 1996. This has resulted in an increase in the wholesale price of CFC-12 which, in turn, has pushed the automotive servicing industry to look at possible non-ozone depleting refrigerant substitutes.

Under federal law, the EPA has authority to review and approve substitutes to ozone-depleting refrigerants. Thus far, EPA has reviewed and approved nine separate refrigerant substitutes for use in motor vehicle air conditioning. Seven of these are currently being marketed in the U.S.

Since March, 1994, the EPA has prohibited the use of flammable, hydrocarbon-based substances as a substitute for R-12, an ozone-depleting refrigerant commonly used in motor vehicle air conditioning systems. EPA prohibited the use of these products in mobile air conditioners because of safety risks associated with these flammable refrigerants.

An Idaho-based company has continued to manufacture and distribute a hydrocarbon-based refrigerant, called HC-12a, for use in mobile air conditioners. The company has argued that the EPA lacks jurisdiction to regulate substitutes to non-ozone depleting substances. In addition, federal law governing the review and approval of substitute refrigerants only prohibits the use of unapproved substances, not the sale and marketing of these products.

In recent months, the Department has investigated several instances of the sale and distribution of HC-12a in Wisconsin. Labeled as containing liquefied petroleum gas, HC-12a is being marketed as an “ozone safe”, “natural organic refrigerant” for use in motor vehicle air conditioning and refrigeration systems.

The Department has used existing regulatory authority under s. 100.45 (3) (a), Stats., which prohibits the sale of any refrigerant in containers holding less than 15 pounds, to direct the removal of small cans of HC-12a. However, 22-lb. pressurized cylinders of HC-12a have also been found on the premises of one of the businesses under investigation.

DATCP Authority under Wisconsin’s Hazardous Substances Law

As part of its consumer product safety program, the Department administers Wisconsin’s Hazardous Substances Law under s. 100.37, Stats. The law defines a “hazardous substance” to include any substance or mixture of substances which is flammable or combustible “if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use.” The statute exempts certain products such as foods, drugs, pesticides, cosmetics and ammunition. But none of these exemptions applies to HC-12a or other hydrocarbon-based refrigerants.

The Department may identify "hazardous substances" by rule, and may regulate "hazardous substances" in various ways. The Department may, by rule:

- Require precautionary labeling of hazardous substances.
- Restrict the use of hazardous ingredients.
- Prescribe package safety standards.
- Ban the sale of hazardous substances if less restrictive alternatives are inadequate to protect public health and safety.

Under s. 100.37, Stats., the Department proposes to prohibit the sale of flammable hydrocarbon-based refrigerants for use in mobile air conditioning because of their serious risk to public health and safety. At this time, public health and safety can only be protected by keeping these products out of the channels of commerce in Wisconsin.

Public Health and Safety Risks Cited

HC-12a is a highly flammable, and potentially explosive substance. Independent testing by the Wisconsin Occupational Health Laboratory has identified a product composition of 62% propane, 23% butane and 12% isobutane.

Motor vehicles and mobile air conditioners are not currently designed to use flammable substances, or to prevent the safety hazards associated with those substances. The Society of Automotive Engineers has issued a standard which states that refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

Refrigerants commonly leak into engine compartments and passenger compartments of motor vehicles. Flammable refrigerants pose a danger in a mobile air conditioning system where they may come in contact with numerous ignition sources. Potential leak sources include evaporators, flexible hoses, and compressor shaft seals. Hydrocarbon-based refrigerants also pose a greater likelihood of leakage because of higher pressures which these substances exhibit within a motor vehicle air conditioning system. Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers.

Numerous national organizations and trade industry groups, including the Association of International Automobile Manufacturers, the American Automobile Manufacturers Association, the National Automobile Dealers Association, the Mobile Air Conditioning Society and the International Mobile Air Conditioning Association, have expressed concern and issued warnings regarding the use of flammable refrigerants in motor vehicle air conditioning systems.

Automotive technicians who repair or service mobile air conditioners are also at risk. Leak detection equipment used by service technicians utilize technologies that provide a source of ignition for leaking flammable refrigerants. Underwriters Laboratories, recognized under state and federal law for testing and approving refrigerant recovery and recycling equipment, has also issued a warning to equipment operators on the use of flammable refrigerants.

At least thirteen states have enacted specific legislation prohibiting sale and use of refrigerants in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

The Department does not believe that further precautionary labeling would adequately address the hazard inherent in the use of these products. Rather, the safety concern can only be effectively addressed by a sales prohibition. Safer, federally approved refrigerant substitutes are available. One such refrigerant, R-134a, has been used by auto manufacturers in new motor vehicles since 1992. Although the Department is unable to identify any deaths or serious injuries to date from the use of hydrocarbon-based refrigerants, the Department believes that the risk is sufficiently serious to warrant permanent rulemaking.

Text of Proposed Rulemaking Order

SECTION 1. ATCP 139.04 (11) is created to read:

ATCP 139.04 (11) Substances containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons when sold or intended for use as refrigerants in mobile air conditioners, as defined under s. 100.45 (1) (b), Stats. This subsection does not apply to substances used as refrigerants which are properly labeled and intended for specific end uses approved by the United States environmental protection agency, and which meet recognized industry standards related to flammability for that specific end use.

SECTION 2. The rule contained in this order shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register*, as provided under s. 227.22 (2) (intro), Stats.

Fiscal Estimate

This Department does not expect this proposed rule to have any fiscal effect. Any workload increase resulting from the rule will be absorbed by existing staff responsible for administering the Department's mobile air conditioning refrigerant use and recovery program.

