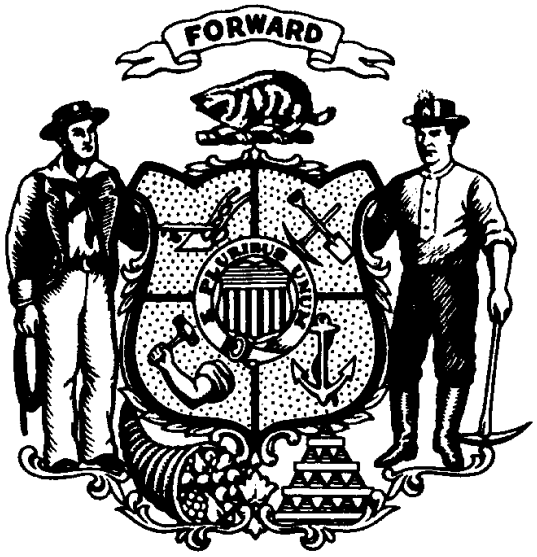
WISCONSIN ADMINISTRATIVE REGISTER

No. 495



Publication Date: March 14, 1997
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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
Extension Through: May 6, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

Rules adopted repealing **ch. DOD 13** and creating **ch. Comm 113**, relating to the annual allocation of volume cap.

Finding of Emergency

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

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately $260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Hearing Date: February 13, 1997

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
Extension Through: May 10, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Family Services
(Management, Policy and Budget, Chs. HSS 1––)

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court–ordered substitute care.

Exemption From Finding of Emergency

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., 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

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court–ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court–ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court–ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court–ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

Publication Date: January 22, 1997
Effective Date: January 22, 1997
Expiration Date: June 21, 1997
Hearing Date: April 8, 1997
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services
(Health, Chs. HSS 110––)

1. Rules adopted creating **ch. HFS 125**, relating to do–not–resuscitate bracelets to alert emergency health care personnel.

Finding of Emergency

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

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do–not–resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do–not–resuscitate order in effect if the patient has on his or her wrist a do–not–resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do–not–resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., created by Wis. Act 200, permits the Department to establish procedures by rule for emergency health care personnel to use in following do–not–resuscitate orders, and s. 154.27, Stats., as created by Wis. Act 200, requires the Department to establish by rule a uniform standard for the size, color and design of do–not–resuscitate bracelets.

These rules are being published by emergency order because while most Wis. Act 200 provisions have taken effect and do–not–resuscitate orders are being written for patients who are qualified, as defined in s. 154.17 (4), Stats., as created by Wis. Act 200, and request the order, without rules that establish a uniform standard for the bracelets the Department cannot approve bracelets. If the bracelet is not approved by the Department, it cannot be affixed. In the absence of a DNR bracelet on the wrist of a person in cardiac or respiratory arrest, emergency health care personnel ordinarily cannot know that a DNR order is in effect, and so must initiate cardiopulmonary resuscitation which in some cases will contravene a DNR order.

The rules establish a uniform standard for do–not–resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do–not–resuscitate orders.

Publication Date: **January 18, 1997**
Effective Date: **January 18, 1997**
Expiration Date: **June 17, 1997**
Hearing Date: **March 19, 1997**

2. Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

Finding of Emergency

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

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead– based paint. When lead–based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead–safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead–based paint and lead– contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a $6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employes who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state–accredited training courses and state–certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection,

a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead–based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over $6.5 million. The grants require that money be disbursed only for lead–based paint activities performed by state–certified persons who have completed state– accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1 997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD–funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

Publication Date: **February 18, 1997**
Effective Date: **February 18, 1997**
Expiration Date: **July 18, 1997**
Hearing Date: **March 18, 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**
Extension Through: **April 28, 1997**

EMERGENCY RULES NOW IN EFFECT (2)

Commissioner of Insurance

1. 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**
Extension Through: **April 28, 1997**

2. A rule adopted creating **s. Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

Finding of Emergency

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

The recently passed federal "Kassebaum–Kennedy" law, P.L. 104–191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

Publication Date: **December 20, 1996**
Effective Date: **January 1, 1997**
Expiration Date: **May 31, 1997**

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

1. 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**

2. 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

Public Instruction

Rules adopted revising **ch. PI 35**, relating to the Milwaukee private school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996–97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to

implement the provisions under the Act through the end of the 1996–97 school year. Permanent rules will be developed when judicial review is finalized.

Publication Date: February 19, 1997
Effective Date: February 19, 1997
Expiration Date: July 19, 1997
Hearing Date: April 1, 1997
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Transportation

1. 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. Therefor, 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

2. 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 (2)

Workforce Development
(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

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 Governor has directed the 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. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W–2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W–2 offers participants the opportunity to move into the work world and become self–sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W–2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W–2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W–2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W–2 no sooner than July 1, 1996 and must fully implement the W–2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV–A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self–sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104–193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W–2 health plan. Therefore, W–2 participants who meet the July 16, 1996, AFDC eligibility

requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101–108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W–2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self–sufficient through employment. The W–2 program provides cash benefits only for those individuals who participate in W–2 employment and training activities. W–2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W–2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self–sufficiency plan and determine their place on the W–2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self–sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of $555 and individuals placed in a transitional placement will receive a monthly benefit of $518. W–2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W–2 employment position. The W–2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W–2 employment position or child care, time–limited benefits for participants in W–2 employment positions, good cause for failure or refusal to participate in W–2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W–2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W–2 employment position participants.

Publication Date: **March 1, 1997**
Effective Date: **March 1, 1997**
Expiration Date: **July 29, 1997**

EMERGENCY RULES NOW IN EFFECT

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 employes 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 employes 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**
Extension Through: **April 28, 1997**

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**
Hearing Date: **March 31, 1997**
[See Notice this Register]

STATEMENTS OF SCOPE OF PROPOSED RULES

Transportation

Subject:

Ch. Trans 29 – Relating to accommodating utility facilities on state–owned railroad corridors.

Description of policy issues:

Description of the objective of the rule:

This is a proposal to amend ch. Trans 29, relating to accommodating utility facilities on state–owned railroad corridors.

The rule proposes to clarify ambiguous sections of the rule, remove unused sections, and update other sections dealing with:

- Relationship with ch. PSC 132
- When the review period begins
- Recent developments in industry specifications
- Review timelines with DOT, Railroad, and Transit Commission
- Unused sections of the rule

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:

Since the creation of ch. PSC 132, effective 2–1–96, there has been some confusion as to which rule, and which specifications apply, to crossings of railroad tracks on State–owned corridors.

Interpretation as to when the review period begins is somewhat unclear. The Department intends to clarify when an acceptable permit is received.

Currently, several sections of the rule have never been utilized. The Department intends to review these sections for possible removal.

The railroad industry recommends, from time to time, allowing new material to be used on installations. The Department intends to review current American Railway Engineering Association (AREA) Manual recommendations, and also to look at possible changes to permit streamlining the material specification sections.

Some current highway specifications may apply to this rule. The Department will review and see if any of the highway specifications (covering utility installations) are applicable here.

Statutory authority for the rule:

SS. 85.02, 85.08, 85.09 and 85.15, Stats.

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

It is estimated that state employes will spend 300 hours completing the rule. This includes research, drafting and hearing from the public.

Workforce Development

Subject:

Ch. DWD 12 – Relating to Wisconsin Works (W2), under ss. 49.141 through 49.161, Stats., as created by 1995 Wis. Act 289.

Description of policy issues:

Description of the objective of the rule:

The purpose of the Wisconsin Works (W–2) program is to eliminate cash and health care entitlements provided under the current AFDC and Medical Assistance programs and require recipients of public assistance to work in unsubsidized employment or in government–subsidized trial jobs and community service jobs. Individuals who are incapacitated could be assigned to transitional placements with more limited work requirements. The program will also establish lifetime limits for the receipt of benefits.

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:

Emergency rule s. DWD 11.135, relating to lifetime limits on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works (W–2) employment position or a combination thereof, became effective on October 1, 1996.

1995 Wis. Act 289 requires the Department to define the following through administrative rule:

1. Certification and training requirements for financial and employment planners;

2. Information to be requested by the W–2 administrative agency in order to determine eligibility;

3. The form in which information requested from the W–2 agency must be provided to the Department;

4. Additional eligibility criteria and specifications for administering such criteria;

5. Cooperation with child support (paternity establishment and obtaining support payments) to be in accordance with federal law and regulations;

6. Criteria that an employer providing a W–2 employment position must meet in order to employ a W–2 participant in a trial job, community service job or a W–2 transitional placement;

7. Satisfactory search efforts for unsubsidized employment;

8. Training activities that a W–2 agency may require a participant in a W–2 employment position to engage in as part of the participant's participation requirement;

9. Permissible education and training activities for participants in community service jobs;

10. What mental health activities a W–2 transition participant may be required to participate in;

11. Terms of job access loans;

12. Good cause for:

▶ Nonparticipation;

▶ Failure to appear for an interview with a prospective employer;

, ▶ Failure to appear for an assigned W–2 transition activity;

▶ Leaving appropriate employment or training;

13. Reasonable promptness for acting upon application for a W–2 employment position;

14. What constitutes failure to pay the W–2 health plan premium in a timely manner;

15. Eligibility criteria related to a W–2 child care subsidy; and

16. Policies and procedures for administering trial job overpayments and for overpayments caused by intentional program violations.

Statutory authority for the rule:

SS. 49.141 through 49.161, Stats., as created by 1995 Wis. Act 289.

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

It is estimated that no more than four state employes will be extensively involved in developing the rule, and for each of these employes the amount of time spent on the rule will be between 20 and 40 hours.

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.

Commerce

Rule Submittal Date

On February 28, 1997, the Department of Commerce submitted proposed ch. Comm 113 to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

The subject matter of the proposed ch. Comm 113 relates to annual allocation of volume cap on tax–exempt bonds for 1998.

Agency Procedure for Promulgation

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date.

Contact Person

If you have questions regarding this rule, you may contact:

Thomas M. Taylor, Deputy Secretary
Telephone (608) 266–1018

Corrections

Rule Submittal Date

On February 26, 1997, the Department of Corrections submitted proposed ch. DOC 314 to the Wisconsin Legislative Council Staff.

Analysis

The subject matter of the proposed ch. DOC 314 relates to mental health treatment for inmates.

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
Telephone (608) 266–8426

Corrections

Rule Submittal Date

On March 3, 1997, the Department of Corrections submitted proposed ch. DOC 311 to the Wisconsin Legislative Council Staff.

Analysis

The subject matter of the proposed ch. DOC 311 relates to observation status.

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
Telephone (608) 266–8426

Regulation & Licensing

Rule Submittal Date

On February 17, 1997, the Department of Regulation & Licensing submitted a proposed rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

This rule proposal contains many amendments, affecting chs. RL 100 to 105 and 110 to 116, relating to the titles of the chapters of the current rules, the statutory authority for each chapter, and to the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following sections, however, contain changes of a more substantive nature:

Sections 4, 6 and 45 create new definitions in chs. RL 100 and 110. Definitions for the following words are proposed: "amateur," "second," "sparring" and "professional."

Sections 14 and 54 require clubs or promoters who cancel a show to not only notify the Department, as in the current rules, but to also notify the members of the media whom the club or promoter initially notified about the show.

Sections 33 and 69 amend and clarify the procedures which must be followed by the referee when a boxer receives a low blow.

Sections 37 and 73 amend the current rules relating to the types of special examinations available to a physician to determine whether a boxer who was knocked out or received hard blows to the head has suffered serious brain damage. The current rules state that the special examination must be either an electroencephalogram (EEG) or a computerized axial tomography (CAT) scan. The proposed rules provide two other choices:

1) A magnetic resonance imaging scan (MRI); or

2) Any other scan which a physician believes is as reliable or more reliable than an EEG or a CAT scan for determining the presence of brain damage.

Section 49 creates a new provision which gives the Department authority to require a professional club to pay a permit application fee in an amount which does not exceed the costs incurred by the Department for paying the salary and travel expenses of the ringside physician and referee assigned to work at a professional show. Currently, professional clubs pay a fee directly to the physician and the referee; however, Public Law 104–272 of the 104th Congress will prohibit professional clubs to pay state boxing officials any compensation, effective July 1, 1997.

Section 75 repeals part of the requirement that an applicant for a professional boxer license must have previously competed in a least 5 bouts or must hold a current license as a profesional boxer issued by another jurisdiction with substantially equivalent regulations. The requirement relating to 5 previous bouts is repealed. Chapter RL 115 continues to contain other requirements for licensure which enable the Department to determine whether a boxer is eligible for a license and fit to box in Wisconsin.

Agency Procedure for Promulgation

A public hearing will be scheduled.

Contact Person

Pamela Haack, Rules Center Coordinator
(608) 266–0495

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on February 26, 1997, the Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

The proposed rule order revises s. Tax 11.12, relating to sales and use tax exemption for certain items used in farming.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Person

If you have questions regarding this rule, you may contact:

Mark Wipperfurth, (608) 266–8253
Income, Sales & Excise Tax Division

NOTICE SECTION

Notice of Hearing

Department of Commerce

Notice is given that pursuant to ss. 560.04 (2) and 560.032, Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of Ch. DOD 13, [Comm 113], Wis. Adm. Code, relating to annual allocation of volume cap on tax–exempt bonds for 1998.

Hearing Information

March 26, 1997	**Madison**
Wednesday	**Room 6, Loraine Bldg.**
9:00 a.m.	**123 W. Washington Ave.**

A copy of the rules to be considered may be obtained from the Department of Commerce, 123 West Washington Avenue, P.O. Box 7970, Madison, Wisconsin 53707, by calling (608) 266–7088 or at the appointed time and place the hearing is held.

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **April 5,1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Thomas H Taylor, Deputy Secretary at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call Tabitha Bemis at (608) 266–7088 or Telecommunication Device for the Deaf (TDD) at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis

Statutory Authority: ss.560.02(4) and 560.032

Statute Interpreted: s.560.032

Section 560.032, Stats. requires the Department of Commerce to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This order complies with that statutory mandate by establishing a volume cap allocation system for calendar year 1998. Without this order, the availability of the annual volume cap for Wisconsin would be uncertain.

This proposed rule should not be confused with the emergency rule and permanent rule that the Department adopted and is adopting relating to the annual allocation of volume cap for calendar year 1997. In that regard, the Department adopted and published an emergency rule on December 30, 1996 relating to the annual allocation of volume cap for calendar year 1997. That emergency rule repealed former Wisconsin Administrative Code ch. DOD 13, administered by the former Department of Development, and simultaneously created chapter Comm 113, administered by the Department of Commerce. The Department held a public hearing on the adoption of the emergency rule as a permanent rule on February 13, 1997. Based on public hearing testimony, the Department has decided to adopt the emergency rule as a permanent rule and is in the process of completing the rulemaking activities in accordance with chapter 227, Stats. Based on the favorable comments received at the public hearing and in order to complete the rulemaking process outlined in chapter 227, Stats. by October 31, 1997, as required by sec. 560.032, Stats., the Department has decided to begin the promulgation process for an identical rule for the calendar year starting on January 1, 1998.

The private activity bonding available under the volume cap in Wisconsin during calendar year 1997 is approximately $258 million. The volume cap for calendar year 1998 will be based upon Wisconsin's 1997 population and should be somewhat higher. Of the total, the rules provide under this order that $125 million will be allocated to the Wisconsin Housing and Economic Development Authority (WHEDA), including $45 million that, during 1996 and previous years, was set aside and held by the Department of Development for local issuers for multi–family housing; $10 million will be allocated to the State Building Commission; and, the remaining $119 million will be allocated to the Department of Commerce to be distributed to local issuers for a variety of economic development and other projects.

This order is substantially the same as the emergency rule and the permanent rule that the department has adopted and is adopting for calendar year 1997. As such, the rule for calendar year 1998 provides for an allocation formula that will address the bonding needs of the state and local issuing authorities. Further, it will provide an efficient and effective use of the state's annual volume cap allocation, and thus, will provide all eligible users with the opportunity to obtain an allocation based upon the merit of their projects. as well as distress in the vicinity of a project.

Contact Person

Thomas H. Taylor, Deputy Secretary, Department of Commerce, 608/266–3203.

Initial Regulatory Flexibility Analysis

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

The proposed rule is not expected to have any impact on small businesses except for businesses located within the state that desire to obtain the economic benefit of industrial revenue bond financing using the volume cap allocated by the Department of Commerce.

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

Pursuant to s. Comm 113.05(2), the Department will charge the following application fees to cover the cost of processing applications related to volume cap:

a. $500 for smaller economic development bond issues that are $2 million or less; and

b .$1000 for all other projects.

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

None.

Fiscal Estimate

Section 560.032, Stats., requires the Department, by rule, establish and administer a system for the annual allocation of the volume cap on the issuance of private activity bonds for the next year. Under rules governing the allocation of the volume cap in calendar year 1997, municipalities that apply for volume cap must submit a fee, along with the application to the Department for an allocation of the unified volume cap in connection with a project, to offset the cost of the review conducted by the Department. The Department proposes to administer the same system for the annual allocation of volume cap for 1998. Under this rule, the application fees for calendar year 1998 will be (1) $500 for smaller economic development bond issues that

are $ 2 million or less; and, (2) $1000 for all other projects. In addition, each issuer, with in five business days, must make a payment to the Department equal to 3–one hundredths of one percent of the amount of the obligation issued. It is anticipated that the application fees will be paid by the businesses which the Department's services related to the all6cation of the volume cap.

The Department estimates the total program revenue generated for calendar year 1998 will be approximately $80,000 that will offset the actual service provided by the Department.

Long–Range Fiscal Implications

Section 560.032, Stats., requires an evaluation of the system used to distribute the annual volume cap.

Notice of Hearing

Health & Family Services (Management Services and Policy & Budget, Chs. HSS 1 –)

Notice is hereby given that pursuant to ss. 46.03 (18), 46.10, 46.25 (9) (b) and 227.11 (2), Stats., the Department of Health and Family Services will hold a public hearing to consider the revision of ch. HSS 1, Wis. Adm. Code, relating to operation of the Department's Uniform Fee System, mainly to add rules for determining parental liability for costs of care of children in court–ordered substitute care, including emergency rules now in effect on the same subject.

Hearing Information

April 8, 1997
Tuesday
Beginning at 1 p.m.

Room B155
State Office Building
1 West Wilson Street
MADISON WI

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

Analysis Prepared by the Department of Health and Family Services

Section 46.10 (14) (b), Stats., as created by 1993 Wisconsin Act 481, requires that parental support for court–ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court–ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court–ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court–ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

The order also makes two updating changes in ch. HSS 1 that are not related to determination of parental liability for the support of children in court–order substitute care. It increases the maximum amount of a delinquent account on which payment may be sought through small claims court action, to make it the same as provided in s. 799.01 (1) (d), Stats., and repeals a provision relating to charges for admission, under a statute repealed in 1985, of residents or patients of state institutions to the University of Wisconsin Hospital.

Similar emergency rules were published on February 22, 1997.

Contact Person

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

Delores Trutlin
Division of Management and Technology
P. O. Box 7850
Madison, WI 53707
(608) 266–0371 or, if you are hearing impaired,
(608) 266–2555 (TDD)

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

Written comments on the proposed rules received at the above address no later than **April 15, 1997**, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

These rules will not affect the expenditures or revenues of state government or local governments. They implement the requirement under s. 46.25 (9) (b), Stats., that the Department promulgate rules to apply the child support percentage of income standard under ch. HSS 80 to child support obligations for the care and maintenance of children placed by court order in residential, nonmedical facilities. All costs to the Department and local governments of promulgating and using the rules, and any additional revenues received because of the rules, were taken into consideration when the bill that became 1993 Wis. Act 481 was enacted.

Initial Regulatory Flexibility Analysis

These rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to the Department, the Wisconsin Department of Corrections, county social service and human service departments and county child support agencies, and they affect also the parents of children who are in court–ordered substitute care placements.

Notice of Proposed Rules

Health and Family Services (Community Services, Chs. HSS 30––)

Notice is hereby given that pursuant to s. 46.976 (4), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health and Family Services will amend ch. HSS 70, Wis. Adm. Code, relating to loans to help pay for group housing for persons recovering from alcohol abuse or other drug abuse, as herein proposed, without public hearing, unless a petition for a hearing is received by the Department within 30 days after the publication of this notice on **March 15, 1997**. A petition for a hearing will be accepted if signed by 25 persons who will be affected by the proposed rule changes, the representative of a municipality that will be affected by the proposed rule changes or the representative of an association which represents a farm, labor, business or professional group that will be affected by the proposed rule changes.

Contact Person

If you have any questions about these rule changes or about filing a petition for a hearing, write or phone Vincent Ritacca, Bureau of Substance Abuse Services, P. O. Box 7851, Madison, WI 53707, (608) 266–2754.

Analysis prepared by the Department of Health & Family Services

Since December 1990, the Department, under the authority of s. 46.976, Stats., and following the procedure in its implementing rules, ch. HSS 70, has been making 2–year loans of up to $4000 each available from a revolving fund to applying nonprofit organizations to help with the costs of establishing group homes for persons recovering from alcohol abuse or other drug abuse. Until recently, a supported group home had to be for a minimum of 4 residents. Section 46.976(2), Stats., as amended by 1995 Wis. Act 27, changed that to a minimum of 6 residents. Chapter HSS 70 is being amended by this order to make that change.

