WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF FUNERAL DIRECTORS AND FUNERAL ESTABLISHMENTS

FEBRUARY 2003

State of Wisconsin
Department of Regulation and Licensing
Funeral Directors Examining Board
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INTRODUCTION

The Funeral Directors Examining Board licenses and regulates funeral directors and funeral establishments. The Board is composed of professional and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to the various professional boards. Within the Department, the Division of Business Licensing and Regulations, provides administrative services to the Funeral Directors Examining Board. Requests for information may be directed to the Funeral Directors Examining Board, 1400 East Washington Avenue, PO Box 8935, Madison WI 53708. Telephone number: (608) 266-5511, Extension 42 or TTY# (608) 267-2416 and TRS# 1-800-947-3529.

This book contains statutes and rules relevant to the regulation and practice of funeral directors and funeral establishments in Wisconsin. Chapter 445, Wis. Stats., grants the Funeral Directors Examining Board authority to promulgate administrative rules outlining procedures for the profession. All administrative rules of the Board are included in this book. Some other statutes and administrative rules are also included.

The development of statutes and rules is ongoing. Therefore, these statutes and rules may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Statutes. All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.html

Rules: http://www.legis.state.wi.su/rsb/code/codtoc.html

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration **of** policy. **(1)** THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review **of** program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the *3* branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) ***As*** the chief administrative officer of the state, the governor should he provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.(c) The integration of the agencies in the executive branch should be on **a** functional basis, ***so*** that programs can be coordinated.

(d) Each agency in the executive branch should he assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) **GOALS** OF CONTINUING REORGANIZATION. Structural reorganization should he a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal **of** reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal **of** reorganization through coordination of related programs in function–oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination **of** state services and by eliminating overlapping activities.

History: 1991a. 316.

15.01 Definitions. In this chapter: **(1g)** "Affiliated credentialing board" means **a** part–time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently **of** the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice **of** the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) "Board" means a part--time body Functioning as the policy making unit for a department or independent agency or **a** part–time body with policy--making or quasi–judicial powers.

(2) "Commission" means a 3–member governing body in charge of **a** department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members. the **parole** commission which shall consist of 8 members, and the Fox River management cornmission which shall consist of 7 members. A Wisconsin group created **for** participation in a continuing interstate body, or the interstate body itself, shall he known as a "commission", but is not a commission for purposes of s.15.06. The parole commission created under s.15.145 (1) shall be **known** as a "commission", but is not a commission for purposes of s.15.06. The sentencing commission created under s.15.105 (27) shall be known as a "commission" hut **is** not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) ':Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and (5) and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified ins. 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, hut does not include the indcpcndcnl agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of **a** department or an independent agency, whether specifically created by law or created by the hcnd of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to

the department or independent agency. The office of justice assistance in the department of administration and the officc of credit unions in the department of financial institutions have the meaning of "division" under this subsection. The officc of the long- term care ombudsman under the board on aging and long- term care and the officc of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part-time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a dcpartment, means the constitutional officer, commission. secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. 111.

History: 1977 c. 29, 274; 1979 c. 34: 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31. 107, 202; 1991 a. 39, 269, 315; 3993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear **a** title beginning with the words "State of Wisconsin" and continuing with "department of...." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub. (4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations. departments may establish district or area offices which may cut across divisional lines **of** responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. **The** principal subunit of the division is the "bureau". Each bureau shall he headed by a "director". The office of the long term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction **have** the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit **of** the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall he known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors"

(4) INTERNAL ORGAHIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of thc governor, establish the internal organization of the department or independent agcncy and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the dcpartment **or** independent agcncy to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department **or** independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27, 399; 1993 a. 16, 184, 215, 491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997 a 27.

Limits **of** internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to **a** dcpartment or independent agency or **a** specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission. council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, officc, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of rhe head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests hy the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02

(7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 **c.347:** *1983r.21:* 1993 a. 123; 1999n.9.

15.04 Heads of departments and independent agencies; powers and duties.(1) DUTIES. Each head of a dcpartmem or independent agency shall:

(a) *Supervision.* Except as provided in s.15.03. plan, direct. coordinate and execute the functions vested in the department or independent agency.

(b) *Budget.* Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) *Advisory bodies.* In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee ofrhis state who represents **an** agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) *Biennial report.* On or before October 15 of each odd-numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. **A** department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secrctary of administration.

(e) *Seal.* Hove authority to adopt a seal for the department or independent agency.

(f) Bonds. Have authority to require that any officer or employee of the department or independent agency give an official bond under ch. 19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) *Discrimination review.* In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities. the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency hcdd finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative **or** administrative authority

(i) *Records and forms management program.* Establish and maintain a records and forms management program.

(j) ***Records** and forms officer.* Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and **rules** and who may prevent any form from being put into use.

(k) *Form numbering and filing system.* Establish a numbering and filing system for forms.

(m) *Notice on forms.* See that each form used by the department **or** independent agency to seek information from municipalities, counties or the public contains on the first page of the form. or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, rhe penalty for failure to respond and whether or not any personally identifiable information, **as** defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than far which it is originally being collected. This paragraph docs not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub. (2) may be authorized only under s. 16.505.

History: 1971 c. 125; 1975 c. 94; 1977 c. 146,273,418,447: 1979 c. 221; 1981 c. 112, 350; 1981 c. 391 s 210; 1983 a. 27, 524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 **a. 39,** 189; 1995 a. 27; 1997 **a.** 73.

15.05 **Secretaries.(1)** SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of **a** board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the hoard shall be regulatory, advisory and policy–making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the hoard, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general. the adjutant gencral. the director of the technical college system and the state superintendent of public instruction

(3m) FIELD DISTRICT **OR** FIELD AREA DIRECTORS Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s.15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions fur which appointment is made under sub. *(3)* may be authorized only under s. 16.505.

History: 1973 c. 90: 1977c.4.196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 16% 1993 **a.** 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed only by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a board to serve at the board's pleasure. Moses v. Board of Veterans Affairs, 80 Wis. 2d 411, 259 N.W.2d 102 (1977).

15.06 Commissions and **commissioners.(1)** SELECTION OF MEMBERS.(a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor. and with the advice and consent of the senate appointed, for staggered 6–year terms expiring on March 1 of the odd–numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5–year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with ***the*** advice and consent of the senate appointed. for **a** 6–year term expiring on March 1 of an odd-numbcred year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5–year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for *3* years immediately prior to the date of appointment, may have been **an** officer of **a** committee in any political party, partisan political club or partisan political organization or have held or been **a** candidate for **any** partisan elective public office. No member may become a candidate **far** or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall he a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbcred year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a *2–year term* expiring on March 1 of the odd–numbered year.

(3) FULL–TIME OFFICES.(a) **A** commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to: 1. The commissioner of insurance. **3.** The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON: ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the

commission end subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson undcr s. 230.08 **(2)** (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform dutie' ^' the chairperson or commissioner prescribes.

(5) FREQUENCY OF MEETINGS: PLACE. Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and tile the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub. (4m) may he authorized only under s. 16.505.

History: 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27, 371, 410, 538; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269, 316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of **the** personnel **commission is empowered** to act as **the** commission when 2 of the *3* commission positions are vacant. *68* Atty. Gen. 323.

A commissioner **designated** as chairperson ***of*** **the** commission **under** sub. (2) is not appointed to a new **position.** and An. IV. s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub. (3) **(a)** prohibits a commissioner from pursuing business interests that would prevent **properly** fulfilling the duties of the office. *77* Atty. Gen. *36*

15.07 Boards.(1) SELECTION OF MEMBERS.(a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s.15.61.

3. Members of the employee trust funds board appointed or elected under s. 15.16(1) (a), (h), (d) and (f) shall he appointed or elected **as** provided in that section.

4. Members of the investment hoard appointed under s.15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications hoard appointed under s.15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed undcr s.15.96 (8) shall he appointed by the governor without senate confirmation.

(b) **For** each board not covered under par. **(a),** the governor shall appoint the members of the board, other than the members serving on the hoard because of holding another office or position and except as otherwise provided, for tcrms prescribed by law except that all membcrs of the following boards, or all members of the following hoards specified in this paragraph. other than the members serving on **a** board because of holding another office or position, shall he nominated hy the governor, and with the advice and consent of thc senate appointed, for terms provided by law:

1. Banking review hoard.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review hoard.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation hoard.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation hoard.
15. The 3 members of the lower Wisconsin state riverway board appointed under s.15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under s.15.445 (4) (a) 3. to 5.
16. Land information hoard.

Note: Subd. 16. is repealed eft. 9-1-03 by 1997 Wis. Act 27.

17. Real estate appraisers hoard.
18. Savings hank review hoard.
19m. Auctioneer board.
20. The **3** members of the Kickapoo reserve management hoard appointed under s.15.445 (2) (h) **3.**
22. Private employer health care coverage hoard.

Note: Suhd.22. is repealed eff. 1-1-10 by 1999 Wis. Act 9.

(c) Except as provided under par. (cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics hoard shall expire on each May 1. The terms of **3** members of the development finance board appointcd under s.15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other **3** members appointed undcr s.15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the **3** members of the land and water conservation hoard appointed under s.15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation hoard appointed under s.15.135 (4) (b) 2m. shall expirc on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers hoard and the terms of the auctioneer and auction company representative members of the auctioneer hoard shall expire on May 1 in an even-numbered year.

(cs) No member of the auctioneer hoard, **real** estate appraisers hoard or real estate hoard may he an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every hoard shall elect **a** chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment boaid shall he designated biennially by the governor.

(h) The chairperson of the hoard on health care information shall he designated biennially by the governor.

(d) The officers elected by the hoard of regents of the University of Wisconsin System and the technical college system board shall be known as a president. vice president and secretary.

(c) The representative of the department of justice shall serve as chairperson of the claims hoard and the representative of the department of administration shall serve **as** its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) **A** representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards hoard.

(h) The chairperson of the state fair park hoard shall be designated annually hy the governor from among the members appointed under s.15.445 (4) (a) **3.,** 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The governor shall serve as chairperson of the governor's work-based learning board.

(L) The governor shall serve as chairperson **of** the information technology management hoard and the chief information officer shall serve as secretary of that hoard.

(3) FREQUENCY OF MEETINGS.(a) If **a** department or independent agency is undcr the direction and supervision of a hoard, the hoard shall meet quarterly and may meet at other times **an** the call of the chairperson or **a** majority of its members. If a department or independent agency is under the direction and supervision of **a** hoard, the hoard shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(h) Except as provided in par. (hm), each hoard not covered under par. (a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer hoard, the real estate hoard and the real estate

appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on tlie call of the chairperson or a majority ofthe board's members.

2. The environmental education hoard shall meet 4 times each year and may meet at other times on the call ofthe chairperson.

3. The auctioneer hoard shall meet at least 4 times each year.

4. The information technology management hoard shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of **a** hoard constitutes a quorum to do business and, unless **a** more restrictive provision is adopted by the hoard, a majority of a quorum may act in any matter within the jurisdiction of the hoard. This subsection does not apply to actions ofthe ethics hoard or the school district boundary appeal hoard as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES, COMPENSATION. Except as provided in sub. (5m), the members of each hoard shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of **an** officer or employee of this state who represents **an** agency as a member of a hoard to he paid by the agency which pays the member's salary. The members shall receive no cornpensation for their services, except that the following members **of** hoards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members ofthe investment hoard, $50 per day.

(hj Members of the banking review hoard, S25 per day hut not to exceed $1,500 per year.

(c) Members ofthe auctioneer hoard, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding $35 per day as fixed by the hoard with the approval ofthe governor, but not to exceed 51,000 per year.

(ej In lieu of **a** per diem, the members of the technical college system hoard shall receive $100 annually.

(f) Members of the teachers retirement hoard, appointive members of the Wisconsin retirement hoard, appointive mcmhcrs of the group insurance board, members of the deferred compensation hoard and mcmhcrs of the employee tmst funds board, $25 per day.

(g) Members of the savings and loan review hoard, S10 per day.

(gm) Members of the savings bank review board, $10 per day.

(hj Voting members of the land and water conservation hoard, $25 per day.

(i) Members ofthe educational approval hoard, $25 per day.

(j) Members of the state fair park hoard. $10 per day hut not to exceed $600 per year.

(k) Members of the ethics hoard, S25 per day.

(L) Members ofthe school district boundary appeal hoard, $25 per day.

(n) Members of the elections board, 525 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate hoard, $25 per day.

(s) Members of the credit union review hoard, S25 per day hut not to exceed $1,500 per year.

(t) Members of the waste facility siting hoard who are town or county officials. **S35** per day.

(w) Members of the lower Wisconsin state riverway hoard, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, $25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES.(b) *Lower Wisconsin state riverway* ***board.*** The members, except for the chairperson, of the lower Wisconsin state riverway hoard shall **he** reimbursed under sub. (5) for only their necessary and actual travel expenses incurred in the performance of their duties. or shall be paid $25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway hoard shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway hoard shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every hoard created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the hoard.

(7) OFFICIAL OATH. Each member of a hoard shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983 a. 27, 282, 403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993 a. 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub. (4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192.

15.08 Examining boards and councils.(1) SELECTION OF MEMBERS. All members of examining boards shall he residents of this state and shall. unless otherwise provided by law, he nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall he **for** the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining hoard may he an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(Im) PUBLIC MEMBERS.(a) Public members appointed under s.15.405 or 15.407 **shall** have all the powers and duties of other mcmhers except they shall not prepare questions **for** or grade any licensing examinations.

(am) Public members appointed under s.15.405 or 15.407 shall not he, nor ever have been, licensed, certified, registered or cngagcd in any profession or occupation licensed or otherwise regulated by the hoard, examining hoard **or** examining council to which they **are** appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, he employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(hj The public memhcrs of the chiropractic examining hoard, the dentistry examining hoard, the hearing and speech examining hoard, the medical examining hoard, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the hoard of nursing, the nursing home administrator examining hoard, the veterinary examining hoard, the optometry examining board, the pharmacy examining hoard, the marriage and family therapy, professional counseling, and social work examining hoard. and the psychology examining hoard shall not be engaged in any profession or occupation concerned with the delivery ofphysical or mental health **care.**

(c) The membership of each examining hoard and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who **shall** he a public member appointed to serve for the same term served by the other members of such examining hoard or examining council, unless the act relating to the creation of such examining hoard or examining council provides that 2 or more public members shall he appointed to such examining hoard or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining hoard shall elect from among its members **a** chairperson, vice chairperson and, unless othenvise provided by law, a secretary. Any officer may he reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS.(a) Every examining hoard shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(h) The medical examining hoard shall meet at least 12 times annually.

(c) The hearing and speech examining hoard shall meet at least once every **3** months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining hoard.

(hj Notwithstanding par. **(a),** no certificate or license which entitles the person certitied or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the voting membership of the examining hoard

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it **is** created, upon request of that person not more often than annually, a report on the operation of the examining **board**.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403, 524; 1985 a. 332, 340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105. Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).

15.085 Affiliated credentialing **boards.(1)** SELECTION OF MEMBERS. **All** members of affiliated credentialing boards shall be residents of this state and shall. unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS.(a) Public members appointed under s.15.406 shall have all **of** the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appoinied under s.15.406 shall not he, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not he married to any person so licensed, certified, registered **or** engaged, and shall not employ, he employed by or he professionally associated with any person so licensed, certified, registered or engaged.

(h) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not he engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. **At** its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may he reelected to succeed hiniself or herself.

(3) FREQUENCY OF MEETINGS.(a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority **of** its members.

(b) The chairperson of **an** affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade **or** profession shall he suspended or revoked without the affirmative vote of two-thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board: (a) May compel the attendance of witnesses, administer oaths. take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, **an** affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed **rule** is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board *to* which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade **or** profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance **of** affiliated credentialing board duties. Each member of an affiliated credentialing board shall he reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of **an** affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils.(1) SELECTION OF MEMBERS.(a) Unless otherwise provided by law, the governor shall appoint the members of councils **for** terms prescribed by law. Except as provided in par. (b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd-numbered year.

(b) The terms of the members **of** the council on recycling shall expire as specified under s. 15.347 **(17)** (c).

(2) SELECTION OF OFFICERS. Unless othenvise provided by law, at its first meeting in each year every council shall elect a chairperson, vice chairperson and secretary from among its members. Any officer may bc reelected for **successive** terms. For any council created undcr the general authority of s.15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQ JENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer **or** secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis far the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for thcir services, hut members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of **an elective** or appointive officer or employee of this state who represents an agency as a member of a council to he paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report. every council created in a department or independent agency shall submit to the head of the dcpartment or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34, **346,** 1983 a. 27, 388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184. 6. One person

15.40 Department of regulation and licensing: creation. There is created a dcpartment of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. **270** s. 104; 1975 c. *39:* 1977 c. *29:* 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same: attached boards and examining boards.(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4-year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall he public members.

(2) EXAMINING BOARD OF ARCHITECTS. LANDSCAPE ARCHITECTS. PROFESSIONAL ENGINEERS. DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining hoard shall be registered to practice architecture, landscape architechire, professional engineering. the design of engineering systems **or** land surveying under ch. 443. The examining board shall consist of the following members appointed far 4-year terms: 3 architects, **3** landscape architects, **3** professional engineers, 3 designers, ***3*** land surveyors and 10 public members.

(a) In operation, the examining hoard shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(h) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect. landscape architect, engineer. designer or land survevor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall he considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS.(a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4-year terms:

1. Three members who arc professional geologists licensed undcr ch. 470.

2. Three members who arc professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall he divided into **a** profcssional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses. and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) 'There is created in the department of regulation and licensing **an** auctioneer board consisting of the following members appointed for 4-year **terms:**

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined ins. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggcrcd 4-year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3-year **terms.**

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the departmcnt of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Six dentists who are licensed under ch. 447.

Note: Par. (a) is shown as repealed and recreated eff. 12-31-02 by 2001 Wis. Act 16. Prior to 12-31-02 it reads: (a) Sir dentists who are licensed under ch. 447.

(h) Three dental hygienists who are licensed under ch. 447. Notwithstanding s.15.08 (Im) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

Note: Par. (b) is shown as repealed and recreated eff. 12-31-02 hy 2001 Wis. **Act 16. Prior to 12-31-02 if reads:**

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s.15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations fur dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following mcmbers appointed for 4–year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(h) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990. and ending on June **30.** 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech--language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public mcmbcrs. One of the public members shall he a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical cxamining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.\

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING. AND SOCIAL WORK EXAMINING BOARD. (a) There is crcatcd a marriage and family therapy, professional counseling, and social work examining boaid in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are liccnsed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par. (a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social workcr.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. **At** least one member who is employed as a social **worker** by **a** federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into **a** social **worker** section, a marriage and family therapist section and a professional counselor section. The social **worker** section shall consist of the 4 social worker members of the examining hoard and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public membcrs of the examining hoard.

(c) All matters pertaining to granting, denying, limiting. suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social **worker,** marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(c) Notwithstanding s.15.08 (4) **(a), at** a joint meeting **of** all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par. (f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining hoard, each member who is present has one vote, except that the social worker mcmbers each have three–fourths of a vote if all 4 of those members are present.

(79) BOARD OF NURSING. There is crcatcd a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4–year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses undcr ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall he public members. No more than 2 members may he officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed optometrists in this state. Two members shall he public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the dcpsrtmcnt of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall he public members.

(lorn) PSYCHOLOGY EXAMINING BOARD. There is created in the department of rcgulation and licensing a psychology examining board consisting of **6** members appointed for staggered 4–year terms. Four of the members shell he psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall he public members

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Three appraisers who are certified **or** licensed under ch. 458.

2. One assessor, as defined in s. 458.09 (1).

3. Three public members

(b) Of the appraiscr members of the hoard, one shall be certified under **s.** 458.06 as a general appraiser, one shall be certified undcr s. 458.06 **as** a residential appraiser and one shall he licensed under s. 458.08 as an appraiser. No public member of the hoard may be connected with or have any financial interest in an appraisal business or in any other real estate–related business. Section 5.08 (Im) (am) applies to the public members of the hoard. No member of the boaid may serve more than 2 consecutive terms.

(c) Notwithstanding s.15.07 (4), **a** majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is crcatcd a real estate hoard in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (Im) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule -making authority.

(12) VETERINARY EXAMINING BOARD. There is created a veterinary cxamining board in the department of regulation and **licensing.** The veterinary examining board shall consist of 8

members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING HOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department *of* regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4–year terms. Four members shall be liccnsed barbers or cosmetologists, 2 members shall he public members, **one** member shall be a representative of a private school of barbering or cosmetology, one member shall he **a** representative of a public school of barbering or cosmetology and one member shall **be** a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to serve on the board of medical examiners. *62* Atty. Gen 193.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The **board** was without authority to reimburse the nominee for expenses incurred in attending a meeting **during** an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three physical therapists who are liccnsed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III **at** ch. 448.

Note: Par. (am) is created eff. 4–1–04 by 2001 Wis. Act 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three dietitians who are ccrtificd under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing; attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATIILFTIC TRAINERS AFFILIATED CREDENTIALING BOARD. Thcrc **is** created in the department *of* regulation and licensing, attached to the medical examining board, an athletic trainers affiliated ciedentialing board consisting of the following members appointed for 4–year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL SHERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107, 443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a 70.

15.407 Same; councils.(1m) RESPIRATORY CAKE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the depanment of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council **shall** consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.05 (1) to **(4)** (a) and **(6)** to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a petiusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed peifusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or **a** cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) *Registered nurses.* There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) *Practical nurses.* There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered **nurse** who is **a** faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–year terms. No member may be a member of the cxamining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists liccnsed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4–year terms. Five members shall be real

estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall he a licensed red estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years **of** experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity The council shall consist of the following members appointed for **3–year** terms:

(8) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity The council shall consist of 7 members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par. (a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3–1–03 by 2001 Wir. Act 74.

History: 1973 c. 149; **1975** c. **39,** 86, 199. **383,** 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341 *359;* 1991 **a.316:** 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89.

CHAPTER 49
PUBLIC ASSISTANCE

SUBCHAPTER III
ECONOMIC SUPPORT AND WORK PROGRAMS

49.30 Funeral expenses. (1) Except as provided in sub. (1m), if any recipient of benefits under s. 49.148, 49.46 or 49.77, or under 42 USC 1381 to 1385 in effect on May 8, 1980, dies and the estate of the deceased recipient is insufficient to pay the funeral, burial and cemetery expenses of the deceased recipient, the county or applicable tribal governing body or organization responsible for burial of the recipient shall pay, to the person designated by the county department under s. 46.215, 46.22 or 46.23 or applicable tribal governing body or organization responsible for the burial of the recipient, all of the following:

(2) The lesser of $1,000 or the cemetery expenses that are not paid by the estate of the deceased and other persons.

(b) The lesser of $1,500 or the funeral and burial expenses not paid by the estate of the deceased and other persons.

(Im) (a) If the total cemetery expenses for the recipient exceed $3,500, the county or applicable tribal governing body or organization responsible for burial of the recipient is not required to make a payment for the cemetery expenses under sub. (1) (a).

(b) If the total funeral and burial expenses for the recipient exceed 53,500, the county or applicable tribal governing body or organization responsible for burial of the recipient is not required to make a payment for funeral and burial expenses under sub. (1) (b).

(c) If a request for payment under sub. (1) is made more than 12 months after the death of the recipient, the county or applicable tribal governing body or organization responsible for burial of the recipient is not required *to* make a payment for cemetery, funeral or burial expenses.

(2) From the appropriations under s. 20.445 (3) (dz) and (md), the department shall reimburse a county or applicable tribal governing body or organization for any amount that the county or applicable tribal governing body or organization is required to pay under sub. (1). from the appropriations under s. 20.445 (3) *(dr)* and (md), the department shall reimburse a county or applicable tribal governing body or organization for cemetery expenses or for funeral and burial expenses for persons described under sub. (1) that the county or applicable tribal governing body or Organization is not required to pay under subs. (1) and (1m) only if the department approves the reimbursement due to unusual circumstances.

History: 1973 c. 147. **333;** 1975 c. 39, **224,** 1979 c. *206;* 1981 c. *20:* **1985** a. 29, 176, 332; 1989 a. 31, 239; 1995 a. 27, 289; 1997 a. 27; 1999 a. 9; 2001 **a.** 16.

A cement grave liner will be considered **a funeral** and burial expense or a cemetery expense **depending** on who **provides** the liner: **a** liner **provided** by a funeral home constitutes **a** funeral **and** burial expense subject to the statutory payment limit. 79 Atty. Gen. **164.**

CHAPTER 69

COLLECTION OF STATISTICS

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SUBCHAPTER I

VITAL STATISTICS

69.01 Definitions. In this subchapter:

(2) "Certifier of the cause of death" means a physician. coroner or medical examiner acting undcr s. 69.18 (2).

(3) "City registrar" means the local health officer of a local health department with jurisdiction for a city that is a registration district.

(5) "Court report" means an abstract of a court action involving a vital record completed and ccrtificd by the clerk of court on a fomi supplied by the state registrar.

(6g) "Date of death" means the date that a person is pronounced dead by a physician, coroner. deputy coroner, medical examiner, or deputy medical examiner.

(7) "Department" mcans the department ofhcalth and family services.

(8) "Direction of the state registrar" means the determination in individual cases that statutes are being observed, the issuance of administrative rules. the imposition of statutory penalties and the maintenance of communications within the system of vital statistics.

(10) "File" means the acceptance by the local registrar and the initial incorporation of vital records provided under this subchapter into the system of vital statistics.

(11) "Filing party" means any person who submits a vital record to a local registrar for filing in the system ofvital statistics.

(12) "Final disposition" means the disposition of a corpse or stillbirth by burial, interment, entombment. cremation. delivery to a university or school under s. 157.02 (3) or delivery to a medical or dental school anatomy department under s. 157.06. "Final disposition" docs not include disposition of the ashes produced by cremation of a corpse or stillbirth.

(13) "Hospital" has the meaning given under s. 50.33 (2).

(13m) "Induced abortion" means the termination of a uterine pregnancy by a physician of a woman known by the physician to be pregnant, **for** a purpose other than to produce a live birth or to remove a dead fetus.

(14) "Local health department" has the meaning given in s. 250.01 (4).

(15) "Local registrar" mcans:

(a) The rcgistcr of deeds responsible for filing vital records in the county except as provided under par. (b).

(h) The city registrar responsible for filing certificates of births or certificates of births and deaths in his or her city.

(16) "Marriage document" has the meaning given under s. 765.002 (4).

(16m) "Medical certification" means those portions of a death certificate that provide the cause of death, the manner of death, injury related data, and any other medically related data that is collected as prescribed by the state registrar under s. 69.18 (1m) (c) 2.

(17) "Person with a direct and tangible interest" means a person who satisfies the requirements under s. 69.20 (1).

(18) "Place of death" means the place where a pronouncement of a human death occurs or, if a death occurs in a conveyance or a corpse is found in interstate waters and removed in this state, the place where the corpse is removed.

(19) "Registrant" means the subject of a certificate which a local registrar has accepted for filing in the system of vital statistics.

(20) "Registration" mcans final processing of vital records after filing and review for completeness and correctness by the local and state registrar

(21) "Registration district" mcans a county. except that a city approved under s. 69.04 is a registration district for filing certificates of births or certificates of births and deaths occurring in the city.

(22) "Research" means a systematic study through scientific inquiry for the purpose of expanding a field of knowledge. including environmental or epidemiological research or special studies, that is conducted by persons who nieet criteria for access that are specified in rules promulgated under s. 69.20 (4).

(24) "State registrar.' means the state registrar of vital statistics appointed by the department under s. 69.02 (1) (b).

(25) "System of vital statistics" means:

(a) The tiling, registration. collection, preservation, amendmcnt and certification of vital records under this subchapter.

(b) The collection of records, other than vital records, required under this subchapter.

(c) Activities related to the activities under pars. (a] and (b), including the tabulation, analysis and publication of viral statistics.

(26) "Vital records" means any of the Following:

(a) Certificates of birth; death. and divorce or annulment, and marriage documents.

(b) Worksheets that use forms that are approved by the state registrar and are related to documents undcr par. (a).

(c) Data related to documents under par. (a) or worksheets undcr par. (b).

(27) "Vital statistics" means the data derived from certificates of birth, death, divorce or annulment, marriage documents. fetal death reports or related reports.

History: 1985 a. 315; 1985 a. 332 s. 253; 1991 a. 39; 1993 a. 27; 1995 a. 27 s. 9126 (19); 2001 a. 16.

69.02 Department powers and duties. **(1)** The department shall:

(a) Establish a unit called the office of vital statistics.

tbj Appoint a state registrar.

(2) (a) The department may promulgate administrative rules to administer this sobchapter.

(b) The department shall promulgate administrative rules which establish procedures regarding the contents of and acceptance and registration of tribally related vital records submitted to the state registrar by tribal courts and procedures for responding to court orders issued by tribal courts regarding tribally related vital records. as required under s. 69.035.

History: 1985 a. 315; 1989 a. 194.

69.03 Powers and duties **of** state registrar. The state registrar shall:

(1) Administer and enforce this subchapter.

(2) Direct the system of vital statistics.

(3) Supervise the office of vital statistics.

(4) Act as custodian of all records in the office of vital statistics and preserve, index and certify the records by photographic, electronic or other means, as determined by the state registrar.

(5) Under this subchapter. accept for registration. assign a date of acceptance, and index and preserve original certificates of birth and death, original marriage documents and original divorce reports. Indexes prepared for public use under s. 69.20 (3) (e) shall consist of the registrant's full name; date of the event. county of occurrence, county of residence, and, at the discretion of the state registrar, state file number. Notwithstanding s. 69.24 (1) (e), the state registrar may transfer the paper original of a vital record to optical disc or electronic format in accordance with s. 16.61 (5) or to microfilm reproduction in accordance with s. 16.61 (6) and destroy the paper original of any vital record that is so converted. For the purposes of this subchapter, the electronic format version or microfilm reproduction version of the paper original of a vital record that has been transferred under this subsection shall serve as the original vital record.

(6) Direct any activity related to the operation of the system of vital statistics.

(7) Conduct training programs to promote uniformity of policy and procedures in this state in the system of vital statistics.

(8) Prescribe, furnish and distribute fomis required undcr this subchapter and ch. 765 and prescribe any other mcans for transmission of data necessary to accomplish complete and accurate reporting and registration. When reasonable and possible the state registrar shall base the prescribed forms on the standard fomis recommended by the federal agency responsible for administering the national system of vital statistics.

(9) Prepare and publish an annual report of vital statistics.

(10) At the request of a local health department, provide the local health department with vital statistics for local health planning and program activities and establish a schedule with the local health department for transmittal of the vital statistics.

(11) Provide a copy or notice of any vital record or court-ordered change of fact prepared by the state registrar under ss. 69.14 (1) (h) and (2) (a) and (b) 5., 69.15, 69.16 (2) and 69.19 or any authorization for an amendment under ss. 69.11 and 69.12 to the register of deeds of the county where the event which is the subject of the vital record, change of fact or amendment occurred and, if the event occurred in a city which is a registration district and responsible for registering the event, to the city registrar of the city.

(12) Accept fetal death reports under s. 69.18 (1) (e). The state registrar may record the information on the reports for use in medical research and may use the information to compile statistics. After recording the information on a fetal death report, the state registrar shall destroy the report.

(13) As the state registrar determines necessary, report violations of this subchapter to the district attorney of the county in which the violation is alleged to have occurred and include a statement of facts and circumstances. The state registrar may request the assistance of the department of justice as he or she determines necessary for the enforcement of this subchapter.

(14) Provide hospitals with a pamphlet containing information for parents about birth certificates including how to add the name of the father of a child whose parents were not married at any time from the conception to the birth of the child to the birth certificate under s. 69.15 (3) (b) or, if the father will not sign an affidavit, through a paternity action; the legal significance and future medical advantages to the child of having the father's name inserted on the birth certificate; and the availability of services under s. 49.22.

(15) Periodically provide to each county child support agency under s. 59.53 (5) a list of names and, notwithstanding s. 69.20 (2) (a), addresses of registrants who reside in that county for whom no father's name has been inserted on the registrant's birth certificate within 6 months of birth.

History: 1985 a. 315; 1987 a. 413; 1993 a. 27; 1995 a. 201, 404; 1997 a. 27; 2001 a. 16.

69.035 Treatment by state registrar of tribal vital records and tribal court orders. (1) The state registrar shall accept and register valid vital records submitted by tribal courts, consistent with the manner in which vital records submitted by local registrars or city registrars are handled, and shall recognize and honor orders from tribal courts in this state relating to vital records which pertain to tribally related events.