Copies of Proposed Rule and Fiscal Estimate

A copy of the proposed rule and fiscal estimate can be obtained at no charge by making a written request to:

Tom Stoebig
Telephone (608) 224-4944
Bureau of Consumer Protection, DATCP
2811 Agriculture Dr.
P.O. Box 8911
Madison, WI 53708-8911

Regulatory Flexibility Analysis

This proposed rule identifies butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons as "hazardous substances", and prohibits the sale of these substances for use as refrigerants in mobile air conditioning systems. The rule exempts refrigerants that are sold and properly labeled for uses approved by the U.S. Environmental Protection Agency, and which meet recognized industry standards related to flammability for those specific uses.

Refrigerants Used in Mobile Air Conditioning Systems

U.S. production of CFC-12 and other Class I ozone-depleting substances ceased on January 1, 1996 under terms of the Federal 1990 Clean Air Act Amendments. Currently, CFC-12 service needs for automotive air conditioning in the U.S. has been estimated at 43.8 million pounds. Current stockpiles of CFC-12, combined with supplies from recycling and reclaiming activities, have been meeting these automotive servicing needs.

As a result of diminishing supplies, the price of CFC-12 has risen dramatically on a statewide and national basis, increasing from about \$8 per pound to more than \$20 per pound. This has influenced business decisions to market and distribute substitute refrigerants.

Under federal law, the EPA has authority to review and approve substitutes to CFC-12 and other ozone-depleting substances. To date, the EPA has reviewed and approved nine separate refrigerant substitutes for use in motor vehicle air conditioning. The EPA has also acted to prohibit the general use of two flammable refrigerants — OZ 12 and HC-12a — because of public safety concerns.

Overall Effect on Small Businesses

The proposed rule prohibits the sale and use of flammable, hydrocarbon-based refrigerants in mobile air conditioning systems. These refrigerant products present an unreasonable public safety risk to motor vehicle owners and auto service technicians.

The Department has identified less than a handful of businesses in Wisconsin with product inventories which were engaged in distributing or marketing HC-12a. This rule will prohibit these and any future businesses from selling this or any similar product. Any potential costs borne by businesses with banned inventory can be mitigated to the extent that these businesses seek refunds from distributors or the manufacturer under the refund remedies provided under s. 100.37 (7), Stats.

Other refrigerant substitutes approved for use in mobile air conditioning systems are also available in the marketplace, thus eliminating the need for flammable refrigerants as a product in the after-market automotive parts and servicing industry.

Products affected by the proposed rule are uncommon in the state, and do not constitute the principal product of any Wisconsin business. Refrigerants are also regulated under other state laws. The Department's mobile air conditioning rule under ch. ATCP 136, Wis. Adm. Code, currently prohibits the sale of refrigerant in containers holding less than 15 pounds. In addition, refrigerant suppliers are generally restricted to selling refrigerant to registered businesses in the state.

The interest of public safety far outweighs any potential cost to small businesses as a result of the proposed rule. The proposed rule also helps to protect investments made by small businesses in approved recovery and recycling equipment and refrigerant supplies by eliminating a potential source of refrigerant contamination. This contamination from intentional or inadvertent use of flammable refrigerants can lead to costly refrigerant disposal costs, the loss of warranty coverage on recovery/recycling equipment and motor vehicle parts, and defective motor vehicle repairs and follow-up servicing costs.

Based on the information above, the proposed rule is not expected to have a significant adverse impact on small businesses.

Notice of Hearings

Corrections

Notice is hereby given that pursuant to ss. 301.03 (2) and 227.11 (2) (a), Stats., that the Department of Corrections proposes s. DOC 309.05 (2) (d), relating to the stamping of outgoing inmate mail.

Hearing Information

January 10, 1997 Friday 10:00 a.m.	Secretary's Conference Room Department of Corrections 149 East Wilson St., 3rd Floor MADISON, WI
January 13, 1997 Monday 10:00 a.m.	Room 223 State Office Building 141 Northwest Barstow St. WAUKESHA, WI
January 14, 1997 Tuesday 1:00 p.m.	Chippewa Valley Room State Office Bldg., 2nd Floor 718 West Clairemont EAU CLAIRE, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

Wisconsin state prison inmates' outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other business.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the Department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals rules in an unpublished decision that IMP #35 had to be promulgated as an administrative rule. In order to protect the public welfare of the state, it is necessary for the Department to adopt a rule to ensure that victims of crime are not

further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

Text of Rule

SECTION 1. DOC 309.05 (2) (d) is created to read:

DOC 309.05 (2) (d) All outgoing inmate mail will be stamped. The stamp will identify the mail as coming from the Wisconsin state prison system.

Initial Regulatory Flexibility Analysis

This rule is not expected to have an effect on small businesses.

Fiscal Estimate

Communication from inmates to their families, friends, government officials, courts and other people has long been encouraged by the Department. This provision requires that each piece of outgoing mail be stamped, "This letter has been mailed from the Wisconsin Prison System."

The act of stamping each piece of mail has a negligible effect on the workload of the mailroom, and has no fiscal impact on the Department.

Contact Person

Deborah Rychlowski
Telephone (608) 266-8426
Office of Legal Counsel
149 E. Wilson Street
P. O. Box 7925
Madison, WI 53707-7925

If you are hearing- or visually-impaired, do not speak English, or have circumstances which might make communication at the hearing 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 **January 15, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Commissioner of Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and according to the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting ss. Ins 8.42 to 8.67, Wis. Adm. Code, relating to small employer health insurance rule changes required by passage of 1995 Wis. Act 289 ("W-2" legislation). (a complete listing of all sections affected is included in the attached proposed order).

Hearing Information

January 16, 1997
Thursday
10:00 a.m., or as
soon thereafter as the
matter may be reached

Room 23, OCI
121 E. Wilson St.
Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI by **5:00 p.m. on January 16, 1997**. Written comments should be addressed to: Alice Shuman, OCI, P.O. Box 7873, Madison WI 53707

This hearing site is fully accessible to people with disabilities. Notice is given that reasonable accommodations, including the

provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Alice Shuman at OCI, P.O. Box 7873, Madison WI 53707 with specific information on your request at least 10 days before the hearing.