This order makes two other changes in ch. HSS 70 to make the rules consistent with how state executive agencies were reorganized effective July 1, 1996. The order changes the name of the Department from Health and Social Services to Health and Family Services, and it substitutes the Department of Administration's Division of Hearings and Appeals for the Department's Office of Administrative Hearings as the organization that conducts administrative hearings for loan applicants who are denied a loan or do not receive the amount requested. The Division of Hearings and Appeals absorbed the remaining staff and functions of the Office of Administrative Hearings after three program divisions were taken out of the Department in the reorganization.

The Department's authority to amend these rules is found in s. 46.976(4), Stats. The rule interpret s. 46.976, Stats.

Text of Proposed Rules

SECTION 1. HSS 70.01 is amended to read:

HSS 70.01 PURPOSE AND AUTHORITY. This chapter is promulgated under the authority of s. 46.976(4), Stats., to make funds available in the form of loans from the revolving fund established pursuant to s. 20.435(7) (ma), Stats., and continued pursuant to s. 20. 435(7) (gd), Stats., to help pay for housing in which individuals recovering from alcohol abuse or drug abuse may reside in groups of 4 6 or more persons. The loans are to be made to eligible non–profit entities for the provision of housing for 4 6 or more recovering individuals who want to rent a house or use other housing as a self–supported and self–run recovery program free of alcohol and drugs.

SECTION 2. HSS 70.03(4) and (5) are amended to read:

HSS 70.03(4) "Applicant" or "applicant group" means a group of 4 6 or more recovering persons interested in living in an alcohol and drug–free environment who make application for a loan under this chapter.

(5) "Department" means the Wisconsin department of health and ~~social~~ family services.

SECTION 3. HSS 70.04(1) is amended to read:

HSS 70.04(1) To establish, directly or through the provision of a grant or contract to a non–profit private entity, a revolving fund to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 4 6 individuals.

SECTION 4. HSS 70.05(Note) is amended to read:

HSS 70.05(Note) For a copy of the application form, write or phone the Bureau of Substance Abuse Services, Division of Supportive Living, P.O. Box 7851, Madison, Wisconsin 53707, 608/266–2717.

SECTION 5. HSS 70.08 and Note are amended to read:

HSS 70.08 APPEALS. An applicant for a housing loan under this chapter whose loan application is either not approved or not approved in the amount requested may appeal that decision by requesting a hearing on it. The request for a hearing shall be in writing, shall be addressed to the ~~department's office of administrative hearings~~ department of administration's division of hearings and appeals and shall be received in that office within 45 days after the date of the action for which review is sought.

Note: The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison, Wisconsin 53707.

Fiscal Estimate

These amendments to ch. HSS 70 will not affect the expenditures or revenues of state government or local governments. The rulemaking order amends ch. HSS 70 to increase the minimum size of a group home eligible for a loan from 4 to 6 residents. This brings the rules into conformity with a change made in s. 46.976(2), Stats., by 1995 Wisconsin Act 27. The order also makes two changes in ch. HSS 70 in the names of state government organizations that were changed in the state executive reorganization effective July 1, 1996.

Initial Regulatory Flexibility Analysis

These amendments to ch. HSS 70 will not affect small businesses as defined in s. 227.114(1)(a), Stats. Only non–profit organizations may apply for the loans that are made available under the rules.

Notice of Proposed Rule

Natural Resources
(Environmental Protection–– Air Pollution Control, Chs. NR 400––)

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 285.11 (1), 285.13, 285.27 (2) and 285.65, Stats., and interpreting s. 285.27 (2), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Natural Resources Board will adopt the following rule, amended and created as herein proposed, without public hearing thereon unless, within 30 days after publication of this notice on **March 15, 1997**, it is petitioned for a public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an effect on small business.

Analysis Prepared by the Dept. of Natural Resources

This proposed order would incorporate into state rules the National Emission Standards for Hazardous Air Pollutants (NESHAPs) (also referred to as Maximum Available Control Technology [MACT] standards) for chromium electroplating and anodizing operations. The federal standard limits the chromium compound emissions from existing and new hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. Chromium compound emissions are also regulated under existing provisions in ch. NR 445, Tables 1, 3 and 4.

The proposed ch. NR 463 is identical to the federal rule in 40 CFR part 63, Subpart N, with the following exceptions:

1. The Department will use the existing ch. NR 406 construction permit process and the existing ch. NR 407 operation permit process in place of a similar process established in the federal rule.

2. The federal rule requires all affected hard chromium electroplating sources and all affected major decorative chromium sources and all affected major chromium anodizing sources to apply for federal operating permits. The federal rule allows Wisconsin to defer the application submission deadline for those sources for up to 5 years from the date of promulgation of the federal chromium MACT standard. This proposed order does not use the entire 5 year deferral period, because s. NR 407.04 (1) (a) already requires those sources to submit permit applications to the Department between July 1997 and November 1998, the exact date depending on the county in which a particular source is located. This change will not require affected sources to meet the federal requirements earlier than the dates listed in the federal MACT standard.

3. In order to simplify the rule and its relationship to other requirements, the following federal MACT standard provisions were placed in rules other than the proposed ch. NR 463, because those rules were deemed more appropriate locations:

a) Operating permit requirements are included in ch. NR 407 (Operation Permits).

b) The EPA test method for determining the concentration of chromium compounds emitted to the ambient air are incorporated by reference in s. NR 484.04.

c) California Air Resources Board (CARB) Method 425, found in 40 CFR 63.344 (c) (2), was not included as one of the performance test methods listed in s. NR 463.09 and incorporated by reference in ch. NR 484. This test method is an optional test method and as such is covered under s. NR 463.09 (3) (c) where the Department approves any alternative test method used for performance testing.

d) The table that lists general provisions applicability is in ch. NR 460 Appendix N.

4. The initial notification requirement for existing sources is not included. The federal MACT standard required those sources to notify EPA or the Department that they are affected by July 23, 1995. Through trade shows, published articles, and a mass mailing, air program staff identified 150 sources that are affected by the federal standard. Thus, the Department feels that it is unnecessary to include this retroactive reporting requirement in this proposed rule.

5. Punctuation, capitalization, numbering, and minor word changes were made to accommodate the state rule form and style. The federal format was retained as allowed under s. 227.14 (1m) (b), Stats.

6. The word "department" replaces "Administrator" where appropriate.

Text of Rule

SECTION 1. NR 400.03 (4) (ke) is created to read:

NR 400.03 (4) (ke) OSHA – United States occupational safety and health administration

SECTION 2. NR 406.04 (1) (rm), citing ch. NR 460 as created by Clearinghouse Rule 96–086, is created to read:

NR 406.04 (1) (rm) Chromium electroplating area sources and chromium anodizing area sources as defined in s. NR 460.02 (5).

SECTION 3. NR 407.02 (6) (b) 7., citing ch. NR 460 as created by Clearinghouse Rule 96–086, is created to read:

NR 407.02 (6) (b) 7. Chromium electroplating and chromium anodizing area sources as defined in s. NR 460.02 (5).

SECTION 4. NR 407.03 (1) (km), citing s. NR 460.02 as created by Clearinghouse Rule 96–086, is created to read:

NR 407.03 (1) (km) Chromium electroplating and chromium anodizing operations which are not major sources or located at major sources and which are any of the following:

1. Any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology.

2. Any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient.

SECTION 5. NR 407.04 (1) (intro.), as affected by Clearinghouse Rule 96–087, is amended to read:

NR 407.04 (1) INITIAL FILING DATES. The owner or operator of an air contaminant source which is not exempt under s. 285.60 (5), Stats., or s. NR 407.03 shall submit an operation permit application on application forms available from the department by the following dates, except as provided under subs. (3) to ~~(5)~~ (6).

SECTION 6. NR 407.04 (6), citing ch. NR 460 as created by Clearinghouse Rule 96–086, is created to read:

NR 407.04 (6) CHROMIUM ELECTROPLATING AND CHROMIUM ANODIZING OPERATIONS. Notwithstanding sub. (1), the owner or operator of any facility which does hard or decorative chromium electroplating as defined in s. NR 463.02 (18) and (10) or chromium anodizing as defined in s. NR 463.02 (7) that is not a major source or located at a major source, is not required to obtain a construction permit under ch. NR 406, and on which construction commenced prior to the effective date of this subsection.... [revisor inserts date], shall submit an operation permit application for a part 70 source, on application forms available from the department, by the date that an operation permit application for a non–part 70 source would be due for that source under the schedule in Table 1.

SECTION 7. NR 439.07 (4) is amended to read:

NR 439.07 (4) NOTIFICATION OF TEST PLAN REVISION. The source owner or operator shall notify the department of any modifications to the test plan at least 5 business days prior to the test. In the event the owner or operator is unable to conduct the compliance emission test on the date specified in the test plan, due to unforeseeable circumstances beyond the owner or operator's control, the owner or operator shall notify the department within 5 business days prior to the scheduled compliance emission test date and specify the date when the test is rescheduled.

SECTION 8. NR 460 Appendix N is created to read:

Chapter NR 460

APPENDIX N
GENERAL PROVISIONS APPLICABILITY TO CHAPTER NR 463

General Provisions Reference	Applies to Chapter NR 463?	Comment
NR 439.07(2) (cited in s. NR 460.06(2))	No	Section NR 463.12(4) requires notification prior to the performance test. Section NR 463.09(1) requires submission of a site–specific test plan upon request.
NR 439.07(3)	Yes	
NR 439.07(4)	Yes	
NR 439.07(6)(a)	No	Section NR 463.09(1) specifies what the test plan should contain, but does not require test plan approval or performance audit samples.
NR 439.07(6) (intro.) and (b) to (d)	Yes	
NR 460.01(1)(a)	Yes	Chapter NR 463 and this appendix clarify the applicability of each paragraph in ch. NR 460 to sources subject to ch. NR 463.

General Provisions Reference	Applies to Chapter NR 463?	Comment
NR 460.02	Yes	Additional terms are defined in s. NR 463.02; when overlap between ss. NR 460.02 and 463.02 occurs, s. NR 463.02 takes precedence.
NR 460.03	Yes	Other units used in ch. NR 463 are defined in that chapter.
NR 460.04	Yes	
NR 460.05(1)	Yes	
NR 460.05(2)(a)–(b)	Yes	Except replace "source" with "affected source."
NR 460.05(2)(c)–(d)	Yes	
NR 460.05(2)(e)	Yes	Except replace "source" with "affected source."
NR 460.05(2)(f)	No	Provisions for new area sources that become major sources are contained in s. NR 463.06(1)(d).
NR 460.05(3)(a)–(b)	Yes	Except replace "source" with "affected source."
NR 460.05(3)(c)	No	Compliance provisions for existing area sources that become major sources are contained in s. NR 463.06(1)(c).
NR 460.05(4)	No	Section NR 463.05 contains work practice standards (operation and maintenance requirements) that override these provisions.
NR 460.05(5)	No	Section NR 463.04(2) specifies when the standards apply.
NR 460.05(6)	No	Chapter NR 463 does not contain any opacity or visible emission standards.
NR 460.05(7)(a)	Yes	
NR 460.05(7)(b)	Yes	Except replace "source" with "affected source."
NR 460.05(7)(c)1.	No	Section NR 463.06(2) specifies the procedures for obtaining a compliance date extension and the date by which such requests must be submitted.
NR 460.05(7)(c)2.	Yes	
NR 460.05(7)(d)	Yes	
NR 460.05(7)(e)1.	Yes	This subdivision only references s. NR 460.05(7)(c) for compliance date extension provisions. But, s. NR 463.06(2) also contains provisions for requesting a compliance date extension.
NR 460.05(7)(e)2.	Yes	
NR 460.05(7)(f)	Yes	
NR 460.05(7)(g)	Yes	This paragraph only references ss. NR 460.05(7)(c) to (e) for compliance date extension provisions, but s. NR 463.06(2) also contains provisions for requesting a compliance date extension.
NR 460.05(7)(h)1.–4.	Yes	
NR 460.05(7)(h)5.a.	Yes	This subdivision paragraph only references s. NR 460.05(7)(c) for compliance date extension provisions. But, s. NR 463.06(2) also contains provisions for requesting a compliance date extension.
NR 460.05(7)(h)5.b.	Yes	
NR 460.05(7)(i)	Yes	
NR 460.05(7)(j)1.	Yes	This subdivision only references s. NR 460.05(7)(c)1. or (d) for compliance date extension provisions. But, s. NR 463.06(2) also contains provisions for requesting a compliance date extension.
NR 460.05(7)(j)2.–3.	Yes	
NR 460.05(7)(k)	Yes	
NR 460.05(7)(L)	Yes	

General Provisions Reference	Applies to Chapter NR 463?	Comment
NR 460.06(1)(a)	Yes	
NR 460.06(1)(b)	Yes	
NR 460.06(2)	See NR 439.07	
NR 460.06(3)	Yes	Except replace "source" with "affected source."
NR 460.06(4)	Yes	Chapter NR 463 also contains test methods specific to affected sources covered by that chapter.
NR 460.06(5)	Yes	
NR 460.06(6)(a)	No	Chapter NR 463 identifies the items to be reported in the compliance test (s. NR 463.09(1)) and the timeframe for submitting the results (s. NR 463.12(6)).
NR 460.06(6)(b)	Yes	
NR 460.06(7)(a)–(b)	Yes	
NR 460.06(7)(c)1.	Yes	This subdivision only references s. NR 460.05(7) for compliance date extension provisions. But, s. NR 463.06(2) also contains provisions for requesting a compliance date extension.
NR 460.06(7)(c)2.–3.	Yes	
NR 460.06(7)(d)–(e)	Yes	
NR 460.07(1)(a)	Yes	
NR 460.07(1)(b)	No	Work practice standards are contained in s. NR 463.05.
NR 460.07(1)(c)	No	
NR 460.07(2)(a)	Yes	
NR 460.07(2)(b)	No	Section NR 463.09(4) specifies the monitoring location when there are multiple sources.
NR 460.07(2)(c)	No	Section NR 463.12(7)(d) identifies reporting requirements when multiple monitors are used.
NR 460.07(3)(a)1.	No	Chapter NR 463 requires proper maintenance of monitoring devices expected to be used by sources subject to ch. NR 463.
NR 460.07(3)(a)2.	No	Section NR 463.05(2)(d) specifies reporting when the operation and maintenance plan is not followed.
NR 460.07(3)(a)3.	No	Section NR 463.05(1) identifies the criteria for whether operation and maintenance procedures are acceptable.
NR 460.07(3)(b)–(c)	No	Section NR 463.09(4)(b) requires appropriate use of monitoring devices.
NR 460.07(3)(d)–(g)	No	
NR 460.07(4)	No	Maintenance of monitoring devices is required by ss. NR 463.05 and 463.09(4)(b).
NR 460.07(5)	No	There are no performance evaluation procedures for the monitoring devices expected to be used to comply with ch. NR 463.
NR 460.07(6)(a)	No	Instances in which the department may approve alternatives to the monitoring methods and procedures are contained in s. NR 463.07(8).
NR 460.07(6)(b)	Yes	
NR 460.07(6)(c)	Yes	
NR 460.07(6)(d)	Yes	
NR 460.07(6)(e)	No	Chapter NR 463 does not require the use of CEM's.

General Provisions Reference	Applies to Chapter NR 463?	Comment
NR 460.07(7)	No	Monitoring data does not need to be reduced for reporting purposes because ch. NR 463 requires measurement once/day.
NR 460.08(1)	Yes	
NR 460.08(2)(a)1.–2.	No	Section NR 463.06(1)(c) requires area sources to comply with major source provisions if an increase in HAP emissions causes them to become major sources.
NR 460.08(2)(a)3.	No	Section NR 463.12(3)(b) specifies initial notification requirements for new or reconstructed affected sources.
NR 460.08(2)(b)	No	Section NR 463.12(3)(a) specifies the information to be contained in the initial notification.
NR 460.08(2)(c)	No	Section NR 463.12(3)(b) specifies notification requirements for new or reconstructed sources that are not major affected sources.
NR 460.08(2)(d)	No	
NR 460.08(2)(e)	No	
NR 460.08(3)	Yes	This subsection only references s. NR 460.05(7)(c) to (e) for compliance date extension provisions. But, s. NR 463.06(2) also contains provisions for requesting a compliance date extension. Chapter NR 463 provides a different timeframe for submitting the request than s. NR 460.05(7)(c).
NR 460.08(4)	Yes	This subsection only references the notification dates established in s. NR 460.08(2). But, s. NR 463.12 also contains notification dates.
NR 460.08(5)	No	Notification of performance test is required by s. NR 463.12(4).
NR 460.08(6)	No	
NR 460.08(7)	No	Chapter NR 463 does not require a performance evaluation or relative accuracy test for monitoring devices.
NR 460.08(8)(a)–(c)	No	Section NR 463.12(5) specifies information to be contained in the notification of compliance status and the timeframe for submitting this information.
NR 460.08(8)(d)	No	Similar language has been incorporated into s. NR 463.12(4)(b)3.
NR 460.08(8)(e)	Yes	
NR 460.08(9)	Yes	
NR 460.08(10)	Yes	
NR 460.09(1)	Yes	
NR 460.09(2)(a)	Yes	
NR 460.09(2)(b)	No	Section NR 463.11(2) specifies the records that must be maintained.
NR 460.09(2)(c)	No	Chapter NR 463 applies to major and area sources.
NR 460.09(3)(a)	No	Applicable requirements of s. NR 460.09(3)(a) have been incorporated into s. NR 463.11(2).
NR 460.09(4)(a)	Yes	
NR 460.09(4)(b)	No	Section NR 463.12(6) specifies the timeframe for reporting performance test results.
NR 460.09(4)(c)	No	Chapter NR 463 does not contain opacity or visible emissions standards.
NR 460.09(4)(d)	Yes	
NR 460.09(4)(e)	No	Sections NR 463.05(2)(d) and 463.12(7)(c) specify reporting associated with malfunctions.

General Provisions Reference	Applies to Chapter NR 463?	Comment
NR 460.09(5)	No	Section NR 463.12(7) and (8) specifies the frequency of periodic reports of monitoring data used to establish compliance. Applicable requirements of s. NR 460.09(5) have been incorporated into subs. (7) and (8).
NR 460.09(6)	Yes	
NR 460.10	No	Flares are not a control option for complying with the emission limits under ch. NR 463.

SECTION 9. Chapter NR 463, citing ch. NR 460 as created by Clearinghouse Rule 96–086, is created to read:

Chapter NR 463

CHROMIUM EMISSIONS FROM HARD AND DECORATIVE CHROMIUM ELECTROPLATING AND CHROMIUM ANODIZING TANKS

NR 463.01 Applicability and designation of sources; purpose. (1) APPLICABILITY. This chapter applies to the owners and operators of hard chromium electroplating tanks, decorative chromium electroplating tanks and chromium anodizing tanks.

(a) The affected source to which this chapter applies is each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating or chromium anodizing.

(b) Owners or operators of affected sources subject to this chapter are also subject to the requirements of ch. NR 460, according to the applicability of ch. NR 460 to these sources as identified in Appendix N of ch. NR 460.

(c) Process tanks associated with a chromium electroplating or chromium anodizing process, but in which neither chromium electroplating nor chromium anodizing takes place, are not subject to this chapter. Examples of these tanks include, but are not limited to, rinse tanks, etching tanks and cleaning tanks. Likewise, tanks that contain a chromium solution, but in which no electrolytic process occurs, are not subject to this chapter. An example of such a tank is a chrome conversion coating tank where no electrical current is applied.

(d) Affected sources in which research and laboratory operations are performed are exempt from this chapter when these operations are taking place.

(e) An owner or operator of any affected source subject to this chapter which is not exempt under s. NR 407.03 (1) (km) is subject to part 70 permit requirements under ch. NR 407.

(2) PURPOSE. This chapter is adopted under ss. 285.11, 285.13, 285.27 (2) and 285.65, Stats., to establish emission standards for hard chromium electroplating tanks, decorative chromium electroplating tanks, and chromium anodizing tanks in order to protect air quality.

Note: This chapter is based on the federal regulations contained in 40 CFR part 63 Subpart N, created January 25, 1995, as last revised on June 3, 1996.

NR 463.02 Definitions. For terms not defined in this section, the definitions contained in chs. NR 400 and 460 apply to the terms used in this chapter, with definitions in ch. NR 460 taking priority over definitions in ch. NR 400. In addition, the definitions in this section apply to the terms used in this chapter. If this section defines a term which is also defined in ch. NR 400 or 460, the definition in this section applies in this chapter rather than the definition in ch. NR 400 or 460.

(1) "Add–on air pollution control device" means equipment installed in the ventilation system of chromium electroplating and anodizing tanks for the purposes of collecting and containing chromium emissions from the tanks.

(2) "Air pollution control technique" means any method, such as an add–on air pollution control device or a chemical fume suppressant, that is used to reduce chromium emissions from chromium electroplating and chromium anodizing tanks.

(3) "Base metal" means the metal or metal alloy that comprises the workpiece.

(4) "Bath component" means the trade, brand or chemical name of each component in trivalent chromium plating baths.

Note: Since for trivalent chromium baths, the bath composition is proprietary in most cases, the trade or brand name for each component may be used. However, ss. NR 463.11 (1) (n) and 463.12 (9) (a) 3. require identification by chemical name of the wetting agent contained in that component.