(2) Wherever this subchapter provides for acceptance and registration by the state registrar of vital records submitted by local registrars, city registrars or clerks of circuit courts, the state registrar shall also accept and register, in a like manner, comparable vital records pertaining to tribally related events submitted by the court of any federally recognized Indian tribe or band in this state.

(3) Wherever this subchapter provides for correction or delayed registration, without court order, of vital records submitted by local registrars or city registrars, the state registrar shall also correct or register, in a like manner, comparable vital records pertaining to tribally related events submitted by any federally recognized Indian tribe or band in this state.

(4) Wherever this subchapter provides for correction, delayed registration, copying or determination of the validity of, or disclosure of information from, vital records, pursuant to an order of a court, circuit court or court of competent jurisdiction, the state registrar shall, in a like manner, correct, register, copy, determine the validity of, or disclose information from, comparable vital records pertaining to tribally related events, pursuant to an order of the court of any federally recognized Indian tribe or band in this state. In order for the state registrar to provide access to an original birth certificate or any accompanying documents in an adoption case,

the tribal court which orders access to such records or documents shall be the court with jurisdiction over the adoption.

History: 1989 a. 194.

69.04 Local registration district. (1) (a) 1. The state registrar may approve a city as a registration district for registration of births occurring in the city if the state registrar determines that the city has a facility which provides obstetrical care and a local health department with jurisdiction for the city that is administered by a full–time local health officer with a deputy who is authorized to act in place of the local health officer during the officer's absence, illness or disability and staff, office space and other resources for the proper administration of birth records, makes reasonable use of public health data derived from birth records and suitably preserves and cares for official city birth records.

2. The state registrar may approve a city as a registration district for registration of deaths occurring in the city if the state registrar has approved the city for registration of births under subd. 1. and if the state registrar determines that the city has staff, office space and other resources for the proper administration of death records, makes reasonable use of public health data derived from death records and suitably preserves and cares for official city death records.

(b) The state registrar may withdraw the approval given under par. (a) if the city fails to meet the requirements under par. (a).

(2) (a) The county register of deeds office shall be the place for filing vital records except as provided under pars. (b) and (c).

(b) If a birth occurs in a city which is a registration district, the office of the city registrar shall be the place for filing the birth certificate.

(c) If a death occurs in a city which is a registration district approved by the state registrar for registering death certificates, the office of the city registrar shall be the place for filing.

(3) Any city which is not a registration district shall dispose of any vital records which it has filed as follows:

(a) Offer all records of events occurring prior to October 1, 1907, to the state historical society.

(b) Offer the records of each event occurring after September 30, 1907, to the register of deeds of the county in which the event occurred.

(c) Destroy any record which the state historical society or the register of deeds does not accept under par. (a) or (b).

History: 1985 a. 315; 1985 a. 332 s. 253; 1993 a. 27.

69.05 Duties of local registrar. A local registrar shall:

(1) Be subject to the direction of the state registrar.

(2) Transmit to the state registrar, within 10 working days after receipt, any original vital record.

(3) If the county of residence of a registrant of a birth or death certificate accepted for filing is different than the county in which the local registrar is located, forward to the register of the deeds of the registrant's county of residence within 10 working days after receipt:

(a) A copy of every original birth or death certificate accepted for filing.

(b) A copy of any copy received from the state registrar under s. 69.03 (11).

(3m) If the mother of a registrant of a birth certificate resides in a city and the birth certificate is not filed in such city, send a copy of the birth certificate to the local health department with jurisdiction for the city if:

(a) The local health department has a maternal–child visitation or information program;

(b) The local health department has requested the copy and notified the state registrar of its request; and

(c) The state registrar has approved the request.

(4) Preserve. amend and certify vital records under this subchapter by photographic; electronic or other means as directed by the state registrar. except that a local registrar may destroy birth certificates on file for more than 365 days if the state registrar determines that the local registrar has access through the state registrar's computer database to the information necessary to issue certified copies under s. 69.21 (1) (b) 2.

(5) Enforce this subchapter in his or her registration district and report to the state registrar in writing any violation upon receipt of knowledge of the violation.

(7) Send a note of the designation of a deputy to the state registrar no later than one working day after the designation takes effect. The notice shall include a copy of the deputy's signature and the effective date of the designation.

History: 1985 a. 315; 1989 a 359: 1993 a. 27; 1997 a. 114; 1999 a. 185.

A local registrar has no power to adopt procedures that are more stringent than those directed by the state registrar for issuing certified copies of vital records under s. 69.21 (1). 80 Atty. Gen. 35.

69.06 Duties of city registrars. A city registrar shall:

(1) Accept for filing, sign and assign a date of acceptance *to* every original certificate of birth and death which he or she has been approved to register under s. 69.04 and which is properly presented in his or her office.

(2) Make. file, and index an exact copy of every certificate accepted under sub. (1). Indexes prepared for public use under s. 69.20 (3) (e) shall consist of the registrant's full name, date of the event, county of occurrence, county of residence, and; at the discretion of the state registrar, local file number.

(3) No later than 5 working days after receipt of the original of any vital record accepted under sub. (1), transmit a clear. reproducible photocopy of the original *to* the register of deeds of the county in which the event which is the subject of the record occurred.

(4) Designate in writing a deputy to perfonn the city registrar's duties under this section during the city registrar's absence, illness or disability.

(5) Destroy, within 365 days after receipt, any copy of a birth certificate received under s. 69.05 (3m). A city registrar may not issue such copy to any person

History: 1985 a. 315; 2001 a. 16.

69.07 Duties of register of deeds. The county register of deeds shall:

(1) Accept for filing, sign and assign a date of acceptance to every original vital rccord properly presented in his or her office.

(2) Make, file; and index an exact copy of every vital rccord accepted under sub. (1) or received under s. 69.05 (3). Indexes prepared for public use under s. 69.20 (3) *(e)* shall consist of the registrant's full name, date of the event. county of occurrence, county of residence, and, at the discretion of the state registrar, local file number.

(3) Designate a deputy appointed under s. 59.43 (3) to perform the register of deeds' duties under this section during the register of deeds' absence, illness or disability.

History: 1985 a. 315; 1995 a. 201; 2001 a. 16.

69.08 Requirements for registration. The state registrar may not register a vital record unless the rccord:

(1) Is on a fomi prescribed or supplied for the record by the state registrar.

(2) Is prepared on a typewriter with unworn black ribbon or printed legibly in black permanent ink applied directly to the form paper.

(3) Supplies all items of infonnation required by the fonn or gives a reason approved by the state registrar for the omission of any item.

(4) Contains proper and consistent date.

(5) Contains the signatures which are required on the form and which are written in black permanent ink applied directly to the form paper.

(6) Is free of correction fluid. correction tape and erasures and is free of any alteration made without a written explanation which has been approved by the state registrar.

(7) Contains the dated signature of the local registrar.

(8) Is prepased under rules promulgated by the department

History: 1985 a. 315; 2001 a 16.

69.09 Corrections prior to filing. If prior to filing a vital record a local regishar determines that the record has an omission or error in infomiation, the local registrar shall return the record to the filing party for correction or replacement, except as provided under s. 69.10 (2). The filing party shall correct or replace any such record within 5 working days after it is received by the filing party

History: 1985 a. 315.

69.10 Correction of obvious errors. (1) Until 365 days aftcr the occurrence of an event which is the subject of a vital record:

[a) The stare registrar may return a vital record to a local registrar for correction tinder s. 69.09 if the statc registrar determines that the record should not have been filed prior to correction.

(b) The state registrar or a local registrar may correct an error in the record if he or she determines that the error is obviously inadvertent.

(2) A person with a direct and tangible interest in a vital record may petition a court to order a correction in the record under this section if the state or local registrar with whom the record is filed fails to make the correction.

History: 1985 a. 315

69.11 Amendments without court order. (1) In this section, "amend" means to change infomiation in an item on a vital record that was incorrect when the vital record was filed or to insert infomiation omitted from an item on a vital rccord when the vital record was filcd.

(2) If a vital record has been filed, any item on the record may be amended one time tinder this section.

(3) (a) Until 365 days after the occurrence of an event which is the subject of a vital record, the state registrar, with satisfactory evidence that information in an item on a vital record was incorrect or omitted when the record was filed, may amend the record except as provided under par. (b)

(h) Until 365 days after the occurrence of an event which is the subject of a vital record. the state registrar may amend the following information on a vital record:

1. Name, sex, date of birth, place ofhirth. parents' surnames and marital status of parents, if the vital record is a birth certificate and **if** the amendment is accompanied by a statement which the filing party has submitted to support the amendment.

2. Cause of death. if the vital record is a death certificate and if the amendment is accompanied by a statement that the person who signed the medical certification has submitted to support the amendincnt

(c) The following, on a fonn supplied by the state registrar, may request the state registrar to act under this subsection:

1. Any person with a direct and tangible interest in the record.

2. A certifier of the cause of death.

(d) The state registrar shall amend a vital record under this subsection if a local rcgistrar:

1. Notifies the filing party. a certifier of the cause of death or the county clerk responsible fos the vital record of the need for correct information;

2. Obtains the correct infomiation from the person notified under subd. 1.:

3. Changes the infonnaiion on his or her copy of the vital record; and

4. Sends a notice of the amendment under suhd. 3. to the state registrar.

(e) 1. If the state registrar determines that a viral record should he amended under this subsection; he or she shall send a notice of the need for an amcndmcnt to the filing party, the certifier of the cause of death or the county clerk responsible **for** the vital sccord or to the local registrar who filed the record. If the local registrar receives the notice, lie or she shall obtain the correct information irom the filing party. ccrtitier of the cause of death or county clerk responsible for the vital record, change the information on his or her copy of the vital record and send a copy of the changed record to the state rcgistrar.

2. **A** filing party who receives a notice under subd. 1. shall respond to the person who sent the notice within 10 working days after receipt of the noticc.

(4) (a) Except as providcd under par. (b), the state registrar may no! amend any vital record if 365 days have elapsed since the occurrence of the event which is the subject of the vital record unless the state registrar has received a court order to make the amendment under s. 69.12.

(b) The state registrar may amend an item on a birth certificate that affects information about the name, sex. datc of birth, place of birth, parent's name, or marital status of the mother if 365 days have elapsed since the occurrence of the event that is the subject of tlic birth certificate, if the amendment is at the request of a person with a direct and tangible interest in the record and is on a request fonn supplied by the state registrar, and if the amendment is accompanied by 2 items of documentary evidence from early childhood that are sufficient to prove that the item to be changed is in error and by the affidavit of the person requesting the amendment. **A** change in the marital status on the birth certificate may he made under this paragraph only if the marital status is inconsistent with information concerning the father or husband that appears on the birth certificate. This paragraph may not be used to add to or delete from a birth certificate the name of a parent or to change the identity of a parent named on the birth certificate.

(5) (a) If the state or local registrar. under this section or under s. 69.15, changes tlic face of a vital record registered or filed in his or her office, the registrar shall:

1. Insert any information that was omitted when the vital record was filed.

2. If the amendment changes the information on the vital record, do all of the following:

a. Record the corrcc! information in the relevant area of the vital record.

b. Maintain legibility of the changed information by placing a single line through the changcd entry, by recording the changed infomiation elsewhere on the legal portion of the vital record, or both.

c. Make a notation on the vital record that clearly states that the vital record has hccn amended and that gives the number of the item corrected. the datc of the correction, and the source of the amending information.

d. Initial the amendment notation specified in subd. 2. c.

(b) If under sub. (4) (b) the state or local registrar makes an amendment other than on the face of the original copy of a vital record. he or she shall file an amendment form which includes an affidavit by the person requesting the amendment, the information which is stricken. the information inserted and an abstract of the documents supporting the amendment.

History: 1985 a. 315; 2001 a. 16.

69.12 Entry of true facts by court order. (1) If the state registrar cannot make an amendment to a vital record under s. 69.11 and a person with a direct and tangible interest in the vital record alleges that information on the vital record docs not represent the actual facts in effect at the time the record was tiled, the

person may petition the circuit court of the county in which the event which is the subject of the vital rccord is alleged to have occurred. The petition shall he accompanied by a certified copy of the original vital record. Ifthc court findsthat the petitioner has cstahlished the actual facts of the event in effect when the rccord was filed, the clerk of court shall report the court's determination to tlie state registrar on a form prescribed by the state registrer, along with the fee required under s. 69.22 *(5)* (a) 2. Upon receipt of the report, the state registrar shall, if information as *to* the cause of death on the original ccrtificatc of death is changed, act under sub. (4), or shall change the record under s. 69.11 *(5)* and send a notice of tlie change *to* the local registrar who shall make the change in the record filed in his or her office.

(2) A court may not order amendment of the names of the parents of a registrant on a birth certificate on the grounds of termination of parental rights or termination of custody.

(3) The state registrar shall amend under s. 69.11 (5) an item on a birth certificate as directed by an order under this section.

(4) (a) If infonnation as to the cause of death on the original certificate of death is changed under tlie court's determination under sub. (1) and the court in accordance with the petition orders the creation of a new certificate of death, the *state* registrar shall do all of the following:

1. Prepare a new certificate of death, omit the changed information. including the name of the physician, coroner or medical examiner who certified the cause of death and enter any other original and any new information, including the name of the judge and the date of the order, sign the new information, enter any notation of support in the margin of the record and insert a note that the certificate ofdcath has been amended.

2. Register a new certificate of death created under this subsection and impound the original certificate and all correspondcnce. affidavits, court orders and other related materials and prohibit access except by court order or except by the state registrar for processing purposes.

3. Send a copy of my new certificate of death registered under this subsection to the local registrar who filed the original of the replaced certificate of death.

(b) Upon receipt of the copy under par. (a) 3., the local registrar shall destroy his or her copy of the replaced certificate of death and file the new certificate of death.

(5) A change in the marital status on the certificate of birth may be requested undcr this section only if the marital status is inconsistent with father or husband information appearing on the certificate ofbirth. This section may not be used to add or delete the name of a parent on the certificate of birth or change the identity of either parent named on the certificate of birth

History: 1985 a. 315; 1993 a. 346; 1995 a. 225; 2001 a. 16.

A court acting under sub. (1) acts as a fact finder, independently reviewing the evidence presented by the petitioner. There is a presumption of validity in the findings in a death certificate; the petitioner has the burden of rebutting the presumption by the greater weight of the credible evidence. Sullivan v. Waukesha County, 218 Wis. 2d 458 578 N.W.2d 596 (1998).

69.13 Correction of facts misrepresented by informant for certificate of birth. The state registrar may, under an order issued by the circuit court of the county in which a birth occurred, correct information about the parent or the marital status of the mother on a certificate ofbirth that is registered in this state if all of the following conditions apply:

(1) The correction may not be accomplished under s. 69.11, 69.12, or 69.15 because the disputed information was misrepresentcd by the informant during the preparation of the birth certificate.

(2) The state registrar receives, on a fonn prescribed by the state registrar, a court order that is accompanied by all of the following:

(a) Apetition for correction filed by a person with a direct and tangible interest in the certificate of birth.

(h) Certification that all of the following supporting evidence, as listed by the court in the order, was presented in addition to oral testimony:

1. A certified copy ofthc original certificate of birth.

2. If the birth occurred in a hospital. a copy of the birth worksheet and any other supporting documentation from the hospital.

3. If the birth did not occur in a hospital, a statement from the birth attendant.

4. If relevant *to* the correction sought; a certified copy of a marriage document, a certified copy of a certificate of divorce or annulment or a final divorce decree that indicates that the mother was not married to the person listed as her husband at any time during the pregnancy, a legal name change order, or any other legal document that clarifies the disputed information.

5. A statement signed by the certificate of birth informant or the pctitioncr acknowledging that the disputed information was misrcprescntcd.

(c) The supporting evidence specified in par. (b) 1. to 5.

(d) The fee specified under s. 69.22 *(5)*(b) 1.

History: 2001 a. 16.

69.14 Registration of births. (1) FILING REQUIREMENTS. (a) *Filing deadline.* 1. Except as provided under suhd. 2., a certificate ofhirth for every birth that occurs in this state shall be filed within 5 days after the birth with the state registrar, who shall register the birth under this subchapter and shall make a copy of the ccrtificate of birth available *to* the registration district in which the birth occurred and the registration district in which the mother of the registrant resided at the time of the birth.

2. A filing party shall send a certificate ofbirth for a birth in a city which has a local health department that is not a registration district to the local health department if the local health department has a maternal–child visitation or information program, if the local health department has filed with the state registrar a request that the certificate be sent to it and if the state registrar has approved the request. The state rcgistrar may revoke his or her approval at any time.

3. Any local health department that accepts original birth certificates under subd. 2. shall:

a. Make a copy ofthe certificate and forward the original *to* the register of deeds within 2 days;

b. Send any copy required under s. 69.05 (3m) and issue no other copy to any person; and

c. Destroy its copy within 365 days after receipt.

(b) *Accuracy.* Either parent of a child who is the subject of a birth certificate, or, if neither parent is available, another person with knowledge ofthc facts of the birth, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within 5 days after the birth.

(c) *Filing party.* A birth certificate shall be prepared and filed by the following:

1. If the birth occurs at or on route to a hospital, the hospital administrator or his or her designee;

2. In the absence of a person under suhd. 1., the physician in attendance at or immediately after the birth:

3. In the absence of a person under subd. 1. or 2., any other person in attendance at or immediately after the birth: or

4. In the absence of a pcrson under subds. 1. *to* 3., the father or mother, or in the absence of the father and the inability of the mother, the person responsible for the premises where the birth occurs.

(cm) *Information concerning paternity.* For a birth which occurs en route to or at a hospital, the filing party shall give the mother a copy of the pamphlet under s. 69.03 (14). If the child's parents are not married at the time of the child's birth, the filing party shall give the mother a copy of the form prescribed hy the state registrar under s. 69.15(3)(b) 3. The filing party shall ensure

that trained, designated hospital staff provide to the child's available parents oral infonnation or an audio or video presentation and written information about the form and the significance and benefits of. and alternatives to, establishing paternity, before the parents sign the form. The filing party shall also provide an opportunity to complete the form and have the form notarized in the hospital. If the mother provides a completed form to the tiling party while she is a patient in the hospital and within 5 days after the birth, tlic filing party shall send the form directly to the state registrar. From the appropriation under s. 20.445 (3) (dz), the department of workforce development shall pay the filing party a financial incentive for correctly filing a form within *60* days after the child's birth.

(d) *Place of birth.* 1. On a birth certificate the place ofbirth shall he the place where the placenta is removed except as provided under subd. 2.

2. If a birth occurs in a conveyance within the United States and tlie birth child is first removed from the conveyance in this state. the birth shall be filed in this state and the place where the birth child is first removed from the conveyance shall be the place ofbirth on the birth certificate. If a birth occurs on a moving convcyance while in international waters or air space or in a foreign country or its air space and the birth child is first removed from the conveyance in this state, a birth certilicate for the child shall be filed in this state and the place ofbirth on the birth certificate shall he the actual place of birth as determined by the filing party.

(e) Father's name. 1. If the mother of a registrant under this section was married at any time from the conception to the birth of the registrant, the name of the husband of the mother shall be entered on the birth certificate as the legal father of the registrant. The name of the father entered under this subdivision may not he changed cxccpt by a proceeding under ch. 767.

2. If the inothcr was not married at any time from the conception to the birth of a registrant undcr this scction, no name of any alleged father of the registrant may be entered as the father on the birth certificate except as provided under s. 69.15 (3). If under this subdivision the name ofthe father ofthc registrant of a birth certificate is omitted from the certificate. no other infonnation about the father may be entered on the certificate.

(f) *Registrant's name.* 1. a. Except as provided under subd. 1. b., if the mother of a registrant of a birth certificate under this section is married to the Sathcr of the registrant at any time from the conception to the birth ofthe registrant, the given name and surname which the mothcr and father ofthe registrant enter for the registrant on the birth certificate shall be the given name and surname filed and registered on the birth certificate.

b. If the mother of a registrant of a birth certificate under this section is marricd to tlic father ofthe registrant at any time from the conception to the birth of the registrant and the mother is separated or divorced from the father of the registrant at the time of birth. the givcn name and surname which the parent of the registrant with actual custody cntcrs for the registrant on the birth certificate shall he the given name and surname filed and registered on the birth certificate, except that if a court has granted legal custody ofthe registrant, the given name and surname which the person with legal custody enters for the rcgistrant on the birth certificate shall be the given namc and surnanie filed and registered on the birth certificate.

c. If the mother of a registrant of a birth certificate under this section is not married to the father of the registrant at any time from the conception to the birth of the registrant, the givcn name and surname which the mother ofthe registrant enters for the registrant on the birth cenificatc shall be the given name and surname filed and registered on the birth certificate, except that if a court has grantcd legal custodv ofthe registrant, the given name and surname which the person with legal custody enters for the registrant on the birth certificate shall be the given name and surname filed and registered on the hirtli ccrtificatc.

2. If no surname has been entered for a registrant within 5 days after the registrant's birth. the filing party shall file a birth certificate for the registrant without entering a surname on the birth certiticate. The state registrar and any local registrar may not issue any certified copy of the birth certificate until a surname is entered under this paragraph.

(g) *Birth by artificial insemination.* If the registrant of a birth ccrtificatc undcr this section is born as a result of artificial insemination under the requirements of s. 891.40; the husband of the woman shall be considered the father ofthe registrant on the birth ccrtificatc. If the registrant is born as a result of artificial insemination which does not satisfy the requirements ofs. 891.40. the information ahout the father ofthe mgisnant shall be omitted from the registrant's birth certificate.

(h) *Surrogate mother.* If the registrant of a birth certificate undcr this section is born to a surrogate mother, infonnation about the surrogate mother shall he entered on the birth certificate and the info,-mation about the father shall be omitted from tlie birth certificate. If a court determines parental rights over the registrant, the clerk of court shall report tlic court's determination to the state registrar on a form prescribed by the state registrar; along with the fee required ondcr s. 69.22. Upon receipt of the report, the state registrar shall prepare and register a new birth certificate for the registrant under s. 69.15 (6) and send a copy of the new certificate to the local registrar who filed the original ccrtificatc. Upon receipt ofthc copy, the local registrar shall destroy his or her copy of the replaced certificate and file the new certificate.

(2) LATE REGISTRATIONS. (a) *Registration* 6 *to* **365** *days after birth.* If a birth certificate is filed *6* to *365* days after the date of birth, the filing party shall use the form used for birth certificates filed under sub. (l). Before registering the certificate, the state registrar may require additional evidence in support of the facts of birth and an explanation ofwhy the birth certificatc was not filed under sob. (l). If a birth certificate filed under this subsection is signed by a person othcr than the person attending the birth or the person managing the institution where the birth occurred or its medical records, the state registrar may require a notarized statement ofwhy the certificate was not filed undcr sub. (1).

(b) *Registration more than 365 days after birth.* 1. If more than 365 days have elapsed since the birth of a person horn in this state and a ccrtificatc of the birth has not been filed in this state; such person or the parent or guardian ofthe person, if the person is living, may request that the state registrar register a birth certificate for the person under this paragraph.

2. Any person requesting a birth ccrtificatc under this paragraph shall establish the following facts by evidence documented under subd. 3.:

a. The full name ofthc registrant given aftcr the time of birth.

b. The date and place of birth.

c. The full maiden name ofthe mother.

d. The full name of the father. except that if the mother was not married at the time of conception or birth or between conception and birth ofthe registrant, the name of the father may not be entered except as provided under s. 69.15 (3)

3. a. As evidence ofthe name, date and place of biith of a registrant for whom a birth certificate is requested under this paragraph; the person requesting the birth certificate shall present at least 2 pieces of documentary evidence for each item if the record is filed prior to 7 years after the date ofbirth or at least 3 pieces of documentary evidence for each item if the record is filed 7 years or more after the date of birth. Only one piece of documentary evidence per item may be an affidavit of personal knowledge.

b. As evidence ofthc parents of a registrant for whom a birth certificate is requested under this paragraph, the person requesting the birth certificate shall present at least one document which is not an affidavit of personal knowledge.

c. No document presented undcr this subdivision may he from a source which is the same as the source for any other such document. Every such document shall be in the form of the original document, shall he a duly certified copy of the original or shall hc a signed statement from the custodian of the document.

d. Any document presented under this subdivision which is not an affidavit of personal knowledge shall have been established at least 10 years prior to the date the birth certificate is requested under this paragraph or shall have been established bcforc tlie registrant's 10th birthday.

e. Any affidavit of personal knowledge presented under this paragraph shall be prepared by a parent, other relative or person and shall be signed bcforc an official authorized to administer oaths. Any person signing an affidavit under this subparagraph shall bc at least 10 years older than the registrant and shall have personal knowledge of the facts of the registrant's birth.

4. If the registrant of a ccrtificatc filed under this paragraph is 18 year o iage or over and is competent to sign and swear to the accuracy of its facts, the registrant shall sign the certificate and swear to the accuracy of its facts before an official authorized to administer oaths. If the registrant is under 18 ycars of age or is not competent to sign and swear to the accuracy *of* the facts of such certificate, a person shall sign the certificate and swear to the accuracy of its facts as follows:

a. One of the parents of the registrant.

b. In the absence of any person under subd. 4. a., the guardian of the registrant.

c. In the absence of any person under subd. 4. a. orb., the next of kin of the registrant.

d. In the absence of any person undcr subds. 4. a. to c., any older person having personal knowledge of the facts of birth of the registrant.

5. The state registrar may deny a request for a birth certificate under this paragraph. If the state registrar approves a request for a birth ccrtificate under this paragraph, he or she shall indicate plainly on the face of the ccrtificate that the certificate has been registered under this paragraph and the date the ccrtificatc is registered and shall send a copy of the certificate to the local registrar under s. 69.03 (11). The local registrar shall **file** the certificate.

6. If the state registrar denies a request Tor registration of a birth certificate under this subsection, the pcrson making the request may file a petition with the circuit court of the alleged county of birth for an order establishing a record of the date and place of the birth and the parentage of the person who would be the registrant. If the court finds that such person was born in this state. the court shall make findings as to the place and datc of birth, parentage and any other required finding and shall issue an order, on a form prescribed and furnished by the state registrar, to register a birth ccrtificatc for the person. The ordcr shall include the hirth datc to be registered, a description of the evidence presented and tlie datc of the court's action.

7. On any birth certificate registered under this paragraph, the state registrar or his or her designatcd representative shall describe each document submitted under subd. 3. The abstract for each document shall include:

a. The title or description of the document.

b. The name and address of the affiant if the document is an affidavit of personal knowledge or the name and address of the custodian if the document is an original or certified copy of a record *or* a signed statement from a custodian.

c. If the document was previously filed. the date of the filing.

d. What birth facts the document contains.

8. On any birth certificate registered under this paragraph, the state registrar or his or her designated representative shall certify by his or her signature that:

a. No orhcr birth certificate is on file for the registrant.

b. The state registrar or his or her designated representative has reviewed the evidence submitted under subd. 3.

c. The abstract under subd. 7. accurately reflects the nature and content of the evidence submitted under subd. 3.

(3) REGISTRATION OF FOUNDLINGS. (a) Any person who assumes custody of a live born infant of unknown parentage shall file a hirth certificate for the infant within 5 days after assuming custody and shall file the birth certificate with the following information:

1. The datc the registrant was found.

2. The estimated date of birth of thc registrant.

3. The address of the place where the rcgistrant w-as found.

4. The sex and race of the rcgistrant.

5. The name given to the registrant by the filing party

6. The name. address and signature of the person with whom the registrant has been placed for care. The inionnation under this subdivision shall be entered in the item on the birth certificate where information on the attendant at birth is required.

(b) A local registrar who accepts a birth ccrtificatc for filing under this subsection shall plainly mark "foundling" in the top margin of the certificate,

(c) If at any time after a birth certificate is filed for a registrant iindcr this subsection a birth certificate filed for the registrant at the time of birth of the registrant is found or the registrant is adopted and the adoptive parents sign a birth record giving their names as the adoptive parents, the state registrar shall impound the birth certificate filed undcr this subsection and prohibit access ''''ept by court order or except by the state registrar for processing purposes.

History: 1985 a. 315; 1987 a. 413; 1993 a. 27; 1997 a. 27, 191; 2001 a. 16.

Sub. (1) (f) 1. b. is not a gender-specific statute violating the right to equal protection. Marriage of Steinbach v. Gustafson, 177 Wis. 2d 178, 502 N.W.2d 156 (Ct. App. 1993).

69.15 Changes of fact on birth certificates. (1) BIRTH CERTIFICATE INFORMATION CHANGES. The state registrar may change infonnation on a birth certificate registered in this state which was correct at the time the birth certificate was filed tinder a court or administrative order issued in this state, in another state or in Canada or undcr the valid order of a court of any federally recognized Indian tribe. hand or nation if:

(a) The ordcr provides for an adoption, name change or name change with sex change or establishes paternity; and

(b) A clerk of court or. for a paternity action, a clerk of court or county child support agency under s. 59.53 (5), sends the state registrar a certified report of an ordcr of a court in this state on a form supplied by the state registrar or, in the case of any other order, the statc registrar receives a certified copy of the order and the proper fee under s. 69.22.

(2) ADOPTIONS. (a) Except as provided under par. (b), if the state registrar receives **an** order under sub. (1) which provides for an adoption, the state registrar shall prepare, under sub. (6). a new ccrtificatc for the subject of the adoption unless the adoptive parents or the subject of the adoption requests, under s. 48.94, that no new certificate be prepared. If the order is from a court in this state; the order shall include a certified copy of the original birth ccrtificatc registcrcd for the subject of the adoption. The new certificate shall show:

1. The name of the registrant.

2. The date and place of birth as transcribed from the original certificate. The date and place on the original certificate inay not be changed by the court.

3. The names and personal information of the adoptive parcnts unless otherwise indicated by the court order.

4. The hospital and time of birth as unknown.

5. The filing date on the original certificate.

6. Any other information necessary to complete the new certificate.

(b) If the statc registrar receives an ordcr under sub. (1) which provides for an adoption of any person born outside of the United States by any person who is a resident of this state at the time of

adoption; and if the adoptive parents present proof of tlie facts of birth to the state registrar, the statc registrar shall prepare a certification of birth data for the subject of the adoption. The certification shall indicate the date and place of birth, the child's adoptive name, the adoptive parents' names. and the sources of information of each of these Facts. If neither of the birth parents ofthc subject of the adoption am U.S. citizens, the new certification may include proof ofthc naturalization of the subject ofthc adoption.

(c) Ifthe state registrar determines that the registrant of a birth certificate was adopted without a change in the registrant's birth certificate under par. (a) or (b), the state registrar shall obtain a copy of the court order which provided for the adoption, if available, and shall prepare. under sub. (6), a nev' certificate for the registrant.

(3) PATERNITY (a) If the state rcgistrar receives an order under sub. (1) which establishes paternity or determines that the man whose name appears on a registrant's birth certificate is not the father of the registrant, the state registrar shall do the following, as appropriate:

1. Prepare undcr sub. (6) a new certificate omitting the father's name if the order determines that the man whose name appears on a registrant-s birth certificate is not the father ofthe registrant and if there is no adjudicated fathcr.

2. Prepare under sub. (6) a new certificate for the subject of a paternity action changing tlie name of the father ifthe name of the adjudicated father is different than the name of the man on the birth certificate.

3. Except as provided under suhd. 4., insert the name ofthc adjudicated father on the original birth certificate if the name of the father was omitted on the original certificate.

4. Ifthe order provides for a change in tho child's given name or surname or both, enter the name indicated on a new birth certificate prepared under suhd. 1. or 2. or on the original birth certificate under subd. 3. except that if the surname of a child under 7 years of age is changed, the state registrar shall prepare a new certificate undcr sub. (6).

(b) 1. Except as provided under par. (c), if the state registrar receives a statcmcnt acknowledging paternity on a form prescribed by the state rcgistrar and signcd by both ofthe birth parents of a child determined to he a marital child under s. 767.60. a certified copy of the parents' marriage certificate and the fee required under s. 69.22 (5) (b) 1., the state registrar shall insert the name of the husband from the marriage certificate as the father ifthe name of the father was omitted on the original birth certificate. The state registrar shall include on the form for the acknowledgment a notice of the information in s. 767.458 (1j (a) to (e).

2. Except as provided under par. (c), if the parent of a child determined to be a marital child under s. 767.60 dies after his or her marriage and before the statement acknowledging paternity has been signed. the state registrar shall insert the name of the father under subd. 1. upon receipt of a court order detetmining that the husband was the father ofthe child.