Copies of the Rule & Fiscal Estimate

Copies may be obtained from:

Meg Gunderson, Services Section, OCI
P.O. Box 7873, 121 East Wilson Street
Madison Wisconsin 53707-7873
Phone: (608) 266-0110

Analysis prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42 and 628.34 (12)

Statutes interpreted: ss. 600.01, 628.34 (12), 632.745, 632.76, 632.747, 632.749, 632.896 and 635.11

1995 Wis. Act 289 ("W-2" legislation effective May 1, 1997) extends protections previously afforded small employers to the self-employed and employers of 26 or more employees. These protections include portability and limits on preexisting condition exclusions (s. 632.745, Stats.), guaranteed acceptance (s. 632.747, Stats.), contract termination and renewability (ss. 632.749 and 635.11, Stats.)

This rule makes changes to existing Insurance Commissioner's administrative rules to implement the provisions of 1995 Wis. Act 289. In general, this rule extends the protections of portability, limitations on preexisting condition exclusions, guaranteed acceptance and renewability to the self-employed, and to employers of 26 or more employees as required by Wis. Act 289. Statutory references have been corrected in this rule as well to reflect the statutes repealed and revised by Wis. Act 289.

Fiscal Estimate

The guaranteed acceptance, preexisting conditions and portability, contract termination and renewability provisions of 1995 Wis. Act 289 ("W-2" legislation) require regulatory oversight and rule changes by the Office of the Commissioner of Insurance. The additional regulatory functions do not require additional resources.

Initial Regulatory Flexibility Analysis

This rule will have no effect on a substantial number of small businesses.

Notice of Hearing

Commissioner of Insurance

The Commissioner of Insurance, pursuant to the authority granted under s. 601.41 (3), Stats., and according to the procedures under s. 227.18, Stats., will hold a public hearing at the time and place indicated below or as soon thereafter as the matter may be reached, to consider the creation of s. Ins 2.80, Wis. Adm. Code, relating to valuation of reserve liabilities for life insurance.

Hearing Information

January 17, 1997
Friday
2:00 p.m.

Room 23
121 East Wilson St.
MADISON, WI

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

This rule will not have an effect on small businesses.

Contact Person

A copy of the text of the proposed rule and fiscal estimate may be obtained from:

Meg Gunderson, Services Section
Telephone (608) 266-0110
Office of the Commissioner of Insurance
121 East Wilson Street
P. O. Box 7873
Madison, WI 53707-7873

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41, 623.02, 623.04 and 623.06

Statutes interpreted: ss. 601.41, 623.02, 623.04 and 623.06

This proposed rule creates guidelines for insurers on the valuation of reserve liabilities for life insurance policies issued with nonlevel premiums or benefits, and 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. With the exception of renumbering and combining some paragraphs, this rule is identical to the National Association of Insurance Commissioners ("NAIC") Valuation Of Life Insurance Policies Model Regulation or XXX adopted March 12, 1995.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.085, 29.174(3), 29.33(1) and 227.11(2)(a), Stats., interpreting ss. 29.085, 29.174(2)(a) and 29.33(1), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 20.02(1)(c), 20.03(1)(k)2. and 25.06(2)(b)1., Wis. Adm. Code, relating to sport and commercial fishing for yellow perch in Lake Michigan. The proposed rule closes the annual sport fishing season for yellow perch in Green Bay and its tributaries from March 16 through May 19. The total allowable annual commercial harvest of yellow perch from zone 1 of Green Bay is decreased from 300,000 pounds to 200,000 pounds.

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- Types of small businesses affected: Commercial fishers in Green Bay
- Description of reporting and bookkeeping procedures required: No new procedures
- Description of professional skills required: No new skills

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

Hearing Information

January 21, 1997
Tuesday
at 4:00 p.m.

Room 604
Green Bay City Hall
100 N. Jefferson St.
Green Bay

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **January 31, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FM-3-97] and fiscal estimate may be obtained from Mr. Horns.

Fiscal Estimate

Fiscal Impact

These rule changes will have no fiscal impact on either state or local units of governments. The following assumptions were used in arriving at the fiscal estimate for these rule changes:

1. The proposed rules do not affect relations with local units of government or other state agencies.
2. No additional liability or revenue fluctuations are envisioned.
3. No additional staffing is required by state or local units of government.
4. State DNR law enforcement officers will enforce the rules in their normal course of duty.
5. No fee collection is involved in these rule changes.

Notice of Hearing

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.415(6m)(e) and 227.11(2)(a), Stats., interpreting s. 29.415(6m)(e), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 27.07, Wis. Adm. Code, relating to notice of receipt of an application to incidentally take an endangered or threatened species. 1995 Wis. Act 296 established authority in the Department to consider applications for and to issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. The law requires the Department to establish a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. It further provides that the Department then give notification of proposed takings to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the Department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Initial Regulatory Flexibility Analysis

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

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental

review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice is hereby further given that pursuant to ss. 29.415(6m)(e), 227.11(2)(a), Stats., and Section 12m, 1995 Wis. Act. 296, interpreting s. 29.415(6m)(e), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. ER-55-96(E) relating to notice of receipt of an application to incidentally take an endangered or threatened species. This emergency order took effect on November 18, 1996. The emergency order implemented a procedure for the Department to follow in processing applications for incidental take.

Hearing Information

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

January 14, 1997
Tuesday
at 1:00 p.m.

Room 511, GEF #2
101 South Webster Street
Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carol Turner at (608) 266-1959 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Randle Jurewicz, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 no later than **January 17, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [ER-54-96] and fiscal estimate may be obtained from Mr. Jurewicz.