(5) "Chemical fume suppressant" means any chemical agent that reduces or suppresses fumes or mists at the surface of an electroplating or anodizing bath.

Note: Another term for fume suppressant is mist suppressant.

(6) "Chromic acid" means the common name for chromium anhydride (CrO_3).

(7) "Chromium anodizing" means the electrolytic process by which an oxide layer is produced on the surface of a base metal for functional purposes, such as corrosion resistance or electrical insulation, using a chromic acid solution. In chromium anodizing, the part to be anodized acts as the anode in the electrical circuit, and the chromic acid solution, with a concentration typically ranging from 50 to 100 grams per liter (g/L), serves as the electrolyte.

(8) "Chromium electroplating tank" or "chromium anodizing tank" means the receptacle or container in which hard or decorative chromium electroplating or chromium anodizing occurs.

(9) "Composite mesh–pad system" means an add–on air pollution control device typically consisting of several mesh–pad stages. The purpose of the first stage is to remove large particles. Smaller particles are removed in the second stage, which consists of the composite mesh pad. A final stage may remove any reentrained particles not collected by the composite mesh pad.

(10) "Decorative chromium electroplating" means the process by which a thin layer of chromium (typically 0.003 to 2.5 μm) is electrodeposited on a base metal, plastic or undercoating to provide

a bright surface with wear and tarnish resistance. In this process, the part serves as the cathode in the electrolytic cell and the solution serves as the electrolyte. Typical current density applied during this process ranges from 540 to 2,400 amperes per square meter (A/m^2) for total plating times ranging between 0.5 to 5 minutes.

(11) "Electroplating or anodizing bath" means the electrolytic solution used as the conducting medium in which the flow of current is accompanied by movement of metal ions for the purposes of electroplating metal out of the solution onto a workpiece or for oxidizing the base material.

(12) "Emission limitation" means the concentration of total chromium allowed to be emitted expressed in milligrams per dry standard cubic meter (mg/dscm), or the allowable surface tension expressed in dynes per centimeter (dynes/cm).

(13) "Existing" means any hard chromium electroplating tank, decorative chromium electroplating tank or chromium anodizing tank the construction or reconstruction of which was commenced on or before December 16, 1993.

(14) "Facility" means the major or area source at which chromium electroplating or chromium anodizing is performed.

(15) "Fiber–bed mist eliminator" means an add–on air pollution control device that removes contaminants from a gas stream through the mechanisms of inertial impaction and Brownian diffusion. These devices are typically installed downstream of another control device, which serves to prevent plugging, and consist of one or more fiber beds. Each bed consists of a hollow cylinder formed from 2 concentric screens; the fiber between the screens may be fabricated from glass, ceramic plastic or metal.

(16) "Foam blanket" means the type of chemical fume suppressant that generates a layer of foam across the surface of a solution when current is applied to that solution.

(17) "Fresh water" means water, such as tap water, that has not been previously used in a process operation or, if the water has been recycled from a process operation, it has been treated and meets the effluent guidelines for chromium wastewater.

(18) "Hard chromium electroplating" or "industrial chromium electroplating" means a process by which a thick layer of chromium (typically 1.3 to 760 μm) is electrodeposited on a base material to provide a surface with functional properties such as wear resistance, a low coefficient of friction, hardness and corrosion resistance. In this process, the part serves as the cathode in the electrolytic cell and the solution serves as the electrolyte. The hard chromium electroplating process is performed at current densities typically ranging from 1,600 to 6,500 A/m^2 for total plating times ranging from 20 minutes to 36 hours depending upon the desired plate thickness.

(19) "Hexavalent chromium" means the form of chromium in a valence state of +6.

(20) "Large, hard chromium electroplating facility" means a facility that performs hard chromium electroplating and has a maximum cumulative potential rectifier capacity greater than or equal to 60 million ampere–hours per year (A–hr/yr).

(21) "Maximum cumulative potential rectifier capacity" means the summation of the total installed rectifier capacity associated with the hard chromium electroplating tanks at a facility, expressed in amperes, multiplied by the maximum potential operating schedule of 8,400 hours per year and 0.7, which assumes that electrodes are energized 70% of the total operating time. The maximum potential operating schedule is based on operating 24 hours per day, 7 days per week, 50 weeks per year.

(22) "New source" or "new tank" means any hard chromium electroplating, decorative chromium electroplating or chromium anodizing source or tank the construction or reconstruction of which is commenced after December 16, 1993.

(23) "Operating parameter value" means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator is in continual compliance with the applicable emission limitation or standard.

(24) "Packed–bed scrubber" means an add–on air pollution control device consisting of a single or double packed bed that contains packing media on which the chromic acid droplets impinge. The packed–bed section of the scrubber is followed by a mist eliminator to remove any water entrained from the packed–bed section.

(25) "Research or laboratory operation" means an operation whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and that is not involved in the manufacture of products for commercial sale, except in a de minimis manner.

(26) "Small, hard chromium electroplating facility" means a facility that performs hard chromium electroplating and has a maximum cumulative potential rectifier capacity less than 60 million A–hr/yr.

(27) "Stalagmometer" means a device used to measure the surface tension of a solution.

(28) "Surface tension" means the property, due to molecular forces, that exists in the surface film of all liquids and tends to prevent liquid from spreading.

(29) "Tank operation" means the use of a tank for chromium electroplating or a chromium anodizing through the application of current or voltage. Tank operation ceases when the current or voltage is turned off.

(30) "Tensiometer" means a device used to measure the surface tension of a solution.

(31) "Trivalent chromium" means the form of chromium in a valence state of +3.

(32) "Trivalent chromium process" means the process used for electrodeposition of a thin layer of chromium onto a base material using a trivalent chromium solution instead of a chromic acid solution.

(33) "Wetting agent" means the type of chemical fume suppressant that reduces the surface tension of a liquid.

NR 463.03 Nomenclature, units and abbreviations. The definitions contained in s. NR 400.03 apply to the abbreviations and symbols of units of measure used in this chapter. In addition, the nomenclature used in this chapter has the following meaning:

(1) AMR is the allowable mass emission rate from each type of affected source subject to the same emission limitation in milligrams per hour (mg/hr).

(2) AMR_{sys} is the allowable mass emission rate from affected sources controlled by an add–on air pollution control device controlling emissions from multiple sources in mg/hr.

(3) CMP is composite mesh–pad, a control technique.

(4) EL is the applicable emission limitation from s. NR 463.04 in milligrams per dry standard cubic meter (mg/dscm).

(5) IA_{total} is the sum of all inlet duct areas from both affected sources and sources not affected by this chapter in meters squared.

(6) IDA_i is the total inlet area for all ducts associated with affected sources in meters squared.

(7) $IDA_{i,a}$ is the total inlet duct area for all ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation in meters squared.

(8) lb_f is pound–force, the unit of force in the English system.

(9) PBS is packed–bed scrubber, a control technique.

(10) VR is the total of ventilation rates for each type of affected source subject to the same emission limitation in dry standard cubic meters per minute (dscm/min).

(11) VR_{inlet} is the total ventilation rate from all inlet ducts associated with affected sources in dscm/min.

(12) $VR_{inlet,a}$ is the total ventilation rate from all inlet ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation in dscm/min.

(13) VR_{tot} is the average total ventilation rate for the 3 test runs as determined at the outlet by testing using Method 306 of Appendix A

of 40 CFR part 63, incorporated by reference in s. NR 484.04, in dscm/min.

NR 463.04 Emission limits. (1) MACT REQUIREMENTS. Each owner or operator of an affected source subject to the provisions of this chapter shall comply with these requirements on and after the compliance dates specified in s. NR 463.06 (1). All affected sources are regulated by applying maximum achievable control technology.

(2) APPLICABILITY OF EMISSION LIMITS. (a) The emission limitations in this section apply during tank operation as well as during periods of startup and shutdown as these are routine occurrences for affected sources subject to this chapter. The emission limitations do not apply during periods of malfunction. However, the work practice standards that address operation and maintenance and that are required by s. NR 463.05 shall be followed during malfunctions.

(b) If an owner or operator is controlling a group of tanks with a common add–on air pollution control device, the emission limitations of subs. (3), (4) and (5) apply whenever any one affected source is operated. The emission limitation that applies to the group of affected sources is as follows:

1. The emission limitation identified in subs. (3), (4) and (5) if the affected sources are performing the same type of operation, such as hard chromium electroplating, are subject to the same emission limitation, and are not controlled by an add–on air pollution control device also controlling sources not affected by this chapter.

2. The emission limitation calculated according to s. NR 463.09 (5) (c) if affected sources are performing the same type of operation, are subject to the same emission limitation, and are controlled with an add–on air pollution control device that is also controlling sources not affected by this chapter.

3. The emission limitation calculated according to s. NR 463.09 (5) (d) if affected sources are performing different types of operations, or affected sources are performing the same operations but subject to different emission limitations, and are controlled with an add–on air pollution control device that may also be controlling emissions from sources not affected by this chapter.

(3) STANDARDS FOR HARD CHROMIUM ELECTROPLATING TANKS. (a) During tank operation, each owner or operator of an existing, new or reconstructed hard chromium electroplating tank shall control chromium emissions discharged to the atmosphere from that affected source by not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the following:

1. 0.015 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air (6.6×10^{-6} grains per dry standard cubic foot (gr/dscf)).

2. 0.03 mg/dscm (1.3×10^{-5} gr/dscf) if the hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility.

(b) 1. An owner or operator may demonstrate the size of a hard chromium electroplating facility by meeting the criteria of s. NR 463.02 (20) or (26). Alternatively, an owner or operator of a facility with a maximum cumulative potential rectifier capacity of 60 million A–hr/yr or more may be considered small if the actual cumulative rectifier capacity is less than 60 million A–hr/yr as demonstrated using one of the following procedures:

a. If records show that the facility's previous annual actual rectifier capacity was less than 60 million A–hr/yr, by using nonresettable ampere–hour meters and keeping monthly records of actual ampere–hour usage for each 12–month rolling period following the compliance date in accordance with s. NR 463.11 (2) (L). The actual cumulative rectifier capacity for the previous 12–month rolling period shall be tabulated monthly by adding the capacity for the current month to the capacities for the previous 11 months.

b. By accepting a federally–enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with s. NR 463.11 (2) (L) to demonstrate that the limit has not been exceeded. The actual cumulative rectifier capacity for the previous 12–month rolling period shall be tabulated monthly by adding the capacity for the current month to the capacities for the previous 11 months.

2. Once the monthly records required to be kept by s. NR 463.11 (2) (L) and by this paragraph show that the actual cumulative rectifier capacity over the previous 12–month rolling period corresponds to the large designation, the owner or operator is subject to the emission limitation identified in par. (a) 1., in accordance with the compliance schedule of s. NR 463.06 (1) (e).

(4) STANDARDS FOR DECORATIVE CHROMIUM ELECTROPLATING TANKS USING A CHROMIC ACID BATH AND CHROMIUM ANODIZING TANKS. During tank operation, each owner or operator of an existing, new or reconstructed decorative chromium electroplating tank using a chromic acid bath or chromium anodizing tank shall control chromium emissions discharged to the atmosphere from that affected source by one of the following:

(a) By not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.01 mg/dscm (4.4×10^{-6} gr/dscf).

(b) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected source to exceed 45 dynes per centimeter (dynes/cm) (3.1×10^{-3} pound–force per foot (lb_f/ft)) at any time during operation of the tank.

(5) STANDARDS FOR DECORATIVE CHROMIUM ELECTROPLATING TANKS USING A TRIVALENT CHROMIUM BATH. (a) Each owner or operator of an existing, new or reconstructed decorative chromium electroplating tank that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient is subject to the recordkeeping and reporting requirements of ss. NR 463.11 (2) (n) and 463.12 (9), but is not subject to the work practice requirements of s. NR 463.05, or the continuous compliance monitoring requirements in s. NR 463.07. The wetting agent shall be an ingredient in the trivalent chromium bath components purchased from vendors.

(b) Each owner or operator of an existing, new or reconstructed decorative chromium electroplating tank that uses a trivalent chromium bath that does not incorporate a wetting agent as a bath ingredient is subject to the standards of sub. (4).

(c) Each owner or operator of existing, new or reconstructed decorative chromium electroplating tank that had been using a trivalent chromium bath that incorporates a wetting agent and ceases using this type of bath shall fulfill the reporting requirements of s. NR 463.12 (9) (c) and comply with the applicable emission limitation within the timeframe specified in s. NR 463.06 (1) (f).

NR 463.05 Operation and maintenance practices. (1) WORK PRACTICE STANDARDS. All owners or operators subject to the standards in s. NR 463.04 (3) and (4) are subject to the following work practice standards:

(a) At all times, including periods of startup, shutdown and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control devices and monitoring equipment, in a manner consistent with good air pollution control practices, consistent with the operation and maintenance plan required by sub. (2).

(b) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the operation and maintenance plan required by sub. (2).

(c) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the department, which may include, but is not limited to, monitoring results; review of the operation and maintenance plan, procedures and records; and inspection of the source.

(d) Based on the results of a determination made under par. (c), the department may require that an owner or operator of an affected source make changes to the operation and maintenance plan required by sub. (2) for that source. Revisions may be required if the department finds that the plan does any of the following:

1. Does not address a malfunction that has occurred.

2. Fails to provide for the operation of the affected source, the air pollution control techniques, or the control system and process monitoring equipment during a malfunction in a manner consistent with good air pollution control practices.

3. Does not provide adequate procedures for correcting malfunctioning process equipment, air pollution control techniques or monitoring equipment as quickly as practicable.

(Notice continues. See Table 1 on following page)

TABLE 1. SUMMARY OF WORK PRACTICE STANDARDS

Control technique	Work practice standards	Frequency
Composite mesh–pad (CMP) system	1. Visually inspect device to ensure there is proper drainage, no chromic acid buildup on the pads, and no evidence of chemical attack on the structural integrity of the device.	1. 1/quarter.
	2. Visually inspect back portion of the mesh pad closest to the fan to ensure there is no breakthrough of chromic acid mist.	2. 1/quarter.
	3. Visually inspect ductwork from tank to the control device to ensure there are no leaks.	3. 1/quarter.
	4. Perform washdown of the composite mesh–pads in accordance with manufacturer's recommendations.	4. Per manu–facturer.
Packed–bed scrubber (PBS)	1. Visually inspect device to ensure there is proper drainage, no chromic acid buildup on the packed beds, and no evidence of chemical attack on the structural integrity of the device.	1. 1/quarter.
	2. Visually inspect back portion of the chevron blade mist eliminator to ensure that it is dry and there is no breakthrough of chromic acid mist.	2. 1/quarter.
	3. Same as number 3 for CMP system.	3. 1/quarter.
	4. Add fresh makeup water to the top of the packed bed[a,b].	4. Whenever makeup is added.
PBS/CMP system . . .	1. Same as for CMP system.	1. 1/quarter.
	2. Same as for CMP system.	2. 1/quarter.
	3. Same as for CMP system.	3. 1/quarter.
	4. Same as for CMP system.	4. Per manu–facturer.
Fiber–bed mist eliminator[c].	1. Visually inspect fiber–bed unit and prefiltering device to ensure there is proper drainage, no chromic acid buildup in the units, and no evidence of chemical attack on the structural integrity of the devices.	1. 1/quarter.
	2. Visually inspect ductwork from tank or tanks to the control device to ensure there are no leaks.	2. 1/quarter.
	3. Perform washdown of fiber elements in accordance with manufacturer's recommendations.	3. Per manu–facturer.
Air pollution control device not listed in rule	To be proposed by the source for approval by the department.	To be proposed by the source for approval by the depart-ment.

Monitoring Equipment		
Pitot tube . . .	Backflush with water, or remove from the duct and rinse with fresh water. Replace in the duct and rotate 180 degrees to ensure that the same zero reading is obtained. Check pitot tube ends for damage. Replace pitot tube if cracked or fatigued.	1/quarter.
Stalagmometer	Follow manufacturer's recommendations.	

[a] If greater than 50% of the scrubber water is drained, for purposes such as maintenance, makeup water may be added to the scrubber basin.

[b] For horizontal–flow scrubbers, top is defined as the section of the unit directly above the packing media such that the makeup water would flow perpendicular to the air flow through the packing. For vertical–flow units, the top is defined as the area downstream of the packing material such that the makeup water would flow countercurrent to the air flow through the unit.

[c] Work practice standards for the control device installed upstream of the fiber–bed mist eliminator to prevent plugging do not apply as long as the work practice standards for the fiber–bed unit are followed.

(2) OPERATION AND MAINTENANCE PLAN. (a) The owner or operator of an affected source subject to the work practices of this section shall prepare an operation and maintenance plan to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's part 70 permit, if and when a part 70 permit is required under ch. NR 407. The plan shall include all the following elements:

1. The plan shall specify the operation and maintenance criteria for the affected source, the add–on air pollution control device, if such a device is used to comply with the emission limits, and the process and control system monitoring equipment, and shall include a standardized checklist to document the operation and maintenance of this equipment.

2. For sources using an add–on air pollution control device or monitoring equipment to comply with this chapter, the plan shall incorporate the work practice standards for that device or monitoring equipment, as identified in Table 1 of this chapter, if the specific equipment used is identified in Table 1.

3. If the specific equipment used is not identified in Table 1, the plan shall incorporate proposed work practice standards. These proposed work practice standards shall be submitted to the department for approval as part of the submittal required under s. NR 463.08.

4. The plan shall specify procedures to be followed to ensure that equipment or process malfunctions due to poor maintenance or other preventable conditions do not occur.

5. The plan shall include a systematic procedure for identifying malfunctions of process equipment, add–on air pollution control devices, and process and control system monitoring equipment and for implementing corrective actions to address the malfunctions.

(b) If the operation and maintenance plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction at the time the plan is initially developed, the owner or operator shall revise the operation and maintenance plan within 45 days after the event occurs. The revised plan shall include procedures for operating and maintaining the process equipment, add–on air pollution control device, or monitoring equipment during similar malfunction events, and a program for corrective action for the events.

(c) Recordkeeping associated with the operation and maintenance plan is identified in s. NR 463.11 (2). Reporting associated with the operation and maintenance plan is identified in s. NR 463.12 (7) and (8) and par. (d).

(d) If actions taken by the owner or operator during periods of malfunction are inconsistent with the procedures specified in the operation and maintenance plan required by par. (a), the owner or operator shall record the actions taken for that event and shall report by phone the actions within 2 working days after commencing actions inconsistent with the plan. This report shall be followed by a letter within 7 working days after the end of the event, unless the owner or operator makes alternative reporting arrangements, in advance, with the department.

(e) Each owner or operator shall keep the written operation and maintenance plan on record after it is developed to be made available for inspection, upon request, by the department for the life of the affected source or until the source is no longer subject to the provisions of this chapter. In addition, if the operation and maintenance plan is revised, the owner or operator shall keep previous versions of the operation and maintenance plan on record to be made available for inspection, upon request, by the department for a period of 5 years after each revision to the plan.

(f) To satisfy the requirements of this subsection, the owner or operator may use applicable standard operating procedure manuals, OSHA plans or other existing plans, provided the alternative plans meet the requirements of this chapter.

(3) CHROMIC ACID BATH STANDARDS NOT MET BY USING REDUCING AGENT. The standards in s. NR 463.04 and this section that apply to chromic acid baths may not be met by using a reducing agent to change the form of chromium from hexavalent to trivalent.

NR 463.06 Compliance provisions. (1) COMPLIANCE DATES. (a) The owner or operator of an existing affected source shall comply with the emission limitations in ss. NR 463.04 and 463.05 as follows:

1. No later than one year after the effective date of this chapter .... [revisor inserts date], if the affected source is a decorative chromium electroplating tank.

2. No later than 2 years after the effective date of this chapter .... [revisor inserts date], if the affected source is a hard chromium electroplating tank or a chromium anodizing tank.

(b) The owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of this chapter .... [revisor inserts date], shall comply immediately upon startup of the source. The owner or operator of a new or reconstructed affected source that has an initial startup after December 16, 1993, but before the effective date of this chapter .... [revisor inserts date], shall follow the compliance schedule of s. NR 460.05 (2) (a).

(c) The owner or operator of an existing area source that increases actual or potential emissions of hazardous air pollutants such that the area source becomes a major source shall comply with the provisions

for existing major sources, including the reporting provisions of s. NR 463.12 (7), immediately upon becoming a major source.

(d) The owner or operator of a new area source that increases actual or potential emissions of hazardous air pollutants such that the area source becomes a major source shall comply with the provisions for new major sources immediately upon becoming a major source.

(e) An owner or operator of an existing hard chromium electroplating tank or tanks located at a small, hard chromium electroplating facility that increases its maximum cumulative potential rectifier capacity, or its actual cumulative rectifier capacity, such that the facility becomes a large, hard chromium electroplating facility shall comply with the requirements of s. NR 463.04 (3) (a) 1. for all hard chromium electroplating tanks at the facility no later than one year after the month in which monthly records required by ss. NR 463.04 (3) (b) and 463.11 (2) (L) show that the large designation is met, or by the compliance date specified in par. (a) 2., whichever is later.

(f) An owner or operator of a decorative chromium electroplating tank that uses a trivalent chromium bath that incorporates a wetting agent, and that ceases using the trivalent chromium process, shall comply with the emission limitation thereafter applicable to the tank within one year of switching from the bath operation.