3. Except as provided under par. (c), if the state registrar receives a statement acknowledging paternity on a form prescribed by the state registrar and signed by both parents, and by a parent or legal guardian of any parent who is under the age of 18 years, along with the fee under s. 69.22, the state registrar shall insert the name of the father under subd. 1. The state registrar shall mark the certificate to show that the farm is on file. The form shall he available to the department of workforce development or a county child support agency under s. 59.53 (5) pursuant to the program responsibilities under s. 49.22 or to any other person with a direct and tangible interest in the record. The state registrar shall include on the form for tlic acknowledgment a notice of the information in ss. 767.458 (1) (a) to (c) and 767.62.

4. If a registrant has not reached the age of 18 years and **if** any of the following indicate. in a statement acknowledging paternity under subd. 1. or 3.. that the given name or sumamc. or both, of the registrant should be changed on tlie birth certificate, the state registrar shall enter the name indicated on the birth certificate without a court order:

a. The mother of the registrant, except as provided under subd. 4. b. and c.

h. The father ofthe registrant ifthc father has legal custody ofthc rcgistrant.

c. The parents ofthe registrant if they have married each other after the birth ofthe rcgistrant.

(c) If the state registrar is required to enter a new surname or a new given name on a birth certificate undcr par. (b) 4. and the registrant has not reached the age of 7 years, the state registrar shall make a new certificate under sub. (6).

(d) The form prescribed by the state registrar for acknowledging paternity shall require that the social security number of each of the registrant's parents signing the form be provided.

(3m) RESCISSION OF STATEMENT ACKNOWLEDGING PATERNITY. (a) A statement acknowledging paternity that is filed with the state registrar under sub. (3) (b) 3. may he rescinded by either person who signcd the statemen: as ; parent of the registrant if all of the following apply:

1. The statement was signed and filed on or after April 1, 1998.

2. The person rescinding the statement files with the state registrar a document prcscribed by the state registrar for rescinding a statement acknowledging paternity under sub. (3) (h) 3.

3. Except as provided in suhd. 4. the person rescinding the statement files the document under subd. 2. before the day on which a court or circuit court commissioner makes an order in an action affecting the family involving the man who signed the statement and the child who is the subject of the statement or before 60 days elapse after the statemcnt was filed. whichever occurs first.

4. If the person rescinding the statement was under age 18 when the statement was filed, the pcrson files the document under subd. 2. before the day on which a court or circuit court commissioner makes an ordcr in an action affecting the family involving the man who signed the statement as the father ofthc registrant and the child who is the subject oithe sratenient or before 60 days elapse after the person attains age 18, whichever occurs first.

(b) Ifthe state registrar, within the time required under par. (a) 3. or 4., whichever is appropriate, receives a document prescribed by the state registrar for rescinding a statement acknowledging paternity under sub. (3) (h) 3., along with the proper fee under s. 69.22, the state registrar shall prepare under sub. **(6)** a new certificate omitting the father's name if it was inserted under sub. (3)(b).

(4) NAME CHANGE. (a) Ifthe state registrar receives an order under sub. (1) which provides for a name change, the state registrar shall change the name on the original birth certificate.

(b) Any person with a direct and tangible interest in a birth certificate registered in this state may petition a court to change the name and sex of the registrant on the certificate due to a surgical sex–change procedure. If the state registrar receives an order which provides for such a change the state registrar shall change the name and sex on the original certificate, except that ifthc court orders the state registrar to prepare a new certificate the state registrar shall prepare a new certificate under sub. (6).

(c) A court may not order the state rcgistrar to change any vital record due to a surgical sex-change procedure except as provided under this subsection.

(4m) NAME CHANGE WITHOUT COURT ORDER. **(a)** Unless either parent of a registrant is a party to an action undcr ch. 767 involving the registrant and notwithstanding sub. (3) (b) 4. and s. 786.16, the namc of a registrant born in this state may he changed once under this subsection without a court ordcr if all of the following apply:

1. The request for the change is received to the state registrar in writing, on a form approved by the state registrar.

2. If a parent has sole legal custody of the registrant, the request for the changc is signed by the parent who has legal custody.

3. If both parents have legal custody of the registrant, the request for the change is signed by both parents.

4. The request for the changc is received within 365 calendar days after the day of birth of the registrant.

(b) If the conditions under par. (a) 1. to 4. are met, the state registrar shall change the registrant's name on the registrant's birth certificate. The state registrar is not required to issue a new birth certificate under this paragraph.

(5) NEW CERTIFICATE FOR A PERSON WITHOUT ANY CERTIFICATE. If no birth certificate has been registered for any person who is more than 365 days old and who is entitled to a new certificate under this section, and if the date and place of birth of the person have not been dctennined by a court, the statc registrar shall register a birth certificate for the individual undcr s. 69.14 (2) (b) heforc preparing a new certificate under sub. (6).

(6) PREPARATION OF NEW CERTIFICATES. (a) The state registrar shall prepare a new birth ccrtificatc under this section on the form in use at the time the original ccrtificate was filed. The state registrar shall include on a new certificate the date of creation of the new certificate and shall sign it. The statc registrar shall type on the new certificate any other legible signature on the original certificate.

(b) The state registrar shall register a new certificatc created undcr this section and shall impound the original cctiificatc or the certificate registered under sub. (5) and all correspondence, affidavits, court orders and other related materials and prohibit access except by court order or except by the state registrar for processing purposes or except when authorized under ss, 48.432 and 48.433. The state rcgistrar shall send a copy of any new ccrtificatc registered under this section to the local registrar who filed Ihe original of the replaced ccrtificate. Upon receipt of the copy, the local registrar shall destroy his or her copy of the replaced certificate and file the new certificate.

(c) If the statc registrar changes a birth certificate on file or registered under this section instead of preparing a new certificate, the state registrar shall make the changc under s. 69.11 (5) and shall send a notice of the change to the local registrar who filed the original of the changed certificate. Upon receipt of the notice, the local registrar shall change his or her copy of the changed certificate.

History: lYaSz.315: 1987 a. 413; 1989 a 183; 1993 a. 481; 1995 a. 201, 404; 1997 a. 3, 27, 191; 2001 a. 16, 61.

Although sub. (1) (a) provides for changing a name according to an order in a paternity action, it does not provide authority to order a name change in a paternity action without complying with the procedural requirements for a name change under s. 786.36. Paternity of Noah J.M. 223 Wis. 2d 768, 590 N.W.2d 21 (Ct. App. 1998).

69.16 Marriage documents. (1) The form; content, application for and registration of marriage documents shall be under ch. 765.

(2) If a person has married in this state. at least 365 days have elapsed since the marriage and no marriage document is on file, a person with a direct and tangible interest in having a marriage document registered may petition the circuit court of the county in which the marriage is alleged to have occurred. If the couti finds that the petitioner has established the fact of the marriage required on the marriage document, except for the information under s. 69.20 (2), the clerk of the court shall report the court's determination to the state registrar on a form prescribed by the statc registrar. along with the fee required under s. 69.22. Upon receipt of the report, the state registrar shall register the marriage document and send a copy of the document to the local registrar under s. 69.03 (11). The local rcgistrar shall file the document.

History: 1985 a. 315

69.17 Divorce report. At the end of every biweekly period, the clerk of any court which conducts divorce proceedings under ch. 767 shall forward to the state registrar, on a form supplied by the state registrar, a report of every divorce or annulment of marriage granted during the biweekly period. The form supplied by the state registrar shall require that the social security numbers of the parties to the divorce or annulment and the social security number of any child of the parties be provided.

History: 1985 a. 315; 1997 a. 191.

69.18 Death records. (1) REGISTRATION OF DEATHS. (a) Any one of the following may move a corpse for the purpose of final disposition:

1. A funeral director licensed under ch. 445 acting in person or through the agency of another funeral director licensed under ch. 445.

2. A member of the decedent's immediate family who personally prepares for and conducts the final disposition of the decedent.

3. A person acting under s. 157.02 or 445.16.

(b) Any person who moves a corpse under par. (a) shall file a certificate of death for the corpse under this subsection on a form prescribed by the state registrar under any one of the following circumstances:

1. The death occurred in this state.

2. The corpse was found in this state.

3. The corpse was removed in this state from a conveyance which was moving at the time of death.

4. The corpse was found in interstate waters and removed in this state.

(bm) A person required to file a certificate of death under par. (b) shall obtain the information required for the certificate of death from the next of kin or the best qualified person or source available. The person filing the certificate of death shall enter his or her signature on the certificate and include his or her address and the date of signing and shall present or mail the certificate, within 24 hours after being notified of the death, to the physician, coroner or medical examiner responsible for completing and signing the medical certification. Within 2 days after receipt of the medical certification, the person filing the certificate of death shall mail or present the certificate of death in:

1. The registration district of the place of death if the death occurred in this state.

2. The registration district where the corpse was found or removed if the place of death is not in this state or is unknown, is removed in this state from a conveyance which was moving at the time of death or is found in interstate waters and removed in this state.

(c) A hospital, a nursing home, as defined in s. 50.01 (3), or a hospice, as defined in s. 50.90 (1), which is the place of death of a person may prepare a certificate of death for the person and give the certificate to the person who moves the corpse under par. (a).

(d) A hospital, nursing home, or hospice, as defined in s. 50.90 (1) (c), may not release a corpse to any person under par. (a) unless the person presents a notice of removal on a form prescribed by the state registrar, in duplicate, to the administrator of the hospital, nursing home, or hospice. The administrator shall retain one copy and forward the other copy to the local registrar of the registration district in which the hospital, nursing home, or hospice is located.

(e) 1. If a death is a miscarriage and 20 weeks or more have elapsed between the mother's last normal menstrual period and delivery or the stillbirth weighs 350 grams or more, one of the following shall submit, within 5 days after delivery, a fetal death report to the state registrar:

a. If the miscarriage occurs at or on route to a hospital, the individual who manages the hospital or the hospital's medical records.

b. If the miscarriage does not occur at or on route to a hospital, the funeral director or other person authorized by at least one parent of the stillbirth.

2. Except as provided under subd. 1., no fetal death report is required

(1m) FORMAT. Beginning on January 1, 2003, a certificate of death shall consist of the following parts:

(a) fact-or-death information. which shall include all of the following:

1. The name and other identifiers of the decadent. including the decedent's social security number, if any.

2. The date, time. and place that the dccedcnt was prvnounced dead.

3. The manner of the decedent's death.

4. The identity of the person certifying the death.

5. The dates of certification and tiling of the certificate of death.

(b) Extended fact of death information; which includcs all of the following:

1. All information under par. (a).

2. information on final disposition and cause of death.

3. Injury-related data.

(c) Statistical use only infomiation. which includes all of the following:

1. All information other than that undcr par. (b) that is collected on the standard death record form recommended by the federal agency responsible for national vital statistics.

2. Other data, as directed by the state registrar, including race, educational background, and health risk behavior

(2) MEDICAL CERTIFICATION. (a) On the form for a certificate of death prescribed by the state registrar under sub. (1) (b), the slate registrar shall provide for a niedical certification to be completed under this subsection.

(b) If a person tinder the care of a physician dies from the illness or condition for which the care is given and a coroner or medical examiner does not certify tlie cause of death undcr par. (d) 1., the physician shall complete and sign a medical certification for the death under par. (f) and mail the medical certification within 5 days after the pronouncement of death or present the medical certification to the person responsible for filing the death certificate under sub. (1) within 6 days after the pronouncement of death

(c) If the physician under par. (b) is absent or gives his or her written approval, the medical certification under par. (b) may hc completed and signed by any one of the following who has access to the medical history of the decedent:

1. If any other physician assisted in attending the decedent, the other physician.

2. The chiefmedical officer of the hospital or nursing home in which the death occurred.

3. The physician who performed an autopsy on the decedent.

(d) 1. Except as providcd under par. (e), if a death is the subject of a coroner's or medical examiner's determination under s. 979.01 or 979.03, the coroner or medical examiner or a physician supervised by a coroner or medical examiner in the county where the event which catiscd the death occurred shall complete and sign the medical certification for the death and mail the death certificate within 5 days afier the pronouncement of death or present the certificate to the person responsible for filing the death certificate under sob. (1) within 6 days after the pronouncement of death.

2. Except as providcd under par. (e), if the decedent was not under the care of a physician for the illness or condition from which the person died, tlic coroner or medical examiner, or a physician supervised by a coroner or medical examiner. in the county of tlie place of dcath shall complete and sign the medical certification for the death and mail the death certificate within 5 days after the pronouncement of death or present the certificate to the person responsible for tiling the dcath certificate under sub. (1) within 6 days after the pronouncement of death.

3. For a medical certification under this paragraph, except a medical certiiication ofthe cause of death of an indigent. a coroner or medical examiner may charge a fee established by the county board, not to exceed an amount reasonably related to the actual and necessary cost of providing the medical certification. The coroner or medical examiner, or the physicinti employed by the coroner or medical examiner, shall mail or present a mcdical certification as required under subd. 1., whether or not tlie fee has hcen paid.

(e) Unless the person is a physician supervised by a coroner or medical cxamitier, no person may act under par. (d) if the subject of the dcath certificate was his or her patient or a patient in a hospital, or nursing home, as defined in s. 50.01 (3), in which he or she has direct care of any patient.

(f) 1. A person signing a medical certification under par. (b), (c) or (d) shall describe, in detail, on a form prescribed by the state registrar. the cause of death, show the duration of each cause. the sequence of each cause if the cause of death was multiple and, if the cause was disease, the evolution of tlie disease. The person shall describe a disease in medical terms and may not limit the description to symptoms or conditions resulting from disease. If the cause of a death is medically certified under par. (d), the coroner or medical examincr shall describe any violence related to the cause of death, its effect on the decedent and whether it was accidental, suicidal; homicidal or undetermined.

2. If a person signing a medical certification under par. (b), (c) or (d) fails to satisfy the requirements of suhd. 1., the medical certification shall he deemed incomplete and unsigned and may he rctunied to the person for completion.

3. **A** person signing a medical certification under par. (b). (c) or (d) shall note on the certificate if the cause of death of the subject of the certificate is unknown, undetermined or if the determination of the cause of death is pending and shall submit to the state registrar within 30 days atter the pronouncement of death an aniendment to the medical certification which satisfies the requirements of subd. 1., except that such amendment may exclude information which is unavailable pending the determination of an inquest under s. 979.04.

(3) REQUIREMENTS FOR DISPOSITION OF A CORPSE OR STILLBIRTH. (a) Except as provided under par. (c) or (e), the person who has moved a corpse under sub. (1) (a) shall complete a report for final disposition, on a fonn supplied by the state registrar, and, within 24 hours after being notified of the death, mail or prcsent a copy of tlic report to the coroner or medical examiner in the county of the place of death and mail or present a copy to the local registrar in the registration district of the place of death. If the cause of death is subject to an investigation under s. 979.01 or 979.03, the report for final disposition shall be submitted to the coroner or medical examiner in the county in which the event which caused the death occurred.

(h) If a medical certification for a corpse is required under sub. (2) (d), no person may embalm the corpse or effect its final disposition without satisfying the requirements for a report undcr par (a) and without obtaining the written permission of the person required to complete the medical certification under sub. (2) (d).

(c) No person may effect a final disposition of a corpse brought into this state unless the corpse is accompanied by written authorization for final disposition undcr the law ofanother state.

(d) No pcrson may remove a corpse from this state if the place of death was in this state unless the corpse is accompanied by a copy of the report for final disposition. If a medical certification is required for the corpse tinder sub. (2) (d). the corpse must be accompanied by the report and the written permission of the coroner or mcdical examiner to embalm and effect final disposition. No person may remove a stillbirth from this state if the delivery of the stillbirth was in this state unless the stillbirth is accompanied by a report for final disposition.

(c) Except as providcd undcr par. (d). no report under par. (a) is required to effect final disposition of a stillbirth. No pcrson may effect final disposition of a stillbirth without the written authorization of any of the following persons, in order of priority stated,

when persons in prior classes are not available at the time of authorization, **and** in the absence of actual notice of opposition by a member of the same or a prior class:

1. A parent of the stillbirth.

2. **An** adult brother or sister of the stillbirth.

3. **A** grandparent of the stillbirth.

4. Any other person authorized or under obligation to dispose of the stillbirth.

(f) Every person in charge of a place in which interment or other disposition of corpses occurs shall maintain a written record of every corpse interred there. The record shall include the name of the decedent, the place of death, the date of burial and the name and address of the funeral director or other person in charge of the funeral.

(g) If a deceased person had a disease which the department determines is communicable and dangerous to the public health, the corpse of the person may not be moved nor final disposition effected except under conditions prescribed by the department.

(4) AUTHORIZATION FOR DISINTERMENT AND REINTERMENT (a) Subject to s. 157.111, the coroner or medical examiner of the county in which a decedent's corpse is interred shall issue an authorization for disinterment and reinterment upon receipt of an order of a court of competent jurisdiction or upon receipt of a written application for disinterment and reinterment signed by the person in charge of the disinterment and by any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:

1. The decedent's spouse.

2. An adult son or daughter of the decedent.

3. Either parent of the decedent.

4. An adult brother or sister of the decedent.

5. **A** guardian of the person of the decedent at the time of the decedent's death.

6. Any other person authorized or under obligation to dispose of the decedent's corpse.

(bm) A cemetery authority may disinter and reinter buried human remains as provided under s. 157.112 without first obtaining an authorization under par. (a).

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114; 2001 a. 16.

Cross Reference: See also chs. HFS 135 and 136, Wis. adm. code.

Sub. (2) (f) does not require a death certificate to state the basis of a patient's treatment or the type of treatment. Neuman v. Circuit Court for Marathon County, 231 Wis. 2d 440, 605 N.W.2d 280 (Ct. App. 1999).

69.186 Induced abortion reporting. (1) On or before January 15 annually, each hospital, clinic or other facility in which an induced abortion is performed shall file with the department a report for each induced abortion performed in the hospital, clinic or other facility in the previous calendar year. Each report shall contain all of the following information with respect to each patient obtaining an induced abortion in the hospital, clinic or other facility:

(a) The state and, if this state, the county, of residence.

(b) Patient number.

(c) Race.

(d) Age.

(e) Marital status.

(f) Month and year in which the induced abortion was performed.

(g) Education.

(h) The number of weeks since the patient's last menstrual period.

(hm) Whether the abortion was a chemically induced abortion, a surgical abortion or a surgical abortion following a failed or incomplete chemical abortion.

(i) Complications, if any, resulting from performance of the induced abortion.

(j) If the patient is a minor, whether consent was provided under s. 48.375 **(4)** (a) 1. for the abortion and, if so, the relationship of the individual providing consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., 1m., 2. or 3. the abortion was performed.

(2) The department shall collect the information under sub. (1) in a manner which the department shall specify and which ensures the anonymity of a patient who receives an induced abortion, a health care provider who provides an induced abortion and a hospital, clinic or other facility in which an induced abortion is performed. The department shall publish annual demographic summaries of the information obtained under this section, except that the department may not disclose any information obtained under this section that reveals the identity of any patient, health care provider or hospital, clinic or other facility and shall ensure anonymity in all of the following ways:

(a) The department may use information concerning the patient number under sub. (1) (b) or concerning the identity of a specific reporting hospital, clinic or other facility for purposes of information collection only and may not reproduce or extrapolate this information for any purpose.

(b) The department shall immediately destroy all reports submitted under **sub.** (1) after information is extrapolated from the reports for use in publishing the annual demographic summary under this subsection.

History: 1985 a. 315; 1995 a. 309; 1997 a. 27.

69.19 Court–ordered certificates of death. If a person has died in this state and final disposition of the person's corpse has been effected but no certificate of death is on file one year after a death, a person with a direct and tangible interest in having a certificate of death registered may petition the circuit court of the county in which the death is alleged to have occurred. If the court finds that the petitioner has established the facts of the death required on the certificate of death, the clerk of the court shall report the court's determination to the state registrar on **a** form prescribed by the state registrar, along with the fee required under s. 69.22. Upon receipt of the report, the state registrar shall register the death certificate and send a copy to the local registrar under s. 69.03 (11). The local registrar shall file the copy.

History: 1985 a. 315.

69.20 Disclosure of information from vital records. (1) **A** person with **a** direct and tangible interest in a vital record is any of the following:

(a) The registrant of the vital record.

(b) A member of the registrant's immediate family.

(c) The parent of a registrant, unless the parent is a birth parent whose parental rights to the registrant have been terminated under ch. 48.

(d) The registrant's legal custodians or guardians.

(e) **A** representative authorized by any person under pars. (a) to (d), including an attorney.

(f) Any other person who demonstrates a direct and tangible interest when information is necessary for the determination or protection of a personal or property right.

(2) (a) Except as provided under sub. (3), information in the part of a certificate of birth or divorce or annulment or a marriage document that is designated on the form as being collected for statistical or medical and statistical use only and information in the part of a death certificate that is designated on the form as being collected as statistical–use–only information under s. **69.18** (1m) (c) may not be disclosed to any person except the following:

1. The subject of the information, or, if the subject is a minor, his or her parent or guardian.

2. For a certificate of death, any of the persons specified under s. 69.18 (4) (a) 1. to 6. or an individual who is authorized in writing hy one of the persons.

(b) Except as provided under sub. (3). the state registrar and local registrars may not permit inspection of or disclose information contained in any record of a birth which occurred after September 30, 1907 if the mother of the subject of the record was not married at any time from the conception to the birth of the suhject of the record, unless tlic inspection is by or the infomiation is disclosed to a person who has a direct and tangible interest in such record

(c) Except as provided under sub. (3), until *50* years after a decedent's date of dcath. the state registrar and a local registrar inay not permit inspection of or disclose information contained in the portion under s. 69.18 (1m) (h) 2. and 3. of the certificate of death to anyone except to a person specified under sub. (1), or to a direct descendent of the decedent.

(3) (a) The state registrar or a local registrar may effect a disclosure of information prohibited under sub. (2) if a court of compatent jurisdiction orders the disclosure and specifies the vital record which is to he disclosed.

(b) The state registrar may effect disclosure of information prohibited under sub. (2) if the person to whom the infomiation will be disclosed has signed and given to the state registrar a written agreement specifying the conditions under which the information will be used, as designated by the state registrar and if:

1. The information will he used for health or demographic research or for a public health program.

2. The infomation will he used by the federal agency responsible for compilation of national statistics and if the federal agency shares the cost of collecting, processing and transmitting the data. The federal agency may not use the infomiation for any purpose except compilation of national statistics unless the federal agency specifies the other purpose to the state registrar and the state registrar gives written authorization for such use.

3. The infonnation is from the vital record of a registrant who is a resident of another state or who was born in another state and is transmitted to the office responsible for keeping the vital statistics in such state under an interstate cooperation agreement which requires that the infonnation be used for statistical and administrativc purposes only and which provides for the retention and disposition of such copies. If under such an agreement the state registrar receives information from an office responsihlc for keeping the vital statistics in another state; the state registrar may not use the information for any purposc except the compilation of statistics.

4. The information is from a birth certificate which indicates that the registrant has a congenital disability and is submitted to the department of public instruction.

5. The information is submitted to a public school system in this state for the purpose of compiling demographic statistics related to planning.

(c) Notwithstanding sub. (2), a local registrar inay disclose information on a birth certificate or issue a copy of the certificate to a local health department, as defined in s. 250.01 (4), for health or demographic research or a public health program if the local health department pays the copying costs and if the birth of the registrant occurred within the boundaries of the political subdivision served by the local health department or the registrant is a resident of the political subdivision. The local health department may not disclose any infonnation from any copy which it receives under this paragraph to any person and shall destroy the copy no later than one year after receipt.

(d) Subject to par. (f), the state or a local rcgistrar may disclose infonnation from the vital record of a specified registrant. except information under sub. (2) (a), to a federal agency, to any agency of the government of this state or to any agency of a county, city, town or village if the agency requests the information for use in the conduct of its official duties.

(e) Public use indexes of certificates of hiith. death, or divorce or annulment, or marriage documents that are filed in the system of vital statistics at the state or local level are accessible only by inspection at the office of the state registrar or of a local registrar and inay not be copied or reproduced except as follows:

1. a. Certificate of birth index information may he copied or reproduced for the puhlic only after 100 years have elapsed from the year in which the hirth occurred. No information in the index that has been impounded under s. 69.15 may be released.

h. Subdivision 1. a. does not apply to certificate of birth indexes of events that occurred before October 1, 1907.

2. Indexes of certificates of death or divorce **or** annulment may he copied or reproduced for the public after 24 months have elapsed from the year in which the event occurred.

3. Beginning January 1, 2003. any information that is obtained from an index under suhd. 1. or 2. and that is released shall contain the following statement: "This information is not a legal vital record index. Inclusion of any infoimation does not constitute legal verification of the fact of the event."

(f) The state or a local registrar inay disclose a social security number on a vital record to the deparhnent of workforce development or a county child support agency under s. 59.53 (5) in response to a request under s. 49.22 (2m).

(4) Under procedures that are promulgated by rule, the state registrar and every local registrar shall protect vital records from mutilation, alteration, theff. or fraudulent use and shall protect the privacy rights of registrants and their families by strictly controlling direct access to any vital record filed or registered in paper form.

History: 1985 a. 3*15;* 1993 a. *27;* 1995 a. 27 s. 9145 (1); 1997 a. *27,* 191; 2001 a 16.

Cross Reference: See also **ch.** HFS 142. **Wis.** adm. code.

69.21 Copies of vital records. (1) CERTIFIED COPIES. (a) 1. Except as provided under subd. 2., the state registrar and any local registrar shall issue a certified copy of a vital record to any person if the person submits a request for a certified copy of a vital record of a specified registrant in writing to the registrar responsible for filing or registering the vital record and if the request is accompanied by the fee required under s. 69.22.

2. The state registrar and any local registrar may not issue any certified copy under subd. 1. of

a. A vital record. if the event which is the subject of the vital record occurred after September 30, 1907, unless the requester is a person with a direct and tangible interest in the record or unless the registrar has received a court order directing issuance of the vital record.

h. Any information of the part of a certificate of birth, death, or divorce or annulment or a marriage document, the disclosure of which is limited under s. 69.20 (2) (a) and (c), unless the requester is the subject of the information or, for a deccdcnt, unless the requester is specified in s. 69.20 (2) (it) 2.

c. The birth certificate of a person if no surname has been entered on the birth certificate for the person under s. 69.14 (1) (f).

(b) 1. Any copy of a vital record certified under par. (a) shall he on a fonn provided or approved by the state registrar and shall include the date of issuance, the name of the issuing officer, the issuing officer's signature or an authorized facsimile of his or her signature and the seal of the issuing officer. The certification shall he applied to the copy in a way that prevents its removal from the copy.

2. Any copy of a birth certificate issued undcr par. (a) shall he in a long or short fonn, as specified by the person submitting the request under par. (a). The long form shall include the name, sex, date and place of birth and parent's surnames of the registrant, the file date and the file number. The short form may not include any information about the parents of the registrant. The state registrar shall issue the short form for any registrant born of unmarried parents if the registrant's certificate was not prepared under

s. 69.15 (3) (b), unless the person requesting the copy requests the long form.

3. A local registrar may issue a copy of a birth or dcath certificate under par. (a) through the state registrar's computer database if the event that is the subject of the birth or death occurred in the local registrar's registration district or if the registrant resided in the local registrar's registration district when rhc event occurred.

4. A copy of a death certificate issued under par. (a) for a death that occurred before January 1, 2003. shall include the name, sex, date and place of death. age or birth date, cause and manner of death, and social security number. if any, of the decadent, and the file number and the file date of the certificate, except that a requester may, upon request, obtain a copy that does not include the cause of dcath.

5. A copy of a dcath certificate issued under par. (a) for a death that occurs after December 31, 2002, shall be on a form that contains only fact-of-death information specified in s. 69.18 (1m) (3). except that a requester may, upon request. obtain a form that contains extended fact-of death information specified in s. 69.18 (1m) (b).

(c) Any certified copy of a vital record or part of a vital record issued under this subsection shall be deemed the same as the original vital record and shell be prima facie evidence of any Fact stated in the vital record, except that the evidentiary value of a vital record filed more than one year after the event which is the subject of the vital record occurred or of a vital record which has been amended shall be determined by the judicial or administrative agency or official before whom the vital record is offered as evidence.

(2) UNCERTIFIED COPIES. (a) The state registrar or local registrar shall issue an uncertified copy of the vital record of one or more registrants if the subject ofthc vital record is an event occurring after September 30, 1907. The requirements ofss. 69.15 (6) (b) and 69.20 (3) (b) for disclosing information under s. 69.20 (2) shall apply to issuance under this paragraph of any copy of a vital record containing such information

(b) The state registrar and any local registrar shall issue an unccrtificd copy of the vital record of one or more registrants, whether specified or not, to any person if the subject of the vital record is an event occumng before October 1, 1907. and if the person submits a request for the copy in writing to the registrar responsible for filing or registering the vital record and if the request is accompanied by the fee required under s. 69.22 (1) (b).

(c) Any uncertified copy issued under par. (a) or (b) shall have on its face a notice that it is uncertified.

(d) 1. An unccrtificd photocopy of a vital record for an event occurring before October 1, 1907, other than a vital record held by the state registrar and any local registrar. is subject to this paragraph and rnay not be made available to the public in electronic format, but is not otherwise subject to the limitations of this section or the requirements ofs. 69.22.

2. An uncertified photocopy of a vital record described in suhd. 1. shall have on its face the following text: "UNCERTIFIED COPY. Not valid for identification purposes. It is illegal to make this document available to the public in electronic format.".

3. The holder of the vital record from which uncertified photocopies may be made and issued under this paragraph may establish fees for the photocopies.

(3) AMENDMENTS. Any copy of a vital record issued under this section shall show all amendments or changes made on the record since it was filed, the date and authority of the amendment or change unless a certificate was issued for the registrant under s. 69.14 (1) (h) or 69.15 (2), (3) or (4) (b).

(4) DETERMINATION OF FRAUD. (a) Except as provided under par. **(b),** if the state registrar or a local registrar determines that a vital record was registered through misrepresentation or fraud, he or she may not issue any copy of the vital record prior *to* a determination by a court ofthe actual facts of the event which is the subject of the record.

(h) A person with a direct and tangible interest in a vital record withheld by the state registrar under par. (a) may petition the circuit court of the comity in which the event which is the subject of the vital record is shown on the original record to have occurred. The petition shall be accompanied by a certified copy of the original vital record. In issuing the certified copy. the state registrar shall mark the copy to indicate that the copy is for use by the court in making its determination under this paragraph. If the court finds that the petitioner has proven that the information on the vital record is valid, the clerk of court shall report the court's determination to the state registrar on a form prescribed by the state registrar. who shall issue the certified copy.

History: 1985 a. 315; 1987 a. 307; 1997 a. 210; 1999 a. 185; 2001 a. 16

Cross Reference: See s 859.18 for evidence of official records and s. 891.09 for evidence of vital statistics.

A local registrar has no power in adopt procedures that are more stringent than those directed by the state registrar for issuing certified copies of a vital **record** under s. 69.21 (1). XU Atty. Gen. 35.

69.22 Fees. (1) Except as provided in sub. (6), the state registrar and any local registrar acting under this subchapter shall collect the following fees:

(a) Except as provided under par. (c), $7 for issuing one certified copy of a vital record and S3 for any additional certified copy of the same vital record issued at the Same time.

(b) Except as provided under par (c), for issuing an uncertified copy of a vital record issued under s. 69.21 (2) (a) or (b), or for verifying information about the event submitted by a requester without issuance of a copy, $7, and $3 for any additional copy of the same vital record issued at the same time.

(c) Twelve dollars Tor issuing an uncertificd copy of a birth certificate or a certified copy of a birth certificate, $7 of which shall be forwarded to the state treasurer as provided in sub. (1m) and credited to the appropriations under s. 20.433 (1) (g) and (h); and $3 for issuing any additional certified or uncertified copy of the same birth certificate issued at the same time.

(d) In addition to other fees under this subchapter. $10 for expedited service in issuing a vital rccord.

(1m) The state registrar and any local registrar acting under this subchapter shall, for each copy of a birth certificate for which a fee under sub. (1) (c) is charged that is issued during a calendar quarter, forward to the state treasurer for deposit in the appropriations under s. 20.433 (1) (g) and (h) the amounts specified in sub. (1) (c) by the 15th day of the first month following the end ofthe calendar quarter.

(2) The state registrar and any local registrar may charge $7 for a search of vital records if the registrar finds no rccord. In addition to the $7, a registrar may charge a fee to cover the costs of a search of vital records if the requester provides no identifying infomiation or identifying information which is imprecise or inadequate.