Fiscal Estimate

State Fiscal Impacts

The only anticipated impact is mailing costs, which are estimated at \$100 annually.

Local Fiscal Impacts

No additional expenses are anticipated from local units of government.

Notice of Hearings

Natural Resources

(Environmental Protection-General Chs. NR 100--)

Notice is hereby given that pursuant to ss. 281.65 and 227.11(2)(a), Stats., interpreting s. 281.65(8), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 120.14(7)(b) and 120.18(1)(b)4., Wis. Adm. Code, relating to the nonpoint source pollution abatement program. The proposed revisions pertain only to the cost-sharing of the high residue management systems best management practice. The changes will allow this practice to be cost-shared at a level representing 50% of the true cost of the practice to the landowner or land operator.

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

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental

review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

January 13, 1997
Monday
at 10:30 a.m.

Room 400X, GEF #1
201 E. Washington Avenue
Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Carnachan at (608) 264-6045 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Robert Carnachan, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than **January 21, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WI-8-97] and fiscal estimate may be obtained from Mr. Carnachan.

Fiscal Estimate

Use of high residue management will likely increase as a result of increasing the cost share rate allowed for this practice up to the 50% rate allowed under statute. It is expected that each year 80 cost share agreements will be signed with an average of 75 acres per agreement at a state cost of \$112,000. This change will allow this best management practice to be cost shared up to 6 times in any one 10 year period as opposed to the 3 year limit now in the rule. While increased costs will be associated with adoption of this practice, use of high residue management is the most cost effective means of reducing phosphorus and sediment from agricultural crop fields. Use of this BMP will ultimately allow pollutant load reductions to be achieved at lower costs.

Notice of Hearings

Natural Resources (Environmental Protection—Remediation and Investigation, Chs. NR 700--)

Notice is hereby given that pursuant to ss. 144.442, 144.76 and 144.77, Stats., interpreting s. 144.76, Stats., the Department of Natural Resources will hold public hearings on the removal of a sunset provision in s. NR 728.11, Wis. Adm. Code, relating to procedures for recording affidavits on property deeds where contamination exists. The sunset provision, in s. NR 728.11(4), provides that the rules "will sunset March 1, 1997." The Department proposes to delete this provision and make the rule permanent. NR 728.11 establishes procedures the Department must follow prior to recording an affidavit at the county register of deeds office for a property where there is confirmed contamination and the property owner and/or responsible party has not conducted the necessary environmental cleanup work. The affidavit will give notice of the existence of the contamination to potential purchasers. The recording of an affidavit would not prevent the property from being sold. If in the future the necessary steps to investigate and remediate the contamination were taken, a second affidavit would be filed to supersede the first.

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

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

Hearing Information

January 21, 1997
Tuesday
at 9:00 a.m.

Room 611A, GEF #2
101 South Webster St.
Madison

January 23, 1997
Thursday
at 1:00 p.m.

Room 149
Marathon County Courthouse
500 Forest St.
Wausau

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Pat McCutcheon at (608) 275-3241 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Pat McCutcheon, ERF Unit Leader, Department of Natural Resources, 3911 Fish Hatchery Road, Fitchburg, WI 53711 no later than **January 31, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [SW-57-96] and fiscal estimate may be obtained from Mr. McCutcheon.

Fiscal Estimate

Chapters NR 700 through 736, adopted in April 1994, establish minimum standards which must be met when conducting investigations and remediations of environmental contamination. Chapter NR 728 describes the tools available to the Department to enforce chs. NR 700 to 726. This rule, section NR 728.11, establishes procedures that the Department must follow before the Department records as affidavit for a property that is contaminated. The recording of an affidavit would be done in lieu of other enforcement actions, such as issuance of an administrative order or a referral to the attorney general's office.

There are approximately 10,500 active LUST made spill sites across the state that require some level of remedial effort. Of those, just over 2,000 sites have been transferred to the Department of Commerce for their oversight. Given current staffing constraints, only minimal staff involvement and oversight are provided to responsible parties (RPs) and/or site owners. Most RPs are left to proceed on their own, relying solely on their consultants for guidance. A percentage of the remaining sites, approximately 20% or 1700 sites statewide, have not made progress towards site cleanup, in some cases due to an inability to finance the work. Traditional Department procedures would require staff to initiate formal enforcement actions to gain compliance. Developing and following through on these actions takes considerable staff time and resources, often only to confirm that resources are not available for the RP. This rule offers the Department another enforcement tool to use in gaining compliance with existing rules and regulations, as well as providing an appropriate response for RPs at sites where there is not other alternative to proceed, due to a true lack of resources.

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.

Commerce (CR 96-63):

An order affecting s. Comm 5.99 and ss. ILHR 51.21, 51.23 and ILHR Table 2.64-1 and chs. ILHR 82 and 84, relating to plumbing plans and adopted standards.

Part effective 01-01-97.

Part effective 03-01-97.

Commerce (CR 96-144):

An order amending the effective date clause of [Clearinghouse Rule 94-116](#) and affecting ss. ILHR 2.31, 59.22 and 82.40 and chs. ILHR 50, 51, 52, 54, 55, 56, 57, 58, 60, 62, 63, 64, 66 and 72, relating to energy conservation and ventilation.

Effective 04-01-97.

Health & Family Services (CR 92-55):

An order affecting chs. HSS 46 and 55, relating to group day care centers.

Effective 08-01-97.

Health & Family Services (CR 96-124):

An order affecting ss. HSS 136.03 and 136.04, relating to embalming standards.

Effective 02-01-97.

Health & Family Services (CR 96-154):

An order affecting s. HSS 105.36 and ch. HSS 107, relating to elimination of coverage under the Medical Assistance (MA) program for services that are medically unnecessary, including services and items that enhance fertility in males or females, and limitation of coverage of certain other services to medically necessary situations.

Effective 02-01-97.