(2) REQUEST FOR A COMPLIANCE DATE EXTENSION. An owner or operator of an affected source or sources that requests a compliance date extension shall do so in accordance with this subsection and the applicable paragraphs of s. NR 460.05 (7). When the owner or operator is requesting the extension for more than one affected source located at the facility, then only one request may be submitted for all affected sources at the facility.

(a) The owner or operator of an existing affected source who is unable to comply with a relevant standard under this chapter may request that the department grant an extension allowing the owner or operator up to one additional year to comply with the standard for the affected source. The owner or operator of an affected source who has requested a compliance date extension under this subsection and is otherwise required to obtain a part 70 permit for the source shall apply for the permit or apply to have the part 70 permit revised to incorporate the conditions of the compliance date extension. The conditions of a compliance date extension granted under this subsection will be incorporated into the owner or operator's part 70 permit for the affected source according to 40 CFR part 70 or part 71, whichever is applicable.

(b) Any request under this subsection for an extension of compliance with a relevant standard shall be submitted in writing to the department not later than 6 months before the affected source's compliance date as specified in this section.

(3) METHODS TO DEMONSTRATE INITIAL COMPLIANCE. (a) Except as provided in pars. (b) and (c), an owner or operator of an affected source subject to the requirements of this chapter is required to conduct an initial performance test as required under s. NR 460.06, using the procedures and test methods listed in ss. NR 460.06 (2) and (5) and 463.09.

(b) If the owner or operator of an affected source meets all of the following criteria, an initial performance test is not required to be conducted under this chapter:

1. The affected source is a decorative chromium electroplating tank or a chromium anodizing tank.

2. A wetting agent is used in the plating or anodizing bath to inhibit chromium emissions from the affected source.

3. The owner or operator complies with the applicable surface tension limit of s. NR 463.04 (4) (b) as demonstrated through the continuous compliance monitoring required by s. NR 463.07 (5) (b).

(c) If the affected source is a decorative chromium electroplating tank using a trivalent chromium bath, and the owner or operator is subject to the provisions of s. NR 463.04 (5), an initial performance test is not required to be conducted under this chapter.

NR 463.07 Monitoring to demonstrate continuous compliance. The owner or operator of an affected source subject to the emission limitations of this chapter shall conduct monitoring according to the type of air pollution control technique that is used to comply with the emission limitation. The monitoring required to demonstrate continuous compliance with the emission limitations is identified in this section for the air pollution control techniques expected to be used by the owners or operators of affected sources.

(1) COMPOSITE MESH–PAD SYSTEMS. (a) During the initial performance test, the owner or operator of an affected source, or a group of affected sources under common control, complying with the emission limitations in s. NR 463.04 through the use of a composite mesh–pad system shall determine the outlet chromium concentration using the test methods and procedures in s. NR 463.09(3), and shall establish as a site–specific operating parameter the pressure drop across the system, setting the value that corresponds to compliance with the applicable emission limitation, using the procedures in s. NR 463.09 (4) (e). An owner or operator may conduct multiple performance tests to establish a range of compliant pressure drop values, or may set as the compliant value the average pressure drop measured over the 3 test runs of one performance test and accept ± 1 inch of water column from this value as the compliant range.

(b) On and after the date on which the initial performance test is required to be completed under s. NR 460.06, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh–pad system once each day that any affected source is operating. To be in compliance with the standards in s. NR 463.04, the composite mesh–pad system shall be operated within ± 1 inch of water column of the pressure drop value established during the initial performance test, or shall be operated within the range of compliant values for pressure drop established during multiple performance tests.

(2) PACKED–BED SCRUBBER SYSTEMS. (a) During the initial performance test, the owner or operator of an affected source, or group of affected sources under common control, complying with the emission limitations in s. NR 463.04 through the use of a packed–bed scrubber system shall determine the outlet chromium concentration using the procedures in s. NR 463.09 (3), and shall establish as site–specific operating parameters the pressure drop across the system and the velocity pressure at the common inlet of the control device, setting the value that corresponds to compliance with the applicable emission limitation using the procedures in s. NR 463.09 (4) (d) and (e). An owner or operator may conduct multiple performance tests to establish a range of compliant operating parameter values. Alternatively, the owner or operator may set as the compliant value the average pressure drop and inlet velocity pressure measured over the 3 test runs of one performance test, and accept ± 1 inch of water column from the pressure drop value and ± 10% from the velocity pressure value as the compliant range.

(b) On and after the date on which the initial performance test is required to be completed under s. NR 460.06, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the velocity pressure at the inlet to the packed–bed scrubber and the pressure drop across the scrubber system once each day that any affected source is operating. To be in compliance with the standards in s. NR 463.04, the scrubber system shall be operated within ± 10% of the velocity pressure value established during the initial performance test, and within ± 1 inch of water column of the pressure drop value established during the initial performance test, or within the range of compliant operating parameter values established during multiple performance tests.

(3) PACKED–BED SCRUBBER/COMPOSITE MESH–PAD SYSTEM. The owner or operator of an affected source, or group of affected sources under common control, that uses a packed–bed scrubber in conjunction with a composite mesh–pad system to meet the emission limitations of s. NR 463.04 shall comply with the monitoring requirements for composite mesh–pad systems as identified in sub. (1).

(4) FIBER–BED MIST ELIMINATOR. (a) During the initial performance test, the owner or operator of an affected source, or group of affected sources under common control, complying with the emission limitations in s. NR 463.04 through the use of a fiber–bed mist eliminator shall determine the outlet chromium concentration using the procedures in s. NR 463.09 (3), and shall establish as a

site–specific operating parameter the pressure drop across the fiber–bed mist eliminator and the pressure drop across the control device installed upstream of the fiber bed to prevent plugging, setting the value that corresponds to compliance with the applicable emission limitation using the procedures in s. NR 463.09 (4) (e). An owner or operator may conduct multiple performance tests to establish a range of compliant pressure drop values, or may set as the compliant value the average pressure drop measured over the 3 test runs of one performance test and accept ± 1 inch of water column from this value as the compliant range.

(b) On and after the date on which the initial performance test is required to be completed under s. NR 460.06, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the fiber–bed mist eliminator, and the control device installed upstream of the fiber bed to prevent plugging, once each day that any affected source is operating. To be in compliance with the standards in s. NR 463.04, the fiber–bed mist eliminator and the upstream control device shall be operated within ± 1 inch of water column of the pressure drop value established during the initial performance test, or shall be operated within the range of compliant values for pressure drop established during multiple performance tests.

(5) WETTING AGENT–TYPE OR COMBINATION WETTING AGENT–TYPE/FOAM BLANKET FUME SUPPRESSANTS. (a) During the initial performance test, the owner or operator of an affected source complying with the emission limitations in s. NR 463.04 through the use of a wetting agent in the electroplating or anodizing bath shall determine the outlet chromium concentration using the procedures in s. NR 463.09 (3). The owner or operator shall establish as the site–specific operating parameter the surface tension of the bath using Method 306B in Appendix A of 40 CFR part 63, incorporated by reference in s. NR 484.04, setting the maximum value that corresponds to compliance with the applicable emission limitation. In lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 45 dynes/cm as the maximum surface tension value that corresponds to compliance with the applicable emission limitation. However, the owner or operator is exempt from conducting a performance test only if the criteria of s. NR 463.06 (3) (b) are met.

(b) On and after the date on which the initial performance test is required to be completed under s. NR 460.06, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath. Operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 45 dynes/cm if the owner or operator is using this value in accordance with par. (a), shall constitute noncompliance with the standards in s. NR 463.04. The surface tension shall be monitored according to the following schedule:

1. The surface tension shall be measured once every 4 hours during operation of the tank with a stalagmometer or a tensiometer as specified in Method 306B in Appendix A of 40 CFR part 63, incorporated by reference in s. NR 484.04.

2. The time between monitoring may be increased if there have been no exceedances. The surface tension shall be measured once every 4 hours of tank operation for the first 40 hours of tank operation after the compliance date. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 8 hours of tank operation. Once there are no exceedances during 40 more hours of tank operation, surface tension measurement may be conducted once every 40 hours of tank operation on an ongoing basis, until an exceedance occurs. The minimum frequency of monitoring allowed by this chapter is once every 40 hours of tank operation.

3. Once an exceedance occurs as indicated through surface tension monitoring, the original monitoring schedule of once every 4 hours shall be resumed. A subsequent decrease in frequency shall follow the schedule laid out in subd. 2. For example, if an owner or operator had been monitoring an affected source once every 40 hours and an exceedance occurs, subsequent monitoring would take place once every 4 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation, monitoring may occur once every 8 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation on this schedule, monitoring may occur once every 40 hours of tank operation.

(c) Once a bath solution is drained from the affected tank and a new solution added, the original monitoring schedule of once every 4 hours shall be resumed, with a decrease in monitoring frequency allowed following the procedures of par. (b) 2. and 3.

(6) FOAM BLANKET–TYPE FUME SUPPRESSANTS. (a) During the initial performance test, the owner or operator of an affected source complying with the emission limitations in s. NR 463.04 through the use of a foam blanket in the electroplating or anodizing bath shall determine the outlet chromium concentration using the procedures in s. NR 463.09 (3), and shall establish as the site–specific operating parameter the thickness of the foam blanket, setting the minimum thickness that corresponds to compliance with the applicable emission limitation. In lieu of establishing the minimum foam blanket thickness during the performance test, the owner or operator may accept 2.54 centimeters (1 inch) as the minimum foam blanket thickness that corresponds to compliance with the applicable emission limitation. All foam blanket measurements shall be taken in close proximity to the workpiece or cathode area in the plating tank.

(b) On and after the date on which the initial performance test is required to be completed under s. NR 460.06, the owner or operator of an affected source shall monitor the foam blanket thickness of the electroplating or anodizing bath. Operation of the affected source at a foam blanket thickness less than the value established during the performance test, or less than 2.54 cm (1 inch) if the owner or operator is using this value in accordance with par. (a), constitutes noncompliance with the standards in s. NR 463.04. The foam blanket thickness shall be measured according to the following schedule:

1. The foam blanket thickness shall be measured once every hour of tank operation.

2. The time between monitoring may be increased if there have been no exceedances. The foam blanket thickness shall be measured once every hour of tank operation for the first 40 hours of tank operation after the compliance date. Once there are no exceedances for 40 hours of tank operation, foam blanket thickness measurement may be conducted once every 4 hours of tank operation. Once there are no exceedances during 40 more hours of tank operation, foam blanket thickness measurement may be conducted once every 8 hours of tank operation on an ongoing basis, until an exceedance occurs. The minimum frequency of monitoring allowed by this chapter is once per 8 hours of tank operation.

3. Once an exceedance occurs as indicated through foam blanket thickness monitoring, the original monitoring schedule of once every hour shall be resumed. A subsequent decrease in frequency shall follow the schedule laid out in subd. 2. For example, if an owner or operator had been monitoring an affected source once every 8 hours and an exceedance occurs, subsequent monitoring would take place once every hour of tank operation. Once an exceedance does not occur for 40 hours of tank operation, monitoring may occur once every 4 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation on this schedule, monitoring may occur once every 8 hours of tank operation.

(c) Once a bath solution is drained from the affected tank and a new solution added, the original monitoring schedule of once every hour shall be resumed, with a decrease in monitoring frequency allowed following the procedures of par. (b) 2. and 3.

(7) FUME SUPPRESSANT/ADD–ON CONTROL DEVICE. (a) If the owner or operator of an affected source uses both a fume suppressant and add–on control device and both are needed to comply with the applicable emission limit, monitoring requirements as identified in subs. (1) to (6), and the work practice standards of Table 1 of this chapter, apply for each of the control techniques used.

(b) If the owner or operator of an affected source uses both a fume suppressant and add–on control device, but only one of these techniques is needed to comply with the applicable emission limit, monitoring requirements as identified in subs. (1) to (6), and work practice standards of Table 1, apply only for the control technique used to achieve compliance.

(8) USE OF AN ALTERNATIVE MONITORING METHOD. (a) Requests and approvals of alternative monitoring methods shall be considered in accordance with s. NR 460.07 (6).

(b) After receipt and consideration of an application for an alternative monitoring method, the department may approve alternatives to any monitoring methods or procedures of this chapter including, but not limited to, the following:

1. Alternative monitoring requirements when installation or use of monitoring devices specified in this chapter would not provide accurate measurements due to interferences caused by substances within the effluent gases.

2. Alternative locations for installing monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.

NR 463.08 Alternative control devices. An owner or operator who uses an air pollution control device not listed in s. NR 463.07 shall submit a description of the device, test results collected in accordance with s. NR 463.09 (3) verifying the performance of the device for reducing chromium emissions to the atmosphere to the level required by this chapter, a copy of the operation and maintenance plan referenced in s. NR 463.05 including proposed work practice standards, and appropriate operating parameters that will be monitored to establish continuous compliance with the standards in s. NR 463.04. The monitoring plan submitted identifying the continuous compliance monitoring is subject to the department's approval.

NR 463.09 Performance test requirements and test methods. (1) PERFORMANCE TEST REQUIREMENTS. Performance tests shall be conducted using the test methods and procedures in this section and s. NR 460.06. The test plan to be followed shall be made available to the department prior to the testing, if requested. Performance test results shall be documented in complete test reports that contain all of the following information:

(a) A brief process description.

(b) Sampling location description.

(c) A description of sampling and analytical procedures and any modifications to standard procedures.

(d) Test results.

(e) Quality assurance procedures and results.

(f) Records of operating conditions during the test, preparation of calibration standards, and calibration procedures.

(g) Raw data sheets for field sampling and field and laboratory analyses.

(h) Documentation of calculations.

(i) Any other information required by the test method.

(2) USE OF OPERATION PERMIT PERFORMANCE TEST RESULTS FOR COMPLIANCE DEMONSTRATION. (a) If the owner or operator of an affected source conducts performance testing at startup to obtain an operation permit under ch. NR 407, the results of the testing may be used to demonstrate compliance with this chapter if all of the following conditions are met:

1. The test methods and procedures identified in sub. (3) were used during the performance test.

2. The performance test was conducted under representative operating conditions for the source.

3. The performance test report contains the elements required by sub. (1).

4. The owner or operator of the affected source for which the performance test was conducted has sufficient data to establish the operating parameter values that correspond to compliance with the standards in s. NR 463.04, as required for continuous compliance monitoring under s. NR 463.07.

(b) The results of tests conducted prior to December 1991 in which Method 306A in Appendix A of 40 CFR part 63, incorporated by reference in s. NR 484.04, was used to demonstrate the performance of a control technique are not acceptable.

(3) TEST METHODS. Each owner or operator subject to the provisions of this chapter and required by s. NR 463.06 (3) to conduct an initial performance test shall use the test methods identified in this section to demonstrate compliance with the standards in s. NR 463.04.

(a) Method 306 or Method 306A in Appendix A of 40 CFR part 63, both titled "Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Anodizing Operations," which are incorporated by reference in s. NR 484.04, shall be used to determine the chromium concentration from hard or decorative chromium electroplating tanks or chromium anodizing tanks. The sampling time and sample volume for each run of Methods 306 and 306A shall be at least 120 minutes and 1.70 dscm (60 dscf), respectively. Methods 306 and 306A allow the measurement of either total chromium or hexavalent chromium emissions. For the purposes of this chapter, sources using chromic acid baths may demonstrate compliance with the emission limits of s. NR 463.04 by measuring either total chromium or hexavalent chromium. The hexavalent chromium concentration measured by these methods is equal to the total chromium concentration for the affected operations.

(b) Method 306B in Appendix A of 40 CFR part 63, "Surface Tension Measurement and Recordkeeping for Tanks Used at Decorative Chromium Electroplating and Anodizing Facilities," incorporated by reference in s. NR 484.04, shall be used to measure the surface tension of electroplating and anodizing baths.

(c) Alternate test methods may also be used if the method has been validated using Method 301 in Appendix A of 40 CFR part 63, incorporated by reference in s. NR 484.04, and if approved by the department. Procedures for requesting and obtaining approval are contained in s. NR 460.06 (5).

(4) ESTABLISHING SITE–SPECIFIC OPERATING PARAMETER VALUES. (a) Each owner or operator required to establish site–specific operating parameters shall follow the procedures in this subsection.

(b) All monitoring equipment shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. For monitoring equipment purchased from a vendor, verification of the operational status of the monitoring equipment shall include execution of the manufacturer's written specifications or recommendations for installation, operation and calibration of the system.

1. Specifications for differential pressure measurement devices used to measure velocity pressure shall be in accordance with section 2.2 of Method 2 in Appendix A of 40 CFR part 60, incorporated by reference in s. NR 484.04.

2. Specifications for differential pressure measurement devices used to measure pressure drop across a control system shall be in accordance with manufacturer's accuracy specifications.

(c) The surface tension of electroplating and anodizing baths shall be measured using Method 306B in Appendix A of 40 CFR part 63, "Surface Tension Measurement and Recordkeeping for Tanks Used at Decorative Chromium Electroplating and Anodizing Facilities," incorporated by reference in s. NR 484.04. This method shall also be followed when wetting agent type or combination wetting agent/foam blanket type fume suppressants are used to control chromium emissions from a hard chromium electroplating tank and surface tension measurement is conducted to demonstrate continuous compliance.

(d) The owner or operator of a source required to measure the velocity pressure at the inlet to an add–on air pollution control device in accordance with s. NR 463.07 (2), shall establish the site–specific velocity pressure as follows:

1. Locate a velocity traverse port in a section of straight duct that connects the hooding on the plating tank or tanks with the control device. The port shall be located as close to the control system as possible, and shall be placed a minimum of 2 duct diameters downstream and 0.5 diameter upstream of any flow disturbance such as a bend, expansion or contraction (see Method 1 in Appendix A 40 CFR part 60, incorporated by reference in s. NR 484.04). If 2.5 diameters of straight duct work does not exist, locate the port 0.8

of the distance between flow disturbances downstream and 0.2 of the distance between flow disturbances upstream from the respective flow disturbances.

2. A 12–point velocity traverse of the duct to the control device shall be conducted along a single axis according to Method 2 in Appendix A 40 CFR part 60, incorporated by reference in s. NR 484.04, using an S–type pitot tube; measurement of the barometric pressure and duct temperature at each traverse point is not required, but is suggested. Mark the S–type pitot tube as specified in Method 1 in Appendix A of 40 CFR part 60, incorporated by reference in s. NR 484.04, with 12 points. Measure the velocity pressure (Δp) values for the velocity points and record. Determine the square root of the individual velocity point Δp values and average. The point with the square root value that comes closest to the average square root value is the point of average velocity. The Δp value measured for this point during the performance test shall be used as the reference for future monitoring.

(e) The owner or operator of a source required to measure the pressure drop across the add–on air pollution control device in accordance with s. NR 463.07 (1) to (4) may establish the pressure drop in accordance with the following guidelines:

1. Pressure taps shall be installed at any of the following locations:

a. At the inlet and outlet of the control system. In this case the inlet tap would be installed in the ductwork just prior to the control device and the corresponding outlet pressure tap would be installed on the outlet side of the control device prior to the blower or on the downstream side of the blower.

b. On each side of the packed bed within the control system or on each side of each mesh pad within the control system.

c. On the front side of the first mesh pad and back side of the last mesh pad within the control system.

2. Pressure taps shall be sited at locations that are:

a. As free from pluggage as possible and away from any flow disturbances such as cyclonic demisters.

b. Situated such that no air infiltration at the measurement site will occur that could bias the measurement.

3. Pressure taps shall be constructed of either polyethylene, polybutylene or other nonreactive materials.

4. Nonreactive plastic tubing shall be used to connect the pressure taps to the device used to measure pressure drop.

5. Any of the following pressure gauges may be used to monitor pressure drop: a magnehelic gauge, an inclined manometer or a "U" tube manometer.

6. Prior to connecting any pressure lines to the pressure gauges, each gauge shall be zeroed. No calibration of the pressure gauges is required.

(5) SPECIAL COMPLIANCE PROVISIONS FOR MULTIPLE SOURCES CONTROLLED BY A COMMON ADD–ON AIR POLLUTION CONTROL DEVICE. (a) This subsection identifies procedures for measuring the outlet chromium concentration from an add–on air pollution control device that is used to control multiple sources that may or may not include sources not affected by this chapter.

(b) When multiple affected sources performing the same type of operation (for example, all are performing hard chromium electroplating), and subject to the same emission limitation, are controlled with an add–on air pollution control device that is not controlling emissions from any other type of affected operation or from any sources not affected by this chapter, the applicable emission limitation identified in s. NR 463.04 shall be met at the outlet of the add–on air pollution control device.

(c) When multiple affected sources performing the same type of operation and subject to the same emission limitation are controlled with a common add–on air pollution control device that is also controlling emissions from sources not affected by this chapter, the following procedures shall be followed to determine compliance with the applicable emission limitation in s. NR 463.04:

1. Calculate the cross–sectional area of each inlet duct (uptakes from each hood) including those not affected by this chapter.

2. Determine the total sample time per test run by dividing the total inlet area from all tanks connected to the control system by the total inlet area for all ducts associated with affected sources, and then multiply this number by 2 hours. The calculated time is the minimum sample time required per test run.

3. Perform testing using Method 306 in Appendix A of 40 CFR part 63, incorporated by reference in s. NR 484.04, and calculate an outlet mass emission rate.