(3) If a local registrar under s. 69.11 (4) or 69.14 (2) (b) 6. completes the proper forms for the applicant and submits the forms and proofs to the office of the state registrar, the state registrar and the register of deeds shall receive equal amounts of the fee received for the action.

(4) A local registrar in a registration district may set a reasonable fee to cover the costs of sending requests to local health departments under s. 69.05 (3m).

(5) The state registrar shall collect the following fees:

(a) Ten dollars for:

1. Making any change under s. 69.11 (4).

2. Making any change ordered by a court under s. 69.12 (3) or 69.15 (4) (a).

3. Making any change in a birth certificate under s. 69.15 (3).

(b) Twenty dollars for:

1. Any new vital record registered under s. 69.12 (4), 69.14 (2) (b), 69.15 (2), (3m), (4) (b), or (6), 69.16 (2), or 69.19, or any corrected vital record registered under s. 69.13.

2. The filing of a birth certificate under s. 69.14 (2) (b) 5. The fee under this subdivision includes the search for the birth certificate and the first copy of the certificate except that the state registrar shall add to the $20 fee, the $5 fee required under sub. (1) (c).

(c) The state registrar may charge a reasonable fee to adequately cover the cost of specialized data collection and data production for research or administrative data requested under s. 69.20.

(6) The state registrar may charge a reasonable fee for providing searches of vital records and for providing copies of vital records to state agencies for program use. The register of deeds may provide free searches and free copies to agencies in his or her county at the direction of the county board.

History: 1985 a. 315; 1985 a. 332 s. 253; 1987 a. 27; 1991 a. 39; 1993 a. 16, 27; 1995 a. 27; 1997 a. 191, 210; 2001 a. 16, 106.

69.23 Costs for collecting delinquent certificates. If the state registrar determines that it is not possible to obtain a vital record from a local registrar under this subchapter. the state registrar may obtain the vital record and charge the cost of ohtaining the record to the registration district in which the record should have been filed. If the registration district receives from the state registrar an itemized statement of such costs filed with the clerk of the registration district, the registration district shall pay the costs to the state registrar.

History: 1985 a. 315.

69.24 Penalties. (1) Any person who does any of the following is guilty of a Class I felony:

NOTE: Sub. (1)(intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1)Any person who does any of the following shall be fined not more than $10,000 or imprisoned for *not* more than 3 years or both:

(a) Other than as authorized under s. 69.21 *(2)* (d), prepares or issues any paper or film which purports to he. or carries the appearance of. an original or a copy of a vital record, certified or uncertified, cxccpt as provided under this suhchaptcr or s. 610.50 and except for any hospital which issues any written announcement of the birth of a person to the parents of the person if the announcement contains plain notice that the announcement is not for official use.

(am) Makes available to the public in electronic fomiat an uncertificd photocopy of a vital record for an event occurring before October 1, 1907. that is issued under s. 69.21 (2) (d).

(b) Willfully and knowingly makes any false statement in a birth or death ccrtificatc under s. 69.09, 69.10, 69.14 or 69.18, in an application for an amendment to a birth or death certificate under s. 69.11 or 69.12 or in a request for a certified copy of a birth certificate under s. 69.21.

(c) Willfully and knowingly supplies any false information with the intent that the information be used in the preparation **of** a birth or death certificate or the amendment of **a** birth or death certificate.

(d) Counterfeits or, without authorization, niakcs, alters **or** amends any birth or death certificate required by this suhchaptcr or a certified copy of such certificate.

(e) Mutilates or destroys an original birth or death certificate filcd under this subchapter.

(f) Willfully and knowingly obtains. possesses, uses. sells, **fur**nishes or attempts to obtain. possess, use, sell or furnish to any person for any purpose of deception, any vital record or certified copy of a vital record which is counterfeited. altered or amended or false in part or in whole or which is related to the birth. death, marriage or divorce of another person, whether living or dead.

(g) Illegally possesses any vital record required under this subchapter with knowledge that the vital record has been illegally ohtaincd

(h) As a public officer or public employee, furnishes or processes a birth or death certificate or a certified copy of a birth or death certificate with the knowledge or intention that the certificate or copy will be used for the purpose of deception.

(2) Any person who does any of the following shall be fined not more than $1,000 or imprisoned not more than 90 days or both:

(a) Willfully and knowingly commits any of the actions prohibited under sub. (1) in relation to a marriage document or divorce report.

(b) Willfully and knowingly refuses to provide information required under this subchapter for any part of a birth certificate which is not designated as the part for statistical or medical and statistical use or for a death certificate.

(c) Willfully and knowingly effects final disposition of a corpse without complying with s. 69.18 (3) (b).

(d) Willfully and knowingly neglects or violates or refuses to perform any requirement under this subchapter.

History: 1985 a. 315; 1987 a. 247; 1987 a. 403 s. 256; 1997 a. 210, 283; 2001 a. 16, 109.

A bank, its employees, and agents violate this section when copying a certified copy of a vital record for use by the Federal Reserve Bank. 78 Atty. Gen. 232.

69.30 Authorized copying of vital records. (1) In this section:

(a) "County department" means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437.

(am) "Family care district" has the meaning given in s. 46.2805 (5).

(b) "Financial institution" means any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions.

(bm) "Service office" has the meaning given in s. 45.36 (1) (c).

(c) "State agency" has the meaning given in s. 20.001 (1).

(d) "Wisconsin works agency" has the meaning given in s. 49.001 (9).

(2) A financial institution, state agency, county department, Wisconsin works agency, service office or family care district or an employee of a financial institution, state agency, county department, Wisconsin works agency, service office or family care district is not subject to s. 69.24 (1) (a) for copying a certified copy of a vital record for use by the financial institution, state agency, county department, Wisconsin works agency, service office or family care district, including use under s. 45.36 (4m), if the copy is marked "FOR ADMINISTRATIVE USE".

History: 1989 a. 313; 1991 a. 221, 269, 315; 1995 a. 27; 1997 a. 27; 1999 a. 9.

SUBCHAPTER II

GENERAL STATISTICS

69.60 Taxes and bonds. The clerk of each town, city, and village shall annually, at the time required by law to deliver the tax roll to the town, city, or village treasurer, make and transmit to the county treasurer, on forms furnished by the department of revenue, a statement showing the total amount of all taxes levied by the town, city, or villagc for the current year.

History: 1971 c. 154; 1975 c. 295, 421; Stats. 1975 s. 69.60; 1991 a. 39; 2001 a. 107.

69.61 Annual statement *of* taxes. (1) Annually. on or before the 3rd Monday of December, each city, village, and town clerk shall make and file with the department of revenue a statement in detail of all taxes levied in the clerk's city, village, or town during the year. Any clerk who fails to make the statement required under this section within the required time shall be liable to the city, village, or town for all damages caused by the delinquency.

(2) The department of revenue shall prepare and furnish to each county clerk forms and instructions for the statement

required under this section. The clerk of each county shall. immediately upon receipt of the forms and instructions from the department of revenue dislribotc the forms and instructions to the clerk of each city. village. and town in the county, at the county's expense.

History: 1975 c. 295 ss. 3, 9; 1975 c. 421; Stats. 1975 s. 69.61; 2001 a. 107

69.62 Returns to department of revenue. (1) Annually, on or before November 30, each county clerk shall make and rransmit to the department of revenue a statement in detail of all county taxes levied on taxable property in the county during the preceding year, and the purposes for which the taxes were levied and expended. Any county clerk failing to make the statement required under this section within the required time, shall he liable to the county for all damages caused by the delinquency.

(2) The departmcnt of revenue shall prepare and furnish to the clcrk of each county forms and instructions for the statement required under this section.

History: 1971 c. 65; 1975 c. 295 ss. 3, 9: 1975 c. 421; Stats. 1975 s. 69.62: 1477 c. 29 s. 1647 (21); 1983 a. 275: 2001 a. 101.

69.63 Department of revenue, duties. It shall be the duty of the department of revenue to collect from time to time statistics of recorded sales of real estate in each county and of the assessed valuation of the lands included in such sales In collecting such statistics, sales appearing to hc made for a nominal consideration or as *to* which the true consideration is not stated and cannot be readily ascertained, and those in which the description of lands does nor substantially correspond or cannot he identified with descriptions upon the assessment roll, shall be omitted; and the departmcnt may also exclude from such statistics any other sales where for any reason the data appear to he unreliable or not serviceable.

History: 1975 c. 295: Stats. 1975 s. 6Y.63.

69.64 Realty statistics; items. The data to be collected as provided by s. 69.63 shall include:

(1) The date of each instrument of conveyance or sale.

(2) The dale, volume and page of the record thereof.

(3) A brief description of the lands conveyed or sold.

(4) The number of acres, where the lands are unplatted.

(5) The consideration recited in such instrument.

(6) The assessed valuation next previous or nearest to the date of such instrument.

(7) Such other facts as the department may deem material.

History: 1975 c. 295 ss. 3, 9; Stats. 1975 s. 69.64.

69.65 Statistics compiled, use of; county clerk's duties. The statistics for each calendar year shall he compiled hy assessment districts and by counties in tabular form, and the compilations shall be filed **and** carefully preserved in the department of revenue for use in the performance of its duties. An abstract or copy ofthc compilations of so niuch as is used by the department in arriving at the true value for each county shall be furnished to the county clerk of such county in each subsequent year as soon as practicable after the compilations are completed for the year. The county clerk shall submit the abstract or copy to the county hoard at its next annual meeting.

History: 1975 c 295: Stats. 1975 s. 69 65: 1977 c. 29

69.66 Agricultural statistics. The department of agriculture, trade and consumer protection may collect statistics in relation to principal farm products and agricultural resources as may be necessary through the use of mail surveys and other appropriate means.

History: 1975 c. 295; Stats. 1975 s. 69.66: 1977 c. 29 ss. 1647 (8), 1650m (4); 1981 c. 166.

69.67 Returns may be sent for; expense. If any town, city or village clerk fails or neglects to transmit to the county treasurer the statement required by s. 69.60 for 10 days after the time required by law to transmit or make the same, the county treasurer shall in either case send a messenger to such clerk who has so failed or neglected to procure the same, and such messenger shall be entitled to receive $3 per day and 10 cents per mile for each mile necessarily traveled in the discharge of duty, to be paid out of the county treasury on the order of the chairperson of the county board and county treasurer. The amount so paid shall be charged to the proper town, city or village and added to and collected with the next county tax apportioned thereto. The county treasurer shall, immediately after having sent any such messenger, notify the treasurer of the proper town, city or village of the amount of expense so incurred, and the treasurer shall deduct that amount from the compensation of the delinquent clerk.

History: 1975 c. 295 ss. 3, 9; 1975 c. 421; Stats. 1975 s. 69.67; 1981 c. 166; 1983 a. 192 s. 303 (2); 1991 a. 39.

69.68 Statement of indebtedness to secretary of state. Each county, city, village, town, technical college district and school district clerk shall, whenever required by the secretary of state, furnish a full and complete statement showing the bonded and all other indebtedness of the respective county, city, village, town, technical college district or school district, the purposes for which the same was incurred and all accrued interest. if any, remaining unpaid.

History: 1971 c. 154; 1975 c. 295, 421; Stats. 1975 s 69.68: 1993 a. 399.

69.69 Neglect of duty. Every clerk of any town, city village or school district, every technical college district board secretary and every assessor who fails or neglects to perform any duty required by this subchapter shall, for every such neglect or failure, forfeit not less than $20 nor more than $50, and it is the duty of the county clerk to cause every such forfeiture lo be prosecuted for Every county clerk and register of deeds who fails or neglects to perform any duty required by this subchapter shall. for every such neglect or failure, forfeit not less than $25 nor more than $100; and it is the duty of the department with which such returns are required to he filed to cause every such forfeiture to be prosecuted for.

History: 1971 c. 154; 1975 c. 295 ss. 3, 8; 1975 c. 421; Stats. 1975 s. 69.69; 1993 a. 399.

CHAPTER 157

DISPOSITION OF HUMAN REMAINS

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SUBCHAPTER III
BURIAL SITES PRESERVATION

157.70 Burial sites preservation.

Cross Reference: See s. 69.18 for 1) registration of deaths; 2) medical certification; 3) disposition of corpse or stillbirth; and 4) disinterment and reinterment.

SUBCHAPTER I

CORPSES

157.01 Rules for preparation, transportation and disposition. The department of health and family services shall make. and delegate to the funeral directors examining board the enforcement of, rules not inconsistent with ch. 445 covering the control of communicable diseases and sanitary and health regulations in the preparation, transportation and disposition of dead human bodies

History: 1975 c. 39; 1979 c. 175 s. 53; 1979 c. 221 ss. 658, 2202 (45); 1983 a 485; 1985 a. 315; 1985 a. 316 s. 14; Stats. 1985 s. 157 01; 1995 a. 27 s. 9126 (19).

157.02 Disposal of unclaimed corpses. (1) NOTICE TO RELATIVES When an inmate of any state, county or municipal institution dies, the superintendent or other person in charge of the institution shall immediately notify a relative of the decedent. A public officer having the possession or the disposition of a corpse shall immediately notify a relative of the decedent. If no relative is known, or discoverable by use of ordinary diligence, notice may be dispensed with. In addition, if the deceased had been an inmate of a state correctional institution; the department of corrections shall provide written notification to the relative informing him or her that the department of corrections, upon request, will provide a copy of any autopsy report or other report or information pertaining to the death. The department of corrections shall describe how the request may be made and shall promptly comply with any such request.

(2) TIME ALLOWED RELATIVE TO ACT. If a relative or fiiend Fails to arrange for taking charge of the corpse within a reasonable time after death, the superintendent or other officer may proceed as provided in this section, but relatives or friends may claim the corpse at any time before it has been delivered pursuant to sub. (3).

(3) NOTICE TO UNIVERSITY OR SCHOOL. If the corpse is in the Mendota Mental Health Institute district. the University of Wisconsin shall bc notified that it may have the corpse. If the corpse is in the Winnebago Mental Health Institute district. the Medical College of Wisconsin, Inc., or any accredited school of mortuary science at Milwaukee shall be notified that it may have the corpse. The university or school so notified shall immediately inform the superintendent or public officer whether it desires to have the corpse. If it does, the corpse shall he delivered accordingly, properly encased, to the most available facility for transportation to the consignee; the consignee to pay the cost of transportation.

(4) STANDING APPLICATIONS. If there are advance applications for such bodies. by the Medical College of Wisconsin; Inc., or any accredited school of mortuary science, the superintendent or public officer shall make an equitable distribution hetwecn them

(5) OTHER DISPOSITION. If the corpse is not disposed of under subs. (1) to (4), the superintendent or public officer shall properly burv it.

History: 1971 c. 211; 1973 c. 90 s. 560 (3); 1985 a. 316 s. 14; Stats. 1985 s. 157.02; 1987 a. 27; 1989 a. 31; 2001 a. 103.

157.03 Restrictions on use of bodies for anatomical purposes; embalming such bodies: delivery of bodies to relatives. (1) The corpse of a person who died with smallpox, diphtheria or scarlet fever, or who in his or her last sickness shall request to be buried or cremated, and of a stranger or traveler who suddenly died, shall not be disposed of under s. 157.02 (3), and no person having charge of a corpse authorized to bc so disposed of shall sell or deliver it to he used outside the state.

(2) Upon receipt of the corpse by a university or school pursuant to s. 157.02 **(3)** it shall be properly embalmed and retained for 3 months before being used or dismembered and shall be delivered to any relative claiming it upon satisfactory proof of relationship.

History: 1985 a. 316 ss. 14, 25; Stats. 1985 s. 157.03; 1993 a. 482.

157.04 Penalty. Any officer or person having a corpse *in* charge, and refusing to report and deliver it, when required by this subchapter. or violating the provisions forbidding sale or delivery thereof, to hc used outside the state. shall be liable to the person, university or medical school aggrieved, in the sum of $50.

History: 1985 a 316 s. 14; Stats. 1985 s. 157.04.

157.05 Autopsy. Consent for a licensed physician to conduct an autopsy on the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child. guardian, next of **kin,** or in the absence of any of the

foregoing, a friend, or a person charged by law with the responsihility for burial. If 2 or more such persons assume custody of the body, the consent of one oi'thcni shall **hc** deemed sufficient.

History: 1979 c 110; 1985 a. 316 s. 14; Stats 1985 s. 157.05.

157.055 Disposal of human remains during state of emergency relating to public health. (1) In this section:

(a) "Funeral estohlislmiesit" has the nicaning given in s. 445.01 (6).

(b) "Public health authority" has the meaning given in s. 250.01 (6g).

(2) Notwithstanding ss. 69.18 (4), 445.04 (2). 445.14, 979.01 (ij, (3m), and (4), 979.02. and 979.10, during a period of a statc of emergency related to public health declared by the governor under s. 166.03 (1) (b) 1., a public health authority may do all of the following:

(a) Issue and enforce orders that are reasonable and necessary to provide for the safe disposal of human remains, including by embalming, burial. cremation, interment, disinterment, transportation. and other disposal.

(b) Take possession and control of any human remains.

(c) Order the disposal, through burial or cremation. of any human remains of an individual who has died of a communicable disease, within 24 hours after the individual's death and consider, to the extent feasible, the religious. cultural, or individual beliefs of the deceased individual or his or her family in disposing of the remains.

(d) If reasonable and necessary for emergency response, require a funeral establishment, as a condition of its permit under s. 445.105 (1), to accept human remains or provide the use of its business or facility, including by transferring the management and supervision of the funeral establishment to the public health authority, for a period of time not to exceed the period of the state of emergency.

(e) [illegible] of all human remains bcforc [illegible] with all available identifying information and information concerning the circumstances of death and, in addition, require that the human remains of an individual with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

(f) Maintain or require the maintenance of a written or electronic record of all human remains that are disposed of, including all available identifying information and information concerning the circumstances of death and disposal. If it is impossible to identify human remains prior to disposal, the public health authority may require that a qualified person obtain any fingerprints, photographs, or identifying dental information, and collect a specimen of deoxyribonucleic acid from the human remains and transmit this information to the public health authority.

(g) Notwithstanding s. 59.34 (1) or 59.35 (1), authorize a county medical examiner or a county coroner to appoint emergency assistant medical examiners or emergency deputy coroners, whichever is applicable, if necessary to perform the duties of the office of medical examiner or coroner, and to prescribe the duties of the emergency assistant medical examiners or emergency deputy coroners. The term of any emergency appointment authorized under this paragraph may not exceed the period of the state emergency. A county medical examiner or county coroner may terminate an emergency appointment before the end of the period of the state emergency, if termination of the appointment will not impede the performance of the duties of his or her office.

History: 2001 a. 109.

157.06 Uniform anatomical gift act. (1) DEFINITIONS. In this section:

(a) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death of the donor, as determined in accordance with s. 146.71.

(b) "Decedent" means a deceased individual.

(c) "Document of gift" means a card, a statement atrached to or iinprintcd on a license under s. 343.175 (2) or on an identification card uiidcr s. 343.50 (3). a will or another writing used to make an anatomical gift.

(d) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(e) "Enucleator" means an individual nho meets the requirements of sub. (8) (c) for authorization to remove donated eyes or parts of eyes.

(f) "Hospital" means a facility approved as a hospital under s. 50.35 or a facility operated as a hospital by the federal government, a *statc* or a subdivision of a state.

(fm) "Organ procurement organization" means an organization that meets the requirements specified for a qualified organ procureincnt organization under 42 USC 273.

(g) "Part" means an organ, tissue. eye, hone, artery, blood, fluid or other body portion.

(h) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(j) "Technician" means an individual who is trained or approved by the American Red Cross Tissue Services or the American Association of Tissue Ranks to remove or process tissue or bone while under the direction or supervision *of a* physician.

(k) "Tissue.' includes all of the following:

1. Skin.

2. Connective tissue, including tendons and ligaments.

3. Cardiovascular tissue, including valves, blood vessels and pericardium, that is not suitable for use for cardiovascular organ transplantation.

(L) "Vascularized organ" means a heart, lung, liver, pancreas, kidney, intestine or other organ that requires the continuous circulation of blood to remain useful for purposes of transplantation.

(2) MAKING, AMENDING, REVOKING AND **REFUSING** TO MAKE ANATOMICAL GIFTS BY THE DONOR. (a) An individual who is at least 18 years of age may do any of the following:

1. Make an anatomical gift for any of the purposes stated in sub. (6) (a).

2. Limit an anatomical gift to one or rnorc of the **purposes** stated in sub. (6) (a).

3. Refuse to make an anatomical gift.

(h) An anatomical gift under par. (a) may he made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift shall he signed by aiiothcr individual and by 2 witnesses, all of whom have signed at the direction and in the presence of the donor and of each other. and the document of gift shall state that it has been so signed.

(c) 1. Before January 1, 1991, if a document of gift is attached to or imprinted on the donor's license to operate a motor vehicle or identification card issued by the department of transportation, the document of gift shall comply with par. (h) and s. 343.17 or 343.50. Revocarion, suspension, expiration or cancellation of the license or identification card docs not invalidate the anatomical gift.

2. After Deceinher 31, 1990, if a document of gift is attached to or iinprintcd on the donor's license under s. 343.175 (2) or identification card under s. 343.50 (3j issued by the deportment of transportation, the document of gift shall comply with par. (h) and s. 343.175 or 343.50. Revocation; suspension, expiration or **cancellation** of the license or identification card does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, technician or enucleator to carry out the appropriate procedures.

(e) An anatomical gift under the circumstances in which tlie document of gift is hy will takes effect upon death of the testator, whether or not the will is probated. if after the death of the testator the will is declared invalid for testamentary purposes. the validity of the anatomical gift is unaffected.

(f) A donor niay amend or revoke an anatomical gift or a refusal ti) make an anatomical gift under par. (i) by doing any of the following:

1. Signing a statement of amendment or revocation.

Im. Signing a new document of gift. Signing a new document of gift revokes any previously signed document of gift.

2. Verbally amending or revoking in the presence of 2 individuals.

3. During the donor's terminal illness or injury making, by any form of communication that is addressed to a physician, an amendment or revocation.

4. Delivering a signed statement of amendment or revocation to a specified donee to whom a document of gift had been delivered.

5. Crossing out or amending the donor authorization or refusal in the space provided on his or her license as prescribed in s. 343.175 (2) or identification card as prescribed in s. 343.50 (3).

6. Revoking the provision of a power of attorney for health care instrument that makes an anatomical gift or revoking that power of attorney for health care instrument.

(g) In addition to the means specified in par. (f), an anatomical gift made by will may he amended or rcvokcd in the manner provided for amendment or revocation of wills.

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and docs not require tlie consent or concurrence of any parson after the donor's death.

(i) An individual may refuse to make an anatomical gift of the individual's body or part of his or her body by doing any of the following:

1. Making a writing of refusal that is signed in the same manner as is required for a document of gift.

2. Attaching a statement of refusal to or imprinting a statement of refusal on his or her license under s. 343.175 (2) or identification card under s. 343.50 (3).

3. Making any other writing that is used to identify the individual as refusing to make an anatomical gift. During tlie individual's terminal illness or injury, he or she may make the refusal by an oral Statement or other form of Communication to another.

(j) In the absence of contrary indications by tlie donor. an anatomical gift of a part of a human body is neither a refusal to give other parts of the body nor a limitation on an aiiatomical gifl under sub. (3) or on a removal or release of other parts of the body under sub. (4).

(k) In the absence of contrary indications by the donor. a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to he a refusal to make an anatomical gift, the donor shall make the refusal under par. (i).

(3) MAKING. REVOKING AND OBJECTING TO ANATOMICAL GIFTS. BY PERSONS OTHER THAN THE DONOR. (a) Any member of the following classes of individuals, in the order of priority listed, may make an anatomical gift of ail or a part of a decedent's body for a purpose specified in sub. (6)(a). unless the decedent, at the time of drath. has made an unrevoked refusal to make that anatomical gift:

1. The spouse of the decedent.

2. An adult son or daughter of the decedent.

3. Either parent of the decedent.

4. An adult brother or sister of the decedent.

5. A grandparent of the decedent.

6. A guardian of the person of the decedent at the time of death.

7. A health care agent, as defined in s. 155.01 (4), for the decedent at the time of death

(b) An anatomical gifi may not be made by an individual listed in par. (a) if any of the following applies:

1. An individual in a prior class is available at the time of death to make an anatomical gift and that individual objects to the making of an anatomical gift.

2. The individual proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent.

3. The individual proposing to make an anatomical gifi knows of an objection to making an anatomical gift by a memhcr of the individual's class or a prior class.

(c) An individual authorized under par. (a) shall make an anatomical gifl of all or a part of the decedent's body by doing one of the following:

1. Executing a document of gift that is signed by the individual.

2. Making a telegraphic. recorded telephonic or other recorded message, or other fonn of communication to another that is reduced to writing and signed by the recipient at the time it is received.

(d) Any member of the same class as or a pnor class to an individual authorized under par. (a) who has made an anatomical gift under par. (a) may revoke the gift if, before procedures have begun for the removal of a part from the body of the decedent. the member so informs the physician or enucleator who will remove the part of the revocation.

(e) A failure to make an anatomical gift under par. (a) is not an objection to the making of an anatomical gifl unless the failure is accompanied by an objection to the making of an anatomical gift.

(4) NOTIFICATION AND AUTHORIZATION BY CORONER OR MEDICAL EXAMINER. (ag) If a decedent is within the custody of a coroner or inedical examiner and if there is no evidence that the decedent has made or refused to make an anatomical gift, the coroner or medical examiner shall contact by telephone the organ procurement organization designated for the region in which the death occurs. The coroner or medical examiner shall provide the organ procurement organization with infomiation. if known to the coroner or medical examiner, concerning the decedent's age, the cause of the decedent's death and, if available, the decedent's medical history.

(am) The coroner or medical examiner may release and permit the removal of a part from, a dcccdent within that official's custody, for transplantation or tlicrapy. if all of the following apply:

1. The official has received a request for the part of the body from a hospital, physician or organ procurement organization.

2. The official has made a reasonable effort, taking into account the useful life of the part of the body, to locate and examine the decedent's medical records and inform individuals listed in sub. (3)(a) of their option to make, or object to making, an anatomical gift

3. The official does not know of a refusal or contrary indication by the decedent or of an objection by an individual having priority to act as listed in sub. (3) (a).

4. The removal will be by a physician. except for the following:

a. In the case of eyes, the removal may be by a physician or by an enucleator.

b. In the case of tissue or bone, the removal may he by a physician or by a technician.

5. The rcmoval will not interfere with any autopsy or investigation.

6. The removal will be in accordance with accepted medical standards.

7. Cosmetic restoration will he done to tlie decedent's hody, if appropriate.

(b) An official releasing, and permitting the rcmoval of a part of, a human body shall maintain a permanent record of the name

of the decedent, the name of the pcrson making the request. the date and purpose of the request, the part of the body requested and the name of the person to whom it was released.

(5) POLICIES: ORGAN PROCUREMENT ORGANIZATION NOTIFICATION; REQUIRED REQUEST; SEARCH AND NOTIFICATION. (a) Each hospital shall develop and adopt written policies for providing information to individuals on how to become part donors and shall makc available to individuals informational brochures that discuss donation of parts.

(b) 1. If at or near the time of death of a patient there is no medical record or evidence obtained under par. (c) that the patient has made, revoked or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss with an available individual, under the priority established in sub. (3) (a), the option to make or refuse to make an anatomical gift and request that the individual make an anatomical gift of all or a part of the decedent's body. Alternatively, the administrator shall contact hy telephone the organ procurement organization designated for the region of which the hospital is a part. If the administrator or rcprcsentative contacts the organ procurement organization, he or she shall provide the organ procurement organization with the identifier number of the patient. the patient's age, the actual or potential cause of the patient's death and. if availablc. the patient's medical history

2. If the organ procurement organization is contacted under subd. 1., the organ procurement organization shall, in consultation with the attending physician of the patient under subd. 1., determine if an anatomical gift is suitable, based upon acceptcd medical standards, for a purpose specified in sub. **(6)** (a). If the organ procurement organization and the patient's attending physician determine that an anatomical gift is not so suitable, hospital personnel shall make a notation to this cffcct in the paticnt's medical record. If the organ procurement organization and the patient's attending physician determine that an anatomical gift is so suitable. an organ procurcmcnt organization representative or a requester designated by the organ procurement organization shall discuss with an available individual, under the priority established in sub. (3) (a), the option to make or rcfusc to make an anatomical gift and request that the individual make an anatomical gift of all or a part of the decedent's body.

3. The hospital administrator or representative or the organ procurement organization representative or designated requester shall make the rcqucst with reasonable discretion and sensitivity to the circumstances of the family. A rcqucst need not be made if the gift is not suitable, based upon accepted medical standards, for a purpose specified in sub. (6) (a) or if the requester knows that the patient. or the mcmbcr of the class of individuals to whom the rcqucst would be directed undcr sub. (3) (a). has a cultural or religious objection or any other objection to the making of an anatomical gift. An entry shall be made in the medical record of the paticnt. in accordance with the rules promulgated undcr par. (f), stating the name and affiliation of the individual making the request and tlic name, response and relationship to the patient of the individual to whom the request was made.

(bm) If at or near the time of dcath of a patient a hospital knows that an anatomical gift of all or a part of the patient's body has been made under sub. (3) (a), that a release and removal of a part of thc patient's body has been permitted under sub. *(4)* or that a patient or an individual identified as in transit to the hospital is a donor. the hospital shall notify the donee if one is named and known to the hospital. If a donee is neither named nor known to the hospital. the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of thc anatomical gift or release and removal of a **part** of the body of the patient or individual.

(c) All of the following persons, under the following circumstances, shall make a reasonable search for a document of gift or other information identifying the individual as a donor or as an individual who has revoked or refused to make an anatoinical gift:

1. A law enforcement officer, fire fighter, emergency inedical technician – paramedic. ambulance service provider or emergency inedical technician – basic who finds an individual whom the person believes is dead or near death.

2. A hospital, upon the admission of an individual who is at or near the lime of death, if there is not immediately available any other source of that information.

(d) If a documcnt of gift, revocation of a document of gift or evidence of refusal to make an anatomical gift is located by the search required by par. (c) 1. and the individual or decedent to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the person locating the document. revocation or othcr evidence shall send it to the hospital.

(f) The department of health and family services shall promulgate rules that do all of the following:

1. Set forth policies and procedures to be followed for discussing the anatomical gift donation process with members of the patient's family in situations under par. (b) 2. and 3. in which there is or is not a documcnt of gift.

2. Prescribe the manner in which information obtained under par. (b) 2. and 3. regarding anatomical gift donations. revocations and refusals shall be placed in the patient's medical record so that it is readily accessible to hospital and other inedical personnel in the event of the death of the patient.

(6) DONEES; PURPOSES OF ANATOMICAL GIFTS. (a) Any of the following persons may become donees of anatomical gifts for the purposes stated:

1. A hospital, physician or organ procurement organization. for transplantation, therapy, medical or dental education, rcscarch, or advancement of medical or dcntal science.

2. An accredited medical or dental school. college or university for education. research or advancement of medical or dental science.

3. A dcsignatcd individual for transplantation or therapy needed by that individual.

(b) A donor may make an anatomical gift to a designated donee or without designating a donee. If a donee is not designated or **if** the donee is not available or rejects the anatomical gift, any hospital may accept the anatomical gift.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under sub. (3) (a). the doncc may nor accept the anatomical gift.

(7) DELIVERY OF DOCUMENT OF GIFT. (a) Delivery of a document of gift during the donor's lifetime to another is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee. the documcnt of gift, or a copy, may be delivered to the doncc to cxpcditc the appropriate procedures after the donor's death. The document of gift, or a copy. may be deposited in any hospital, organ procurement organization or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the intcrcstcd person to examine or copy the document of gift.

(8) RIGHTS AND DUTIES AT DEATH. (a) Rights of a donee created by an anatomical gift are superior to rights of others except for autopsies under sub. (10) (b). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an cntirc body for a purpose other than transplantation o therapy, the body may not he delivered to the donee or the donee's agent if the surviving spouse or other person who assumes custody of the body requests a funeral service or other last rites for the deceased. If such a rcqucst is made, the body may not be delivered until after the funeral or rites have been conducted. if the entire body is given for transplantation or therapeutic purposes or if the gift is of a part of a body. the donee. upon the death of the donor and before

embalming. shall cause the part to hc removed without unnecessary mutilation. After removal of the part of the body, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(h) The time of death shall be determined by a physician who attends the donor at death or. if none. the physician who certifies the death. Neither the physician who attends the donor at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part of the donor's body unless rhc document of gift designates a particular physician under sub. (2) (d).