Psychology Examining Board (CR 96-123):

An order affecting ss. Psy 2.01, 2.015, 2.05 and 3.01, relating to transcripts of undergraduate training, passing scores on examinations, and abandonment of applications.

Effective 02-01-97.

Transportation (CR 96-146):

An order affecting ss. Trans 325.01, 325.02, 326.01 and 328.03, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

Effective 02-01-97.

Transportation (CR 96-155):

An order amending s. Trans 269.11 (2a), relating to transportation of garbage or refuse permits.

Effective 02-01-97.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **December 31, 1996 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Agriculture, Trade & Consumer Protection (CR 96-71):

An order affecting chs. ATCP 10 to 12, relating to animal health, including farm-raised deer and poultry disease reporting requirements.

Effective 01-01-97.

Commerce (CR 96-80):

An order affecting chs. ILHR 63 and 64, relating to ventilation and energy conservation.

Effective 01-01-97.

Commerce (CR 96-89):

An order amending ss. ILHR 14.31 (3) (c) 1., ILHR 14.36 and ILHR 14.38, relating to the inspection of fire extinguishing systems.

Effective 01-01-97.

Employe Trust Funds (CR 96-125):

An order repealing and recreating s. ETF 10.75, relating to signatures on Wisconsin Retirement System (WRS) documents by an agent holding the person's power of attorney.

Effective 01-01-97.

Employe Trust Funds (CR 96-126):

An order creating ss. ETF 20.04 (4), 20.07 and 60.53, relating to optional forms of annuity and to automatic distributions of Wisconsin Retirement System (WRS) benefits to participants and alternate payees who have attained age 69.5 and to beneficiaries of deceased annuitants.

Effective 01-01-97.

Employe Trust Funds (CR 96-137):

An order affecting ss. ETF 10.01, 20.14, 20.15 and 20.16, relating to purchases of service under the Wisconsin Retirement System, including forfeited, qualifying and other governmental service.

Effective 01-01-97.

Health & Family Services (CR 96-103):

An order affecting ss. HSS 124.27, 124.29, 124.30, 124.31, 132.812, 132.815 and 134.815, relating to review of plans for constructing or remodeling a hospital, nursing home or facility for the developmentally disabled (FDD), including review for compliance with the State Building Code, and fees for plan review.

Effective 01-01-97.

Insurance, Commissioner of (CR 96-37):

An order affecting s. Ins 6.20, relating to investments by town mutual insurers.

Effective 01-01-97.

Insurance, Commissioner of (CR 96-94):

An order affecting chs. Ins 14 and 51, relating to financial standards for insurers.

Effective 01-01-97.

Natural Resources (CR 95-192):

An order affecting the chs. NR 400 series, relating to revision of the definition of volatile organic compound (VOC), and to updating, clarification and corrective changes throughout the chs. NR 400 series.

Part effective 01-01-97.

Natural Resources (CR 96-23):

An order affecting ss. NR 20.015, 20.03 and 21.04, relating to sport fishing.

Part effective 03-01-97.

Part effective 04-01-97.

Natural Resources (CR 96-72):

An order creating s. NR 20.04 (5), relating to sport fishing in urban waters.

Effective 01-01-97.

Natural Resources (CR 96-97):

An order repealing and recreating s. NR 20.038, relating to special size and bag limits for sport fishing on the Lac du Flambeau reservation.

Effective 01-01-97.

Natural Resources (CR 96-112):

An order affecting ss. NR 20.03, 20.036, 20.13 and 20.18, relating to sturgeon spearing.

Effective 02-01-97.

Natural Resources (CR 96-114):

An order amending ss. NR 20.02 (1) (c) and 25.05 (1) (e), relating to sport and commercial fishing for yellow perch in Lake Michigan.

Effective 01-01-97.

Natural Resources (CR 96-116):

An order amending s. NR 20.08 (10), relating to fishing tournament permitting.

Effective 01-01-97.

Revenue (CR 96-83):

An order repealing and recreating s. Tax 11.95, relating to the retailer's discount.

Effective 01-01-97.

Revenue (CR 96-91):

An order affecting ss. Tax 11.28, 11.46, 11.51 and 11.87, relating to Wisconsin sales and use taxes.

Effective 01-01-97.

Securities, Commissioner of (CR 96-143):

An order affecting chs. SEC 2, 3, 4, 5, 32, 33, 35 and 37 and ss. SEC 7.06, 9.01, 31.01 and 34.01, relating to:

- 1) Securities registration exemptions;
- 2) Securities registration procedures, substantive registration standards and disclosure requirements;
- 3) Securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures;
- 4) Franchise definitions;
- 5) Franchise registration exemptions;
- 6) Franchise registration procedures, substantive registration and disclosure requirements;
- 7) Franchise registration or exemption revocations and fraudulent practices;
- 8) Franchise fee-related provisions; and
- 9) Franchise forms.

Effective 01-01-97.

Transportation (CR 96-69):

An order affecting ch. Trans 128, relating to a traffic violation and registration program.

Effective 01-01-97.

Workforce Development (CR 95-70):

An order creating ch. DWD 75 (HSS 275), relating to appeal procedures for persons applying for or receiving vocational rehabilitation services.

Effective 01-01-97.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection (CR 96-71)

Chs. ATPC 10 – 12 – Animal diseases and animal movements.

Summary of Final Regulatory Flexibility Analysis:

General Overview

This proposed rule establishes the policies and procedures whereby the Department of Agriculture, Trade and Consumer Protection will implement 1995 Wisconsin Act 79 which transferred the primary authority for regulating “farm-raised deer” from the Department of Natural Resources to the Department of Agriculture, Trade and Consumer Protection. The rule incorporates recently adopted USDA regulations related to branding and shipping to slaughter cervidae and bovine animals defined as tuberculosis suspects or reactors. The rule also includes provisions responding to the recently reached agreement with USDA/APHIS and its Russian counterparts regarding the export of poultry meat to the Russian Federation.