4. Determine the total ventilation rate from the affected sources by using equation 1:

$$VR_{tot} \times \frac{IDA_i}{\sum IA_{total}} = VR_{inlet} \qquad \text{Equation (1)}$$

where VR_{tot} is the average total ventilation rate in dscm/min for the 3 test runs as determined at the outlet by means of the Method 306 testing; IDA_i is the total inlet area for all ducts associated with affected sources; IA_{total} is the sum of all inlet duct areas from both affected sources and sources not affected by this chapter; and VR_{inlet} is the total ventilation rate from all inlet ducts associated with affected sources.

5. Establish the allowable mass emission rate of the system (AMR_{sys}) in milligrams of total chromium per hour (mg/hr) using equation 2:

$$\sum VR_{inlet} \times EL \times 60 \text{ minutes/hour} = AMR_{sys} \qquad \text{Equation (2)}$$

where $\sum VR_{inlet}$ is the total ventilation rate in dscm/min from the affected sources, and EL is the applicable emission limitation from s. NR 463.04 in mg/dscm. The allowable mass emission rate (AMR_{sys}) calculated from equation 2 shall be equal to or more than the outlet 3–run average mass emission rate determined from Method 306 testing in order for the source to be in compliance with the standard.

(d) When multiple affected sources performing different types of operations (for example, hard chromium electroplating, decorative chromium electroplating or chromium anodizing) are controlled by a common add–on air pollution control device that may or may not also be controlling emissions from sources not affected by this chapter, or if the affected sources controlled by the common add–on air pollution control device perform the same operation but are subject to different emission limitations (for example, because one is a new hard chromium plating tank and one is an existing small, hard chromium plating tank), the following procedures shall be followed to determine compliance with the applicable emission limitation in s. NR 463.04:

1. Follow the steps outlined in par. (c) 1. to 3.

2. Determine the total ventilation rate for each type of affected source using equation 3:

$$VR_{tot} \times \frac{IDA_{i,a}}{\sum IA_{total}} = VR_{inlet,a} \qquad \text{Equation (3)}$$

where VR_{tot} is the average total ventilation rate in dscm/min for the 3 test runs as determined at the outlet by means of the Method 306 testing; $IDA_{i,a}$ is the total inlet duct area for all ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation; IA_{total} is the sum of all duct areas from both affected sources and sources not affected by this chapter; and $VR_{inlet,a}$ is the total ventilation rate from all inlet ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation.

3. Establish the allowable mass emission rate in mg/hr for each type of affected source that is controlled by the add–on air pollution control device using equation 4, 5, 6 or 7 as appropriate:

$$VR_{hc1} \times EL_{hc1} \times 60 \text{ minutes/hour} = AMR_{hc1} \quad \text{Equation (4)}$$

$$VR_{hc2} \times EL_{hc2} \times 60 \text{ minutes/hour} = AMR_{hc2} \quad \text{Equation (5)}$$

$$VR_{dc} \times EL_{dc} \times 60 \text{ minutes/hour} = AMR_{dc} \quad \text{Equation (6)}$$

$$VR_{ca} \times EL_{ca} \times 60 \text{ minutes/hour} = AMR_{ca} \quad \text{Equation (7)}$$

where "hc" applies to the total of ventilation rates for all hard chromium electroplating tanks subject to the same emission limitation, "dc" applies to the total of ventilation rates for the decorative chromium electroplating tanks, "ca" applies to the total of ventilation rates for the chromium anodizing tanks, and EL is the applicable emission limitation from s. NR 463.04 in mg/dscm. There are 2 equations for hard chromium electroplating tanks because different emission limitations may apply (for example, a new tank versus an existing, small tank).

4. Establish the allowable mass emission rate (AMR) in mg/hr for the system using equation 8, including each type of affected source as appropriate:

$$AMR_{hc1} + AMR_{hc2} + AMR_{dc} + AMR_{ca} = AMR_{sys} \quad \text{Equation (8)}$$

The allowable mass emission rate calculated from equation 8 shall be equal to or more than the outlet 3–run average mass emission rate determined from Method 306 testing in order for the source to be in compliance with the standards in s. NR 463.04.

(e) Each owner or operator that uses the special compliance provisions of this subsection to demonstrate compliance with the emission limitations of s. NR 463.04 shall submit the measurements and calculations to support these compliance methods with the notification of compliance status required by s. NR 463.12 (5).

(f) Each owner or operator that uses the special compliance provisions of this subsection to demonstrate compliance with the emission limitations of s. NR 463.04 shall repeat these procedures if a tank is added or removed from the control system regardless of whether that tank is not an affected source. If neither the new tank nor the existing tank is an affected source and the new tank replaces an existing tank of the same size and is connected to the control system through the same size inlet duct, then this procedure does not have to be repeated.

NR 463.10 Preconstruction review requirements for new and reconstructed sources. (1) NEW OR RECONSTRUCTED AFFECTED SOURCES. The owner or operator of a new or reconstructed affected source which is exempt from the permit requirements of chs. NR 406 and 407 is subject to this section.

(a) No person may construct a new affected source or reconstruct an affected source subject to this chapter, or reconstruct a source such that it becomes an affected source subject to this chapter, without either meeting the permit application and approval requirements under ch. NR 406 or 407, if applicable, or submitting a notification of construction or reconstruction to the department under this section. Notification under this section shall contain the information identified in pars. (b) and (c), as appropriate.

(b) The notification of construction or reconstruction required under this subsection shall include all of the following:

1. The owner or operator's name, title and address.

2. The address or proposed address where the affected source would be located, if different from the owner's or operator's.

3. A notification of intention to construct a new affected source or make any physical or operational changes to an affected source that may meet or has been determined to meet the criteria for a reconstruction as defined in s. NR 460.02 (32).

4. An identification of this chapter as the basis for the notification.

5. The expected commencement and completion dates of the construction or reconstruction.

6. The anticipated date of initial startup of the affected source.

7. The type of process operation to be performed, hard or decorative chromium electroplating or chromium anodizing.

8. A description of the air pollution control technique to be used to control emissions from the affected source, such as preliminary design drawings and design capacity if an add–on air pollution control device is used.

9. An estimate of emissions from the source based on engineering calculations and vendor information on control device efficiency, expressed in units consistent with the emission limits of this chapter. Calculations of emission estimates shall be in sufficient detail to permit assessment of the validity of the calculations.

(c) If a reconstruction is to occur, the notification required under this subsection shall include the following in addition to the information required in par. (b):

1. A brief description of the affected source and the components to be replaced.

2. A brief description of the present and proposed emission control technique, including the information required by par. (b) 8. and 9.

3. An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source.

4. The estimated life of the affected source after the replacements.

5. A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the department's satisfaction that the technical or economic limitations affect the source's ability to comply with the relevant standard and how they do so.

6. If in the notification of reconstruction, the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or requirements, the owner or operator need not submit the information required in subds. 3. to 5.

(d) The owner or operator of a new or reconstructed affected source that submits a notification under this subsection is not subject to approval by the department under this chapter. Construction or reconstruction is subject only to notification and may begin upon submission of a complete notification. This paragraph applies only to affected sources which are exempt from permit requirements under chs. NR 406 and 407.

(2) SUBMITTAL TIMEFRAMES. After the effective date of this chapter .... [revisor inserts date], an owner or operator of a new or reconstructed affected source shall submit the notification of construction or reconstruction required by sub. (1) according to the following schedule:

(a) If construction or reconstruction commences after the effective date of this chapter .... [revisor inserts date], the notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence.

(b) If the construction or reconstruction had commenced and initial startup had not occurred before the effective date of this chapter .... [revisor inserts date], the notification shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of this chapter .... [revisor inserts date].

NR 463.11 Recordkeeping requirements. (1) The owner or operator of each affected source subject to this chapter shall fulfill all recordkeeping requirements outlined in this section and in the general provisions of ch. NR 460, according to the applicability of ch. NR 460 as identified in Appendix N of ch. NR 460.

(2) The owner or operator of an affected source subject to this chapter shall maintain all of the following records for the source:

(a) Inspection records for the add–on air pollution control device, if such a device is used, and monitoring equipment, to document that the inspection and maintenance required by the work practice

standards of s. NR 463.05 and Table 1 of this chapter have taken place. The record may take the form of a checklist and shall identify the device inspected, the date of inspection, a brief description of the working condition of the device during the inspection, and any actions taken to correct deficiencies found during the inspection.

(b) Records of all maintenance performed on the affected source, the add–on air pollution control device and monitoring equipment.

(c) Records of the occurrence, duration and cause, if known, of each malfunction of process, add–on air pollution control and monitoring equipment.

(d) Records of actions taken during periods of malfunction when the actions are inconsistent with the operation and maintenance plan.

(e) Other records, which may take the form of checklists, necessary to demonstrate consistency with the provisions of the operation and maintenance plan required by s. NR 463.05 (2).

(f) Test reports documenting results of all performance tests.

(g) All measurements as may be necessary to determine the conditions of performance tests, including measurements necessary to determine compliance with the special compliance procedures of s. NR 463.09 (5).

(h) Records of monitoring data required by s. NR 463.07 that are used to demonstrate compliance with the standard including the date and time the data are collected.

(i) The specific identification, including date and times, of each period of excess emissions, as indicated by monitoring data, that occurs during malfunction of the process, add–on air pollution control or monitoring equipment.

(j) The specific identification, including date and times, of each period of excess emissions, as indicated by monitoring data, that occurs during periods other than malfunction of the process, add–on air pollution control or monitoring equipment.

(k) The total process operating time of the affected source during the reporting period.

(L) Records of the actual cumulative rectifier capacity of hard chromium electroplating tanks at a facility expended during each month of the reporting period, and the total capacity expended to date for a reporting period, if the owner or operator is using the actual cumulative rectifier capacity to determine facility size in accordance with s. NR 463.04 (3) (b).

(m) For sources using fume suppressants to comply with the standards in s. NR 463.04, records of the date and time that fume suppressants are added to the electroplating or anodizing bath.

(n) For sources complying with s. NR 463.04 (5), records of the bath components purchased, with the wetting agent clearly identified by its chemical name as a bath constituent contained in one of the components.

(o) Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements, if the source has been granted a waiver under s. NR 460.09 (6).

(p) All documentation supporting the notifications and reports required by ss. NR 460.08, 460.09 and 463.12.

(3) All records shall be maintained for a period of 5 years in accordance with s. NR 460.09 (2) (a).

NR 463.12 Reporting requirements. The owner or operator of each affected source subject to this chapter shall fulfill all reporting requirements outlined in this section and in the general provisions of ch. NR 460, according to the applicability of ch. NR 460 as identified in Appendix N of ch. NR 460. Owners or operators complying with the provisions of s. NR 463.04 (5) shall meet the requirements of sub. (9) rather than the requirements of subs. (1) to (8).

(1) REPORT SUBMITTALS. Reports under this section shall be made to the department as follows:

(a) Reports required by ch. NR 460 and this section may be sent by U.S. mail, fax or by another courier.

1. Submittals sent by U.S. mail shall be postmarked on or before the specified date.

2. Submittals sent by other methods shall be received by the department on or before the specified date.

(b) If acceptable to both the department and the owner or operator of an affected source, reports may be submitted on electronic media.

Note: Submittals sent by U.S. mail should be addressed to the Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707. Submittals by another courier should be delivered to department's Bureau of Air Management, 7th floor, 101 South Webster Street, Madison WI 53703. Submittals by fax should be directed to (608) 267–0560.

(2) TIMING OF APPLICABILITY. The reporting requirements of this section apply to the owner or operator of an affected source when the source becomes subject to the provisions of this chapter.

(3) INITIAL NOTIFICATIONS. The owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of this chapter .... [revisor inserts date] shall comply with par. (a) or (b), as applicable.

(a) If no permit application is required under s. NR 406.03 or 407.04 (1) (b) 3., the owner or operator shall submit an initial notification report to the department, in addition to the notification of construction or reconstruction required by s. NR 463.10 (1), as follows:

1. A notification of the date when construction or reconstruction was commenced shall be submitted simultaneously with the notification of construction or reconstruction, if construction or reconstruction was commenced on or before the effective date of this chapter .... [revisor inserts date].

2. A notification of the date when construction or reconstruction was commenced shall be submitted no later than 30 calendar days after that date, if construction or reconstruction was commenced after the effective date of this chapter .... [revisor inserts date].

3. A notification of the actual date of startup of the source shall be submitted within 30 calendar days after that date.

(b) If a permit application is required under s. NR 406.03 or 407.04 (1) (b) 3. prior to construction or reconstruction, submittal of a completed permit application and compliance with the conditions in any permit subsequently issued shall be deemed to meet the notification requirements of par. (a).

(4) NOTIFICATION OF PERFORMANCE TEST. (a) The owner or operator of an affected source shall notify the department in writing of the owner or operator's intention to conduct a performance test at least 60 calendar days before the test is scheduled to begin to allow the department to have an observer present during the test. Observation of the performance test by the department is optional.

(b) In the event the owner or operator is unable to conduct the performance test as scheduled, the provisions of s. NR 439.07 (4) apply.

(5) NOTIFICATION OF COMPLIANCE STATUS. (a) A notification of compliance status is required each time that an affected source becomes subject to the requirements of this chapter.

(b) Each time a notification of compliance status is required under this subsection, the owner or operator of an affected source shall submit to the department a notification of compliance status, signed by the responsible official, as defined in s. NR 400.02 (80e), who shall certify its accuracy, attesting to whether the affected source has complied with this chapter. The notification shall list for each affected source the following:

1. The applicable emission limitation and the methods that were used to determine compliance with this limitation.

2. If a performance test is required by this chapter, the test report documenting the results of the performance test, which contains the elements required by s. NR 463.09 (1), including measurements and calculations to support the special compliance provisions of s. NR 463.09 (5) if these are being followed.

3. The type and quantity of hazardous air pollutants emitted by the source reported in mg/dscm or mg/hr if the source is using the special provisions of s. NR 463.09 (5) to comply with the standards in s. NR 463.04. If the owner or operator is subject to the construction and reconstruction provisions of s. NR 463.10 and had previously submitted emission estimates, the owner or operator shall state that

this report corrects or verifies the previous estimates. For sources not required to conduct a performance test in accordance with s. NR 463.06 (3), the surface tension measurement may fulfill this requirement.

4. For each monitored parameter for which a compliant value is to be established under s. NR 463.07, the specific operating parameter value, or range of values, that corresponds to compliance with the applicable emission limit.

5. The methods that will be used to determine continuous compliance, including a description of monitoring and reporting requirements, if methods differ from those identified in this chapter.

6. A description of the air pollution control technique for each emission point.

7. A statement that the owner or operator has completed and has on file the operation and maintenance plan as required by the work practice standards in s. NR 463.05.

8. If the owner or operator is determining facility size based on actual cumulative rectifier capacity in accordance with s. NR 463.04 (3) (b), records to support that the facility is small. For existing sources, records from any 12–month period preceding the compliance date shall be used or a description of how operations will change to meet a small designation shall be provided. For new sources, records of projected rectifier capacity for the first 12–month period of tank operation shall be used.

9. A statement by the owner or operator of the affected source as to whether the source has complied with the provisions of this chapter.

(c) For sources required to conduct a performance test by s. NR 463.06 (3), the notification of compliance status shall be submitted to the department no later than 90 calendar days following completion of the compliance demonstration required by ss. NR 460.06 and 463.06 (3).

(d) For sources that are not required to complete a performance test in accordance with s. NR 463.06 (3), the notification of compliance status shall be submitted to the department no later than 30 days after the compliance date specified in s. NR 463.06 (1).

(6) REPORTS OF PERFORMANCE TEST RESULTS. (a) The owner or operator shall report to the department the results of any performance test conducted as required by s. NR 460.06 or 463.06 (3).

(b) Reports of performance test results shall be submitted no later than 90 days following the completion of the performance test, and shall be submitted as part of the notification of compliance status required by sub. (5).

(7) ONGOING COMPLIANCE STATUS REPORTS FOR MAJOR SOURCES. (a) *Documentation requirements.* The owner or operator of an affected source that is located at a major source site shall submit a summary report to the department to document the ongoing compliance status of the affected source. The report shall contain the information identified in par. (c), and shall be submitted semiannually except under one of the following conditions:

1. The department determines on a case–by–case basis that more frequent reporting is necessary to accurately assess the compliance status of the source.

2. The monitoring data collected by the owner or operator of the affected source in accordance with s. NR 463.07 show that the emission limit has been exceeded, in which case quarterly reports shall be submitted. Once an owner or operator of an affected source reports an exceedance, ongoing compliance status reports shall be submitted quarterly until a request to reduce reporting frequency under par. (b) is approved.

(b) *Request to reduce frequency of ongoing compliance status reports.* 1. An owner or operator who is required to submit ongoing compliance status reports on a quarterly or more frequent basis may reduce the frequency of reporting to semiannual if all of the following conditions are met:

a. For one full year, the ongoing compliance status reports, which may, for example, be quarterly or monthly, demonstrate that the affected source is in compliance with the relevant emission limit.

b. The owner or operator continues to comply with all applicable recordkeeping and monitoring requirements of ch. NR 460 and this chapter.

c. The department does not object to a reduced reporting frequency for the affected source, as provided in subds. 2. and 3.

2. The frequency of submitting ongoing compliance status reports may be reduced only after the owner or operator notifies the department in writing of the owner or operator's intention to make such a change, and the department does not object to the intended change. In deciding whether to approve a reduced reporting frequency, the department may review information concerning the source's entire previous performance history during the 5–year recordkeeping period prior to the intended change, or the recordkeeping period since the source's compliance date, whichever is shorter. Records subject to review may include performance test results, monitoring data and evaluations of an owner or operator's conformance with emission limitations and work practice standards. The information may be used by the department to make a judgment about the source's potential for noncompliance in the future. If the department disapproves the owner or operator's request to reduce reporting frequency, the department shall notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the department to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

3. As soon as the monitoring data required by s. NR 463.07 show that the source is not in compliance with the relevant emission limit, the frequency of reporting shall revert to quarterly, and the owner shall state this exceedance in the ongoing compliance status report for the next reporting period. After demonstrating ongoing compliance with the relevant emission limit for another full year, the owner or operator may again request approval from the department to reduce the reporting frequency as allowed by this paragraph.

(c) *Contents of ongoing compliance status reports.* The owner or operator of an affected source for which compliance monitoring is required in accordance with s. NR 463.07 shall prepare a summary report to document the ongoing compliance status of the source. The report shall contain all of the following information:

1. The company name and address of the affected source.

2. An identification of the operating parameter that is monitored for compliance determination, as required by s. NR 463.07.

3. The relevant emission limitation for the affected source, and the operating parameter value, or range of values, that correspond to compliance with this emission limitation as specified in the notification of compliance status required by sub. (5).

4. The beginning and ending dates of the reporting period.

5. A description of the type of process performed in the affected source.

6. The total operating time of the affected source during the reporting period.

7. If the affected source is a hard chromium electroplating tank and the owner or operator is limiting the maximum cumulative rectifier capacity in accordance with s. NR 463.04 (3) (b), the actual cumulative rectifier capacity expended during the reporting period, on a month–by–month basis.

8. A summary of operating parameter values, including the total duration of excess emissions during the reporting period as indicated by those values, the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to process upsets, control equipment malfunctions, other known causes and unknown causes.

9. A certification by a responsible official that the work practice standards in s. NR 463.05 were followed in accordance with the operation and maintenance plan for the source.

10. If the operation and maintenance plan required by s. NR 463.05 (2) was not followed, an explanation of the reasons for not following the provisions, an assessment of whether any excess emission or parameter monitoring exceedances are believed to have

occurred, and a copy of the report or reports required by s. NR 463.05 (2) (d) documenting that the operation and maintenance plan was not followed.

11. A description of any changes in monitoring, processes or controls since the last reporting period.

12. The name, title and signature of the responsible official who is certifying the accuracy of the report.

13. The date of the report.

(d) *Reporting for multiple monitoring devices.* When more than one monitoring device is used to comply with the continuous compliance monitoring required by s. NR 463.07, the owner or operator shall report the results as required for each monitoring device. However, when one monitoring device is used as a backup for the primary monitoring device, the owner or operator shall only report the results from the monitoring device used to meet the monitoring requirements of this chapter. If both devices are used to meet these requirements, then the owner or operator shall report the results from each monitoring device for the relevant compliance period.

(8) ONGOING COMPLIANCE STATUS REPORTS FOR AREA SOURCES. The requirements of this subsection do not alleviate affected area sources from complying with the requirements of state or federal operating permit programs under 40 CFR part 71.

(a) *Annual summary report.* The owner or operator of an affected source that is located at an area source site shall prepare a summary report to document the ongoing compliance status of the affected source. The report shall contain the information identified in sub. (7) (c) and shall be retained on site and made available to the department upon request. The report shall be completed annually except as provided in par. (b).

(b) *Reports of exceedances.* 1. If both of the following conditions are met, semiannual reports shall be prepared and submitted to the department:

a. The total duration of excess emissions, as indicated by the monitoring data collected by the owner or operator of the affected source in accordance with s. NR 463.07, is 1% or greater of the total operating time for the reporting period.

b. The total duration of malfunctions of the add–on air pollution control device and monitoring equipment is 5% or greater of the total operating time.

2. Once an owner or operator of an affected source reports an exceedance as defined in subd. 1., ongoing compliance status reports shall be submitted semiannually until a request to reduce reporting frequency under par. (c) is approved.