(c) If thcrc has been an anatomical gift, a physician may remove any donated parts of the body, a technician may remove any donated tissue or bone and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician. Any individual acting undcr the direction of a physician and any funeral director licensed under ch. 445 may perform the functions of an enucleator under this section if he or she has completed a course in eye enuclcation and holds a valid certification of competence from a medical college approved by the medical examining hoard under s. 44.05(2). A certificate of competence shall be valid for 3 years.

(9) PROCUREMENT AND USE. (a) Each hospital in this state. after consultation with other hospitals and with the organ procuremcnt organization in whose designated service area the hospital is located, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

(b) A vascularized organ that is obtained by an organ procurement organization for which the designated service area primarily includes area in this state shall be used within that dcsignated service area unless par. (c) applies.

(c) If no suitahlc potential recipient for the vascularized organ is specified on a waiting list of a hospital that is within the designated service area of the organ procurement organization specified in par. (h). that organ procurement organization shall offer the vascuiarized organ for use by any other organ procurement organization for which the designated service area primarily includes area in this state.

(d) If no suitahlc potential recipient for the vascuiarized organ is specified on a waiting list of a hospital that is within the designated service area of the organ procurement organization to which the vascularized organ is offered under par. (c), the organ procurement organization specified in par. (b) shall do one of the following:

1. If the organ procurement organization has found that it is in the best interests of persons on waiting lists in this state in need of transplanted vascularized organs and will increase the number of people receiving transplants to enter into a reciprocal sharing agreement with an organ procureincnt organization for which tlic designated service area primarily is outside this state, and has entered into such an agreement, offer the vascularized organ for use by the organ procurement organization under the agreement.

2. Offer the vascularired organ for use by an entity that distributes vascularized organs on a regional or national basis under a contract with the federal department of health and human services or a subcontract with a contractor with the Federal department of health and human services.

(10) EXAMINATION, AUTOPSY, LIABILITY. (a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) This section is subject lo the laws of this state prescribing powers and duties of the coroner, medical examiner and other physicians licensed to perform autopsies, with respect to autopsies and the reporting of certain deaths under ch. 979.

(c) A hospital. physician. coroner. medical examiner. enucleator or other person. who acts in accordance with this section or with the applicable anatomical gift law of another state or a foreign counhy or attempts in good faith to do so. is not liable for that act in a civil action or criminal proceeding.

(d) A person who makes an anatomical gift under sub. (2) or (3) and the person's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

(e) A person who fails to discharge the duties imposed by sub. (5) (c) and (d) is not liable for that act or inaction in a civil action or criminal proceeding.

(11) UNIFORMITY OF INTERPRETATION This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(11m) EFFECT OF PRIOR DOCUMENT OF GIFT. Notwithstanding the requirements of this section, a document of gift that was made under the requirements of s. 157.06, 1987 stats., is deemed to comply with the requirements of this section.

(12) SHORT TITLE. This section may he cited as the "uniform anatomical gift act".

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m. 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103.

Chapters 69 and 157 are not alternatives to the requirement in s. 979.10 that anyone cremating a corpse must first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a corpse can receive a corpse for research without first obtaining a permit. 77 Atty. Gen. 218.

SUBCHAPTER II

CEMETERIES

157.061 Definitions. Except as otherwise provided; in this subchapter:

(1) "Burial" means entombment, inurnment or interment.

(1g) "Business day" has the meaning given in s. 421.301 (6).

(1m) "Care fund" means one or more accounts or other investments established for the care of a cemetery.

(1r) "Cemetery association" means an association formed under s. 157.062.

(2) "Cemetery authority" means any person who owns or operates a cemetery specified in s. 157.065 (1).

(2m) "Cemetery lot" means a grave or 2 or more contiguous graves and, when used in reference to the sale, purchase or ownership of a cemetery lot, includes the right to bury human remains in that cemetery lot.

(3) "Cemetery nmchandisc" means goods associated with the burial of human remains, including monuments, markers, nameplates, vases and urns, and any services that are associated with supplying or delivering those goods or with the burial of human remains and that may be lawfully provided by a cemetery authority The term docs not include caskcrs or outer burial containers.

(4) "Dedicated" means platted for use exclusively as a cemetcry and qualified for the exemption from general property taxes unders. 70.11 (13).

(5) "Departnient" means the department of regulation and licensing.

(7) "Family member" means a spouse or an individual related by blood, marriage or adoption within the 3rd degree of kinship as computed under s. 990.001 (16).

(7m) "Grave" means a piece of land that is used or intended to be used for an underground burial of human remains, other than a burial in an underground mausoleum space.

(8) "Human remains" means the body of a deceased individual that is in any stage of dccomposition or has hcen cremated.

(9) "Mausoleum" means a building. structure or part of a building or structure that is used or intended to be used for the burial of human remains.

(10) "Mausoleum space" means a niche, crypt or specific place in a mausoleum that contains or is intended to contain human remains.

(11) "Municipality" means town, village or city.

(11g) "Outer burial container" means any container that is placed or intended to be placed into the burial excavation of a grave and into which a casket is placed or intended to he placed at the time of burial.

(11r) "Payment of principal" means the portion of a payment for the purchase of a cemetery lot, cemetery merchandise or a mausoleum space that represents the principal amount owed by the purchaser for the cemetery lot, cemetery merchandise or mausoleum space. and does not include any portion of the payment that rcprcsents any taxes, finance or interest charges or insurance premiums.

(12) "Preneed sales contract" means an agreement for the sale of cemetery merchandise that is to be delivered after the datc of the initial payment for the mcrchandisc, or for the sale of an undeveloped space.

(13) "Prcneed trust fund means an account or other investincnt in which a portion of the proceeds received under a preneed sales contract is deposited.

(14) "Public mausoleum" means a mausoleum that holds or is intended to hold more than 10 human remains or a mausoleum in which at least one mausoleum space is offered for sale to the general public.

(15) "Religious association" ineans any church, synagogue or mosque or any religious society organized under ch. 187.

(16) "Sale" means a transfer for consideration of any interest in ownership. title or right to use.

(17) "Undeveloped space" means a mausoleum space that is not ready for the burial of human remains on the date of the sale of the mausoleum space.

History: 1983 a. 189; 1985 a. 316 s. 18; Stats. 1985 s. 157.061; 1989 a 307; 1991 a. 269; 1997 a. 188; 1999 a. 32.

157.062 Cemetery associations; creation; powers and duties. (1) ORGANIZATION. Seven or more residents of the same county may form a cemetery association. They shall meet. select a chairperson and secretary. choose a name, **fix** the annual meeting date. and elect by ballot not less than 3 nor more than **9** trustees whom the chairperson and secretary shall immediately divide by lot into 3 classes, who shall hold their offices for 1, 2 and 3 years, respectively. Within 3 days, the chairperson and secretary shall certify the corporate name, the names, home addresses and business addresses of the organizers and of the trustees, and their classification, and the annual meeting date acknowledged by them, and, except as provided in sub. (9), deliver the certification to the department of financial institutions. The association then has the powers of a corporation.

(2) AMENDMENTS. The association may change its name, the number of trustees or the annual meeting date by resolution at an annual meeting, or special meeting called for such purpose; by a majority vote of the members present, and, except as provided in sub. (9), by delivering to the department of financial institutions a copy of the resolution, with the date of adoption. certified by the prcsidcnt and secretary or corresponding officers.

(3) VALIDATION. When there shall have been a hona fidc attempt to organize a cemetery association. but a failure to record a properly drawn and executed certificate of organization, aiid it has in good faith bought and platted grounds and conveyed cemetery lots and carried on business for over 25 years. the same shall be a body corporate from the date of conveyance to it of real estate. and its transfers and other transactions are validated.

(4) MEETINGS: ELECTIONS (a) **An** annual election shall be held during the annual meeting. The annual meeting, and any special meeting described in sub. (2), shall be held at a place in the county chosen by the trustees upon public notice as required by the bylaws. Trustees chosen after the first election shall he proprietors of cemetery lots in the cemetery, residents of the state, and hold office for 3 years. Election shall he by ballot and a plurality shall elect. Each owner of one or more cemetery lots is entitled to one vote, and one of several owners of a cemetery lot, designated by the majority of them, shall cast the vote.

(b) If the annual election is not held on the day fixed for the annual mecting, the trustees may appoint another day, not more than 60 days after the annual meeting. and give public notice of time and place. and if an election is not so held 5 members may apply to the judge of a court of record in the county for an order granting power to hold an election, by publishing in the county a class 2 notice, under ch. 985, of the application and the judge shall grant the application. and election shall then he held upon like notice. The terms of trustees expire on the date of the annual meeting in the year in which they are scheduled to cxpire. except that if no election is held at the annual meeting the terms expire on the date of the next election held under this paragraph.

(5) TRUSTEES; DUTIES. REPORT. The trustees may fill vacancies for the unexpired term. One shall he chosen president, and they shall appoint a secretary and treasurer. and may require security of the treasurer. The trustees shall manage the affairs and property of the association and control and beautify the cemetery, and may establish regulations for those purposes. The trustees shall make and file written reports as required in s. 157.62(1) and (2).

(6) DISSOLUTION: REORGANIZATION. (a) The association is dissolved hy failure to hold an annual election for 3 successive years.

(b) If an association that has been dissolved under par. (a). or any group that was never properly organized as a cemetery association, has cemetery grounds and human remains arc buried in the cemetery grounds, 5 or more members, or persons intercsted as determined by order of the circuit judge under par. (c), may publish a class 3 notice; under ch. 985, in the municipality in which the cemetery is located, of the time, place and object of the meeting, assemble and reorganize by the election of trustees and divide them into classes as provided in sub. (1), the commencement of the terms to he computed from the next annual meeting date. The secretary shall enter the proceedings of the meeting on the records. The association is reorganized upon delivery of a copy of the proceedings to the department of financial institutions, except as provided in sub. (9). Upon reorganization, the title to the cemetery grounds, trust funds and all other property of the association or group vests in the reorganized association. under the control of the trustees. The reorganized association may continue the name of the dissolved association or may adopt a new name.

(c) If an association is dissolved under par. (a) or any group **has** never been properly organized as cemetery association. and there arc fewer than 5 members living or residing in the county where the cemetery is located, the circuit judge for the county shall upon the petition of any person intercsted, make an order determining who are persons interested in the cemetery. Any adult person who owns an interest in any cemetery lot in the cemetery, who is related to any person buried in the cemetery. or who is a descendant, brother, sister. nephew, niece or surviving spouse of a member of the dissolved association, is an intercsted person. The circuit jndgc may make the ordcr upon evidence he or she deems sufficient, with or without hearing. The order need not contain the names of all persons interested. hut shall contain the names of at least 5 such persons.

(6m) FORMS. The department of financial institutions may prescribe and furnish forms for providing the inforniation required under subs. (1) to (6).

(7) TAX FOR MAINTENANCE When a cemetery association having control of a cemetery in a town. village or city of the third or fourth class has insufficient inaintenance funds it may certify in writing to the clerk of such town, city or village the amount deemed necessary during the next ensuing year, the amount the association has therefor, and the deficiency, and the governing body of such town, city or village may levy and collect a tax therefor and pay the same to the association. If the cemetery is in more than one such municipality the deficiency shall be equitably distributed. If a cemetery located wholly within a town, village or

city of the third or fourth class has also buried therein decedents from an adjoining municipality, the association having insufficient funds, the association may certify in writing to its municipal clerk and to the clerk of such other municipality, the amount deemed necessary for the ensuing year, the amount the association has therefor, ths amount of the deficiency and the equitable amount that each municipality should contribute; whereupon the governing body of each such municipality may levy and collect a tax therefor and pay the same to the association.

(8) LIMITED LIABILITY OF TRUSTEES AND OFFICERS. (a) Except as provided in pars. (b) to (d), a trustee or officer of a cemetery association organized under this section is not liable to the association, its members or creditors, or any person asserting rights on behalf of the association, its members or creditors, or any other person, for damages, settlements. fees, fines, penalties or other monetary liabilities arising froin a breach of, or failure to perform, any duty resulting solely from his or her status as a trustee or officer, unless the person asserting liability proves that the breach *or* failure to perform constitutes any of the following:

1. A willful failure to deal fairly with the association or its members in connection with a matter in which the trustee or officer has a material conflict of interest.

2. A violation of criminal law, unless the trustee or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the trustee or officer derived an improper personal profit.

4. Willful misconduct.

(b) Except as provided in par. (c), this subsection docs not apply to any of the following:

1. A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

2. A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

3. The liability of a trustee or officer arising from a breach of, or failure to perform, any duty relating to the receipt, handling, investment or other use of care funds or any other funds made in trust.

4. The liability of a tnistee or officer for violating s. 157.12.

(c) Paragraph (b) 1. and 2. does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

(d) This subsection does not apply to a cemetery association organized under this section if any part of the association's income is distributable among its members, trustees or officers.

(9) EXEMPTIONS FOR CERTAIN NONPROFIT CEMETERIES. In lieu of delivering a certification, resolution or copy ofproceedings to the department of financial institutions under sub. (1), (2) or (6) (b), a ccmctery association that is not required to be registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit shall deliver the certification, resolution or copy of proceedings to the office of the register of deeds of the county in which the cemetery is located.

History: 1977 c. 449 ss. 233, 497; 1983 a. 192; 1985 a. 316 s 18; Stats. 1985 s. 157.062; 1989 a. 31, 307; 1991 a. 269; 1995 a. 27; 1997 a. 254.

Under sub. (4), cemetery association voters must be lot owners. Heirs of **deceased** lot owners are entitled to vote in cemetery association elections 69 Atty. Gen. 132.

157.064 Cemetery associations and religious associations: holding property; change of ownership. (1) A cemetery or religious association authorired to hold lands for cemetery purposes may take and hold not more than 80 acres of land, to be used exclusively for burial of the dead, and personal property not exceeding $250,000 in value, to promote the objects of the association; and if the cemetery is near to or within a **3rd** class city the association may so take and hold not more than 160 acres of land: and if near to or within a 1st or 2nd class city, not more than 240 acres.

(2) A cemetery or religions association incorporated in this state and having a cemetery in or near a 1st or 2nd class city and any cemetery described tinder s. 157.065 (3m) (d) may acquire by gift o **purchase** up to 30 acres of adjoining lands for cemetery purposes, and may pay for it wholly or partly from its cemctery lot sales.

(3) When it is necessary to enlarge a cemetery owned by a ccmetery or religious association, and adjoining lands cannot he acquired or can be acquired only at an exorbitant price, application may be made in writing to the circuit judge by 12 or more resident freeholders of the municipality in which the cemetery is located dcscrihing the land and setting forth the facts and the price asked, whereupon the judge shall appoint 3 resident freeholders of the county, but not of the municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands may be taken within 330 feet of a residence owned by the occupant without the occupant's written consent. The appraisers shall hear all parties upon 10 days' notice and file a report in writing with the judge within 10 days after determination. Upon payment into court of the amount appraised. the lands shall be taken. Either party may appeal as provided in s. 32.06(10). The commissioners shall be paid, by the party seeking to take the land, $3 for each day actually employed and 6 cents for each mile necessarily traveled.

(5) Whenever a cemetery association votes to convey cemctery property and all trust funds pertaining to the cemetery property to a city, village or town, the trustees of the association shall have the power to transfer the property upon the acceptance of the transfer by resolution of the governing body of the city, village or town. A convcyancc under this subsection is subject to s. 157.08 (2).

(6) Whenever the majority of the members of a cemetery association, or of a religious association authorized to hold lands for cemetery purposes, present at an annual meeting or special meeting called for such purpose vote to convey all of the cemetery association's or religious association's cemetery property, trust funds and other property used for cemetery purposes to another cemetery association or religious association, the trustees of the association shall transfer the property upon the acceptance of the transfer by the other association by affirmative vote of a majority of its members present at an annual meeting or special meeting called for that purpose. Upon such acceptance, the title to the cemetery property, trust funds and other property of the transferring association vests in the accepting association under the control of the trustees of thc accepting association. A conveyance under this subsection is subject to s. 157.08 (2). This subsccction does not apply to a religious society organized under ch. 187.

(7) Not more than 30 days after a transfer under sub. (6), the transferring association shall notify the depanment of financial institutions in writing of the transfer, including the name and address of the accepting association or its treasurer. The department of financial institutions may prescribe and furnish forms for providing the information required under this subsection.

History: 1977 c. 449 s. 497; 1985 a. 316 s. 18; Stats. 1985 s 157.064; 1987 a 190; 1989 a. 307 ss. 19, 21 to 24; 1995 a. 27.

157.065 Location and ownership of cemeteries. (1) No cemetery may be used for burials except any of the following:

(a) A cemetery in use on April 4. 1864.

(b) A cemetery organized and operated by any of thc following:

1. A municipality.
2. A religious association.
3. A fraternal or benevolent society.
4. An incorporated college of a religious order.
5. A cemetery association created under s. 157.062.
6. A corporation organized under ch. 180 or 181
7. A limited liability company organized under ch. 183

(2) (a) Except as provided in sub. (31, no cemetery may he established:

1. Within a rccordcd plat or rccordcd ;addition to a plat of any city or village. if the cemetery is within one mile of a building in the plat;

2. Outside a recorded plat or recorded addition to a plat of any city or village if the cemetery is within 3,300 feet of an inhabited dwelling that is located within a recorded plat or addition, unless the city or village consents;

3. Within 250 feet of any habitable dwelling, publicly owned building or school, unless the cemetery is establishing an extension on property it has owned continually since June 18, 1929: or

4. Within 3,300 feet of any of the following state facilities, without the consent of the state:

a. Any institution for the deaf or the blind

h. Any mental health institute, as defined in s. 51.01;

c. A Type 1 secured correctional facility, as defined in s. 938.02 (19);

d. Any center for the developmentally disabled; or

e. Any state reformatory.

(b) Paragraph (a) does not apply to enlargements under sub. (3m) or s. 157.064(2) or (3).

(3) *(a)* Any incorporated college of a religious order in a 4th class city may establish a private cemetery within the city on land the college owns to bury members of the religious order, if the common council consents and if each person owning a private building within 825 feet of the proposed ccmctery consents.

(h) Any private military academy that provides an educational program for grades 7 to 12 in a 4th class city may establish a private cemetery within the city on land that the military academy owns, if the common council consents. No mausoleum within a cemetery established under this paragraph may exceed 3,500 square fcct in area.

(3m) Any of the following cemcterics may enlarge only in the following manner:

(a) Any cemetery in a village may enlarge with the consent of the village hoard and of the owners of each building within 250 feet of the addition.

(b) Any cemctcry in a 3rd or 4th class city may enlarge with the consent of the common council.

(c) Notwithstanding pars. (a) and (d), any cemetery established before **April** 30, 1887, in a village and located within 100 fcct of the village limits may extend to the village limits with the consent of the village hoard.

(d) Norwithstanding pars. (a) to (c), any cemetery established before **April** 30, 1887, may expand as provided in s. 157.064.

(5) Any violation of this section is a public nuisance.

History: 1975 c. 39, 106: 1975 c. 189 s. 99 (2); 1975 c. 200, 422, 430; 1977 c. 83; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 20; 1985 a 316 ss. 18, 25; Stats. 1985 s. 157.065; 1987 a. 190; 1989 a 43, 307; 1993 a. 98, 112; 1995 a. 77; 1999 a 9; 2001 a. 103, 107.

157.067 Connection with funeral establishment prohibited. (1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6).

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employee or agent of tho cemctcry to have any ownership, operation or other financial interest in a funeral establishment. Except as provided in sub. (2m), no cemetery authority or employee or agent of a cemetery may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from a funeral establishment or from an owner, employee or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employee or agent of a funeral establishment if all of the following requirements arc satisfied:

(a) The *See* or remuneration is a payment to the cemetery authority lor a burial in the cernctcry anthority's ccmetcry.

(b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the fiincral establishment's services.

(c) The fiineral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the fiincral expenses in amount that is identical to the amount of the fee or remuneration paid by the funeral establishment to the cemetery authority.

History: 1993 *1.* 100, 386

If subsidiary corporations have prohibited financial connections, their corporate structure will not save them from *:he* prohibitions of ss 157.06*1* (2) and 445.12 (6). Those statutes are not unconstitutionally "s". Cemetery Services, Inc. v. Dept. of Regulation and Licensing, 221 Wis. 2d 817, 586 NW 2d 191 (:t. App. 1998).

157.07 Platting. (1) A cemetery authority shall cause to he surveyed and platted hy a land surveyor registered in this state those portions of the lands that are from time to time required for burial, into cemetery lots, drives and walks, and record a plat or map of the land in the office of the register of deeds. The plat or map may not be recordcd unless laid out and platted to the satisfaction of the county board of the county, and the town hoard of the town in which the land is situated, or, if the land is situated within a 1st class city, then only by the common council of that city.

(2) The plat or map shall show the exact location of the tract being subdivided with reference to a corner or comers established in the United States public land survey by bearings and distances, and shall show a small scale drawing of *the* section or government subdivision of the section in which the cemetery plat is situated, with the cemetery plat indicated. The plat or map shall include the certificate of the surveyor containing the name of the cemetery authority, the date of the survey, the surveyor's stamp or seal and signature and the surveyor's statement that the survey is true to the surveyor's best knowledge and belief.

(3) The plat or map shall be made on muslin-backed white paper that is 22 inches wide by 30 inches long. or reproduced with a photographic silver haloid image on double matt polyester film of not less than 0.004 inch thickness that is 22 inches wide by 30 inches long. Seals or signatures that are reproduced on images that comply with this subsection have the force and effect of original seals and signatures. When more than one sheet is used for any one plat or map, they shall be nunihered consecutively and each sheet shall contain a notation showing the whole number of sheets in the plat; and its relation to the othcr sheets. The sheets may he provided by the county through the register of deeds on terms determined by the county hoard. The surveyor shall leave a binding margin of 1 1/2 inches on the left side of the 30 inch length and a one-inch margin on all other sides.

(4) The cemetery authority shall cause the plat or map to bc recorded within 30 days of the date of its approval, together with the evidence of the town and county hoard's or common council's approval, which shall he a copy of the resolution adopted by the county hoard and by the town board, or by the common council, certified by the county clerk and the town clerk, respectively. or city clerk, and affixed to the map or plat. For failure to do so. the plat shall be void.

(5) The cemetery authority may vacate or replat any portion of its cemetery upon the filing of a petition with the circuit court dcscrihing the portion and setting faith the facts and reasons therefor. The court shall **fin** a time for hearing and direct publication of a class 3 notice, under ch. 985, and the court shall order a copy of the notice to he mailed to at least one interested person, as to each separate parcel involved, whose post-office address is known or can he ascertained with reasonable diligence. at least 20 days before such hearing. If the court finds that the proposed vacating or replatting is for the best interest of the cemetery

aiithority and that the rights of none to whom cemetery lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating or replatting of the lands of the cemetery. The ordcr shall he effective when recorded by the register of deeds.

(6) This section does not apply to a religious society organized under ch. 187.

History: 1983 a 473; 1989 a 307 ss. 29, 30, 34; 1993 a. 490; 1995 *1*. 110.

157.08 Conveyances. (1) Alter the plat or map is recorded under s. 157.07, the cemetery authority niay sell and convey cemetery lots. Conveyances shall be signed by the chief officer of the cemetery authority, and hy the secretary or clerk of the cemetery authority. if any. Before delivering tlie conveyance to the grantee, the ccmctcry aiithority shall enter on records kept for that purpose, the date and consideration and the name and residence of the grantee. The conveyances may he recorded with the register of deeds.

(2) (a) If a ccmctery lot or mausoleum space is sold by a cemetcry authority and used or intended to be used for the burial of the human remains of the purchaser or the purchaser's family memhers, the purchaser's interests in the ownership of. title to or right to use the cemetery lot or mausoleum space are not affected or limited by any claims or liens of other persons against the cemetery authority.

(b) Before a cemetery authority sells or encumbers any cemetery land, except for a salc described in par. (a), the cemetery authority shall notify the department in writing of the proposed sale or encumbrance. If within 60 days after the department is notified olthc proposed sale or encuinbrance the department notifies the cemetery authority in writing that the department objects to the salc or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the department subsequently notifies the cemetery authority in writing that the objection is withdrawn. The department may object to a sale or eocumhrance only if it determines that the cemetery authority will not he financially solvent or that the rights and interests of owners of cemetery lots and mausoleum spaces will not he adequately protected if the salc or encumbrance occurs. The department may, before the expiration of the 60–day period, notify the cemetery authority in writing that the department approves of the sale or encumbrance. Upon receipt of the department's written approval, the cemetery authority may sell or cncunibcr the cemetery land and is released of any liability undcr this paragraph. The department shall make every effort to make determinations under this paragraph in an expeditious manner.

(c) A preneed sales contract is enforceable against the successor in interest of the cemetery authority that made the sale.

(3) A cemetery authority may sell its personal property at its discretion.

(5) Subsections (1) and (2) (b) do not apply to a religious society organized under ch. 187, and sub. (2) (h) does not apply to a cemetery authority that is not required to he registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1977 c. 449 s. 497; 1989 a. **307;** 1991 a. 269.

157.10 Alienation and use of cemetery lots. While any person is buried in a cemetery lot, the ccmetery lot shall be inalienable, without rhc consent of the ccmctery authority. and on the death of the owner, ownership of the ccmetery- lot shall descend to the owner's heirs; but any one or more of such heirs may convey to any other heir his or her interest in the cemetery lot. No human remains may be buried in a cemetery lot except the human remains of one having an interest in the cemetery lot. or a relative, or the husband or wife of such person, or his or her relative, cxccpt by the consent of all persons having an interest in the ccmetcry lot.

History: *1989 a. 307.*

157.11 Improvement and care *of* cemetery lots and grounds. (1) FENCE; FUNERAL BUILDING A cemetery authority may enclose the grounds of i s ccinetery with a suitable fence, and niay erect thcrcon a building for funeral services.

(2) REGULATIONS The cemetery authority may make regulations for management and care of the cemetery. No person niay plant. in the cemctcry. trees or shrubs, nor erect wooden fences or structures or offensive or dangerous structures or monuments, nor maintain them if planted or erected in violation of the regulations. The cemetery authority may require any pcrson owning or controlling a cemetery lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if the person is a resident of the state, otherwise by publishing a class 3 notice. under ch. 985, in the county. If the person fails to comply within 20 days thereafter, the cemctcry authority niay cause it to he done and recover from the person the expense. The cemetery authority may also impose a forfeiture not exceeding $10 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. Each employee and agent of the cemetery authority shall have constable powers in enforcing the regulations.

(3) CONTRACTS. The cemetery authority may contract with persons who own or are interested in a cemetery lot for its care. The contract shall he in writing, may provide that the ccmctery lot shall be forever exempt from taxes, assessments or charges for its care and the care and preservation of the grounds, shall express the duty of the cemetery authority, be recorded in a hook kept for that purpose. and he effective when the consideration is paid or secured.

(4) ASSOCIATIONS OF RELATIVES Persons owning a cemetery lot or having relatives buried in a cemetery may incorporate an association to hold and occupy a previously constituted cemetery, and to preserve and care for the same. Section 157.062 shall apply to the association. Nothing in this subsection shall give rights of burial. A municipality may lease a municipal cemetery to a cemetery association for preservation and niay contract to permit the association to use cemetery funds therefor. Such leases and contracts may be revoked at will by the municipal hoard.

(5) SUM REQUIRED. The ccmctery authority shall annually **fin** the sum necessary for the care of ccinetery lots and care and improvement of thc cemetery. or to produce a sufficient income for those purposes.

(7) ASSESSMENTS. (a) The cemetery authority may annually assess upon the cemetery lots amounts not to exceed the amounts reasonably required for actual and necessary costs for cleaning and *care of cemetery lots* and *care and improvement* of *the cemetery*. Notice of the assessment, along with a copy of this section, shall he mailed to each owner or person having charge of a cemetery lot. at the owner's or person's last–known post–oftice address, directing payment to the ccmetery authority within 30 days and specifying that such assessments are a personal liability of the owner or person.

(b) The cemetery authority may fix and determine the sum reasonably necessary for the care of the grave or cemetery lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect those amounts as part of the funeral expenses.

(c) Before ordering distribution of the estate o f a dcceascd person. the court shall order paid any assessment under this section. or the sum so fixed for the care of the cemetery lot or grave of the deceased.

id) When uniform care of a cemetery lot has been given for 2 consecutive years or more, for which assessments are unpaid. aficr notice as provided in sub. (2), right to burial is forfeited until delinquent assessments are paid. When uniform care has been given for 5 consecutive years or more and the assessments are unpaid. upon like notice, title to all unoccupied parts of the cemetery lot shall pass to the cemetery authority and may be sold, the

payment of principal to he deposited into the care fund. Before depositing the payment of principal into the care fund, the cemctcry authority may retain an amount necessary to cover the cemetcry authority's administrative and other expenses related to the sale. hut the amount retained niay not exceed 50% of the proceeds.

(8) GIFTS. The cemetery authority shall take, hold and use any gifts, or the income and proceeds of any gifts. as may be made in trust or otherwise, for the improvement, maintenance, repair, preservation or ornamentation of any cemctcry lot or structure in the cemetery. according to the terms of the gift and regulations by the cemetery authority.

(9) HANDLING OF PROPERTY RECEIVED AS GIFT. (a) Before a cemetery authority receives a gift, the surety bonds of the cemctcry authority shall be increased to cover such amount if it docs not then do so. If the bonds are not filed, or the cemetery authority fails to do anything required by this subsection. the judge may appoint a trustee, and all property and money so given and evidences of title and securities shall he delivered to the trustee.

(9g) CARE FUND FOR CEMETERY LOTS. (a) 1. Except as provided in ss. 66.0603 (Im) (c) and 157.19 (5) (b), funds that are received by a cemetery authority for the care of a cemetery lot shall he invested in one or more of the following manners:

a. Deposited and invested as provided in s. 157.19.

b. Deposited with the treasurer of thc county or city in which the cemetery is located if the governing body of the county or city accepts such deposits.

c. If not invested as provided in subd. 1. a. or h., otherwise deposited by the ccmctery authority in an investment approved by the department if the care funds arc segregated and invested separately from all other moneys held by the cemetery authority.

2. The manner in which the care funds are invrstcd may not permit the ccmetery authority to withdraw the care fund's principal amount. The income from the investment of a care fund for the care of cemetery lots may he used only to maintain the cemetcry lots and grounds, except that if the amount of income exceeds the amount necessary to maintain the cemetery lots or grounds properly, the excess amount may be used to maintain any other portion of the ccmetery, including mausoleums. If the care funds are deposited with a city or county, or previously deposited with a village, there shall be paid to the ccmctery authority annually interest on funds so deposited of not less than 2% per year. The governing body of any city or county, or any village or town in the case of previous deposits. may determine to return all or a part of any funds deposited by a ccmetery authority, and that ccmetery authority shall accept the returned funds within 30 days after receiving written notice of that action. If the cemetery authority is dissolved or becomes inoperative, the county or city shall use the interest on the funds for the cars and upkeep of the cemetery. Deposit shall be made and the income paid over from time to time. not less frequently than once each year, and receipts in triplicate shall be given, one tiled with the county clerk, one with the ccmctcry authority and one given to the person making the deposit. Deposits shall be in the amount of $5 or a multiple thereof. Records and receipts shall specify the cemetery lot for the care of which the deposit is mads. Reports of money received for care and of money and property received as gifts shall he made annually as provided in s. 157.62 (2).

(b) Anyone having in custody or control any ccinetery care trust Fund received other than by testament shall, upon demand. deliver it to the cemetery authority to be handled as provided in this subsection.

(c) Except as provided in sub. (11), any cemetery authority that sells a cemetery lot on or after November 1, 1991, shall deposit 15% of each payment of principal into a care fund under par. (a) within 30 days after the last day of the month in which the payment is received. except as provided in sub. (7) (d) and s. 157.115 (2) (f). The total amount deposited must equal 15% of the total amount of all payments of principal that have been received, hut not less than $25.

(9m) ACTION BY DISTRICT ATTORNEY. If any money or property is not turned over when required by this section, or default occurs under a bond, the district attorney. upon the request of the department of regulation and licensing. shall bring action to recover.

(Sr) TAX AND OTHER EXEMPTIONS. Gifts and trusts under this section shall be exempt from taxation and the law against perpetuities, accumulations and mortmain.

(10) EXEMPTION FOR RELIGIOUS SOCIETIES. Subsections (1) to (9), (9g) (a) and (b), (9m) and (9r) do not apply. hut sub. (9g) (c) does apply, to a religious society organized under ch. 187.

(11) EXEMPTION FOR CERTAIN NONPROFIT CEMETERIES. Subsection (9g) docs not apply to a cemetery authority that is not required to he registered undcr s. 140.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1971 c. 41 s. 12; 1977 c. 449 ss. 234, 497; 1979 c. 32 s. 92 (8); 1979 c. 110 s. 60 (13); 1985 a. 200; 1985 a. 316 s. 25; 1987 a. 190; 1989 a. 307; 1991 a. 269; 1999 a. 150 s. 672; 2001 a. 30.