This proposed rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in farming specific genera of the family Cervidae defined as “farm-raised deer”, cervidae in general and bovine animals, the practice of veterinary medicine and livestock trucking, livestock dealing and operating a livestock market.

Farm-Raised Deer

The statute requires that any person who keeps farm-raised deer must be registered with the department. This proposed rule defines keeping farm-raised deer as owning, renting, leasing or serving as the custodian of farm-raised deer. For those keeping farm-raised deer, the rule proposes an annual registration fee of \$50 for persons keeping 15 or fewer farm-raised deer and \$100 for persons keeping more than 15 farm-raised deer. If the department has certified the herd as an accredited tuberculosis-free herd, the keeper is required to register, but the fee is waived. After December 31, 1998, no fee will be charged to any keeper, but all persons becoming keepers of farm-raised deer must register. In registering, keepers of farm-raised deer will need to complete a form providing owner and custodian name and address and herd information.

The rule provides options to keepers of farm-raised deer who have multiple locations. They may register as one entity and pay one fee or they may register each location separately paying multiple fees. Registering as one entity will allow free movement of cervidae between the locations, but the department will view the multiple locations as one premise for disease traceback and control purposes.

The rule requires keepers of farm-raised deer to maintain records for two years relating to all farm-raised deer purchased or received, sold or delivered, including the names and addresses of the parties involved, the official identification of the farm-raised deer, and the date and location of each transaction.

About 150 farms scattered across Wisconsin will be affected by the farm-raised deer requirements in this rule. These farms are presently being licensed by the Department of Natural Resources, by completing an annual license application form, paying an annual \$100 fee and submitting quarterly reports on sales, purchases and transfers. Under the Department of Agriculture, Trade and Consumer Protection, registration fees for farms with fewer than 15 deer will decrease, from \$100 to \$50 annually. The effect on small business in the future will be a further reduction in costs as the annual registration requirement and fee both sunset. While this rule requires the keeper of farm-raised deer to maintain records of transactions, this requirement is less burdensome to the keepers than the DNR requirement of quarterly reporting.

Cervidae

The statute requires owners of animals subject to bovine tuberculosis testing to provide animal handling facilities to ensure the safety of the animal being tested and the persons performing the testing. This proposed rule requires the owner or custodian of cervidae to restrain the cervidae for tuberculosis testing by: 1) providing a cervidae handling facility which meets the minimum standards as outlined in the rule; 2) tranquilizing sufficiently to ensure safe testing of the animal and to protect the person conducting the test or; 3) utilizing a private isolation and testing facility, where the testing can be conducted, including transporting the animal to the facility. The expense of any one of these options is to be borne by the small business. The department has provided alternatives to constructing and maintaining a cervidae handling facility because the alternatives accomplish the same goal and provide cost and management alternatives for small businesses. The owner or custodian will be able to minimize costs by choosing the least costly alternative.

This rule creates a requirement for owners or custodians of cervidae to obtain a department permit in order to move a cervid to an isolation and testing facility. The requirement to obtain a department permit prior to moving an untested cervid to an isolation and testing facility may add minimal costs for the small business person choosing this option, but presumably the business person will consider those costs when deciding which restraint option to choose. The disease control concerns outweigh the minimal cost associated with this requirement.

This rule also imposes requirements for the handling of tuberculosis suspect and reactor cervid consistent with USDA regulations relating to branding and shipping to slaughter. The changes related to handling suspect and reactor cervid will not add costs for the business person because the requirements are already in place at the federal level and this is consistent with the federal requirement.

Bovine Animals

The statute includes the requirement that the owner of animals subject to bovine tuberculosis testing provide animal handling facilities to ensure the safety of the animal being tested and of the persons performing the testing. This proposed rule includes this requirement for bovine animals. Since the statute requires it, the rule does not impose additional costs on the business.

Also, this rule imposes requirements for the handling of tuberculosis suspect and reactor bovine animals consistent with USDA regulations relating to branding and shipping to slaughter. Since these requirements are already in place at the federal level, this rule provision does not add costs for the business person.

Veterinarians

This rule requires veterinarians who prepare interstate health certificates or certificates of veterinary inspection for farm-raised deer to record on the certificate the owner's Department of Agriculture, Trade and Consumer Protection's farm-raised deer registration number. This will not result in significant time or expense, since veterinarians need only record the registration number supplied to them by the deer owner.

To better define a veterinarian's responsibility in officially identifying cervidae tested for disease purposes or vaccinated, identified or tested for purposes of health certificate documentation, provisions related to officially eartagging are included in the rule. These provisions correlate with existing provisions for bovine animals. These provisions do not create new responsibilities, but clarify responsibilities which are already in effect.

Also, the rule requires veterinarians that diagnose or find evidence of five poultry diseases to report to the department the diagnosis or finding. These diseases are being added to an already existing list of diseases that are reportable to the department. Therefore, this will not result in any notable time or expense since veterinarians already have reporting procedures in place.

Livestock Truckers, Livestock Dealers and Livestock Markets

The statute includes farm-raised deer in the definition of livestock as it pertains to livestock truckers, dealers and markets as of June 1, 1996. This proposed rule imposes requirements for the identification and associated record keeping of farm-raised deer handled by livestock truckers, dealers and markets which are consistent with records currently required for other species of livestock. For existing livestock dealers, truckers and market operators, the costs of complying will be insignificant. There may be a few business people who have previously not been required to be licensed as a livestock dealer, trucker or market operator who will now be required to license. Costs that will be incurred by those people are a result of the statutory change and not as a result of this rule.