3. The department may determine on a case–by–case basis that the summary report shall be completed more frequently and submitted, or that the annual report shall be submitted instead of being retained on site, if these measures are necessary to accurately assess the compliance status of the source.

(c) *Request to reduce frequency of ongoing compliance status reports.* 1. An owner or operator who is required to submit ongoing compliance status reports on a semiannual or more frequent basis, or is required to submit its annual report instead of retaining it on site, may reduce the frequency of reporting to annual or be allowed to maintain the annual report onsite if all of the following conditions are met:

a. For one full year (for 2 semiannual or 4 quarterly reporting periods, for example), the ongoing compliance status reports demonstrate that the affected source is in compliance with the relevant emission limit.

b. The owner or operator continues to comply with all applicable recordkeeping and monitoring requirements of ch. NR 460 and this chapter.

c. The department does not object to a reduced reporting frequency for the affected source, as provided in subds. 2. and 3.

2. The frequency of submitting ongoing compliance status reports may be reduced only after the owner or operator notifies the department in writing of the owner or operator's intention to make such a change, and the department does not object to the intended change. In deciding whether to approve a reduced reporting frequency, the department may review information concerning the source's previous performance history during the 5–year recordkeeping period prior to the intended change, or the recordkeeping period since the source's compliance date, whichever is shorter. Records subject to review may include performance test results, monitoring data, and evaluations of an owner or operator's conformance with emission limitations and work practice standards. The information may be used by the department to make a judgement about the source's potential for noncompliance in the future. If the department disapproves the owner or operator's request to reduce reporting frequency, the department shall notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the department to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

3. As soon as the monitoring data required by s. NR 463.07 show that the source is not in compliance with the relevant emission limit, the frequency of reporting shall revert to semiannual, and the owner shall state this exceedance in the ongoing compliance status report for the next reporting period. After demonstrating ongoing compliance with the relevant emission limit for another full year, the owner or operator may again request approval from the department to reduce the reporting frequency as allowed by this paragraph.

(9) REPORTS ASSOCIATED WITH TRIVALENT CHROMIUM BATHS. The requirements of this subsection do not alleviate affected sources from complying with the requirements of state or federal operating permit programs under ch. NR 407 or 40 CFR part 70. Owners or operators complying with the provisions of s. NR 463.04 (5) are not subject to subs. (1) to (8), but shall instead submit the following reports:

(a) Within 180 days after the effective date of this chapter .... [revisor inserts date], submit an initial notification that includes all of the following:

1. The same information as is required by sub. (3) (a) 1. to 5.

2. A statement that a trivalent chromium process that incorporates a wetting agent will be used to comply with s. NR 463.04 (5).

3. The list of bath components that comprise the trivalent chromium bath, with the wetting agent clearly identified by its chemical name.

(b) Within 30 days after the compliance date specified in s. NR 463.06 (1), a notification of compliance status that contains an update of the information submitted in accordance with par. (a) or a statement that the information is still accurate.

(c) Within 30 days after a change to the trivalent chromium electroplating process, a report that includes all of the following:

1. A description of the manner in which the process has been changed and the emission limitation, if any, now applicable to the affected source.

2. If a different emission limitation applies, the applicable information required by sub. (3) (a).

3. The notification and reporting as required by subs. (4), (5), (6), (7) and (8), which shall be submitted in accordance with the schedules identified in those subsections.

Fiscal Estimate

Summary of Rule:

The federal standard that regulates hazardous air pollutant emissions from chromium electroplating and anodizing operations became effective on January 5, 1995. That standard is one of the approximately 173 national emission standards for hazardous air pollutants (NESHAPs) that the US Environmental Protection Agency expects to promulgate by 2002.

Section 144.375 (5), Stats., requires the Department to promulgate these NESHAPs by rule. This order [AM–34–96] would establish the chromium electroplating and anodizing operations NESHAP [Please note that NESHAPs are also called Maximum Achievable Control Technology (MACT) standards] through revisions to chs. NR 400, 406, 407, 439 and 460; and creation of ch. NR 463, Wis. Adm. Code.

Fiscal Impact:

Because all affected sources must meet the federal requirements, promulgating this proposed rule will not pose additional costs on them. Local governments have no role in implementing these standards and, therefore, should not incur additional costs.

The Department's Bureau of Air Management is currently required to receive reports from and issue permits to sources that are affected by this proposed rule; consequently, promulgating this proposed rule will not pose additional costs on the Department.

Sources that have hard chromium electroplating, decorative chromium electroplating, and chromium anodizing operations are affected by this standard.

Long–Range Fiscal Implications:

None.

Notice of Hearing

Optometry Examining Board

Notice is hereby given that pursuant to authority vested in the Optometry Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 449.18 (7), Stats., and interpreting ss. 449.01, 449.04, 449.05 (2), 449.06, 449.07 (1), 449.08 and 449.18 (4), Stats., the Optometry Examining Board will hold a public hearing at the time and place indicated below to consider revision to the Opt Code, relating to applications, examinations and continuing education requirements, and to standards of professional conduct of optometrists.

Hearing Information

April 2, 1997 **Room 179A**
Wednesday **1400 East Washington Ave.**
9:00 a.m. **MADISON, WI**

Appearances at the Hearing

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

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

Written comments must be received by **April 18, 1997** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 449.18 (7)

Statutes interpreted: ss. 449.01, 449.04, 449.05 (2), 449.06, 449.07 (1), 449.08 and 449.18 (4)

In this proposed rule–making order, the Optometry Examining Board amends s. Opt 1.03 to clarify that an optometrist may direct unlicensed people working under the optometrist's direct supervision to perform remediable procedures as well as routine visual screenings. Section Opt 4.01 is amended to include a note to clarify the examination requirements for reciprocal applicants. Section Opt 6.04 (3) is amended to clarify that in lieu of submitting certificates of attendance directly to the Board, optometrists who hold TPA certificates issued under s. 449.18, Stats., will be required to sign a statement at the time of renewal certifying that the continuing educational coursework has been completed.

Section Opt 1.02 (5m) is created to include a definition of "remediable procedure." Section Opt 5.08 (2) (c) is created to permit optometrists to accept written verification of examination findings from a licensed optometrist or ophthalmologist obtained within the 90 day period immediately preceding the date of a patient's visit, in lieu of conducting a minimum visual examination. Section Opt 5.15 is created to further define that it is unprofessional conduct for an optometrist to engage in any practice or conduct which constitutes a substantial danger to the health, welfare, or safety of a patient or the public or to engage in conduct in the practice of optometry which evidences a lack of knowledge or ability to apply professional principles or skills.

The Board amends various sections throughout the rules relating to clarity, streamlining application and renewal procedures, proper placement in the rules, and punctuation. Several provisions are amended in ch. Opt 6 to reflect that a signed statement certifying that the continuing education coursework has been completed is sufficient for purposes of renewing a credential, and that licensees will be required to retain certificates of attendance for a specific period of time and to provide them to the Board upon request. And, finally, changes are made to several notes.

Text of Rule

SECTION 1. Chapter Opt 1 (title) is amended to read:

Chapter Opt 1
~~PRACTICE OF OPTOMETRY~~ AUTHORITY AND DEFINITIONS

SECTION 2. Opt 1.01 is amended to read:

Opt 1.01 Authority. The rules in ~~this chapter~~ chs. Opt 1 to 7 are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 449.01 and 449.07, Stats., to define the scope of practice of optometry in Wisconsin.

SECTION 3. Opt 1.02 (intro.) is amended to read:

Opt 1.02 ~~In this chapter~~ As used in chs. Opt 1 to 7:

SECTION 4. Opt 1.02 (1) and Note are repealed.

SECTION 5. Opt 1.02 (1) and (1m) are created to read:

Opt 1.02 (1) "Board" means the optometry examining board.

(1m) "Department" means the department of regulation and licensing.

SECTION 6. Opt 1.02 (2) (a), (b), (c), (d),(e), (f) and (g) are amended to read:

Opt 1.02 (2) (a) Determining whether a patient may safely and comfortably wear contact lenses~~;~~.

(b) Measuring and evaluating the curvature of the cornea through any means including photographic, mechanical or reflected light methods~~;~~.

(c) Using a spectacle prescription or a prescription determined through the use of a vertometer or its equivalent on a pair of spectacles, as a basis for designing, manufacturing or duplicating a contact lens~~;~~.

(d) Prescribing a schedule of wearing contact lenses~~;~~.

(e) Placing a contact lens upon the eye of a patient for diagnostic purposes~~;~~.

(f) Evaluating the physical fit of the contact lens~~;~~.

(g) Using a phoropter, hand–held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens~~;and,~~.

SECTION 7. Opt 1.02 (4) (intro.), (a), (b), (c) and (d) are amended to read:

Opt 1.02 (4) "Minimum examination for the fitting of contact lenses" means the performance of all of the following procedures:

(a) Performing a minimum visual examination~~;~~.

(b) Determining lens specifications~~;~~.

(c) Evaluating the physical fit of diagnostic and prescribed lenses by means of a slit lamp~~;~~.

(d) Prescribing a time schedule for a patient's wearing the contact lenses~~; and~~.

SECTION 8. Opt 1.02 (5) (intro.), (a), (b), (c), (d), (e), (f), (g), (h) and (i) are amended to read:

Opt 1.02 (5) "Minimum visual examination" means the performance of all of the following procedures:

(a) Recording a complete case history of the patient~~;~~.

(b) Measuring far and near visual acuity~~;~~.

(c) Conducting an ophthalmoscopic and external examination~~;~~.

(d) Measuring corneal curvature~~;~~.

(e) Performing retinoscopy~~;~~.

(f) Evaluating convergence and accommodation~~;~~.

(g) Obtaining far and near subjective findings~~;~~.

(h) Evaluating muscle balance~~;~~.

(i) Measuring intraocular pressure~~; and,~~.

SECTION 9. Opt 1.02 (5m) is created to read:

Opt 1.02 (5m) "Remediable procedure" means any patient procedure to the eye or surrounding structures of the eye that can be remedied.

SECTION 10. Opt 1.02 (6) (a), (b), (c), (d) and (e) are amended to read:

Opt 1.02 (6) (a) Obtaining and recording a case history~~;~~.

(b) Measuring far and near visual acuities~~;~~.

(c) Measuring stereopsis~~;~~.

(d) Testing color vision~~;~~.

(e) Testing visual fields~~; and,~~.

SECTION 11. Opt 1.03 is amended to read:

Opt 1.03 Responsibility and supervision. An optometrist may direct an unlicensed person working under the optometrist's immediate supervision to perform routine visual ~~screening~~ screenings and other remediable procedures as delegated by the optometrist. The optometrist shall be responsible for the evaluation of the results of any routine visual screening and any other delegated procedure.

SECTION 12. Opt 3.01 (title) is amended to read:

Opt 3.01 Scheduling of examination.

SECTION 13. Opt 3.02 (title), (1) (intro.), (a) and Note are amended to read:

Opt 3.02 Application for examination. (1) An applicant for examination for licensure as an optometrist shall file with the board at least 30 days prior to the date of the scheduled examination under s. Opt 3.03, a completed~~, sworn~~ application on a form provided by the board. The application shall include:

(a) The fee authorized in s. 440.05 (1), Stats.~~;and~~

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations. Application forms for examination may be obtained from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 14. Opt 3.02 (1) (b) is repealed and recreated to read:

Opt 3.02 (1) (b) Verification of the applicant's successful completion of the national board examination submitted directly to the board by the national board of examiners in optometry.

SECTION 15. Opt 3.02 (2) is repealed.

SECTION 16. Opt 3.02 (3) is renumbered s. Opt 3.02 (1) (c) and amended to read:

Opt 3.02 (1) (c) ~~An~~ A certified transcript of the coursework completed by the applicant submitted directly to the board by an accredited college of optometry approved and recognized by the board ~~shall forward to the board a certified transcript of the applicant~~.

SECTION 17. Opt 3.02 (4) and (5) are renumbered s. Opt 3.02 (2) and (3).

SECTION 18. Opt 3.04 (title) and 3.04 are amended to read:

Opt 3.04 Rules of conduct. An applicant who gives or receives unauthorized assistance, violates rules of conduct of the examination or otherwise acts dishonestly during the written or ~~clinical~~ practical examination may be denied licensure by the board. Future consideration of the applicant shall be at the discretion of the board.

SECTION 19. Opt 3.07 (2) (title), (a) and (b) are amended to read:

Opt 3.07 (2) STATE BOARD EXAMINATIONS. (a) To pass the practical examination, an applicant shall receive ~~an average grade of 75 or above with no grade lower than 70 on any part of the examination~~ a grade determined by the board to represent minimum competence to practice optometry.

(b) To pass the state law examination, each applicant must receive a grade ~~of 75 or above~~ determined by the board to represent minimum competence to practice optometry.

SECTION 20. Opt 3.10 (1), (2) and (6) are amended to read:

Opt 3.10 Failure and review. (1) In case of failure of an applicant on the practical examination, all failing grades ~~below 75~~ shall be reviewed by the board or by 2 members designated by the chairperson.

(2) An applicant who fails ~~the~~ a state board examination may request a review of that examination. The applicant shall file a written request to the board within 30 days of the date on which examination results were mailed.

(6) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing on the provided form. These comments shall be retained and made available to the applicant for use at ~~a~~ any subsequent hearing.

SECTION 21. Opt 3.11 (1) (a), (b), (c) and (3) are amended to read:

Opt 3.11 (1) (a) The applicant's name and address~~;~~.

(b) The type of license applied for~~;~~.

(c) A description of the perceived error, including specific questions or procedures claimed to be in error~~; and,~~.

(3) If the board's decision does not result in the applicant passing the examination, the applicant may ~~request a hearing under s. RL 1.05~~ retake the examination as provided under s. Opt 3.12.

SECTION 22. Opt 3.12 (1) is amended to read:

Opt 3.12 (1) PRACTICAL EXAMINATION. An applicant who fails to achieve a passing grade ~~of 75~~ shall be required to retake the practical examination. The fee for reexamination shall be as ~~specified~~ authorized in s. 440.05 (1), Stats.

SECTION 23. Opt 4.01 (intro.), (4) and (6) are amended to read:

Opt 4.01 Qualifications. An optometrist holding a license to practice optometry in another state may become licensed in Wisconsin if the applicant ~~does all of the following~~ submits evidence satisfactory to the board that he or she:

(4) Has passed the required state board ~~examination~~ examinations administered by the board as set forth in s. Opt 4.03

Note: Applicants who engaged in the practice of optometry for at least 5 years prior to 1996 are required to take and pass Parts I and II of the national board examination. Applicants who engaged in the practice of optometry for less than 5 years prior to 1996 and applicants who graduated from an approved college of optometry college after December 31, 1995 are required to take and pass Parts I, II and III of the national board examination.

(6) Is not aware of any ~~current investigation against the applicant's license to practice optometry in any state or jurisdiction~~ pending complaints against the applicant or investigations of the applicant that relate to the practice of optometry.

SECTION 24. Opt 4.02 (1) (intro.), (a), (b), (c) and Note are amended to read:

Opt 4.02 (1) An applicant for licensure under this chapter shall file with the board, no later than ~~60~~ 30 days prior to the examination, a completed~~, sworn~~ application on a form provided by the board. The application shall include:

(a) The signature of the applicant~~;~~.

(b) Notice as to whether the applicant has been disciplined in any state in which he or she has held a license~~; and~~.

(c) The ~~fee~~ fees authorized in s. 440.05 (1) and (2), Stats.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations. Application forms for licensure may be obtained from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 25. Opt 4.02 (2) and (3) are renumbered s. Opt 4.02 (1) (d) and (1) (e) and amended to read:

Opt 4.02 (1) (d) ~~An~~ A certified transcript of the coursework completed by the applicant submitted directly to the board by an accredited school or college of optometry approved and recognized by the board ~~shall forward to the board a certified transcript of the applicant~~.

(e) ~~All~~ Verification of the applicant's licensure submitted directly to the board by all states in which the applicant has ever held a license ~~shall forward to the board verification of the applicant's licensure in those states~~.

SECTION 26. Opt 4.02 (4) is renumbered s. Opt 4.02 (2).

SECTION 27. Opt 4.02 Note is amended to read:

Note: For ~~DPA~~ certification ~~the~~ to use diagnostic pharmaceutical agents, an applicant for licensure must also meet requirements in ~~ch.~~ chs. Opt 6 and RL 10.

SECTION 28. Opt 5.01 (title) is amended to read:

Opt 5.01 Intent.

SECTION 29. Opt 5.01 (1) is repealed.

SECTION 30. Opt 5.01 (2) is amended to read:

Opt 5.01 ~~(2)~~ The intent of the ~~optometry examining~~ board in adopting the rules is to establish minimum standards of conduct for optometrists and to specify reasons for taking disciplinary action against a licensee.

SECTION 31. Opt 5.02 (intro.) is created to read:

Opt 5.02 As used in this chapter:

SECTION 32. Opt 5.02 (1) is renumbered s. Opt 5.02 (1m) and amended to read:

Opt 5.02 (1m) ~~"Gross incompetence"~~ "Grossly incompetent" as that term is used in s. 449.07, Stats., means the failure of a licensee or certificate holder to exercise that degree of care and skill which is exercised by the average practitioner ~~in the class to which the optometrist belongs~~ who holds the same type of license or certificate, acting in the same or similar circumstances. ~~Gross incompetence~~ Grossly incompetent specifically includes the inability to proficiently operate equipment and instruments described in s. Opt 5.07.

SECTION 33. Opt 5.02 (1) is created to read:

Opt 5.02 (1) "Extended–wear contact lenses" means contact lenses which have received federal food and drug administration approval for marketing for extended wear and are prescribed for use on an extended wear (overnight) schedule.

Note: Extended–wear contact lenses require premarket approval under section 515 of the Federal Food, Drug and Cosmetic Act, 21 USC 360e (1985). A copy of this provision is available at the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 34. Opt 5.04 is amended to read:

Opt 5.04 Improper use of title. It shall be unprofessional conduct for an optometrist to use the title "Doctor", or the initials "Dr.", in printed form unless the optometrist has been granted the title of doctor of optometry by an optometric college and unless the optometrist indicates in the communication that he or she is an optometrist.

SECTION 35. Opt 5.06 is amended to read:

Opt 5.06 Inspection. It shall be unprofessional conduct for an optometrist to fail to furnish to the board upon request information concerning the mode and location of practice. Every optometrist shall permit the ~~inspection by a~~ board ~~member~~ or a board representative ~~of~~ to inspect his or her office, equipment and records during regular office hours.

SECTION 36. Opt 5.08 (2) (c) is created to read:

Opt 5.08 (2) (c) Where written verification of all examination findings has been received from a licensed optometrist or an ophthalmologist stating that he or she has performed a minimum visual examination, as defined in s. Opt 1.02 (5), for the patient within the 90 day period immediately preceding the date of the patient's visit.

SECTION 37. Opt 5.10 (1) (intro.), (a), (b), (c) and (d) are amended to read:

Opt 5.10 (1) It shall be unprofessional conduct for an optometrist to record and include in each patient's record the following information:

(a) Name and date of birth of the patient~~;~~.

(b) Date of examination and examination findings, including a clear and legible record of the tests performed, the results obtained, the prescription ordered and the patient's far and near visual acuity obtained with the prescription ordered~~;~~.

(c) Date of the prescription~~;~~.

(d) Lens verification of lenses dispensed, including the date of verification and identification of the person verifying the lenses~~; and~~,.

SECTION 38. Opt 5.11 (2) and Note are amended to read:

Opt 5.11 (2) It shall be unprofessional conduct for an optometrist to deliver ophthalmic lenses if the lenses do not meet requirements set forth in Table 1, ANSI Z80.1–~~1972~~1995, requirements for first–quality prescription ophthalmic lenses, approved ~~November 1, 1971~~ January 3, 1995, by the American national standards institute, inc.

Note: The standard incorporated above as reference may be obtained from the Standards Institute located at ~~1430 Broadway~~ 11 West 42nd Street, New York, NY ~~10018~~ 10036. A copy of the Standard is on file at the board office.

SECTION 39. Opt 5.12 is amended to read:

Opt 5.12 Supervision. It shall be unprofessional conduct for an optometrist to fail to exercise immediate supervision over individuals to whom the optometrist has delegated the task of routine visual screening or the performance of remedial procedures under s. Opt 1.03.

SECTION 40. Opt 5.13 (1) (a) and (b) are amended to read:

Opt 5.13 (1) (a) Create false, fraudulent or unjustified expectations of favorable results~~;~~.

(b) Make comparisons with other optometrists which are false, fraudulent, misleading or deceptive~~; or~~,.

SECTION 41. Opt 5.14 (4) is amended to read:

Opt 5.14 (4) The disclosure shall be signed by the patient prior to the patient's receipt of the lenses. If the patient is a minor or incompetent, the patient's parent or legal guardian shall sign the disclosure. The patient or the patient's parent or legal guardian, if the patient is a minor or incompetent, shall be given a copy of the disclosure, and a signed copy of the disclosure shall be placed in the patient record of the individual for whom the lenses are dispensed.

SECTION 42. Opt 5.15 is created to read:

Opt 5.15 Conduct. (1) It shall be unprofessional conduct for an optometrist to engage in any practice or conduct which constitutes a substantial danger to the health, welfare, or safety of a patient or the public.