Cross Reference: See s. 863.09 (2) for court order concerning care of graves.

Cross Reference: See s. 701.11 (3) for authorization to distribute small trusts to cemeteries.

Cross Reference: See also chs. RL 53 and 54, Wis. adm. code.

Sub. (9) **(a)** [now sub. (9g) (b)] neither requires nor authorizes payment to entities other than ch. 157 cemetery associations. Krawczyk v. Bank of Sun Prairie, 161 Wis. 36 792, 468 N.W.2d 773 (Ct. App. 1991).

157.111 Opening and closing of burial places. If a grave, mausoleum space or other place used or intended to be used for the burial of human remains is located in a cemetery owned or operated by a cemetery authority. only the cemetery authority or a person designated by the cemetery authority may open or close the grave. mausoleum space or other place used or intended to be used for the burial of human remains.

History: 1993 a. 386.

157.112 Reburial of human remains by a cemetery authority. (1) In this section, "rebury" means to disenomb, disinum or disinter human remains that are hiiried in a cemctcry and reentomb, reinurn or reinter the human remains in another grave, mausoleum space or other place used or intended to be used for the burial of human remains that is located in the same cemetery.

(2) A cemetery authority may rebury human remains that are buried in a cemetery *owned* or operated by the cemetery authority for the purpose of correcting an error made by the cemetery authority in the burial of those human remains.

(3) A cemetery authority may rebury human remains under sub. (2) without first obtaining an authorization under s. 69.18 (4), hut the cemetery authority shall do all of the following:

(a) No later than 30 days after reburying human remains under sub. (2), provide written notice of the reburial to the coroner or medical examiner of the county in which the reburial occurs.

(b) Notify one of the following by registered mail of the reburial:

1. The decedent's spouse.

2. If the person specitied in suhd. 1. is not available, an adult son or daughter of the decedent,

3. If the persons specified in suhds. 1. and 2. are not available. either parent of the decedent.

4. If the persons specified in suhds. 1., 2. and 3. are not available, an adult brother or sister of the decedent.

(3m) If none of the persons specified in sub. (3) (b) 1. to 4. are available for notification under sub. (3) (b), the cemetery authority shall maintain a record of its attempt to provide notification under sub. (3) (b) for not less than 10 years from the date of the reburial of the human remains under sub. (2).

(4) (a) A ccmctcry authority is immune from civil liability for an error that is corrected by a reburial of human remains under sub. (2).

(h) The immunity under par. (a) docs not apply if the error was the result of reckless, wanton or intentional misconduct.

History: 1995 a. 357.

157.114 Duty to provide for burials. (1) In this section, "cemctcry aiithority" docs not include a municipality that takes control of a cemetery under s. 157.115 (1) (b).

(2) A cemetery authority shall, insofar as practicable, provide for burials during each season, including winter. Nnthing in this subsection may be construed to prohibit a ccinctcry authority from charging a reasonable fee to recover the costs related to providing for a burial during difficult weather conditions.

History: 2001 a 16

157.115 Abandonment of cemeteries and cemetery lots. (1) ABANDONMENT OF CEMETERIES (a) If any cemetery located on property not subject to condemnation under ch. *32* is abandoned, the circuit court for tlic county in which the cemetery is located may authorize the removal of bodies from the cemetery to another cemetery upon the petition of 6 or morc residents of the municipality in which the cemetery is located. Prior to authorizing the removal, the court shall publish a notice to all interested parties as provided in s. 879.05 (4). The court may not authorize the removal unless suitable arrangements have been made to reinter the bodies.

(b) 1. When a cemetery authority fails to care for the cemetery for a period of one or more years, the municipality in which the cemetery is located may take control of the cemetery, manage and Care for the cemetery and collect and manage all trust funds connected with the cemctery other than trust funds received by a will.

2. When a cemetery authority abandons or fails to manage or care for the cemetery for a period of 5 or more years, tlic municipality in which the cemetery is located shall take control of the cemetery. manage and care for the cemetery and collect and manage all trust funds connected with the ccnietcry other than trust funds received by a will.

(c) Whenever any cemetcry in a town is falling into disuse, or is abandoned or neglected, and by reason of the removal or death of the persons interested in its upkeep there exists no association or group with authority to transfer ownership and operation of the cemetery to the town, the town board, at the expense of the town. shall take chergc of the cemetery and manage and care for it. and if the town hoard fails to take charge of the cemetery. the circuit judge may upon petition by **6** or more persons interested in the upkeep of the cemetery order its transfer to the town. including the transfer of all assets. Cemeteries so transferred shall be managed as provided for other town cemeteries.

(2) ABANDONMENT OF CEMETERY LOTS. (a) In this subsection:

1. "Ahandoncd lot" means one or more graves of a cemetery lot that is not owned by the cemetery authority of the cemetery in which the cemetery lot is located if those graves have not been used for the burial of human remains and if, according to the records of the cemetery authority, all of the following apply during the 50–year period immediately preceding the date on which the notice requirement under par. (c) is satisfied

a. No owner has transferred any ownership interest in the cemetery lot to any other person.

h. No owncr has purchased or sold another cemetery lot or a mausoleum space in the cemetery.

c. No other grave in that cemetery lo! or adjoining cemetery lot or adjoining mausoleum space that is owned or partially owned hy an owner has been used for the burial of human remains.

d. No grave marker, monument or other memorial has hcen installed on the cemetery lot.

e. No grave marker, monument or other memorial has been installed on any other cemetery lot, in the same cemetery, that is owned or partially owned by an owner.

f. No nameplate, monument or other memorial has been installed to identify the human remains that are buried within a mausoleum space. in the same cemetery. that is owned or partially owned by an owner.

g. The cemetery authority has not been contacted by an owner or assignee or received any other notice or evidence to suggest that an owner or assignee intends to use the cemetery lot for a future hurial of human remains.

2. "Assignee" means a person who has been assigned in the deccascd owner's will or in any other legally binding written agreement, or who is entitled to receive under ch. 852, an owncrship interest in the abandoned cemetery lot.

3. "Owner" means a person who, according to the records of the cemetery authority of the cemetery in which an abandoncd ceinctcry lot is located, owns or partially owns the abandoned cemctery lot.

(b) No cemetery authority may resell an abandoncd cemetery lot unless the cemetery authority complies with tlic requirements in this subsection.

(cj The cemetery authority shall mail to each owner, at each owner's last–known address. a notice of the cemetery authority's intent to resell the abandoned cemetery lot as provided in this subsection. If an owner is buried in the cemetery in which the abandoned cemetery lot is located or if the cemetery authority has any other cvidcnce that reasonably supports a determination by the cemetery authority *that the owner* is drccascd. no notice is required under this paragraph

(d) If no notice is required under par. (c) or **if** within 60 days after notice is mailed under par. (cj. no owner or assignee contacts the ccmctery authority to express an intent to use the abandoncd ccrnctery lot for a future burial of human remains, the cemetery authority shall publish in a newspaper of general circulation in the county in which the abandoned lot is located. a class 3 notice under ch. 985 that includes all of the following:

1. The location of the abandoned lot.

2. The name and last- known address of each owner.

3. **A** statement that. unless an owner or assignee contacts the ccinetcry authority within the period specified in par. (e), the cemetery authority intends to resell the abandoned lot as provided in this subsection.

(e) If within 60 days after notice is published under par. (c) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority shall bring an action in the circuit court of the county in which the abandoned lot is located for a judgment that the cemetery lo! is an abandoned lot and an order transferring ownership of the abandoned lot to the cemetery authority.

(f) If within *one* year *after* the circuit court *enters a judgment* and order under par. (e) no owner or assignee contacts the cemetery authority to express an intent to use the abandoncd lot for a future burial of human remains, the cemetery authority may resell the abandoned lot, except as provided in par. (gj. The payment of principal shall be deposited into the care fund. Before depositing the payment of principal into the care fund, the cemctery authority may retain an amount necessary to cover the cemetery authority's administrative and other expenses related to the sale, but the amount retained may not exceed 50% of the proceeds.

(g) If at any time before an abandoned lot is resold under par. (f) an owner or assigncc contacts tlic ccmctcry authority to express an intent to use the abandoned lot for a future burial of human remains, the authority may not resell the abandoned lot. and ownership of the abandoned lot shall he transferred to the owncr or assignee. The cemetery authority shall pay all costs of transfcrring ownership under this paragraph

(h) Nothing in this subsection prohibits a cemetery authority from seeking the authority to resell more than one abandoned lot by publishing a single class *3* notice under par. (d) or bringing a single action under par. (e) that applies to all of the abandoned lots for which such authority is sought.

History: 1989 a. 307 ss. ism. 20, 28, 45.

157.12 Mausoleums and crematoriums. (1) DEFINITION. Notwithstanding s. 157.061 (5), in this section, "department" means the department of commerce.

(2) CONSTRUCTION OF MAUSOLEUMS (a) Any pcrson who constructs a mausoleum or converts a building or other structure to a mausoleum shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. No pcrson niay modify plans or specifications which have hccn approved under this paragraph without approval in writing from the department. unless such modifications arc cosmetic in nature. The department shall promulgate rules providing reasonable requirements governing the location, material and construction of a mausoleum, in accordance with the requirements in par. (d). Any municipality may enact ordinances governing mausoleums at least as stringent as this section.

(b) The departnieiit shall supervise constniction of any public mausoleum and conversion of any building to a public mausoleum Within 30 days after r^^iving written notice from the cemetery authority that the construction or conversion has been completed. the department shall inspect the piiblic mausoleum and provide the cemetery authority with a written ccitification as to whether the construction or conversion complies with approved plans. If the department determines that; except for certain minor defects, the construction or conversion complies with the approved plans, the department may provide the cemetery authority with a written temporary certification of compliance that is contingent on the correction of those minor defects. **A** temporary certification is valid for a period designated by the department. not to exceed **6** months. No person may sell a mausoleum space. except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in a public mausoleum unless a care fund has been established for the mausoleum under sub. (3) and the department has provided the cemetery authority with a certification or a temporary cenificatioii under this paragraph. If a cemetery authority that has been provided with a temporary certification notifies the department in writing before the date on which the temporary certification expires that the defects in the construction or convcrsion of tho public mausoleum have been corrected, the department shall; within 30 days after receiving the notice, reinspect the public mausoleum and provide the cemetery authority with **a** written certification as to whether the construction or conversion complies with the approved plans. If a cemetery authority that has been provided with a temporary certification docs not receive a written ccrtification from the departnieiit before the date on which the temporary certification expires that the construction or conversion complies with the approved plans, then, heginning on the date on which the certification expires, no person may sell a mausoleum space. except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in the public mausoleum until the defects arc corrected and the department subsequently inspects the public mausoleum and provides the cemetery authority with a certification that the construction or conversion complies with the approved plans. The department may charge a reasonable fee to the cemetery authority for each inspection and certification provided under this paragraph if the inspection and certification are provided within the applicable 30–day period prescribed under this paragraph.

(bm) If a municipality in which a mausoleum is located requires the owner or operator of the mausoleum to obtain from the municipality a permit for the use or occupancy of the mausoleum. the municipality shall issue that permit to the owner or operator if the owner or operator has been provided with a certification or temporary certification for the mausoleum under par. (b). The permit shall be valid for a period equal to or longer than the period for which the certification or temporary certification under par. (b) is valid.

(c) 1. Except as provided in subd. 2., no person may establish or use a public mausoleum unless the mausoleum is located inside a cemetery of 20 acres or more that has been in existence for 10 years or more.

2. A person may establish or use a public mausoleum in a cemetery consisting of less than 20 acres in a municipality that has enacted an ordinance under s. 157.129 (2) if the cemetery meets the minimum acreage rcquiremcnt specified in that ordinance.

(d) A mausoleum shall be constructed to last as long as possible, taking into consideration the technology and economics applicable to mausoleum construction at the time of construction.

(3) CARE FUND FOR MAUSOLEUMS (a) Any person who operates a public mausoleum shall establish a care fund as follows:

1. If the mausoleum has been in existence since **June** 15. 1933. and is covered by the care kind of tlie cemetery in which the mausoleum is located, the ceinetery shall deposit at least 1% of each payment of principal received from th^ s: le of a mausoleum space into the care fund. until the care fund equals 10% of the cost of constructing the mausoleum.

2. Except as provided in subd. 1.. the operator of the mausoleum shall deposit at least 25% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 25% of the cost of constructing the mausoleum.

3. The operator shall make deposits rcqtiired under subds. 1 and 2. within 30 days after the last day of the month in which the payment is received. The municipality in which the mausoleum is located may, by ordinance, require a larger fund, but only if the departincnt notifics the municipality in writing that the department approves of the requirement. The department may promulgate rules establishing uniform standards for approvals under this subdivision.

(b) The cemetery's treasurer is the custodian of the fund. The treasurer shall file with the cemetery, at the cemetery's expense, a bond with sureties approved by the department of regulation and licensing to indemnify the cemetery against loss if the treasurer fails to maintain the fund. No indemnity is required if the terms of sale of a mausoleum space require the purchaser to pay directly to a trust company in the state, designated by the cemetery as custodian of the fund. The fund shall be invested as provided in s. 157.19. Income from investment may be used only to maintain the mausoleum, except that if the amount of income exceeds the amount necessary to properly maintain the mausoleum the excess amount may be uscd to maintain any portion of the cemetery.

(4) CONSTRUCTION OF CREMATORIUMS. (a) Any person who constructs a crematorium or converts a building or other structure to a crematorium shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. The department may promulgate rules governing the location, material and construction of any crematorium. Any municipality may enact ordinances governing crematoriums at least as stringent as this subsection.

(b) The department shall supervise construction of any crematorium and conversion of any building or other structure to a crematorium. No person may modify departmental construction or conversion requirements without written approval of the department. No person may operate a crematorium unless the department certifies in writing that construction or conversion complied with approved plans.

History: 1971 c. 41 s. 12; 1971 c. 164; 1977 c. 449; 1979 c. 221; 1981 c. 20; 1989 a. 307; 1991 a. 269; 1995 a. 27 ss. 4402, 9116 (5); 1999 a. 150 s. 672.

157.125 Trustees for the care of cemeteries or cemetery lots. (1) If a trust is created for the care of a burial place or grave but no trustee is named in the will to administer the trust, the circuit court having jurisdiction may name the county treasurer of the county in which the burial place or grave is situated as trustee, except as provided in sub. (2). if not contrary to the terms of the trust. the county treasurer may contract with the person in charge of thc burial place or grave for its carc and pay to that pcrson the income from the trust property or the part of the income that may be necessary for that purpose, and if there is no person in charge of the burial place or grave then the income shall be paid to the city, village or town. in which the burial place or grave is sihiated. and for the purposes of this subsection the governing body of that

municipality has the duty of caring for the burial place or grave to the extent of money received for that purpose. The county treasurer shall annually render an account to the circuit court as provided in ch. 701 and the person or municipality receiving money for such care shall also render an annual accounting to the Circuit court and the department as provided in s. 157.62 (2) (b) 3. to 7.

(2) If the burial place or grave is located in a cemetery owned and opcratcd by a religious society organized under ch. 187, the court shall name the religious society as the trustee unless the religious society petitions the court to name the county treasurer as the trustee.

History: 1971 c. 41 s. 11; 1979 c. 175 s 50; 1989 a. 307.

157.128 Minimum acreage requirement for cemetery established on or after November 1, 1991. (1) Except as provided in subs. (2) and (3). no cemetery may he dedicated on or aficr November 1, 1991, unless the cemetery consists of at least 20 contiguous acrcs.

(2) A cemetery consisting of less than 20 contiguous acrcs may he dedicated on or after November 1, 1991, if all of the following apply:

(a) The cemetery is owned by a religious association.

(h) The religious association is responsible for all liabilities of the cemetery.

(c) The total acreage of all other cemeteries owned by the religious association exceeds 20 acres.

(3) (a) **A** cemetery consisting of less than 20 contiguous acres may he dedicated in a municipality that has enacted an ordinance under s. 157.129 if the cemetery meets the minimum acreage requirement specified in that ordinance.

(b) A cemetery consisting of less than 20 contiguous acrcs may hc dedicated by a cemetery authority that is not required to he registered under s, **440.91** (1) and that is not organized or conducted for pecuniary profit.

History: 1989 a 307; 1991 a. 269; 1999 a. 150 s. 672

157.129 Minimum acreage of cemeteries; local ordinance. A city, village or town may enact and enforce an ordinance that does any of the following:

(1) Allows a cemetery consisting of less than the minimum acreage specified ins. 157.128 (1) to he dedicated; as defined in s. 157.061 (4), in that city, village or town.

(2) Allows a person to establish and use a public mausoleum in a cemetery consisting of less than the minimum acreage specified ins. 157.12 (2) (c).

History: 1991 a. 269; 1999 a 150 s. 157; Stats. s. 157.129.

157.19 Deposit and investment of care funds and preneed trust funds. (1) In this section, "financial institution" has the meaning given in s. 705.01 (3).

(2) (a) Except as providcd in sub. *(5)* and the rules promulgated under sub. (4), the cemetery authority inay deposit care funds undcr s. 157.11 (9g), and shall deposit care funds undcr s. 157.12 (3) and prcnccd trust funds under s. **440.92**, with a financial institution located in this state. The financial institution shall he the trustee of the care funds and preneed trust fiinds. **A** hank need not comply with s. 221.0316 (1) or (2) or ch. 223 to accept or disburse deposits under this section. The trustee shall invest the care funds and prcneed trust funds as provided under s. 881.01, except as provided in sub. *(5)* and the rules promulgated under sub. (4).

(h) The cemetery authority inay not change the trustee of a care fiind under s. 157.11 (Yg) that is deposited under this section or of a care fund under s. 157.12 (3), and the financial institution may not release any portion of the principal amount of the care fund. without the department's written approval.

(c) Upon request of the financial institution, the prenced seller, as defined in s. 440.90 (8). shall furnish the financial institution with a copy of the preneed sales contract. Except as provided in s. 440.92 (2) (c). (f) and (j) and *(5)*. preneed tnist funds. and any interest or dividends that have accumulated on the prcnccd tnist funds, may not be withdrawn until all obligations under the preneed sales contract have been fulfilled. The financial institution is not responsible for the fulfillment of any part of the preneed sales contract; except that the financial institution shall release the prcnccd trust funds, and any interest or dividends that have accumulated on the prcnccd tnist funds, as provided by the terms of thc preneed sales contract. The trustee of a preneed tnist fund inay not be changed without the department's written approval. If the trustee or account number of a prenced trust fund is changed, the cemetery authority shall notify the department in writing within 30 days after the change.

(d) The department shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (h) and (c). For approval of changes under par. (h). the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will he adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser undcr the prenced sales contract will he adequately protected if the change is approved.

(4) The department may promulgate rules allowing funds invested under this section to be deposited with a financial institution located outside this state.

(5) (a) This section does not apply to care fiinds under s. 157.11 (9g) that are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds of a cemetery for which a certification under s. 157.63 is effective, to preneed trust funds of a ccmetcry for which a certification under s. 440.92 (9) is effective, or to care funds orpreneed trust funds of a cemetery authority that is not required to he registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

(h) If the department determines that care funds under s. 157.11 (9g) that have not been deposited with a city or county as provided in s. 157.11 (9g) (a) arc not being properly segregated from other moneys held by the cemctery authority or that those care funds arc not being properly invested as required in s. I57.11 (9g) (a), the department may require the cemetery authority to deposit those care funds with a financial institution for investment under this section.

(6) Nothing in this section prevents a cemetery authority from combining its care funds and preneed trust funds for investment undcr this section if the ccmctcry authority maintains separate accountings for each fund.

(7) Except as provided in sub. *(5)* (a), this section applies to every care fiind and every prcnccd trust fund of a cemetery authority, regardless of when the carc fund or prenced trust fiind was established.

History: 1989 a. **307:** 1991 a. 74, 269; 1995. ■336.

Cross Reference: See also ch. RL 53, Wis. adm. code

157.50 Municipal cemeteries. (1) Municipalities may acquire by gift, purchase or condemnation land for cemeteries within or without their boundaries. In the case of towns acquisition and price must be authorized by the t o w meeting.

(2) The governing body of every municipality acquiring a cemetery shall by ordinance determine the system of management and operation. Any municipality inay proceed undsr s. 157.07, 157.08 or 157.11 (7), or otherwise as provided by ordinance.

(3) Upon organization of a cemetery association to take over a municipal cemetery. the municipality may convey real property and all funds and other personal property to the association. In towns the conveyance must be authorized by the town meeting.

(4) When a town cemetery becomes embraced within a city or village, it shall be managed as though acquired thereby.

(5) The town meeting may authorize the town hoard to appropriate up to $500 in any year for the improvement of the town cemetery, under supervision of the town hoard.

(6) Any municipality that creates a care fund shall invest the money received for care as provided by ch. 881. The municipality may terminate the care fund. transferring the money to its general fund. if the municipality owns the cemetery and provides all maintenance expcnscs in perpetuity fix those graves in the cemetery at the time of termination.

History: 1971 c. 41 s. 12: 1979c. 254; 1983 a. 532; 1989 a 307.

157.60 Public easement in cemetery. Any person who shall open or make any highway, town way or private way or shall construct any railroad; turnpike or canal or anything in the nature of a public easement over, through. in or upon such part of any enclosure. being the property of any town, city. village or religious society or of private proprietors. as may be used for the burial of the dead, unless an authority for thnt purpose shall be specially granted by law or unless the consent of such town, city. village, religious society or private proprietors, respectively. shall be first obtained, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $300.

157.62 Reporting; record keeping; audits. **(1)** CEMETERY ASSOCIATIONS (a) Except as provided in par. (b) and s. 157.625, every ccmetery association shall file an annual report with the department of financial institutions. The rcport shall be made on a calendar–year basis unless the department of financial institutions, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period. The annual report shall include all of the following:

1. The name ofthc cemetery association and the address of its principal office.

2. The name. residence address and business address of each officer, director and trustee of the ccmctery association.

3. The name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the cemetery association.

4. The dates and places of all meetings and elections.

5. A statement of whether the cemetery association engaged in the operation of a cemetery during the previous calendar year.

(b) Paragraph (a) does not apply to any person required to file arcportunders. 180.1622 or 181.1622.

(c) The dcpartmcnt of financial institutions may prescribe and Furnish forms for reports required under this subsection. If the department of financial institutions prescribes forms under this paragraph, the department of financial institutions shall mail the forms to cemetery associations required to file under par. (a) no later than 60 days bcforc the reports are due.

(2) CEMETERY AUTHORITIES. (a) Except as provided in ss. 157.625 and 157.63 (1), every cemetery authority shall file an annual report with the department. The report shall be made on a form prescribed and furnished by the department. The report shall be made on a calendar year basis unless the department, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period.

(b) The ccmetcry authority shall include all of the following in the annual report required under par. (a):

1. A copy of any report required undcr sub. (1) (a) or s. 180.1622 or 181.1622.

2. If the cenietery authority is required to file a report under s. 180.1622 or 181.1622. the information specified in sub. (1) (a) 3.

3. An accounting of amounts deposited in, aniounts withdrawn from, incotne accruing to and the balance al the close ofthe reporting period of any preneed trust funds of the cemetery.

4. An accounting of amounts deposited in. amounts withdrawn from. other income accruing to and the balance at the end ofthc reporting period of care funds of the cemetery: including the funds in ss. 157.11 (9g) (a), 157.12 (3) and 157.125.

5. An accounting of all gifts received, income from gifts deposited in accounts not accounted for under subd. 4., amounts expended from thosc accounts and the balance of those accounts at the end of the reporting period.

6. The name and address of each trustee for the funds undcr subds. 3. to 5. and of the financial institution holding those accounts at the close of the reporting period.

7. The information specified in sub. (1) (a), to the extent applicable, if the cemetery is not required to file a report under sub. (1) (a) or s. 180.1622 or 181.1622.

(c) All records relating to accountings of trust funds described under par. (b) 3. to 7. and maintained by the department am confidential and arc not available for inspection or copying undcr s. 19.35 (1).

(d) The department shall review each report filed under par. (a) to determine whether the cemetery authority is complying with this subchapter.

(3) RECORDS; INSPECTION. (a) Every cemetery authority shall keep a copy of the report required under sub. (2) (a) at its principal place of business and, except for those records relating to accountings of trust funds described under sub. (2) (b) 3. to ?., shall make the report available for inspection; upon reasonable notice, by any person with an interest in a cemetery lot or a mausoleum space in a cemetery owned or operated by the cemetery authority.

(b) Every cemetery authority shall maintain all of the following:

1. The records needed to prepare the reports required under sub. (2) (a).

2. Records that show. for each deposit in a trust fund or account specified in sub. (2) (b) 3. or 4., the name of the purchaser or beneficiary of the contract relating to the deposit and the item purchased.

3. A copy of each contract for the sale of a ccmctery lot, mausoleum space or ceinetery merchandise.

(4) RECORDS MAINTENANCE. The rccords under sub. (3) (b) 1. shall be permanently maintaincd by the ccmetery authority or licensee. Each record under sub. (3) (b) 2. shall be maintained for not less than 3 years after the date of the deposit. Each copy of a contract under sub. (3) (b) 3. shall be maintained for not less than 3 years after all of the obligations of the contract have been fulfilled. The department may promulgate rules to establish longer time periods for maintaining records undcr sub. (3) (b) 2. and 3.

(5) RULES; RECORDS. The department may promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records.

(6) AUDIT. Except as provided in ss. 157.625, 157.63 (5) and 440.92 (9) (e), the department may audit, at reasonable times and frequency, the rccords, trust funds and accounts of any cemetery authority.; including records, trust funds and accounts pertaining to services provided by a cemetery authority which arc not otherwise subject to the requirements under this chapter. The department may conduct audits under this subsection on a random basis, and shall conduct all audits under this subsection without providing prior notice to the cemetery authority.

(7) RULES; FILING FEE. The department may promulgate rules establishing a filing fee to accompany the report required under sub. (2) (a). The filing fee shall be based on the approximate cost of regulating cemetery authorities.

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27: 1997 a 79

Cross Reference: *See* also ch. RL 51, Wis. adm. code.

157.625 Reporting exemption for certain cemeteries. **(1)** A cemetery authority that is not required under this chapter or under s. 440.92 to maintain any care funds or preneed trust funds is not required to file an annual report under s. 157.62 (2).

(2) A cemetery authority whose annual operating budget for the cemetcry is $2,500 or less is not rcquircd to tile an annual report under s. 157.62 (2).

(3) Section 157.62 does not apply to a cemetery authority that is not required to he registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1991 a. 269.

157.63 Reporting and auditing exemptions; certification of compliance of cemetery affiliated with religious society. (1) In lieu of filing an annual report under s. 157.62(2), a cemetery authority of a ccinetery that is affiliated with a religious society organized under ch. 187 or that religious society may file an annual certification with the department as provided in this section.

(2) A certificatioii under this section shall be made on a form prescribed and furnished by the department and include all of the following:

(a) The name and address of each cemetery to which the certification applies.

(b) A notarized statement of a pcrson who is legally authorized to act on behalf of the religious society under this section that. during the reporting period under s. 157.62, each cemetery and the cemetery authority of each cemetery specified under par. (a) have either fully coinplied or have substantially complied with ss. 157.11 (9g) and 157.12 (3).

(3) If the statement under sub. (2)(b) includes a statement of substantial compliance, the statement under sub. (2) (bj must also specify those instances when the cemetery or cemetery authority did not fully comply with s. 157.11 (9g) or 157.12 (3).

(4) A certification undcr this section is effective for the 12–month period immediately following the reporting period under s. 157.62 t21 for which the cemetery authority is certified under this section to have fully or substantially complied with ss. 157.11 (9g) and 157.12 (3).

(5) During the effective pcriod specified under sub. (4), the department may not audit the care funds or any records or accounts relating to the care funds of a cemetcry to which a certification under this section applies.

(6) The religious society that is affiliated with a cemetery to which a certification under this section applies is liable for the damages of any person that result from the failure of the cemetery or cemetery authority to fully comply with s. 157.1l (9g) or 157.12 (3) during the reporting period under s. 157.62 (2) fur which such compliance has been certified under this section.

History: 1989 a. 307; 1991 a. 269.

Cross Reference: See also ch. RL 51, Wis. adm. code.

157.635 Regulations of cemetery affiliated with religious society. Nothing in this suhchapter prohibits a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 from prohibiting the burial of the human remains of an individual in the cemetery if the individual was in a class of individuals who arc prohibited under regulations adopted by the cemetery authority or religious society from being buried in the cemetery.

History: 1989 a. 307.

157.64 Penalties. (1) In addition to or in lieu of other remedies provided by law, any person who violates this subchapter or any rule promulgated under this subchapter may he required to forfeit not more than $200 for each separate offense. Each day of continued violation constitutes a separate offense.

(2) Any person who intentionally does any of the following may be fined not more than $1,000 or imprisoned for not more than 90 days or both:

(a) Violates s. 157.08(2) (b), 157.11 (9g) or 157.12 (2)(b), (c) or (d) or (4) (b).

(h) Fails to handle funds for the improvement and care of a cemetery as required in s. 157.11 or 157.125.

(c) Fails to deposit or invest care funds or prcneed trust funds as required in s. 157.19.

(d) Fails to filea report or files an incomplete, false or misleading report under s. 157.62 (1) or (2).

(e) Fails to maintain records as required in s. 157.62(3) and (4).

(f) Files a false or misleading certification under s. 157.63.

(g) Violates s. 157.111.

(3) Any person who intentionally commits an act spccificd under sub. (2) (a) to (f) with intent to defraud may he punished for theft under s. 943.20.

History: 1989 a. 307; 1991 a. 269; 1993 a. 386.

157.65 Enforcement. (1) (a) If the department of regulation and licensing has reason to believe that any person is violating or has violated this subchapter or any rule promulgated under this subchapter and that the continuation of that activity might cause injury to the public interest, the department of regulation and licensing may investigate.

(b) If the department of commerce has reason to believe that any person is violating s. 157.12 or any rule promulgated tinder s. 157.12 and that the continuation of that activity might cause injury to the public interest, the departmenr of commerce may investigate.

(2) The departmcnt of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or pemianent injunction any violation of this subchapter. The court may, prior to entry of final judgment. make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action. if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpocnd persons and require the production of books and other documents, and may request the department of regulation and licensing or the department of commerce to exercise its authority under sub. (1) to aid in the investigation of alleged violations of this subchapter.

(3) In lieu of instituting or continuing an action under this section, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to he a violation of this suhchapter from the person who has engaged in the act or practice. An assurance entered into under this subsection shall not he considered evidence of a violation of this subchapter, but a violation of the assurance shail be treated as a violation of this subchapter.

History: 1989 a. 307: 1995 a. 27 ss 4405, 4406, Y116 (5).

SUBCHAPTER III

BURIAL SITES PRESERVATION

157.70 Burial sites preservation. (1) DEFINITIONS. In this section:

(a) "Board" means the burial site preservation hoard.

(b) "Burial site" means any place where human remains are buried.

(c) "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c).

(cm) "Dedicated has the meaning given ins. 187.061 (4).

(d) "Director" means the director of the historical society or his or her formally appointed designee.

(e) "Disturb" includes defacing, mutilating, injuring. exposing, removing. destroying, desecrating or molesting in any way.

(f) "Human remains" means any part of the body of a deceased person in any stage of decomposition.

(g) "Interest" means an interest based on any of the following:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific. environmental or educational purpose.
4. Land use.

5. A commercial purpose not related to land use which is consistent with the purposes of this section.

6. Any other interest which the hoard deems to be in the public interest.

(h) "Owner" means a person who owns or leases land on which a burial site is located.

(hm) "Person" includes the state.

(i) "Qualified archaeologist" means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full-time professional experience or equivalent specialized training *in* archaeological or physical anthropological research, administration or management. at least **4** months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

(1m) APPLICABILITY. This section does not apply to the disturbance ofcataloged land contiguous to a cataloged burial site if the cataloged burial site was recorded tmdcr sub. (2) (i) before August 9, 1989.

(2) DIRECTOR'S DUTIES The director shall:

(a) Under a special inspection warrant as required under s. 66.0119, identify and record in a catalog burial sites in this state and. for burial sites which are not dedicated. sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded and any county or local historical society in the county where the burial site or the land is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in (he disturbance of the burial site or the cataloged land contiguous to the burial site, is not subject to s. 19.35 (1). The notice shall include information about the permit required undcr sub. (5) and the toll free number the owner may call for more infomiation. In this paragraph, "sufficient contiguous land" means land that is within at least 5 feet from any part of a burial site.