Summary of Comments from Legislative Committees:

The rule was referred to the Senate Committee on Agriculture, Transportation, Utilities and Financial Institutions on October 2, 1996, and to the Assembly Committee on Agriculture on October 2, 1996. The department received no comments for request for hearing from either committee.

2. Department of Commerce (CR 96-89)

S. ILHR 14.31 (3) (c) 1 – Inspection of fire extinguishing systems.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not create any new requirements for small businesses. The proposed rules consist of a revision that will be a benefit to small businesses. The rule revision will allow more persons, if properly trained, to perform the inspection and testing of fire extinguishing systems for food preparation equipment. All of the small businesses who presented hearing comments were in favor of the proposed rules.

Summary of Comments:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Labor. No comments were received.

3. Employe Trust Funds (CR 96-125)

S. ETF 10.75 – Signatures on Wisconsin retirement system documents by an agent holding the person's power of attorney.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses.

Summary of Comments:

No comments were reported.

4. Employe Trust Funds (CR 96-126)

SS. ETF 20.07 and 60.53 – Automatic distributions of Wisconsin retirement system benefits to participants and alternate payees who have attained age 69.5 and to beneficiaries of deceased animals.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses.

Summary of Comments:

No comments were reported.

5. Employe Trust Funds (CR 96-137)

Ch. ETF 20 – Purchases of service under the Wisconsin retirement system, including forfeited, qualifying and other governmental service.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses.

Summary of Comments:

No comments were reported.

6. Health & Family Services (CR 96-103)

Chs. HSS 124, 132 and 134 – Review of plans for constructing or remodeling a hospital, nursing home or facility for the developmentally disabled (FDD), including review for compliance with the State Building Code, and fees for plan review.

Summary of Final Regulatory Flexibility Analysis:

These rules changes apply to hospitals, nursing homes and facilities for the developmentally disabled that proposed to undertake new construction or remodeling. They provide for the Department to review facility construction and remodeling plans for conformance to the State Building Code. Until October 1, 1995, review of those plans for that purpose was done by a different state agency. About 185 of the 466 nursing homes and facilities for the developmentally disabled in the state are small businesses as defined in s. 227.114 (1) (a), Stats. No hospital in Wisconsin is a small business.

The changes will not add to facility reporting or recording-keeping requirements nor will they require new professional skills to comply with them. The Department is simply incorporating in its rules parts of the State Building Code, and is revising its fees for consolidated plan review to be 95% of the sum of the fees previously charged by the Department for review of plans for conformance to the Life Safety Code and other state agency for review of plans for conformance to the State Building Code.

No comments on the proposed rule changes were received at the Department's public hearing on them.

Summary of Comments of Legislative Standing Committees:

No comments were received.

7. Commissioner of Insurance (CR 96-37)

S. Ins 6.20 – Investments by town mutual insurers.

Summary of Final Regulatory Flexibility Analysis:

1. None of the methods specified under s. 227.114 (2), Stats., for reducing the rule's impact on small business were included because all must be treated equally and thus it is not possible to have different rules for one segment of the population.

2. The issues raised by small business during the hearing are identified in the listing of modifications in the response to the Clearinghouse Report and in the letters included in the rule hearing record.

3. The proposed rule does not impose any additional reporting requirements on small businesses.

4. The proposed rule generally broadens the authority of town mutuals to invest and therefore is not expected to impose additional costs or require additional measures.

5. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.

6. No methods of specified under s. 227.114 (2), Stats., are included in the proposed rule because the rule relates to financial solvency of insurers.

Summary of Comments:

The legislative standing committees had no comments on this rule.

8. Commissioner of Insurance (CR 96-94)

S. Ins 14.02 and ch. Ins 51 – Financial standards for insurers.

Summary of Final Regulatory Flexibility Analysis:

1. Several provisions were included that exempt or permit the exemption of many insurers which qualify as small businesses from the requirements of the rule. None of the other methods specified under s. 227.114 (2), Stats., for reducing the rule's impact on small businesses were included because all must be treated equally and thus it is not possible to have different rules for one segment of the population.

2. Two small mutual insurers and an association of town mutual insurers suggested broadening the ability of the commissioner to exempt small property and casualty insurers from the requirements of the rule. That change is included in the final rule. No other issues were raised by small businesses during the hearing on the proposed rule.

3. The proposed rule does not impose any additional reporting costs on small businesses. To the extent the rule applies to a small business the reporting requirements are simply additions to existing requirements.

4. The proposed rule does not require any additional measures or investments by small businesses.

5. There will be no additional costs to the agency to implement the methods specified under s. 227.114 (2), Stats., which are included in the proposed rule.

6. The rule permits the commissioner to approve exemptions for small business-insurers.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

9. Natural Resources (CR 96-23)

Ch. NR 20 – Sport fishing.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules affect individual anglers. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources and Urban Affairs. On July 10, 1996, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. The Committee asked the Department to consider modifications to consider different treatment of the early trout season in the northern and southern parts of the state.

At its July 24, 1996 meeting, the Natural Resources Board declined to make any modifications to the rule, but did commit to evaluate the statewide early season after one year and make adjustments if needed.

On August 7, 1996 the Senate Committee on Environmental Resources and Urban Affairs held a public hearing. The Committee requested the Department to modify the rule by identifying those streams and those areas of the state deemed appropriate by Department fish managers for inclusion in an early trout fishing season, rather than inclusion of the entire state in such a season. The Natural Resources Board declined to modify the rule, emphasizing its direction to the Department to study the implications of the early trout season during the 1997 season.

The Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources and Urban Affairs took no further action on the rule.

10. Natural Resources (CR 96-72)

S. NR 20.04 – Sport fishing in urban waters.

Summary of Final Regulatory Flexibility Analysis:

This rule will not directly affect small businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Committee and the Senate Environmental Resources and Urban Affairs Committee. There were no comments.