(2) It shall be unprofessional conduct for an optometrist to engage in conduct in the practice of optometry which evidences a lack of knowledge or ability to apply professional principles or skills.

SECTION 43. Opt 6.02 (3) is repealed.

SECTION 44. Opt 6.03 (1) (a) and (b) are amended to read:

Opt 6.03 (1) (a) Has obtained certification under s. 449.17, Stats., to use ~~DPA's;~~ diagnostic pharmaceutical agents.

(b) Has successfully completed 100 hours of approved study in the use of ~~TPA's~~ TPAs and removal of superficial foreign bodies from an eye or from an appendage to the eye~~; and~~.

Note: 100 hours of postgraduate courses and qualifying examinations required for approval for TPA certification are

approved annually by the board. A list of approved 100 hours postgraduate courses and examinations may be obtained from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 45. Opt 6.03 (2) Note is repealed and recreated to read:

Note: Applications for certification may be obtained from the board office located at 1400 East Washington Avenue, P. O. Box 8935, Madison, WI 53708.

SECTION 46. Opt 6.04 (1) (a) is renumbered s. Opt 6.04 (1) and amended to read:

Opt 6.04 (1) ~~Except as provided in par. (b), a~~ A certificate holder shall complete 30 hours of approved continuing education relating to diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye in each biennial registration period. Seven of the 30 hours must be in the diagnosis and management of glaucoma, and 2 of the 30 hours must relate to the responsible use of controlled substances and substance abuse concerns, new drugs used for ophthalmic therapeutic purposes which have been approved by the federal food and drug administration or other topics as designated by the board.

SECTION 47. Opt 6.04 (1) (b) is repealed.

SECTION 48. Opt 6.04 (2), (3), (4) and (5) are amended to read:

Opt 6.04 (2) Continuing education hours may be applied only to the biennial registration period in which the continuing education hours are acquired, except as provided under s. Opt 6.08, to apply credits to the previous biennium to satisfy requirements for ~~reinstatement~~ renewal of a certificate which has lapsed.

(3) To obtain credit for completion of continuing education hours, an optometrist shall ~~submit to the board certificates of attendance from the provider of the board–approved course~~, at the time of each renewal of registration, sign a statement certifying that the coursework has been completed. If audited, an optometrist shall submit certificates of attendance issued by each provider or other evidence of attendance satisfactory to the board.

(4) A TPA certificate holder who fails to meet the continuing education requirements by the renewal ~~deadline~~ date may not use therapeutic pharmaceuticals or remove superficial foreign bodies from the eye or from an appendage to the eye after the renewal ~~deadline~~ date until the certificate is ~~reinstated~~ renewed under s. Opt 6.08.

(5) Optometrists initially certified under s. 449.18, Stats., within a biennium shall ~~submit to the board proof of completion of~~ complete one hour of board approved continuing education per month or partial month of certification reported on or before January 1 of the biennium. A minimum of one–quarter of the continuing education hours must be in the diagnosis and management of glaucoma.

SECTION 49. Opt 6.06 and 6.07 are amended to read:

Opt 6.06 Renewal of certificate. TPA certificates expire on January 1 of each even–numbered year. Renewal applications shall be submitted on a form provided by the department on or before the renewal date specified in s. 440.08 (2) (a) 54., Stats., along with ~~proof~~ certification of the continuing education requirements specified in s. Opt 6.04.

Opt 6.07 Failure to renew. An optometrist who fails to renew a TPA certificate by the renewal date may not use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye until the certificate is ~~restored~~ renewed under s. Opt 6.08.

SECTION 50. Opt 6.08 (intro.), (1), (2) (intro.) and (a) are amended to read:

Opt 6.08 Late renewal of certificate. An optometrist who fails to renew a TPA certificate by the renewal date may ~~restore~~ renew the TPA certificate by submitting an application on a form provided by the department, and satisfying the following requirements:

(1) If applying less than 5 years after the renewal date, submit ~~proof~~ certification of completion of 30 hours of continuing education coursework as required under s. Opt 6.04.

(2) If applying 5 years or more after the renewal date, submit ~~proof~~ certification of 30 hours of continuing education coursework as required under s. Opt 6.04, and proof of the following as ordered by the board:

(a) Successful completion of educational coursework required by the board to ensure protection of the public health, safety and welfare~~; and~~.

SECTION 51. Opt 7.01 is repealed.

SECTION 52. Opt 7.04 is amended to read:

Opt 7.04 Failure to renew. An optometrist who fails to renew a certificate of registration by the renewal date may not practice optometry, until the certificate is ~~restored~~ renewed under s. Opt 7.05.

SECTION 53. Opt 7.05 (intro.), (2) (intro.) and (a) are amended to read:

Opt 7.05 Late renewal. An optometrist who fails to renew a certificate of registration by the renewal date may ~~restore~~ renew the certificate by satisfying the following requirements:

(2) If applying 5 years or more after the renewal date, submit an application on a form provided by the department, pay the renewal fees specified in s. 440.08 (2) (a) and (3), Stats., and submit proof of the following, as ordered by the board:

(a) Successful completion of educational coursework required by the board to ensure protection of the public health, safety and welfare~~, and~~.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Public Defender

Notice is hereby given that pursuant to s. 977.02 (5), Stats., and interpreting s. 977.08, Stats., the Office of the State Public Defender will hold a public hearing at **315 North Henry Street, 2nd Floor, in the city of Madison, Wisconsin, on the 14th day of April, 1997, from 11:00 a.m. to 1:00 p.m.** to consider a proposed rule related to the assignment of trial division cases to the private bar. Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis

Statutory authority: s. 977.02 (5)

Statute interpreted: s.977.08

Chapter PD 2,Wis. Adm. Code, relates the assignment of cases, not certification. The proposed amendment to s. PD 2.06 clarifies that the rule relates to assignment rather than certification. The proposed

amendments further specify that assignment by county applies only to trial division cases and that exceptions to the residency requirements exist when necessary for effective client representation.

Initial Regulatory Flexibility Analysis

This rule would not have a regulatory effect on small businesses.

Fiscal Estimate

The proposed amendments to s. PD 2.06 simply clarify that the rule relates to the assignment, rather than the certification, of trial division cases to the private bar. The proposed rule will not increase or decrease the number of cases appointed to the private bar. Accordingly, the proposed rule will have no fiscal impact.

Contact Person

For copies of the proposed rule, or if you have questions, please contact Gina Pruski, Deputy Legal Counsel, 315 North Henry Street, Madison, WI 53703–3018; (608) 266–6782.

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by **April 14, 1997.**

Notice of Hearing

Public Defender

Notice is hereby given that pursuant to s. 977.02 (5), Stats., and interpreting s. 977.08, Stats., the Office of the State Public Defender will hold a public hearing at **315 North Henry Street, 2nd Floor, in the city of Madison, Wisconsin, on the 14th day of April, 1997, from 9:00a.m. to 11:00a.m.** to consider proposed rules related to the certification of private bar attorneys. Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis

Statutory authority: s. 977.02 (5)

Statute interpreted: s. 977.08

The proposed rules make various changes to rules in ch. PD 1, Wis. Adm. Code, which relates to the certification of private bar attorneys.

First, the proposed amendment to s.PD 1.05 (5) allows an attorney to submit any material he or she believes is relevant to the board when appealing a certification decision. Currently, s. PD 1.05 (5) states that the attorney may request that the state public defender reproduce and submit to the board material relevant to the appeal. Under s. PD 1.05 (4), however, the state public defender is required to submit relevant material to the board. Pursuant to ch. 227, the attorney must be allowed to submit evidence to the board, but does not have the right to require the SPD to submit additional material.

Next, s. PD 1.06 currently does not contain the same time limits and procedures as s. PD 1.05, which relates to appeal of certification decisions by the state public defender, and does not closely follow the requirements of ch. 227, Stats., as does s. PD 1.05 The changes to s. PD 1.06 make the rule consistent with s. PD 1.05 and follow ch. 227.

Moreover, while PD 1.05 allows the state public defender to deny certification of private bar attorneys, with appeals rights to the board, s. PD 1.06 currently requires that both decertification decisions and decertification appeals be heard by the board. The statutes do not require that decertification decisions be made by the board rather than the state public defender. Therefore, for consistency of policy and procedure, and in consideration of the board's other responsibilities with limited meeting time, the proposed rule allows the state public defender to make decertification decisions, with appeals to the board.

Next, s. PD 1.035 is being created to clarify that private bar attorneys must reside or maintain a principal office in Wisconsin in order to be certified by the SPD. The second section of the rule was previously found in s. PD 2.06, but it is more appropriately placed in ch. PD 1, Wis. Adm. Code, which relates to certification than in chapter s. PD 2, Wis. Adm. Code, which relates to the assignment procedure. The residency requirements are designed to ensure that certified attorneys are located relatively close to their assigned clients so that they are able to communicate promptly and efficiently with their clients and provide effective representation. However, the rule now specifies that exceptions to the residency requirements may be made on a case–bycase basis to help ensure effective client representation is provided. The rule also clarifies that certification by county applies only to trial division cases.

Finally, s. PD 1.05 (8) is being created so that the entire board need not be present for certification appeal hearings. Proposed s. PD 1.05 (8) contains the same language as prposed s. PD 1.06 (8).

Initial Regulatory Flexibility Analysis

This rule would not have a regulatory effect on small businesses.

Fiscal Estimate

The proposed rules amend and clarify the procedures related to the certification of private bar attorneys, and will not increase or decrease the number of cases appointed to the private bar. Accordingly, the proposed rules will have no fiscal impact.

Contact Person

For copies of the proposed rule, or if you have questions, please contact Gina Pruski, Deputy Legal Counsel, 315 North Henry Street, Madison, WI 53703–3018; (608) 266–6782.

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by **April 14,1997**.

Notice of Hearing

Public Instruction

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 119.23, Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency rules amending the Milwaukee private school choice program under ch. PI 35.

Hearing Information

The hearing will be held as follows:

April 1, 1997	**Auditorium**
Tuesday	**Administration Bldg.**
7:00 p.m.	**5225 West Vliet St.**
to 8:30 p.m.	**MILWAUKEE, WI**

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Brad Adams, School Finance Consultant, at (608) 266–2853 or leave a message with the Teletypewriter(TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

A copy of the proposed rule and the fiscal estimate may be obtained by writing to:

Lori Slauson
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **April 4, 1997**, will be given the same consideration as testimony presented at the hearing.

Analysis by the Dept. of Public Instruction

1995 Wis. Act 27 made several modifications to the Milwaukee private school choice program, including expanding the program to include sectarian schools. In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the program to religious private schools provided for under the Act. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996–97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements for the participating private schools. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the 1996–97 school year. Permanent rules will be developed when other legislation or judicial review is finalized.

The emergency rules make several modifications to the Milwaukee private school choice program, including:

❑ Requiring the pupil assignment council to meet annually by April 15 to designate a date by which random selection of pupils will be determined for those private schools that receive more applications than spaces available for enrollment.

❑ Developing private school financial reporting requirements.

❑ Determining costs allowed to be claimed by private schools and reimbursed by the Department.

❑ Developing private school financial audit requirements.

❑ Developing payment adjustments to be made at the end of the school year by the private schools or the Department.

Fiscal Estimate

State Costs: Costs relating to providing assistance, reviewing reports, and making payment adjustments and inquiries to the private schools regarding data provided are indeterminable, and will be absorbed by the Department.

Public School Costs: The rules are not expected to have a fiscal effect on the Milwaukee public schools.

Private School Costs: Currently, there are 20 private schools participating in the Milwaukee private school choice program. It is anticipated that the private school financial audit requirements will have a fiscal effect since many of these schools currently have no audit procedures in place. Auditing costs for small public school districts range from $2,000 – $5,000, annually. It is assumed that auditing costs to participating private schools will fall within the lower end of the $2,000 – $5,000 range due to private schools' processing of fewer transactions than public schools. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.

Initial Regulatory Flexibility Analysis

The proposed rules may have a fiscal effect on small businesses as described above.

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 444.02 and 444.05, Stats., and interpreting ch. 444, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider a revision to chs. RL 100 to 116, relating to amateur and professional boxing.

Hearing Information

March 31, 1997
Monday
11:00 a.m.

Room 179A
1400 East Washington Ave.
MADISON, WI

Appearances at the Hearing

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

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

Written comments must be received by **April 7, 1997** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 227.11 (2), 444.02 and 444.05

Statutes interpreted: Ch. 444

This rule proposal contains many amendments which relate to the titles of the chapters of the current rules, the statutory authority for each chapter, and to the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following sections, however, contain changes of a more substantive nature:

Sections 4, 6 and 45 create new definitions in chs. RL 100 and 110. Definitions for the following words are proposed: "amateur," "second," "sparring" and "professional."

Sections 14 and 54 require clubs or promoters who cancel a show to not only notify the Department, as in the current rules, but to also notify the members of the media whom the club or promoter initially notified about the show.

Sections 33 and 69 amend and clarify the procedures which must be followed by the referee when a boxer receives a low blow.

Sections 37 and 73 amend the current rules relating to the types of special examinations available to a physician to determine whether a boxer who was knocked out or received hard blows to the head has suffered serious brain damage. The current rules state that the special examination must be either an electroencephalogram (EEG) or a computerized axial tomography (CAT) scan. The proposed rules provide two other choices: a magnetic resonance imaging scan

(MRI), or any other scan which a physician believes is as reliable or more reliable than an EEG or a CAT scan for determining the presence of brain damage.

Section 49 creates a new provision which gives the department authority to require a professional club to pay a permit application fee in an amount which does not exceed the costs incurred by the department for paying the salary and travel expenses of the ringside physician and referee assigned to work at a professional show. Currently, professional clubs pay a fee directly to the physician and the referee; however, Public Law 104–272 of the 104th Congress will prohibit professional clubs to pay state boxing officials any compensation, effective July 1, 1997.

Section 75 repeals part of the requirement that an applicant for a professional boxer license must have previously competed in at least 5 bouts or must hold a current license as a professional boxer issued by another jurisdiction with substantially equivalent regulations. The requirement relating to 5 previous bouts is repealed. Chapter RL 115 continues to contain other requirements for licensure which enable the Department to determine whether a boxer is eligible for a license and fit to box in Wisconsin.

Text of Rule

SECTION 1. Chapter RL 100 (title) is amended to read:

Chapter RL 100

DEFINITIONS, LICENSES, PERMITS FOR AMATEUR BOXING

SECTION 2. RL 100.01 is repealed and recreated to read:

RL 100.01 Scope and authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 444.05, Stats.

SECTION 3. RL 100.02 (1) is renumbered s. RL 100.02 (1m) and amended to read:

RL 100.02 (1m) "Amateur club" means ~~an amateur~~ a club licensed under ch. 444, Stats., to conduct amateur boxing and sparring shows.

SECTION 4. RL 100.02 (1) is created to read:

RL 100.02 (1) "Amateur" means having boxers receive no money, compensation, or reward for their participation in a show, other than watches, medals, articles of jewelry, silverware, trophies or ornaments suitably inscribed to show that they are given for participation in the show.

SECTION 5. RL 100.02 (3) and (6) are amended to read:

RL 100.02 (3) "Boxer" means any person seeking or designated to participate in ~~a boxing or sparring~~ an amateur show.

(6) "Permit" means a ~~license~~ credential issued to an amateur club to conduct a specific amateur ~~boxing or sparring~~ show.

SECTION 6. RL 100.02 (6m), (8) and (9) are created to read:

RL 100.02 (6m) "Second" means a person who is present during a bout to provide assistance or advice to a boxer.

(8) "Sparring" means a show or bout in which the boxers participate for training or exhibition purposes and the results of the show or bout do not become part of the boxer's boxing record which shows wins and losses.

(9) "Stimulant" means amphetamines, cocaine, caffeine, phenylpropanolamine and ephedrine.

SECTION 7. RL 100.03 (title) is amended to read:

RL 100.03 Amateur club license; application.

SECTION 8. RL 100.04 (title) is amended to read:

RL 100.04 Amateur show permits; application.

SECTION 9. RL 100.05 (title) is amended to read:

RL 100.05 Amateur show permits; issuance and effect.

SECTION 10. RL 100.05 (1) is repealed.

SECTION 11. RL 100.05 (2) is renumbered s. RL 100.05.

SECTION 12. RL 100.06 is repealed.

SECTION 13. RL 100.07 (title) is amended to read:

RL 100.07 Cancelling an amateur show.

SECTION 14. RL 100.07 (3) is amended to read:

RL 100.07 (3) An amateur club may cancel a show by notifying the department and those members of the media whom the club initially notified about the show at least 24 hours before the show is scheduled to begin.

SECTION 15. Chapter RL 101 (title) is amended to read:

Chapter RL 101
STATE OFFICIALS FOR AMATEUR BOXING

SECTION 16. RL 101.005 is created to read:

RL 101.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02, 444.06 and 444.10, Stats.

SECTION 17. RL 101.04 is amended to read:

RL 101.04 Judges and judging. An amateur boxing club applying for a permit shall describe in the application the procedure to be used for selecting judges and in judging and scoring bouts. If current rules of the United States ~~of America~~ amateur boxing ~~federation~~, inc., are to be used in judging and scoring bouts, it is sufficient to state in the application "Scoring and judging according to ~~USA–ABF~~ USA boxing rules."

Note: A copy of the USA Boxing Official Rules may be obtained from the United States Amateur Boxing, Inc., 1750 East Boulder Street, Colorado Springs, Colorado 80909–5776.

SECTION 18. Chapter RL 102 (title) is amended to read:

Chapter RL 102
EQUIPMENT FOR AMATEUR BOXING

SECTION 19. RL 102.005 is created to read:

RL 102.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.09, Stats.

SECTION 20. RL 102.01 (2) is amended to read:

RL 102.01 (2) The ring shall be circumscribed with at least 3 ropes. Ropes may not be less than one inch in diameter. Ropes may not be made of metal. Ropes shall be wrapped securely with soft material. If 3 ropes are used, they shall extend in parallel 2, 3 and 4 feet above the ring floor. If 4 ropes are used, the lowest rope shall be 18 inches above the ring floor, the second rope 30 inches, the third rope 42 inches, and the fourth rope 54 inches above the ring floor. The ring floor shall be padded with a one–inch layer of padding of felt, rubber or other similar material, placed on a one–inch base of building board or similar supporting base. Padding shall be covered with canvas~~,~~ duck, or similar material tightly stretched and laced securely in place, preferably under the apron.

SECTION 21. RL 102.02 is amended to read:

RL 102.02 Emergency equipment. The amateur club holding the permit shall have at least one properly charged oxygen ~~equipment~~ tank with a suitable mask, airways of assorted sizes, and it shall have a stretcher available at ringside.

SECTION 22. RL 102.03 (1) is amended to read:

RL 102.03 (1) Boxing gloves may be not less than ~~10~~ 5 oz. each in weight ~~except that in international competition gloves weighing not less than 8 oz. may be used~~ when worn by a boxer under 140 pounds, and not less than 6 oz. when worn by other boxers.

SECTION 23. RL 102.05 (1) is amended to read:

RL 102.05 (1) Boxers shall box in proper dress including an approved foul–proof protection cup for a male boxer, trunks with a belt line below or at the waistline, shoes of soft material, without spikes, cleats or heels, and socks which may extend to within one inch below the knee.

SECTION 24. RL 102.07 (8) is amended to read:

RL 102.07 (8) The inner casing of the headgear shall be lined with ~~2 1/2~~ two and one–half ounces of tanned unfinished sheepskin.

SECTION 25. RL 102.08 (2) is amended to read:

RL 102.08 (2) Seconds shall submit first aid kits and corner equipment to the ringside physician for inspection and approval

before ~~an exhibition~~ a show. Kits and equipment may not include stimulants.

SECTION 26. Chapter RL 103 (title) is amended to read:

Chapter RL 103
CONDUCTING ~~A~~ AN AMATEUR SHOW

SECTION 27. RL 103.005 is created to read:

RL 103.005 Authority. The rules in this chapter are adopted pursuant to ss. 277.11 (2), 444.02, 444.09 and 444.10, Stats.

SECTION 28. RL 103.01 (1) is amended to read:

RL 103.01 (1) To participate in a show a boxer shall be at least 14 years of age and be examined on the day of the bout by the ringside physician and certified to be fit. Boxers between 14 and 18 years of age shall present to the inspector a statement signed by a parent or guardian permitting participation in the show ~~signed by a parent or guardian~~.

SECTION 29. RL 103.07 is amended to read:

RL 103.07 Battle royal prohibited. All shows in which more than 2 ~~principals~~ boxers appear in the ring at the same time, commonly called "battle royal" shows, are prohibited.

SECTION 30. Chapter RL 104 (title) is amended to read:

Chapter RL 104
CONDUCTING ~~A~~ AN AMATEUR BOUT

SECTION 31. RL 104.005 is created to read:

RL 104.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.12, Stats.

SECTION 32. RL 104.02 (9) is amended to read:

RL 104.02 (9) Interrupt a bout and call time if a mouthpiece is knocked out of a ~~competitor's~~ boxer's mouth. The mouthpiece shall be taken to the boxer's corner where ~~is~~ it shall be washed. A second shall replace the mouthpiece in the boxer's mouth after washing. Boxers may not box without wearing a mouthpiece. If a boxer deliberately spits out his or her mouthpiece, the referee shall warn the offending boxer. A repetition of the same offense shall cause a second warning. After the third offense, the referee shall disqualify the boxer.