(bj Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be ofarchaeological interest or of any area likely to contain a burial site. the disclosure of which would bc likely to result in the disturbance of the burial site or the cataloged land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide For and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

(c) Establish a registry for any person whom the board determines to have an interest in a cataloged burial sitc or class ofcataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the hoard determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person *is* determined to have an interest. Any information in the registry related to the location of any burial site. the disclosure ofwhich would be likely to result in disturbance of the burial site, is not subject to disclosure under s. 19.35 (1).

(f) Assist owners in identifying persons to be notified under sub. (5)(b) 2.

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial sitc.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (1) (a).

(2m) BOARD DUTIES. The hoard shall:

(aj Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged burial sites and notify the director for entry in the registry under sub. (2) (e).

(c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director aud the division of hearings and appeals in the department of administration under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director undcr sub. (6).

(f) As it dcems appropriate. approve transfers ***of*** burial sites under sub. (6m) (b) 2.

(2p) APPLICATION FOR REGISTRY. Any person may apply to the board for entry in the registry and shall indicate in which burial sitc she or he is claiming an interest.

(2r) SITE DISTURBA ICE PROHIBITED. Except as provided tinder subs. (4j and (5) and ss. 157.111 and 157.112, no person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. This subsection docs not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(3) REPORT OF DISTURBED BURIAL SITES (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to the requirements of subs. **(4)** and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged under sub. (2) (a).

(4) PROCEDURE FOR UNCATALOGED BURIAL SITES. (a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may give notice to the board. and to any person who has or may have an interest in the burial site. that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director iinder par. (cj 2. or (d).

(cj 1. Using information available concerning the burial site and the proposed activity. the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director detemiines that the pi-oposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner docs one of the following:

a. Subject to s. 157.111, authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3.. he or she shall notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3. a. all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site. the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

(5) PROCEDURE FOR CATALOGED BURIAL SITES. (a) No person may intentionally cause or permit the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director issued under this subsection.

(b) Any person who intends to cause or permit any activity on a cataloged burial site or on cataloged land contiguous to a cataloged burial site which in any way might disturb the burial site or the land shall:

1. Apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The dircctor shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a fonn provided by the director, notify any person whose name the dircctor has sent under subd. 1. of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a pennit to disturb the burial site or the land.

(c) 1. Upon request *of* the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division of hearings and appeals in the department of administration to conduct a hearing **on** whether a permit should be issued to disturb the burial site or the land which is the subject of the request. If in any part of the hearing the location of a burial sitc is the subject of the testimony. such part of the hearing shall be conducted in a session closed to the public and the racord of such past of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1., the director shall determine whether a pennit should he issued to disturb the burial sire or the land which is the subject of thc application under par. (b) 1. If the dircctor determines that the benefits lo the pennit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land, the director shall grant a permit to disturb the burial site or the land. In making the determination, the director shall consider the interest *of* the public in addition to any other interests. If the director determines that any of the following classes of interest arc represented, the director shall weight the interests in the following order of priority:

a. Direct kinship.

b. A cultural. tribal or religious affiliation.

c. **A** scientific. environmental or educational purpose.

cm. Historical and aesthetic significance of the burial site.

d. Land use.

e. A commercial purpose not related to land use which is consistent with the purposes of this section.

f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to he necessary under subd. 1., the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial sitc or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (c) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial sitc or the land which is the subject of the hearing iindcr this paragraph. In making the determination. the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

a. Direct kinship.

b. **A** cultural. tribal or religious affiliation.

c. **A** scientific, environmental or educational purposc.

cm. Historical and aesthetic significance of the burial site.

d. Land use.

e. **A** commercial purpose not related to land use which is consistent with the purposes of this section.

f. Any other interest which the board deems to he in the public interest.

2m. If the division makes a determination for granting **a** permit to disturb a burial site which is the subject of the hcaring under this paragraph, the division may determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or othcr appropriate disposition when the burial site is disturbed. In making such a determination. the division shall follow the order of priority prescribed in sub. *(6)*(a).

3. If the determination under subd. 1m. or 2. is for granting **a** permit to disturb a burial site which is the subject of the hearing under this paragraph, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time. beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. **A** permit issued under this subsection shall be subject to s. 157.111 and may he subject to any other condition or exemption deemed necessary to limit the disturbance of a burial site or the land or to minimize any other burden on any person affected by granting the permit.

5. Any party in a hearing under this paragraph may appeal the determination under subd. 1m. or 2. to the board.

(d) 1. The director may charge a fee to recover the cost of excavation of a cataloged burial site under par. (c) 3. on the basis of the historical society's assessment of the costs associated with excavation of the cataloged site.

2. The dircctor may charge a fee to recover costs incurred by the historical society to analyze and reinter or otherwise dispose of human remains and other material under par. (c) 2m.

(6) DISPOSITION OF HUMAN REMAINS REMOVED **FROM** BURIAL SITES (a) If human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a. or *(5)* (c) 3. and the division has not determined under sub. *(5)* (c) 2m. the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and

reintennent or other appropriate disposition based on the following, in the order of priority stated. when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.

2. A cultural, tribal or religious affiliation

3. A scientific. environmental or educational purpose.

4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reinterring the human remains and objects received under par. (a). the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(c) The director shall enter into the catalog prepared under rub. (2)(a) the site of any reinterment under par. (a) or (b).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

(6m) BURIAL SITES ON PUBLIC LANDS (a) In this subsection, "municipality" has the meaning given under s. 66.0621 (I) (a) and includes the state.

(b) Notwithstanding any other provision of this section. a municipality:

2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturbance by any person and unless the transfer is approved by the board.

3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserver.

(7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation. inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

(8) REMEDIES. Any person who intentionally disturbs. without the authorizatioii of the director under sub. (4) (c) 2. or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site or the cataloged land contiguous to a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial sitc or in reinterring the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial sitc or in reinterring the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial sitc or the cataloged land contiguous to a cataloged burial sit;: or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment. in the order of priority specified in sub. (6)(a).

(9) PRESERVATION OF RIGHTS The transfer of title to any property shall not change the rights and duties of any person undcr this section.

(10) PENALTIES (a; Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial sitc as required under sub. (3) shall forfeit not less than $100 nor more than $1,000.

(b) Any person who intentionally disturbs a burial site which is not catalogcd without the authorization of the dircctor under sub. (4)(c) 2. or (d) shall forfeit not less than $500 nor more than $2,000 if the burial site is not dedicated or shall forfeit not less than 51,000 nor more than Sl0.000 if the burial site is dedicated.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4)(a) without the authorization required under sub. (4) (c) 2. or (d) shall forfeit not less than $1,000 nor more than $10,000.

(d) Any pcrson who intentionally causes or permits any activity which disturbs a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than 51.000 nor more than $10.000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

History: 1985 a. 316; 1987 a. 27; 1989 a. 3, 31, 359; 1991 a. 39; 1993 a. 386; 1995 a. 357; 1999 a. 83; 1999 a. 150 s. 672; 2001 a. 16.

Cross Reference: See also ch. HS I. Wis. adm. **code.**

Note: 1985 Wis. her 316, which created this section, contains extensive notes. Also. Section I of the Act is entitled "Legislative findings and purpose".

CHAPTER 252
COMMUNICABLE DISEASES

252.10 Public health dispensaries.
252.14 Discrimination related to acquired immunodeficiency syndrome.
252.15 Restrictions on use of a test for HIV.

252.10 Public health dispensaries. **(1)** A local health department may request from the department certification to establish and maintain a public health dispensary for the diagnosis and treatment of persons suffering from or suspected of having tuberculosis. Two or more local health departments may jointly establish, operate and maintain public health dispensaries. The department shall certify a local health depanment to establish and maintain a public health dispensary if the local health department meets the standards established by the department by rule. The department of heaith and family services may withhold, suspcnd or revoke a certification if the local health department Fails to comply with any rules promulgated by the department. The department shall provide the local health department with reasonable notice of the decision to withhold, suspend or revoke certification. The department shall offer the local health department an opportunity to comply with the rules and an opportunity for a fair hearing. Certified local health departments may contract for public health dispensary services. If the provider of those services fails to comply, the department may suspend or revoke the local health department's certification. The department may establish, operate and maintain public health dispensaries and branches in areas of the statc where local authorities have not provided public health dispensaries.

(6) (a) The state shall credit or reimburse each dispensary on an annual or quarterly basis for the operation of public health dispensaries established and maintained in accordance with this section and rules promulgated by the department.

(b) The department shall determine by rule the reimbursement rate under par. (a) for services.

(g) The reimbursement by the state under pars. (a) and (b) shall apply only to funds that the department allocates for the reimbursement under the appropriation under s. 20.435 (5) (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries, local health departments, physicians or advanced practice nurse prescribers.

(9) Public health dispensaries shall maintain such records as are required by the department to enable them to carry out their responsibilities designated in this section and in rules promulgated by the department. Records may be audited by the department.

(10) All public health dispensaries and branches thereof shall maintain records *of* costs and receipts which may be audited by the department of health and family services.

History: 1971 c. 81; 1971 c. 211 s. 124; 1973 c. 90; 1975 c. 39, 198, 224; 1975 c. 413 ss. 2, 18; Stats. 1975 s. 149.06; 1977 c. 29; 1981 c. 20 ss. 1446, 2202 (20) (c); 1983 a. 27; 1985 a. 29; 1991 a. 39, 160; 1993 a. 27 ss. 406, 407, 409, 411 to 414; Stats. 1993 s. 252.10, 1993 a. 443; 1995 a. 27 ss. 6318, 9126 (19), 9145 (1); 1997 a. 27, 75, 156, 175, 252; 1999 a. 9, 32, 186.

Cross Reference: See also ch. HFS 145, Wis. adm. code. .

252.14 Discrimination related to acquired immunodeficiency syndrome. **(1)** In this section:

(ad) "Correctional officer" has the meaning **given** in s. 301.28 (1).

(am) 'Fire fighter" has the meaning given in s. 102.475 (8) (b).

(ar) "Health care providei' means any of the following:

1. **A** nurse licensed under ch. 441

2. **A** chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447.

4. **A** physician licensed under subch. II of ch. 448.

4c. A perfusionist licensed under subch. II of ch. 448.

NOTE: Subd. 4c. is created eff. 1–1–03 by 2001 Wis. Act *89.*

4e. A physical therapist licensed under subch. III of ch. 448.

NOTE: Subd. 4e. is amended eff. 4–1–04 by 2001 Wis. Act 70 to read: 4e. A physical therapist or physical therapist assistant licensed under subch. III ofch. 448.

4g. **A** podiatrist licensed under subch. IV of ch. 448.

4m. A dietitian certified under subch. V of ch. 448.

4p. **An** occupational therapist or occupational therapy assistant liccnscd under subch. VII ofch. 448.

4q. An athletic trainer licensed under subch. VI ofch. 448.

5. An optometrist licensed under ch. 449.

6. A psychologist licensed under ch. 455.

7. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 7. is shown as amended eff. 11–1–02 by 2001 Wis. Act 80. Prior to 11–1–02 it reads:

7. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

8. A speech--language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

9. An employee or agent of any provider specified under subds. 1. to 8.

10. **A** partnership of any provider specified under subds. 1. to 8.

11. **A** corporation of any provider specified under subds. 1. to 8. that provides health carc services.

12. **An** operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

13. An emergency medical technician licensed under s. 146.50 (5).

14. **A** physician assistant licensed under ch. 448. 15. **A** first responder.

(c) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(d) "Inpatient health care facility" means a hospital. nursing home, community–based residential facility, county home, county mental health complex or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a Facility under s. 45.365, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(2) No health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, home health agency, inpatient health care facility or person who has access to a validated test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual. if his or her condition is within the bcope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(am) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, refuse to provide services to the individual.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(bm) If a peace officer, fire fighter, correctionai officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, provide services to the individual at a standard that is lower than that provided other individuals with like service needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired

immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition eacccds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating Sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to 55.000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

History: 1984 a. 201; 1991 a 32. 39, 160, 189. 269, 315; 1991 a. 27 ss. 326 to 331; Stats. 1943 s. 252 14; 1993 a 105. 190. 252. 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 is 6322, 9145 (1); 1997 a. 27, 35, 67. 75. 175; 1999 a. 9, 32. 180; 2001 a. 70, 80. 89.

252.15 Restrictions **on use of a** test **for HIV.**

(1) DEFINITIONS In this section: (ab) "Affected person" means an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or kccpcr of a jail or person designated with custodial authority by the jailer or keeper, health care provider, employce of a health care provider or staff member of a state crime laboratory.

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(af) "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

(aj) "Fire fighter" has the meaning given in s. 102.475 (8) (b).

(am) "Health care professional" means a physician who is licensed under ch. 448 **or** a registered nurse or licensed practical nurse who is licensed under ch. 441

(ar) "Health care provider" means any of the following: 1. **A** person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 1. is **shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to** 3–1–03 **it reads: 1. A person or entity that is specified in s. 146.81**

(1), but does not include **a massage therapist or bodyworker issued a license of registration under subch.** XI **of ch. 440.**

2. **A** home health agency.

3. An employce of the Mendota mental health institute or the Winnebago mental health institute.

(cm) "Home health agency" has the meaning given in s. 50.49 (1) (a).

(d) "Informed consent for testing or disclosure" means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or to the disclosure to another specified person **of** the results of a test administered to the person consenting.

(e) "Informed consent for tcsting or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or non-antigcnic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

(eg) "Relative" means a spouse, parent. grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(em) "Significantly exposed means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen: vaginal secretions; Cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an cyc, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericdrdiai or amniotic fluid; or other body fluid that is visibly contaminated with blood.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(fm) "Universal precautions-' means measures that a health care provider, an employce of a health care provider or other individual takes in accordance with reconimendations of the federal centers for disease control for the health care provider, employee or other individual for prevention of HIV transmission in health– care settings.

(2) INFORMED CONSEVT FOR TESTING OK DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. 1g., a health care provider who procurcs, processes, distributes or uses a human body part or human tissue donated as specified under s. 157.06 **(6)** (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or non-antigcnic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigcn or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

1g. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to tcsting under subd. 1. is unavailable, the requirement of subd. 1. does not apply.

2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

3. The medical director of a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. A health care provider may subject an individual to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual's guardian, if the individual is adjudicated incompetent under ch. 880; from the individual's parent or guardian, if the individual is undcr 14 years of age; or from the individual's closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

6. **A** health care professional acting under an order **of** the court under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or *(5)* may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding

Sub. (4) (c), the test results may not be made part of the individual's pernianent medical record.

7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer **or** keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employee of a health care provider who, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; or a staff member of a state crime laboratory who; during the course of handling or processing specimens of body fluids or tissues of an individual; is significantly exposed to the individual may subject the individual's blood to a lest or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and may receive disclosure of the results.

ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. A physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this determination or certification. The information that is provided to a physician *to* document the occurrence of a significant exposure and the physician's certification that **an** affected person has been significantly exposed, under this subd. 7. ak., shall be provided on a report form that is developed by the department of commerce under s. 101.02 (19) (a) or on a report form that the department of commerce determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

am. The affected person submits to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV.

ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including that individual, without his or her con sent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the rccord does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of *tests* for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and to disclose the results to that person. The person who is certified under subd. 7. ak. to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

b. Upon receipt of a request and certification under the requirements of this subdivision, a district attorney shall, as soon as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care professional, and to disclose the results of the test or tests as specified in subd. 7. c.

c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross–examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit *to* a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

d. The court is not required to order the individual to submit to a test under subd. 7. c. if the court finds substantial reason relating to the life or health of the individual not *to* do so and states the reason on the record.

7m. The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed. **A** record may be retained of the test results only if the rccord does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

(am) 1. **A** health care provider who procures, processes, distributes or uses human sperm donated as specified under s. 157.06 **(6)** (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

2. **A** health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.05 **(6)** (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall, in instances under those paragraphs in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may. if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care

instrument under ch. 155 and has been found *to* be incapacitated under s. 155.05 (2), the name of the health care agent.

2. **A** statement of explanation *to* the potential test subject that the test results may be disclosed as specified under Sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under Sub. *(5)* (a) 2. to 19. or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential *test* subject has executed a power of attorney for health care instrument under ch. 155 and has been found *to* be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent *to* disclosure is effective.

(bm) The health care provider that subjects a person *to* a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody *to* HIV under par. (a) 3. shall provide the test subject and the test subject's guardian. if the test subject is incompetent under ch. 880, with all of the following information:

1. **A** statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

2. **A** statement of explanation that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. *(5)* (a) 2. to 18. or a Statement that the listing is available upon request.

(3) WRITTEN CONSENT TO DISCLOSURE. **A** person who receives a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under Sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent *to* providing informed consent for disclosure under Sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) RECORD MAINTENANCE. A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under Sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained. **A** record that is made under the circumstances described in Sub. (2) (a) 7m. may not reveal the identity of the test subject.

(5) CONFIDENTIALITY OF TEST. (a) An individual who is the subject of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. **A** person who is neither the individual nor the individual's health care agent may not. unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

1. To the subject of the test and, if the *test* subject has executed a power of attorney for health care instrument under ch. 155 and has been found *to* be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care *to* the **test** subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employee of a health care provider under subd. 2. who prepares or stores patient health care records, as defined in s. 146.81 (4). for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under Sub. (2) (a). for any of the following purposes: a. Determining the medical acceptability of blood or plasma secured from the test subject. b. Notifying the test subject of the *test* results. c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 ***(6)*** (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the slate epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 *(5)* or *to* other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV–infected status is relevant *to* the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided *to* the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13 To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order *to* permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under Sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

17. To an alleged victim or victim, *to* a health care professional, upon request as specified in s. 938.296 (4) (e) or *(5)* (e) or 968.38 (4) (c) or *(5)* (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or

guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

18. To an affected person, under the requirements of Sub. (2) (a) 7.

19. If the test was administered to a child who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility, as defined in s. 938.02 (15m), including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child, or to an agency that placed the child or arranged for the placement of the child in any of those placements and, by any of those agencies, to any other of thosc agencies and, by the agency that placed the child or arranged for the placement of the child in any of thosc placements, to the child's foster parent or treatment foster parent or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child is placed, as provided ins. 48.371 or 938.371.

NOTE: Subd. 19. is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2)(c).

20. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to the prisoner's patient health care records under s. 302.388, to the medical staff of a jail to whom the results are disclosed under s. 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner is being transferred, if the results are provided to the medical staff by the department of corrections as part of the prisoner's medical file, to a health care provider to whom the results are disclosed under s. 302.388 (2) (c) or (f) or the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) A private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10. if he or she annually submits to the maintainer of his or her test results under Sub. (4) (c) a signed, written request that denial be made.

(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES. Notwithstanding s. 157.05, a corpse may be subjected to a test for the prescncc of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to **HIV,** and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the attending physician of the funeral director. coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employee of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the prcscnce of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to HIV, and if a physician who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employee has been significantly exposed and if the certification accompanies the request for testing and disclosure, Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED No person may sell or offer to sell in this state a test or test kit to detect the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to HIV for self–use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED. No person to whom the results of a test for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** have been disclosed under Sub. (5) (a) or (5m) may disclose the test results except as authorized under Sub. (5) (a) or (5m).

(7) REPORTING OF POSITIVE TEST RESULTS. (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under s. 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 250.04 (1) or (2) (a).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under Sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of **HIV** infections.

(c) Except as provided in Sub. (7m), a report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 252.05 with respect to persons for whom a diagnosis of acquired immuno-deficiency syndrome has been made.

(7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED. If a positive, validated test result is obtained from a test subject, the test subject's physician who maintains a record of the test result under Sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician to have been significantly exposed to the test subject, only after the physician has done all of the following:

(a) Counseled the test subject to inform any person who has been significantly exposed to the test subject.

(b) Notified the test subject that the name of any person known to the physician to have been significantly exposed to the test subject will be reported to the state epidemiologist.

(8) **CIVIL LIABILITY**. (a) Any person violating Sub. (2), *(5)* (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to $1.000 for a negligent violation and up to $25,000 for an intentional violation.

(b) The plaintiff in an action under per. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under Sub. (2), (5) (a), (5m), (6) or (7) (c). A conviction under Sub. (2). (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) **PENALTIES**. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than 525,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of Sub. (2) (a) 7m., *(5)* (a) or (5m) is subject to a forfeiture *of* not more than 51,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than 5100,000 or imprisoned not more than 3 years and **6** months, or both.

(10) **DISCIPLINE OF EMPLOYEES**. Any employee of the state or a political subdivision of the state who violates this section may be dischaged or suspended without pay.

History: 1985 a. 29, 73. 120: 1987 a. 70 ss. 13 to 27, 36: 1987 *1*. 403 ss. 136, 256; 1989 a. 200; 1989 a 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a 16 s. 2567; 1993 **a.** 27 ss. 332, 334, 337, 340, 342: Stats. 1993 s. 252.15; 1993 **a** 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, **188:** 1999 a. 9, 32, 79, 151, 162, 188; 2001 **a. 38,** 59, 69. 74; s. 13.93*(2)* (c).

No claim for a violation of Sub. (2) was stated when the defendants neither conducted HIV tests nor were authorized recipients *of* the test results. Hillman ■ Columbia County, 164 Wis. 2d 376.474 N.W.2d 913 (Ct. App. 1991).

This section does not prevent **a** court acting **in** equity from ordering an HIV test where this section **does** not apply. Syring v. Tucker. **174** Wis. 2d 787. 498 N.W.2d 370 (1993).

This sectior [illegible] on a case in which a letter from the plaintiff to the [illegible] ntained a reference to a drug used only to treat AIDS, but dic [illegible] the [illegible] test of directly disclose that the defendant had AIDS. Doe v. American Stores, Co. 74 F. Supp. 2d 855 (1999).

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995

346.50 Exceptions to stopping and parking restrictions.

(1) The prohibitions against stopping or leaving a vehicle stand contained in ss. 346.51 to 346.54 and 346.55 do not apply when:

(a) The vehicle becomes disabled while on the highway in such a manner or to such an extent that it is impossible to avoid stopping or temporarily leaving the vehicle in the prohibited place; or

(b) The stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations or the directions of a traffic officer or traffic control s i p or signal.

(c) The vehicle of a public utility, as defined in s. 196.01 (5), a telecommunications carrier, as defined in s. 196.01 (8m), or a rural electric cooperative is stopped or left standing and is required for maintenance, installation, repair, construction or inspection of its facilities by the public utility or a rural electric cooperative when warning signs, flags, traffic cones, or flashing yellow lights or barricades, have been placed to wam approaching motorists of any obstruction to the traveled portion of the highway.

(2) Except **as** provided in sub. (3m), a motor vehicle bearing a special registration plate issued under s. 341.14 (1) or (Ir) (a) to a disabled veteran or on his or her behalf is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased; or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one–half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one–half hour or more, no meter payment is required. Parking privileges granted by this subsection arc limited to the disabled veteran to whom or on whose behalf the special plates were issued and to qualified operators acting under the disabled veteran's express direction with the disabled veteran present.

(2a) Except as provided in sub. (3m), a motor vehicle bearing special registration plates issued under s. 341.14 (la), (le), (1m), (1q) or (1r) (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled pcrson is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one–half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one–half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the following:

(a) A person to whom plates wcre issued under s. 341.14 (la).

(b) A qualified operator acting under the express direction of a person to whom plates were issued under s. 341.14 (la) when such person is present.

(c) A person to whom plates were issued under s. 341.14 (Im) when the disabled person for whom the plates were issued is present.

(d) A person for whom plates were issucd under s. 341.14 (Iq).

(e) **A** qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (Iq) when such person is present.

(f) A person for whom plates were issued under s. 341.14 (1r) (a).

(g) A qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (Ir) (a) when the person is present.

(h) **A** person or organization to whom a special identification card was issued under s. 343.51

(j) **A** qualified operator acting under the express direction of a person to whom a special identification card was issued under s. 343.51 when such person is present.

(k) A qualified operator of a motor vehiclc registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vchicle as a vehicle used by a physically disablcd person if the vehicle is transporting the disablcd person for whom the plate, card or emblem was issued.

(L) A pcrson to whom a plate was issued under s. 341.14 (le

(m) **A** qualified operator acting under the express direction of a person to whom a plate was issued undcr s. 341.14 (1e) when such person is present

(3) Except as provided in sub. (3m), a vehicle bearing special registration plates issued under s. 341.14 (1), (la), (lej, (1m), (Iq) or (Irj (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued undcr s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vchicle used by a person with a physical disability is exempt from s. 346.505 (2) (a) or any ordinance in conformity therewith prohibiting parking, stopping or standing upon any portion *of* a street, highway or parking facility reserved for persons with physical disabilities by official traffic signs indicating the restriction. Stopping, standing and parking privileges granted by this subsection arc limited to the persons listed under subs. (2) and (2a) (a) to (m).

(3m) (a) In this subsection, "motor vehicle used by a physically disabled person" has the meaning given in s. 346,503 (1

(b) The city council of a 1st or 2nd class city may enact an ordinance imposing a 3–hour or less limitation on parking of a motor vehicle used by a physically disabled person upon any portion of a street, highway **or** parking facility reserved by the city for physically disabled persons by official traffic signs indicating the restriction if the following conditions arc complied with:

1. Before enactment, the city council seeks the advice and recommendation of a disabled parking council of at least 7 members established by an ordinance of the city or, if the city has established a disabled parking enforcement assistance council under s. 349.145, by that council, and holds a public hearing on the proposal. The majority of the members of any disabled parking council shall be appointed by the city council from among those residents of the city to whom or on whose behalf the department has issued a special registration plate under s. 341.14 (1) to (lr) or a special identification card under s. 343.51

2. The ordinance may apply to not more than one–third of the number of spaces reserved by the city for use by a motor vehicle used by a physically disabled pcrson, and no time limitation may be imposed on a reserved space in a parking facility unless an adjacent space without any such time limitation is reserved for use by a motor vehicle used by a physically disabled person. The ordinance shall require that the disabled parking council or, if applicable, the disablcd parking enforcement assistance council give advice and make a recommendation on the location of such reserved spaces.

3. The official traffic sign for such reserved spaces shall include information on the applicable time limitation for use by a motor vehicle used by a physically disabled person.

4. The ordinance may not impose a penalty for a violation of the ordinance that is greater than the penalty for violation of any ordinance of the city imposing time limitations on parking upon any portion of a street, highway or parking facility,

5. The ordinance shall require the city to submit a report by December 31 of each odd–numbered year to the council on physical disabilities under s. 46.29 (1) (fm) on implementation and administration of the ordinance, including an evaluation of the effectiveness of time limitations imposed by the ordinance. With respect to spaces reserved by the city for use by a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility, the report shall include the total number of spaces; the total number of spaces in a parking facility and the number of those spaces that arc subject to a time limitation, and the duration of any such limitation; and the total number of spaces upon a street or highway and the number of those spaces that are subject *to* a time limitation, and the duration of any such limitation.

(4) In subs. (2) and (2a), the terms 'municipal" and "municipally" include county.

History: 1977 c. 29,418; 1979 c. 55, 276, 288; 1981 c. 119; 1981 c. *255* ss. 5, 6, 13; 1983 a. 53 s. 114; 1963 **a.** 227: 1985 a. **87;** 1989 *a.* 304: 1991 a. *239* 1993 **a.** 256, 496; 1995 a. 422; 1997 a. 92.

347.25 Special warning **lamps** on **vehicles. (1)** Except as provided in subs. (1m) (a), (1r) and (1s), an authorized emergency vehicle may be equipped with one or more flashing, oscillating or rotating red lights, except that ambulances, fire department equipment, and privately owned motor vehicles under s. 340.01 (3) (d) or (dmj being used by personnel of a full–time or part–time fire department or by members of a volunteer fire department or rescue squad, may be equipped with red or red and white lights, and shall be so equipped when the operator thereof is exercising the privileges granted by s. 346.03. The lights shall be so designed and mounted as to be plainly visible and understandable from a distance of 500 feet both during normal sunlight and during hours of darkness. No operator of an authorized emergency vehicle may use the warning lights except when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm or when necessarily parked in a position which is likely to be hazardous to traffic.

(1m) (a) **A** police vehicle under s. 340.01 *(3)* (a) may be equipped with a blue light and a red light which are flashing, oscillating or rotating.

(b) If the vehicle is so equipped, the lights shall be illuminated as required under s. 346.03 when the operator of the police vehicle is exercising the privileges granted under that section. On a marked police vehicle, the blue light shall be mounted on the passenger side of the vehicle and the red light shall be mounted on the driver side of the vehicle. When in use on an unmarked police vehicle, the blue light shall be displayed on the passenger side of the vehicle and the red light shall be displayed on the driver side of the vehicle. The lights shall be designed and displayed so as to be plainly visible and understandable from a distance of 500 feet during normal sunlight and during hours of darkness. No operator of a police vehicle may use the warning lights except when responding to an emergency call or when in pursuit of an actual or suspected violator of the law. when responding to but not upon returning from a fire alarm or when necessarily parked on a highway in a position which is likely to be hazardous to traffic using the highway.

(c) If the state or any local authority intends to equip its police vehicles as authorized under par. (a), the state or the local authority shall give notice of its intent as a class 2 notice under ch. 985 at least 90 days before so equipping the first vehicle.

(1r) (a) 1. **A** police vehicle under s. 340.01 (3) (a) may be equipped so that the high beams of its headlamps pulsate or flash alternately at a rate of 70 to 90 pulses or flashes per minutc. The pulsating or flashing headlamps may be used only when the waming lamps authorized under sub. (1) or (1m) arc in use.

2. If the state or any local authority intends to equip its police vehicles as authorized under subd. 1., the state or the local authority shall give notice of its intent as a class 2 notice under ch. 985 at least 90 days before so equipping the first vehicle.

(b) 1. a. A vehicle of a fire department under s. 340.01 (3) (c) or an ambulance under s. 340.01 (3) (g) may be equipped so that the high beams of its headlamps pulsate or flash alternately at a rate of 70 to 90 pulses or flashes per minute. The pulsating or flashing headlamps may be used only when the warning lamps authorized under sub. (1) are in use.

b. If any local authority intends to equip its vehicles as authorized under subd. 1. a., the local authority shall give notice of its intent as a class 2 notice under ch. 985 at least 90 days before so equipping the first vehicle.

2. a. **A** sheriff or others designated by the county board may authorize that an ambulance under s. 340.01 (3) (i) be equipped so that the high beams of its headlamps pulsate or flash alternately at a rate of 70 to 90 pulses or flashes per minutc. The pulsating or flashing headlamps may be used only when the warning lamps authorized under sub. (1) are in use.

b. If the sheriff or others designated by the county board intend to authorize any ambulance under s. 340.01 (3) (i) to be equipped as authorized under subd. 2. a., the local authority shall give notice of its intent as a class 2 notice under ch. 985 at least 90 days before authorizing the first vehicle to be so equipped.

(c) 1. a. The state fire marshal may authorize that a privately owned motor vehicle under s. 340.01 (3) (d) that is being used by a deputy state fire marshal be equipped so that the high beams of its headlamps pulsate or flash alternately at a rate of 70 to 90 pulses or flashes per minute. The pulsating or flashing headlamps may be used only when the warning lamps authorized under sub. (1) are in use.

b. If the state fire marshal intends to authorize any privately owned motor vehicle under s. 340.01 (3) (dj that is being used by a deputy state fire marshal to bc equipped as authorired under subd. 1 a., the state shall give notice of its intent as a class 2 notice under ch. 985 at least 90 days before authorizing the first vehicle to bc so equipped.

2. a. **A** fire chief may authorize that a privately owned motor vehicle under s. 340.01 (3) (d) that is being used by an employee of the fire department or, if applicable, a member of the volunteer fire department be equipped so that the high beams of its headlamps pulsate or flash alternately at a rate of 70 to 90 pulses or flashes per minutc. The pulsating or flashing headlamps may be used only when the warning lamps authorized under sub. (1) are in use.

b. If the fire chief intends to authorize any privately owncd motor vehicle under s. 340.01 (3) (d) that is being used by an employee of the fire department or, if applicable, a member of the volunteer fire department to be equipped as authorized under subd. 2. a., the local authority shall give notice of its intent as a class 2 notice under ch. 985 at least 90 days before authorizing the first vehicle to be so equipped.

(1s) **A** vehicle in use by a fire department as a command post at the site of an emergency call may be equipped with a blue or green light which is flashing, oscillating or rotating.