11. Natural Resources (CR 96-97)

S. NR 20.038 – Special size and bag limits for the Lac du Flambeau reservation.

Summary of Final Regulatory Flexibility Analysis:

This rule will not directly affect small businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources committee and the Senate Environmental Resources and Urban Affairs Committee. There were no comments.

12. Natural Resources (CR 96-112)

Ch. NR 20 – Sturgeon spearing in Lake Winnebago.

Summary of Final Regulatory Flexibility Analysis:

The rule will not directly affect small businesses; therefore no analysis is required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environmental Resources and Urban Affairs Committee. There were no comments.

13. Natural Resources (CR 96-114)

Chs. NR 20 and 25 – Sport and commercial fishing for yellow perch in Lake Michigan.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule will directly affect licensed commercial fishers who fish for yellow perch in Lake Michigan. Indirect effects may be felt by other small businesses, including commercial fish wholesalers, restaurants, sport fishing bait and tackle shops and others connected with sport angling and commercial fishing around Lake Michigan.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environmental Resources and Urban Affairs Committee. There were no comments.

14. Natural Resources (CR 96-116)

S. NR 20.08 (10) – Fishing tournament permitting.

Summary of Final Regulatory Flexibility Analysis:

The rule will not directly affect small businesses; therefore no analysis is required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Environmental Resources and Urban Affairs Committee. There were no comments.

15. Revenue (CR 96-83)

S. Tax 11.95 – Retailer's discount.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

16. Revenue (CR 96-91)

Ch. Tax 11 – Wisconsin sales and use taxes.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

17. Securities (CR 96-143)

SEC Code – Securities registration exemptions, securities registration procedures, substantive registration standards and disclosure requirements, securities, broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, franchise definitions, franchise registration exemptions, franchise registration procedures, substantive registration and disclosure requirements, franchise registration or exemption revocations and fraudulent practices, franchise fee-related provisions and franchise forms.

Summary of Final Regulatory Flexibility Analysis:

No final regulatory flexibility analysis is included on the bases that the Division of Securities has determined, after complying with s. 227.016 (1) to (5), Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

18. Transportation (CR 96-69)

Ch. Trans 128 – Traffic violation and registration program.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

19. Workforce Development (CR 95-70)

Ch. HSS 275 – Appeal procedures for persons applying for a receiving vocational rehabilitation services.

Summary of Final Regulatory Flexibility Analysis:

Implementation of this rule has no impact on business or local units of government.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 300. Relating to the Creation of the Governor's Blue Ribbon Commission on Campaign Finance Reform.

Executive Order 301. Relating to the Creation of the Wisconsin International Trade Council.

PUBLIC NOTICE

Public Notice

Financial Institutions

(Division of Banking)

(Division of Savings Institutions)

(Office of Credit Unions)

Notice of Required Interest Rate on Residential Mortgage Loan Escrow Accounts

Under s. 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance or both shall pay interest on the outstanding principal balance of the escrow.

Section 138.052 (5) (am) 2, Stats., directs the Division of Savings Institutions in the Department of Financial Institutions, with the cooperation of the Office of Credit Unions and the Division of Banking, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Division of Savings Institutions has calculated the interest rate required to be paid on escrow accounts under s. 138.052 (5), Stats., to be 2.83% per year. This interest rate shall remain in effect until the first day of the first month following publication of a new interest rate in the *Wisconsin Administrative Register*.

The interest rate of 2.83% per year applies to escrow accounts required for residential mortgage loans originated on or after **January 1, 1997** and to escrow accounts required for residential mortgage loans originated after January 31, 1983 and before January 1, 1997 which do not specify an interest rate in the loan agreement.

Contact Information

Thomas M. Boykoff, Administrator
Telephone: (608) 261-4338
Division of Savings Institutions
Department of Financial Institutions
101 East Wilson Street, 5th Floor
MADISON, WI 53703

NOTICES OF NONACQUIESCENCE

NOTICE OF NONACQUIESCENCE

THADDEUS J. HARTLAUB, D/B/A :
WORLDWIDE REFINISHING SYSTEMS :
Petitioner, :
v. :
WISCONSIN DEPARTMENT OF REVENUE, :
Respondent, :
Docket No. 95-S-1511 :

Pursuant to sec. 73.01 (4) (e) 2, Stats., the respondent hereby gives notice that, although it is not appealing the Decision and Order of the Tax Appeals Commission in its favor rendered in the above-captioned matter dated November 6, 1996, which Decision and Order were unchanged by the Order denying petitioner's petition for rehearing dated November 21, 1996, it has adopted a position of nonacquiescence in regard to the second-to-last paragraph of the Opinion. The effect of this action is that the Commission's construction of section 77.52 (2) (a) 10., Stats., as providing that the capital improvement exception applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of property deemed to have retained its character as tangible personal property is not binding upon or required to be followed by the respondent in other cases.

NOTICE OF NONACQUIESCENCE

In the matter of the contribution liability, or status, under ch. 108, Wis. Stats., of:

JAY WARECKI, Transferor
The Fish Connection
228 Green ST
Wrightstown, WI 54180-1030

Account No. 285696-8

Hearing No. S9500351GB

The Fish Connection, Transferee
228 Green ST
Wrightstown, WI 54180-1030

Account No. 520284-7

Please take notice that the Department of Workforce Development, (formerly the Department of Industry, Labor and Human Relations), pursuant to s. 108.10 (7) (b), Stats., hereby nonacquiesces in those parts of the decision dated November 27, 1995, which hold that the mandatory successorship in this case under s. 108.16 (8) (e), Stats., was a partial successorship and those parts of the decision which set forth the methodology for calculating the percentage of partial successorship. The Department acquiesces in and agrees with that part of the decision which holds that the transfer from Jay Warecki to The Fish Connection resulted in a mandatory successorship under s. 108.16 (8) (e), Stats.

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