SECTION 33. RL 104.03 is repealed and recreated to read:

RL 104.03 Low blows. (1) A referee may penalize any boxer who deliberately fouls an opponent during a contest with a loss of points and round. If the referee determines that a low blow foul was deliberate and that it severely impairs the boxer who was fouled, the referee may award a bout to a boxer who received a low blow foul. The boxer responsible for the low blow foul shall be disqualified.

(2) In the case of a low blow foul when the referee does not determine that the boxer responsible for the low blow should be disqualified, the referee shall determine whether the boxer who has been fouled is able to continue. If the boxer's chances have not been seriously jeopardized as a result of the foul, the referee may order the bout to continue after an interval of not more than 5 minutes. If the boxer who was fouled refuses to box, the referee shall declare that boxer to be the loser of the bout.

SECTION 34. RL 104.04 (2) and (5) are amended to read:

RL 104.04 (2) Hits or blows with the head, shoulder, forearm, elbow, knee or foot; ~~throttling of the opponent;~~ pressing with arm or elbow in opponent's face; or pressing the head of the opponent back over the ropes.

(5) ~~360–degree~~ A blow which is delivered during or at the end of a 360–degree pivot ~~blows~~.

SECTION 35. RL 104.04 (12) and (13) are repealed.

SECTION 36. RL 104.05 (5) is amended to read:

RL 104.05 (5) CONTINUED COUNT. If a boxer is down as the result of a blow and the bout is continued after the count of 8 has been reached, but the boxer immediately falls again without having received a fresh blow, the referee shall continue the counting from the count of 8.

SECTION 37. RL 104.06 (2) (d) is amended to read:

RL 104.06 (2) (d) Before resuming boxing after any of the periods of rest prescribed in pars. (a) to (c), a boxer shall be given a special examination by a qualified physician which includes an electroencephalogram (EEG) ~~or~~, a computerized axial tomography (CAT) scan ~~and certified by the examining physician as~~, a magnetic resonance imaging (MRI), or any other scan which a physician believes is as reliable or more reliable than an EEG or a CAT scan for determining the presence of brain damage. The special examination shall include a certification by the examining physician that the boxer is fit to take part in competitive boxing.

SECTION 38. RL 104.06 (2) (e) is created to read:

RL 104.06 (2) (e) The requirements and conditions enumerated in this subsection apply to knockouts and hard blows to the head regardless of whether the bouts occurred in Wisconsin or another jurisdiction.

SECTION 39. Chapter RL 105 (title) is amended to read:

Chapter RL 105
CAUSE FOR DISCIPLINE OF AMATEUR CLUBS AND OTHER PERSONS

SECTION 40. RL 105.005 is created to read:

RL 105.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.14, Stats.

SECTION 41. RL 105.01 (1) (d) and (2) are amended to read:

RL 105.01 (1) (d) Misrepresents material facts relating to a show ~~such as~~ including, but not limited to, the identity or record of a ~~contestant~~ boxer.

(2) No employe, officer or member of a club whose license has been suspended or revoked may participate in any boxing show ~~or enter the dressing room or press row of any licensed club during any show~~.

SECTION 42. Chapter RL 110 (title) is amended to read:

Chapter RL 110
DEFINITIONS, LICENSES, PERMITS FOR PROFESSIONAL BOXING

SECTION 43. RL 110.01 is amended to read:

RL 110.01 Scope and authority. ~~Rules~~ The rules in ~~chs. RL 110 to 116~~ this chapter are adopted ~~under the authority of ch. 444,~~ pursuant to ss. 227.11 (2), 444.02 and 444.03, Stats. These rules govern all professional boxing or sparring shows conducted within the state of Wisconsin.

SECTION 44. RL 110.02 (5) and (6) are amended to read:

RL 110.02 (5) "Permit" means a ~~license~~ credential issued to a professional club to conduct a specific professional boxing or sparring show.

(6) "Professional club" means a ~~professional~~ club licensed under ch. 444, Stats., to conduct professional boxing and sparring shows.

SECTION 45. RL 110.02 (5m), (6m), (8) and (9) are created to read:

RL 110.02 (5m) "Professional" means receiving money or reward, except that "professional" does not mean receiving watches, medals, articles of jewelry, silverware, trophies or ornaments suitably inscribed to show that they are given for participating in a show.

(6m) "Second" means a person who is present during a bout to provide assistance to a boxer.

(8) "Sparring" means a show or bout in which the boxers participate for training or exhibition purposes and the results of the show or bout do not become part of the boxer's boxing record which shows wins and losses.

(9) "Stimulant" means amphetamines, cocaine, caffeine, phenylpropanolamine and ephedrine.

SECTION 46. RL 110.03 (title) and (1) are amended to read:

RL 110.03 Professional club record. (1) APPLICATION. An applicant for a professional club license shall, before conducting ~~any~~

~~sparring or boxing~~ a show in this state, submit an application on forms provided by the department together with the fee specified in s. 444.03, Stats., and be licensed by the department.

Note: Application forms are available on request to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 47. RL 110.03 (2) (a) 2. is repealed.

SECTION 48. RL 110.04 (title), (1) (e) and (h) are amended to read:

RL 110.04 Professional show permits; application. (1) (e) A list of the ~~participants~~ boxers in each bout, and if licensed, the ~~participant's~~ boxer's current license number. An applicant shall also provide the department with information concerning a boxer's boxing history, if requested by the department. If a ~~participant~~ boxer is not licensed, the ~~participant~~ boxer shall file an application for a license as a professional boxer. The club may substitute a boxer for any ~~participant~~ boxer listed on the permit application, provided a request to substitute is submitted to the department no later than 4:30 p.m. of the 4th business day preceding the date of the show and the department approves the substitute boxer pursuant to this section and s. RL 110.05. The club may substitute up to and including 2 additional boxers at any time before a scheduled bout, provided that the boxer or boxers are licensed in Wisconsin, the boxer or boxers provide an affidavit that the boxer or boxers are not under suspension in Wisconsin or any other jurisdiction and both the inspector and the referee agree that permitting the boxer or boxers to fight in a specific scheduled bout would pose no unreasonable risk of harm to the boxers in that bout.

(h) Evidence satisfactory to the department that the professional club has entered into a valid agreement with the owner or manager of the facility where the boxing show will be conducted.

SECTION 49. RL 110.04 (3) is created to read:

RL 110.04 (3) The department may require a professional club to pay a permit application fee in an amount which does not exceed the costs incurred by the department for paying the salary and travel expenses of the ringside physician and referee assigned to the professional show.

SECTION 50. RL 110.05 (title) is amended to read:

RL 110.05 Professional show permits; issuance and effect.

SECTION 51. RL 110.05 (1) is repealed.

SECTION 52. RL 110.05 (1m) is renumbered s. RL 110.05 (1) and amended to read:

RL 110.05 (1) If the department denies an application for a permit or refuses to approve a participant whose name has been submitted to the department by the applicant, it shall provide the applicant with ~~the right to~~ an opportunity for a hearing. If the department does not approve a boxer to fight in a show, the department shall provide the boxer with the right to a hearing. In either case, the department is not required to hold the hearing before the date submitted to the department pursuant to s. RL 110.04 (1) (b).

SECTION 53. RL 110.06 is repealed.

SECTION 54. RL 110.07 (title) and (3) are amended to read:

RL 110.07 Cancelling a professional show. (3) A professional club may cancel a show by notifying the department and those members of the media whom the club initially notified about the show at least 24 hours before the show is scheduled to begin.

SECTION 55. Chapter RL 111 (title) is amended to read:

Chapter RL 111
STATE OFFICIALS FOR PROFESSIONAL BOXING

SECTION 56. RL 111.005 is created to read:

RL 111.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.09, Stats.

SECTION 57. Chapter RL 112 (title) is amended to read:

Chapter RL 112
EQUIPMENT FOR PROFESSIONAL BOXING SHOWS

SECTION 58. RL 112.005 is created to read:

RL 112.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.09, Stats.

SECTION 59. RL 112.01 (2) is amended to read:

RL 112.01 (2) The ring shall be circumscribed with at least 3 ropes. Ropes may not be less than one inch in diameter. Ropes may not be made of metal. Ropes shall be wrapped securely with soft material. If 3 ropes are used, they shall extend in parallel 2, 3, and 4 feet above the ring floor. If 4 ropes are used, the lowest rope shall be 18 inches above the ring floor, the second rope 30 inches, the third rope 42 inches, and the fourth rope 54 inches above the ring floor. The ring floor shall be padded with a one–inch layer of padding of felt, rubber or other similar material, placed on a one–inch base of building board or similar supporting base. Padding shall be covered with canvas~~,~~ duck, or similar material tightly stretched and laced securely in place, preferably under the apron.

SECTION 60. RL 112.02 is amended to read:

RL 112.02 Emergency equipment. The professional club holding the permit shall have at least one properly charged oxygen ~~equipment,~~ tank with a suitable mask, airways of assorted sizes, and it shall have a stretcher available at ringside.

SECTION 61. RL 112.03 (1) is amended to read:

RL 112.03 (1) Boxing gloves may be not less than ~~8~~ 5 oz. each in weight when worn by a boxer under 140 pounds, and not less than 6 oz. when worn by other boxers.

SECTION 62. RL 112.05 (1) is amended to read:

RL 112.05 (1) Boxers shall box in proper dress including an approved foul–proof protection cup for a male boxer, trunks with a belt line below or at the waistline, shoes of soft material, without spikes, cleats or heels, and socks which may extend to within one inch below the knee.

SECTION 63. RL 112.08 (2) is amended to read:

RL 112.08 (2) Seconds shall submit first aid kits and corner equipment to the ringside physician for inspection and approval before a show. Kits and equipment may not include stimulants.

SECTION 64. Chapter RL 113 (title) is amended to read:

Chapter RL 113
CONDUCTING A PROFESSIONAL SHOW

SECTION 65. RL 113.005 is created to read:

RL 113.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02, 444.09 and 444.10, Stats.

SECTION 66. RL 113.04 (1) is renumbered s. RL 113.04 and amended to read:

RL 113.04 Weight limitations. No boxer may participate in a show where the weigh–in weight difference of the boxers exceeds the allowance shown in the schedule below. When approving pairings between boxers and applying these allowances, the department shall first determine which boxer weighs less than the other. The maximum allowable weight difference shall be that which relates to the category in which the lower weight boxer falls.

Weight	Allowance
135 lbs. or under	not more than 6 lbs.
136–175 lbs.	not more than 10 lbs.
176–190 lbs.	not more than 15 lbs.
191 lbs. or over	no limit

SECTION 67. Chapter RL 114 (title) is amended to read:

Chapter RL 114
CONDUCTING A PROFESSIONAL BOUT

SECTION 68. RL 114.005 is created to read:

RL 114.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02, 444.09 and 444.12, Stats.

SECTION 69. RL 114.03 is repealed and recreated to read:

RL 114.03 Low blows. (1) A referee may penalize any boxer who deliberately fouls an opponent during a contest with a loss of points and round. If the referee determines that a low blow foul was deliberate and that it severely impairs the boxer who was fouled, the referee may award a bout to a boxer who received a low blow foul. The boxer responsible for the low blow foul shall be disqualified.

(2) In the case of a low blow foul when the referee does not determine that the boxer responsible for the low blow foul should be disqualified, the referee shall determine whether the boxer who has been fouled is able to continue. If the boxer's chances have not been seriously jeopardized as a result of the foul, the referee may order the bout to continue after an interval of not more than 5 minutes. If the boxer who was fouled refuses to box, the referee shall declare that boxer to be the loser of the bout.

SECTION 70. RL 114.04 (2) and (5) are amended to read:

RL 114.04 (2) Hits or blows with the head, shoulder, forearm, elbow, knee, or foot; ~~throttling of the opponent;~~ pressing with arm or elbow in an opponent's face; or pressing the head of the opponent back over the ropes.

(5) ~~360–degree~~ A blow which is delivered during or at the end of a 360–degree pivot ~~blows~~.

SECTION 71. RL 114.04 (12) and (13) are repealed.

SECTION 72. RL 114.05 (5) is amended to read:

RL 114.05 (5) CONTINUED COUNT. If a boxer is down as the result of a blow and the bout is continued after the count of 8 has been reached, but the boxer immediately falls again without having received a fresh blow, the referee shall continue the counting from the count of 8.

SECTION 73. RL 114.06 (2) (d) is amended to read:

RL 114.06 (2) (d) Before resuming boxing after any of the periods of rest prescribed in ~~the~~ pars. (a) to (c), a boxer shall be given a special examination ~~including~~ by a qualified physician which includes an electroencephalogram (EEG) ~~or,~~ a computerized axial tomography (CAT) scan ~~by a qualified physician and certified~~, a magnetic resonance imaging scan (MRI), or any other scan which a physician believes is as reliable or more reliable than an EEG or a CAT scan for determining the presence of drain damage. The special examination shall include a certification by the examining physician ~~as~~ that the boxer is fit to take part in competitive boxing.

SECTION 74. RL 115.005 is created to read:

RL 115.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.11, Stats.

SECTION 75. RL 115.01 (1) (b) is amended to read:

RL 115.01 (1) (b) Be ~~physically and mentally fit to engage~~ capable of engaging in professional boxing competition based on the information included in the application and other reliable information~~; and,~~.

SECTION 76. RL 115.01 (1) (c) is repealed.

SECTION 77. RL 115.02 (6) is repealed.

SECTION 78. Chapter RL 116 (title) is amended to read:

Chapter RL 116
CAUSE FOR DISCIPLINE OF A PROFESSIONAL CLUB AND OTHER PERSONS

SECTION 79. RL 116.005 is created to read:

RL 116.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 444.02 and 444.14, Stats.

SECTION 80. RL 116.01 (1) (d), (2) and (3) (g) are amended to read:

RL 116.01 (1) (d) Misrepresents material facts relating to a show ~~such as~~ including, but not limited to, the identity or record of a ~~contestant~~ boxer.

(2) No employe, officer or member of a club whose license has been suspended or revoked may participate in any boxing show ~~or enter the dressing room or press row of any licensed club during any show~~.

(3) (g) Is ~~impaired by mental or emotional disorder,~~ not capable of engaging in professional competition due to the use of drugs or alcohol.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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

Notice of Hearing

Workforce Development

Notice is given that pursuant to s. 103.005 (1), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal, recreation, amendment, renumbering, and creation of rules under ch. DWD 290, Wis. Adm. Code, relating to prevailing wage rates for state or local public works projects.

Hearing Information

March 31, 1997	**Madison, WI**
Monday	**Room 400X**
9:30 a.m.	**201 E. Washington Ave.**

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Division of Equal Rights, 201 East Washington Avenue P.O. Box 8928, Madison, Wisconsin 53708, by calling (608) 266–7560 or at the appointed time and place the hearing is held.

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, view and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **April 7, 1997**. for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to James L. Stelsel at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266–7560 or Telecommunication Device for the Deaf (TDD) at (608) 264–8752 at least 10 days prior to the hearing date. Accommodations such as interpreters. English translators or materials in audio tape format will,

to the fullest extent possible, be made available on request by a person with a disability.

Analysis

Authority for rule: ss. 103.005(1), in conjunction with ss.66.293, 103.49 and 103.50

Statutes interpreted: ss: 66.293, 103.49 and 103.50

Introduction. 1995 Wis. Act 215 made a number of major changes to the laws which require the Department of Workforce Development to determine prevailing wage rates for state and local public works projects. In place of case–by–case investigations, the department 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 rule establishes deadline and appeal criteria for the process that will be used to compile the annual survey results and consider requests for review, and makes further code changes as explained below.

Annual survey. The rule establishes procedures for the annual survey of wage rate information that is now required by statute. The department will set a deadline date for the return of survey information and will not compile responses that are late. Determinations will be made for each "area," which is defined by statute as a county, or (if there is insufficient data) a county with its surrounding contiguous counties, or (if there is still insufficient data) that territory included with the next tier of contiguous counties, or (if there is still insufficient data) the entire state. The department may include in its determinations future prevailing wage rates if a collectively bargained wage rate and fringe benefit package is found to prevail in a particular area for a particular trade or occupation and future rates are provided for by the agreement or its successor. if the wage rate data from all available sources is insufficient, the department may consider wage rate data for a similar trade or occupation in making its determinations.

Recalculation requests. Within 30 days after the department issues its initial determinations, any person may request a recalculation of any portion of a particular determination. In future years, a recalculation request will not be granted for the consideration of data that was not submitted on time. However, for the 1996 survey only, the department will accept recalculation requests on this basis.

Project determinations. The department will continue to issue prevailing wage rate determinations for individual projects. A project determination remains in effect until the end of the year (if issued on or before June 30) or for 180 days (if issued after June 30). A local government unit or state agency which receives a project determination may request an administrative review of any portion of a determination if it makes a written request within 30 days, the request is received before construction contracts are awarded or negotiated, and the request includes wage rate information for the contested trade or occupation from at least 3 similar projects within the city, village or town where the proposed project is located that took place and were reported within the survey period. In conducting administrative reviews, the department will consider other wage rate information on similar projects within the city, village or town where the proposed project is located and will issue a decision as to the prevailing wage rate for the contested trade or occupation in that city, village or town, using the same calculation criteria employed in the survey determinations.

"Highest–paid 51%." When calculating the "highest–paid 51% of hours worked" for the purpose of determining the weighted average wage for a particular trade or occupation, the department will include all hours worked at the wage and corresponding fringe benefits that include the highest–paid 51% of hours worked.

Definitions and classifications. The rule adopts a detailed definition of the term "site of work" and describes in detail the characteristics of projects classified as agricultural, building, heavy, highway and residential construction. The rule also creates definitions for "minor subcontract" and "subjourneyperson" and specifies when the prevailing wage laws apply to employes who process, manufacture, pick up or deliver materials from a commercial establishment with a fixed place of business.

Trainees. The proposed rule allows for the employment of one or more trainees on a prevailing wage project when certain conditions are met. In addition to on the job training, the employer is required provide 30 hours of safety and necessary job skills training.

Subjourneypersons. This proposed rule contains the same provision on the topic of subjourneypersons as the emergency rule that is currently in effect. Under this provision, the department will determine a separate prevailing wage rate for a subjourneyperson category in a particular trade or occupation within a county when there are at least 500 countable hours reported for the trade or occupation in that county and the reported hours for a subjourneyperson category are greater than or equal to 25% of the reported hours for the journeyperson category, or (if the "25% of reported hours" condition is not met) if there is a subjourneyperson rate in a collective bargaining agreement filed with the department which reflects the prevailing wage rate for that county and trade. The proposed rule also establishes a maximum ratio of one subjourneyperson for each two journeypersons employed in the same trade or occupation by the same employer at each site of work.

The department has already received many comments on this aspect of the rule and expects to receive many more. The department has convened an advisory committee to provide assistance in reviewing this and other prevailing wage issues, and the department intends to review the comments on the subjourneyperson issue carefully, with the assistance of the committee.

Minor subcontractors. A contractor or subcontractor that hires a minor subcontractor (defined as a subcontract of less than $2,000 in cost and less than 3 days of work) must provide, within 7 days of the date that work is first performed by the minor subcontractor, either a copy of the prevailing wage rate determination for the project, or a written notice which states that the work to be performed is subject to a prevailing wage rate determination.

Threshold costs. In accordance with amendments to the statutes, these amounts are amended so that the prevailing wage rate requirements do not apply to a single–trade project with an estimated cost below $30,000 or a multi–trade project with an estimated cost below $150,000.

Initial Regulatory Flexibility Analysis

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

Businesses engaged in public works construction as contractors or subcontractors.

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

This rule changes some procedures under the prevailing wage program and implements a wage survey that is provided for by statute. The records involved are wage and hour records for employes, which employers are already required to keep.

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

No professional skills are necessary for compliance. Employers are already required to keep records of the wages and hours of their employer.

Fiscal Estimate

The purpose of this rule is to implement the statutory changes made by 1995 Act 215. The rule does not create any new policies which will have a fiscal effect on state or local government.

Notice of Submission of Proposed Rules to the Presiding Officer of each House of the Legislature, Under S. 227.19, Stats.

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

Employment Relations (CR 97–5):
SS. ER 18.01, 18.04 and 18.15 – Relating to the creation of a catastrophic leave program that permits classified nonrepresented employes to donate certain types and amounts of leave credits to other classified nonrepresented employes who have been granted an unpaid leave of absence due to a catastrophic need, and removal of the reference to Good Friday as a legal holiday for state employes.

Funeral Directors Examining Board (CR 96–183):
Ch. FD 6 – Relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy.

Natural Resources (CR 96–40):
S. NR 19.025 – Relating to the waiver of approvals, fees and other requirements of ch. 29, Stats., for an educational, recreational skills activity.

Natural Resources (CR 96–174):
Ch. NR 25 and s. NR 26.23 – Relating to the Lake Superior fisheries management plan.

Natural Resources (CR 96–177):
S. NR 5.21 (2) – Relating to waiver of the slow–no–wake speed restriction on the Wild Rose Mill Pond, Waushara County.

Public Defender (CR 97–12):
S. PD 3.02 (1) – Relating to the cost of retained counsel.

Transportation (CR 96–44):
Ch. Trans 139 – Relating to motor vehicle trade practices.

Transportation (CR 96–168):
Ch. Trans 117 – Relating to occupational driver's license.

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