(2) No person may operate a school bus which is painted as provided in s. 347.44 unless it is equipped with flashing red signals and with a 360–degree flashing white strobe light having a flashrate of 60 to 120 per minute. The secretary shall prescribe rules for the type, installation, operation and light output brilliance of the signals and lights required under this subsection. No vehicle may be equipped with such flashing red signals and a strobe light unless it also is painted as provided in s. 347.44.

Cross Reference: See also **ch.** Trans **300,** Wis. adm. code.

(2m) **A** human service vehicle may be equipped with a 360–degree flashing strobe light with a flashrate of 60 to 120 per minute. Notwithstanding s. 110.05 (1), the secretary shall prescribe rules for the type, color, installation, operation and light output brilliance of the lights permitted under this subsection.

(3) The lead vehicle or a motorcycle escort in a funeral procession may be equipped with a flashing amber light which may be used only when such vehicle is used as a lead vehicle or escort in such procession.

(4) No vehicle may be equipped with or display any blue colored light or lamp unless the vehicle is used in police work authorized by the state or a political subdivision of the state or is used by a fire department as authorized under sub. (1s).

(5) Notwithstanding **s.** 347.26 (I l), whenever flashing waming lamps on an authorized emergency vehicle are designed and being used to exhibit **a** directional arrow at the scene of an emergency, the lamps exhibiting the directional arrow may be flashing simultaneously or sequentially. If the use of flashing warning lamps to exhibit a directional arrow would likely direct approaching traffic into a lane of traffic moving in the opposite direction, only the flashing waming lamps that exhibit the horizontal bar of a directional arrow may be used and such lamps shall be flashing simultaneously.

History: 1977 c. 29 *s.* 1654 (7) (c); 1917 c. 228; 1979 c. 54, 149: 1983 a. 56; 1985 a. 143; 1987 a. 126; 1989 a. 69; 1991 a. 73, 142; 1993 a. 369; 1995 a. 31, 190; 1997 a. 31, 117.

The burden is on the operator of an emergency vehicle to prove that the warning light met the requirements. A light showing only to the front would not provide the operator with emergency privileges for stopping, parking, or turning as to vehicles approaching from the rear. Pittman v. Lieffring, 59 Wis. 2d 52, 207 N.W.2d 610 (1973).

CHAPTER 350
SNOWMOBILES

350.155 Coroners and medical examiners to report; require blood specimen.

350.155 Coroners and medical examiners to report; require blood specimen. (1) Every coroner or medical examiner shall on or before the 10th day of each month report in writing to the depaitment the death of any person within the coroner's or medical examincr's jurisdiction during the preceding calendar month as the result of an accident involving a snowmobile and the circumstances of such accidents.

(2) In cases of death involving a snowmobile in which the decedent died within 6 hours of the time of the accident, a blood specimen of at least 10 cc. shall be withdrawn from the body of the decedent within 12 hours after death, by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of such physician. All funeral directors shall obtain a release from the coroner or medical examiner prior to proceeding with embalming any body coming under the scope of this section. The blood so drawn shall be forwarded to a laboratory approved by the department of health and family services for analysis of the alcoholic content of such blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall he notified of the results of each analysis made and shall forward the results of each such analysis to the department of health and family services. The department of health and family services shall keep a record of all such examinations to be used for statistical purposes only. The cumulative results of the examinations, without identifying the individuals involved. shall be disseminated and made public by the department of health and family services. The department shall reimburse coroners and medical examiners for the costs incurred in submitting reports and taking blood specimens and laboratories for the costs incurred in analyzing blood specimens under this section.

History: 1973 c. 298: 1975 c. 39 s. 732 (2); 1975 c. 199; 1983 a. 485; 1991 a. 316; 1995 a. 27 s. 9126 (19).

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions.
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Cross reference: See also RL, Wis. adm. code.

SUBCIIAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context **requires** otherwise:

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

(am) -'Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the **substantive** act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit". when used in reference to limiting **a** crcdential. means to impose conditions and requirements **upon** the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date-' means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand means to publicly warn the holder of a credential

(f) "**Revoke-',** when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by **the** credential

(g) "Secretary" means the secretary of regulation and licensing,

(hj "Suspend. when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "*Credentialing" means the acts of* an *examining* board; section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board means an examining hoard or an affiliated crcdentialing board in the department.

(c) "Examining board-' includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board: affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining **board,** section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who **are** assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board. the real estate appraisers board, and all examining boards **and** affiliated credentialing boards attached to the department or an examining board, for **receiving,** filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated crcdentialing board in the department **must** review and **make** a determination on **an** application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar crcdentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The depanment may charge a fee sufficient to reimburse the department for the costs of providing such scrvices. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and **an** organization exempt **from** tax under 26 USC 501

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board **under** s. 15.405 or 15.406.

(3m) The department **may** investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation **and** licensing **shall** investigate my report that it receives under s. 146.40 (4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement **of** disciplinary proceedings.

(5) The depamnent may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The departmcnt shall publicize the toll– free telephone number and the investigative powers and duties of the departinent and the medical examining board as widely **as** possible

in the state, including in hospitals, clinics. medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credcntialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and **of** all forms for applying for any credential issued or renewed under chs. 440 to 480.All forms shall include a place for the information required under sub.(11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for subrnitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing hoard be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in 3 conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par.(am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (e).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant docs not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(cj The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under **s.** 441.50 *(7)*;the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for **a** credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate ofregistiation as a music therapist to **a** person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registcred or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered **or** accredited as required under subd.1. 3.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certiticd, registered or accredited as an art therapist by the **Art** Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

h. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dancc therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that

he or she is certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization rcvokes such a certification, registration, or accreditation. If the department rcvokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 (2) (a). Renewal applications shall he submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration. or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: *See* also **chi.** RL 140. 141, and **142,** Wis. adm. **code.**

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than 5200 or imprisoned for not more than **6** months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually. the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 c. 418 ss. **24,** 792; 1979 c. 34, 221, *337:* 1981 c. 94; 1985 a. 29, 340 1989 a. 31.340 1991 a. 39; 1993 **a.** 16, 102, 107, 443, 445, 490, 491; 1995 a. **27** ss. 6472g, 6472j, 9126 (19); 1995 a.233: 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318: 1997 **a.** 231, *237:* 1997 a. **261** ss. **1** to 4. 7, 10, 13; **1997** a. 311; 1999 a. 9. *32;* 2001 **a.** 16, *66, 80.*

Cross reference: See also RL. Wis. adm. **code.**

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing hoard attached to the department or an examining hoard shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who arc credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 s. **JLa.259:** 1991 a. 39; 1993 a. 107: 1997 a. 27, 191, 237.

440.04 Duties of the secretary. The secretary shall: **(1)** Centralize, at the capital and in such district offices **as** the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated crcdentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing hoards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. fl of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare andsubmit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for liccnsurc as a certified public accountant under ch. 442, the number who passed the examination required for liccnsure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442. during the preceding year.

History: 1977 c. 418 s. *26:* 1979 c. **34;** 1981 c. 20: 1985 a. 29: 1987 a. 27; 1989 a. 316; 1991 a. **39;** 1993 a. 102, 107: 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing hoards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee **to** advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or anv examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 197'1c.34. 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor **is discussed.** 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.I8 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuanec of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a Service fee that is equal to the department's best estimate of the cost of processing the application on an exaedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29,418: 1979 c. 34: 1979 c. 175 s. **53:** 1979 c. 221 s. 2202 (45); 1483 **a.** 27: 1985 **a.** 29; 1987 a. 264, 265. 329, 399, 403; 1989 **a.** 31, 229, 307. 316. 336, 340, 341, 359 1991 **a.** 39, 269, 278, 315: **1993 a.** 16; 1995 **a.** 27: 1997 a. 27, 96; 1999a.92001 **a.** 16.

Cross reference: See also ch. RL **4,** Wis. adm. code.

440.055 Credit card payments. **(2)** If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall he in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department mey contract for services relating to the payment of fees by credit card under this section.

History: 1995**a.** 27: 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4. Wis. adm. code.

440.07 Examination standards and services. **(1)** In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likelv to he needed for an applicant to practice in this state at the time'of examination and shall seek to'dctermine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall he based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 **a.** 27: 1991 a. 39; 1493 **a.** 102, 107.

Cross reference: *See* also ch. RL 4, Wis. adm. **code.** Department of Regulation **and** Licensing test **scores** were **subject** to **disclosure** under the **open** records **law.** Munroe v. Braatz, 201 Wis. **2d** 442.549 N.W.2d **452** (Ct. **App.** 1996).

440.08 Credential renewal. **(1) NOTICE OF RENEWAL.** The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may he mailed to the last address provided to the department by the credential holder or may he given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; **S73**

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; S70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 ofeach odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $185.

13. Architect: August 1 ofeach even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; 5106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; 571
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery prenecd seller: January 1 of each odd–numbered year; $61
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 ofeach year; $15.
24. Chiropractor: January 1 of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; s57.
26. Dentist: October 1 of each odd–numbered year; 5131
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; 553.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year: $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered ycar; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; 553.

NOTE: Suhd. 46r. is created eff. 3–1–03 by 2001 Wis. Act 74.

48. Nurse, licensed practical: May 1 of each odd–numbered year; **569.**
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each wen–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; 559.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each wen–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 ofeach even–numbered year: $97.
56. Pharmacy: June 1 ofeach even–numbcrcd year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.

NOTE: Suhd. 57m. is created eff. 4–1–04 by 2001 Wis. Act 70.

58. Physician: November 1 ofeach odd–numbered year; $106.
59. Physician assistant: November 1 of cach odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; ***$83.***
63w. Professional hydrologist: August 1 of each even–numbered year; S53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity January 1 ofeach odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist **or** bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. FI–03 by 2001 Wis. Act 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd–numbered year; *$58.*
68t. Social worker. indeoendent clinical: Julv 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $119.
70. Veterinarian: January 1 of cach even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (h).

(d) If an applicant for credential renewal requests that the department process an application on an expcditcd basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL.(a) Except as provided in rules promulgated under par.(b), if the department docs not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub.(2) (a) and by payment of a late renewal fee of $25.

(h) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restorc the credential. in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health; safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that arc more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL.(a) *Generally*. If the department or the interested examining board or affiliated credentialing board; as appropriate, determines that an applicant for renewal has failed to comply with sub.(2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to prolect the public health, safety or welfare. the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days afier the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) ***Applicability.*** This subsection docs not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (h).

History: 1991 a. 39 ss. 3305, 3313: 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3. 16, 102. 105, 107, 443. 463, 465: 1993 a 490 ss. 228 to 230, 274, 275: 1995 a. 27, 233, 321. 322, 461; 1997 a. 27. 75, 81. 96. 156. 191. 237. 261, 300; 1999 a 9, 32: 2001 a. 16, 70, 74. 80, 89.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last–known address of the holder as indicated in the records of the department, examining board, afiliated credentialing board or board.

(3) Any person who fails to comply with sub.(1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39: 1993 a. 107: 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the deparhnent of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237

Cross reference: See also ch. RL 9, Wis. adm. code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credcntial renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriatc notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice. with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 *(5)* and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing hoard, a credcntialing hoard shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191,237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(bj "Personal identifier" means a name, social security number, telephone number, street address, post–ofice box number or 9–digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the crcdentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing hoard shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing hoard furnishes to another person.

(4) The department or a credentialing hoard shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not he disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing hoard may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4).

(b) Paragraph (a) docs not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par.(a) does not apply to a list that the department or the hoard of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. **88:** 2001 a. 66.

440.142 Reporting potential causes *of* public health emergency. **(1)** A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 (7).

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with biotcrrorism, as defined in s. 166.02(1r).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed **a** prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (bj, or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. *109.*

440.20 Disciplinary proceedings. **(1)** Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or hoard to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any *grounds* for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. **34:** 1985 a. 2 9 1989 a. 31, 201; 1991 **a. 39;** 1993 **a.** 16. 27, **102,** 107. 490.

The constitutionality of sub.(3) is upheld. Gandhi v. Medical Examining Board, 168 Wis. 2d 299. 483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for **a** complaint filed **under** this section. 68 Atty. **Gen.** 30.

The **"preponderance** of the **evidence"** burden **of** proof **under** sub.(3) does not violate **the due** process rights of a **licensee.** 75 Atty. Gen. 76.

440.205 Administrative warnings. **If** the department or a board, examining hoard or affiliated credentialing hoard in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, hoard, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated crcdentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, cxamining board or affiliated crcdentialing board in the department, the matter relating to the issuance of the administrative waming may be reopened and disciplinary proceedings may he commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the *administrative* warning *was* contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross reference: ***See*** also **ch.** RL 8, Wis. adm. **rode.**

440.21 Enforcement **of** laws requiring credential. **(1)** The department may conduct investigations, hold hearings and make findings as to whether aperson has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as providcd in ch. 8 13.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the countyjail or both.

History: 1991 **a.** 39; 1993 a. 102.

Cross reference: *See also* ch *RL 3, Wis. adm. code.*

440.22 Assessment **of** costs. **(1)** In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated crcdentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and *compensation* and expenses of ***a*** reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated crcdentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining hoard, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 **a.** 39; 1993 **a.** 107; 1997 a. 27.

The collection of costs assessed under this section m y not be **pursued** in an independent action for a money judgment. The costs may **he** collected only as a

condition of reinstatement of the disciplined practitioner's credentials State v. Dunn, 213 Wis. 2d 363, 570 N.W.2d 614 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement. **(1)** If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(h) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time tv comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189, 269, ***278.*** 315; 1993 **a.** 16; 1995 a ***27:*** 1999 a. 9

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining hoard or affiliated credentialing board attached Io the medical examining board. The depaitment shall he represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the hoard, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 **a.** 340; 1993 **a.** 107.

CHAPTER 445

FUNERAL DIRECTORS

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Cross-reference: See definitions in s. 440.01

445.01 Definitions. As used in this chapter:

(2) An "apprentice funeral director" is any person engaged in the learning of the practice of funeral directing under the instruction and personal supervision of a duly licensed and registered funeral director under this chapter, whose funeral establishment is located in this state; provided, that no person shall serve or attempt to serve as such apprentice funeral director under any such funeral director until the person has filed registration thereof with the examining hoard.

(3) "Embalming" means disinfecting or preserving dead human bodies, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injection, or by direct application into rhe organs or cavities for the purpose of preservation or disinfection.

(4) "Examining board" means the funeral directors examining hoard.

(5) A "funeral director" means any of the following:

(a) A person engaged in or conducting, or holding himself or herself out, in whole or in part, as heing engaged in embalming or otherwise preparing for the burial or disposal, or directing and supervising the burial or disposal, of dead human bodies.

(c) A person who, in connection with his or her name or funeral establishment. uses the words. "fiineral director", "mortician" or any other title implying that he or she is engaged as a fiineral director as defined in this subsection.

(6) "Funeral establishment" means any building or part of a building used and held out to the public as being used in the care and preparation for burial or transportation of dead human bodies or for holding or conducting of funeral services. "Funeral establishment" does not include a building or part of a building that is erected under s. 157.11 (1) for holding or conducting funeral services if dead human hodics are not cared for or prepared for burial or transportation in the building. A fiineral establishment must contain a preparation room equipped with tile, cement or composition floor, necessary drainage and ventilation and contain necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition.

(7)"Operator of fiineral establishment" means any person who conducts. maintains, manages or operates a funeral establishment.

(8) "Person" includes firm; corporation, partnership, cooperative and association of individuals.

History: 1975 c. 39 ss. 648m, 649, 649g, 732 (2); 1975 c. 199; 1977 c. 272 s. 98; 1979 c. 175 ss. 29, 30, 53; 1979 c. 221 ss. 660, 2202 (45); Stats. 1979 s. 445.01; 1981 c. 20; 1983 a. 189, 485; 1993 a. 100.

445.03 Powers of examining board. (1) The examining hoard shall:

(a) Enforce this chapter.

(h) Make and enforce rules necessary for the administration of subch. I of ch. 157.

(2) The examining hoard may:

(a) Make and enforce rules not inconsistent with this chapter establishing professional and business ethics for the profession of funeral directors and for the general conduct of the business of funeral directing, and for the examination and licensing of fiineral directors and the registration of apprentices.

(h) Grant licenses to funeral directors, certificates of registration to apprentices, and permits to operators of funeral establishments.

(c) Conduct a school of instruction to apprise funeral directors of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators shall he employed for this purpose, who may be selected without regard to the civil service law

(d) Make and determine reciprocal agreements with other states.

History: 1971 c. 301; 1975 c. 39 ss. 650, 651, 732 (2); 1979 c 175 s 29; 1979 c. 221 s. 660: Stats. 1979 s. 445.03; 1981 c. 20, 162; 1983 a. 485; 1985 a. 316 s 25.

Rules authorized under **rub.** (2) (a) should be enacted under ch. **227.** 63 Atty. Gen. 154.

445.04 Funeral directors; licenses. (1) The business of a funcral director must he conducted in **a** funeral establishment equipped for the care and preparation for burial or transportation of dead human bodies. What shall he deemed "neceasary equipment" shall he defined in the rules.

(2) No person may engage in the business of a funeral director, or make a representation as engaged in such business, **in** whole or in part, unless first licensed as a funeral director by the examining board. Application for a license, other than a renewal, shall be in writing and verified on a form to be furnished by the department. The application must specify the address at which the applicant proposes to conduct the business of a fiineral director and shall contain such other infomiation as the examining board requires to determine compliance with the requirements of this chapter. Accompanying the application shall be the fee specified in s. 440.05 (1), together with affidavits of recommendation from at least 2 persons of the county in which the applicant resides or proposes to conduct the business of a funeral director.

(3) (a) Written examinations for a funeral director's license shall be held at least once a year and shall he conducted hy the examining hoard at a time and place to be designated by the examining hoard.

(b) The examination shall include the subjects of.

1. Funeral directing and burial or other disposition of dead human bodies;

2. Anatomy, bacteriology, autopsy, chemistry and practical embalming: and

3. Sanitary science, public health, transportation. business ethics and the laws of this state and rules of the department of health and Family services relating to communicable diseases. quarantine and causes of death.

History: 1971 c. 301; 1975 c. 39 ss. 653, 732 (2); 1975 c. 199; 1977 c. 29. 418; 1979 c. 175 s. 29; 1979 c. 221 s. 661; Stats. 1979 s. 445.04; 1981 c. 162, 380; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9126 (19).

Cross Reference: See also chs. HFS 135 and 136, Wis. adm. code.

445.045 License requirements. (1) To he eligible for an original funeral director's license, a person must meet all of the following requirements:

(a) The person must he at least 18 years of age.

(h) Subject to ss. 111.321, 111.322 and 111.335, the person must not have an arrest or conviction record.

(d) The pcrson must have completed 2 academic years of instruction in a recognized college or university, in a course of study approved by the examining hoard. or have equivalent education.

(e) The pcrson must have satisfactorily completed 9 months or more instruction in a prescribed course in mortuary science approved by the examining hoard at any time after having completed one year of college work or equivalent education.

(f) The pcrson must have complctcd one year ofapprenticcship as prescribed in s. 445.095 at any time after having completed one year of college work or equivalent education and either before or after taking the course in mortuary sciencc required by par. (e).

(g) The pcrson must have successfully passed a comprehensivc examination conducted by the examining hoard as required by s. 445.04. The examination may be taken at any time after coinpiction of the college and mortuary school instruction and regardless of the age of the applicant.

(2) The eligibility requirements in sub. (1) shall not apply to:

(a) Any person to whom a certificate of apprenticeship was issued before Octohcr 1. 1959, and who satisfies the legal requirements in effect at the time of the person's registration; or

(b) Any person who served actively in the armed forces of the United States between August 3, 1951, and October 1, 1959, and who was discharged under conditions other than dishonorable; registers with the examining hoard within 6 months of the date of discharge, and who satisfies the legal requirements in effect at the time the person entered the armed forces.

History: 1971 c. 213 s. 5; 1971 c. 228 s. 44; 1971 c. 301, 307; 1975 c. 39 ss. 654, 654n, 732 (2); 1975c. 199; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss 662, 2202 (45); Stats. 1979 s. 445.045; 1981 c. 380; 1981 c. 391 s. 211; 1983 a. 485; 1991 a. 316; 1999 a. 85.

Cross Reference: See also ch. FD 1, Wis. adm. code

445.06 Renewal of licenses. The renewal date and renewal fee for a funeral directors' license are specified under s. 440.08 (2) (a). Before any renewal liccnsc is delivered *to* any licensed funeral director, proof must he furnished by the applicant, to the satisfaction of the examining board, that the applicant is doing business at a recognized funeral establishment, except that if such applicant is *not* doing business at a recognized funeral establishment at the time of application for a license, the applicant shall be given a certificate, without additional cost, to the effect that the applicant is in good standing as a funeral director. and shall hc cntitlcd *to* a renewal license at any time during that liccnse period, when located at a recognized funeral establishment, without payment of any additional renewal fee. The applicant must also furnish proof of completion of at least 15 hours of continuing education during the previous 2–year licensure period, except that new licensees are exempt from this requirement during the time between initial licensure and commencement of a full 2 year licensure period.

History: 1475 c. 39 s. 732 (2): 1975 c. 199; 1977 c. 29; 1979 c. 175 s. 29; 1979 c. 221 s. 662: Stats. 1979 s. 445.06: 1983 a 485. 1985 a. 29; 1991 a. 39.

Cross Reference: See also ss. FD 1.10, 1.11, and 4.01, Wis. adm. code.

445.08 Reciprocity in issuance of licenses. (1) Any person holding a valid liccnse as a funeral director or embalmer in another state having requirements substantially equal to those in this state for a funeral director's license may apply for a licensc to practice in this state by filing with the examining board a certificd statement from an authorized official of the c state in which the applicant holds a license. showing the qualifications upon which said liccnse was granted. Thereupon the examining board may, upon the payment of the required fee. issue a funeral director's license.

(4) Applications for the examination at a time and place *to* be arranged and conducted by the examining board for a reciprocal funeral director's license shall he in writing and verified on a form to be furnished hy the examining board, and shall be accompanied by all of the following:

(a) [Proof] of compliance with the requirements for a reciprocal funeral director's license.

NOTE: The bracketed language was inserted by 2001 Wis. Act 107 without being underscored. The insertion was intended. Corrective legislation is ending.

(h) Any other information that the examining hoard requires.

(c) The examination fee for each application.

History: 1971 c. 213 s. 5; 1971 c. 301; 1975 c. 39 ss. 656, 657, 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.08; 1981 c. 380; 1981 c. 391 s. 211; 1983 a. 485; 1997 a. 27; 2001 a. 107.

Cross Reference: See also ch. FD 5, Wis. adm. code.

445.09 Display of licenses. Funeral director's licenses and certificates of apprenticeship shall he displayed conspicuously in the place of husiness conducted by the licensee or where the licensee or apprentice is employed.

History: 1979 c. 175 s. 29; 1979c. 221 s. 662; Stats. 1979 s. 445.09: 1983 a. 485.

445.095 Apprenticeship, funeral directors. (1) (a) 4 person desiring *to* become an apprentice as a funeral director shall apply on a form provided for the purpose and appear before the examining hoard, or any duly appointed representative of the examining hoard. The application shall state that the applicant is 18 years of age or older, holds a high school diploma or possesses equivalent education as defined by the examining hoard, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, and has completed one academic year of instruction in a recognized college or university in a course of study approved by the examining board or has equivalent education. The application must he substantiated by the oath of the applicant and be accompanied by the fee specified in s. 440.05 (6). When the examining hoard is satisfied as *to* the qualification of an applicant for apprenticeship, it shall issue a certificate of apprenticeship. When the apprentice enters the employment of a licensed funeral director. the apprentice shell immediately notify the examining hoard. giving the name and placc of business of the funeral director whose service the apprentice has entered. If, at any time thereafter, the apprentice leaves the employ of the licensed funeral director whose service the apprentice has entered, the licensed funeral director shall give the apprcnticc an affidavit showing the length of time served as an apprentice with that employer, **and** the work done in detail, which affidavit shall he filed with the examining board and made a matter of record in that office. If the apprentice thereafter enters the employ of another licensed funeral director in this state. the applicant shall forthwith report such employment to the examining board.

(b) All apprentices under this chapter shall he paid at least the minimum wage in effect in this state.

(c) A certificate of apprenticeship issued under this section shall be renewable annually upon the payment on January 1 of each year of the renewal fee specified in s. 440.08 (2) **(b)**.

(d) All apprentices registered under this section shall report at least semiannually *to* the examining hoard upon forms provided by the examining board. The reports shall contain the information required by the examining hoard. Failure to submit the required reports shall constitute justification for termination of the apprenticeship.

(e) The semiannual report must show the number of hours served by the apprentice and the number of hodies the apprentice has assisted in embalming, or otherwise prepared for burial or dis-

position during such period, the number of funeral services at which the apprentice has assisted. and give such other information as may be required by the examining board. The data contained in the report shall he certified to as correct by the licensed funeral director under whom the apprentice has served during such period.

(2) (b) The term of a registered apprentice shall he recognized only when given employment in a funeral establishment under the personal supervision of a licensed funeral director.

(c) Only one funeral director apprcnticeship shall be recognized by the examining hoard at any one establishment in a current year that has had less than 150 funeral services or prepared less than 150 bodies for burial or shipment during the preceding year.

(d) The examining hoard may recognize a 2nd funeral director apprenticeship at **a** funeral establishment during the current year that has had 150 funerals or more and has prepared 150 bodies or more for burial or shipment during the preceding year, provided that full-time employment is given to at least 2 licensed funeral directors at such funeral establishment.

(3) All apprentices shall he governed by ch. 106 and apprenticeship rules of the department of workforce development.

(4) Before such apprentice shall he eligible to receive a license to practice funeral directing, the apprentice shall present, in connection with the other evidence required by this chapter, affidavits from the several licensed funeral directors under whom the apprentice has worked. showing that the apprentice has assisted in embalming for burial or shipment at least 25 bodies, has assisted in preparing 25 dead human bodies for burial or transportation, other than by embalming, and has assisted in at least 25 funeral services during the apprenticeship. This work must all have been done within 4 years from the date of registering as an apprentice, hut such time may be extended by the examining hoard for good cause shown, not to exceed one additional year. The provisions of this section shall be suspended for such period as a registered apprentice may be an active member of the military or naval forces of the United States

History: 1971 c. 164, 228; 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.095; 1981 c. 20, 162, 380; 1981 c. 391 s. 211; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9130 (4); 1997 a. 3.

Cross Reference: See also ss. FD 1.06, 1.07, 2.06, and 2.07, Wis. adm. code

445.10 Term **of** apprenticeship. **(1)** The term of an apprenticeship for a funeral dircctor shall begin on the date of registration and terminate after a period of not more than 4 years from the time of first registration unless the time is extended under this chapter. **A** registered apprentice must make application for license and must appear before the examining board for examination within 4 years from the date of registration unless the time is extended under this chapter. Noncompliance with this subsection terminates the right to serve as an apprentice.

(2) In all applications of apprentices for licenses as funeral directors under this chapler, the eligibility of the applicant to lake the examination shall he determined by the records filed with the examining board.

(6) The examining hoard may limit, suspend or revoke a certificate of apprenticeship. or reprimand an apprentice, for violation of any provision of this chapter.

(7) An apprentice who has allowed a certificate of apprenticeship to lapse or who has had an apprenticeship suspended or revoked, inay within one year after such lapse or suspension or revocation make application for reregistration, hut not more than 2 such reregistrations shall he allowed by the examining board. The examining hoard may, at its discretion. allow an apprentice credit under a registration for the time actually served under a previous registration; provided, that if the previous registration has been suspended or revoked for cause. not more than 75% of the time previously served shall he credited on the reregistration.

History: 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 418; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss 662, 2202 (45); Stats. 1979 s. 445.10; 1983 a. 485.

445.105 Funeral establishment permits. **(1)** No person shall conduct, maintain, manage or operate a funeral establishment unless : permit for each such establishment has hccn issued hy the examining hoard and is conspicuously displayed in such funeral establishment. In case of funeral services held in any private residence, church, or lodge hall. no permit shall hc required.

(2) No permit to operate a funcral establishment shall be issued by the examining hoard unless each such funeral establishment has in charge, full time therein, a licensed funeral director.

(3) Applications for funcral establishment permits shall hc made on forms provided by the department and filed with the department and shall be accompanied by the fee specified under s. 440.05 (1). The renewal date and renewal fee for a funeral establishment permit arc specified under s. 440.08 (2) (a).

(4) Violations of this chapter or any rules or regulations of the examining hoard committed by any person, or an officer, agent or employee with the knowledge or consent of any person operating such funeral establishments shall he considered sufficient cause for reprimand or for limitation, suspension or revocation of such funeral establishment permit.

(5) No operator of a fiineral establishment shall allow any licensed funeral director to operate out of such funeral establishment unless such licensed funeral director is the operator of or an employee of the operator of a Funeral establishment which has been granted a permit by the examining hoard.

History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

Cross Reference: See also **ch.** FD 2 and ss. FD 1.08 and 1.09, Wis. adm. code.

Licensing requirements prohibit operators of funeral establishments from allowing free-lance funeral direction. The statute does not prohibit operation of 2 establishments from one location nor regular use of a church for funeral services. 60 Atty. Gen. 147.

445.11 Register; change **of** address. The examining hoard shall keep a register of the names and business address of all persons to whom licenses or certificate of registration are issued under this chapter, the number and date of each license or certificate, and date of renewal. The register shall be available for purchase at cost.

History: 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.11; 1983 a. 485; 1987 a. 27.

445.12 Prohibited practices. **(1)** No funeral director may embalm a dead human body when he or she has information reasonably indicating crime in connection with the cause of death. until permission of the coroner or medical examiner has first been obtained.

(2) No licensed funeral director may sign a certificate stating that he or she has embalmed or prepared a dead human body. when in fact, some other person embalmed or prepared said dead human body; provided, that this subsection shall not he construed as preventing a registered apprentice funeral director assisting the licensed funeral director from so certifying.

(3) No licensed funeral dircctor or operator of a funeral establishment may, directly or indirectly. solicit a funeral service or the right to prepare a dead human body for burial or transportation either before or after death has occurred, or pay or cause to be paid any sum of money or other valuable consideration for the securing of the right to do such work. This subsection does not prohibit any of the following:

(a) The solicitation of memberships or the sale of stock or memberships in any association organized under ch. 185 by any person who is not a licensed fiineral director.

(h) The solicitation or sale of burial agreements under s. 445.125 (1) and the solicitation and sale of burial agreements under s. 445.125 (3m) to the extent permitted under sub. (3g) and s. 445.125 (3m).

(39) (a) Except as provided in pars. (b) and (c), a licensed funeral director. agent of a licensed funeral director. operator of a funeral establishment or agent of an operator of a funeral estab-

lishment may not solicit the sale of a burial agreement under s. 445.125 (3m) by doing any of the following:

1. Knowingly contacting a prospective purchaser of a burial agreement in a hospital. health care facility or similar facility or institution.

2. Knowingly contacting a relative of a person whose death is imminent or appears to be imminent.

3. contacting a prospective purchaser of a burial agrcemcnt by door to door solicitation or in a manner that violates rules promulgated by the examining hoard under s. 435.125 (3m) (j) 2.

(b) A licensed funeral director, agent of a licensed funeral director, opcrator of a funeral establishment or agcnt of an operator of a funeral establishment may solicit the sale of a burial agreement under s. 445.125 (3m) by contacting any person if any of the following applies:

1. The prospective purchaser requests the contact.

2. The contact is part of a mass mailing, television. radio, print or other type of advertising campaign that is not dircctcd solely toward persons in a hospital. health care facility or similar facility or institution or toward the relatives of a person whose death is imminent or appears to be imminent.

(c) Paragraph (a) 3. does not prohibit a licensed funeral director, agent of a liccnscd funeral director, opcrator of a funeral establishment or agent of an operator of a funeral establishment from using mass-marketing practices or in-person contacts or communications permitted under this section or by a rule promulgated by the examining hoard undcr s. 445.125 (3m) (j) 2.

(3r) No licensed funeral director or operator of a funeral establishment may do any of the following:

(a) Require a person who enters into a burial agreenieot under s. 445.125 **(3mj** to purchase a life insurance policy used to fimd the agrcemcnt from an insurance intermediary licensed undcr ch. 628 who is specified by the funeral director or operator of the funeral establishment.

(b) Authorize an insurance intermediary licensed under ch. *628* to sell or solicit the sale of a burial agreement wider s. 445.125 (3m) (b) 2. a. unless the insurance intermediarv meets the training requirements established by the examining board by rule under s. 445.125 (3m) (j) 1. a.

(4) No liccnscd funeral director or opcrator of a funeral establishment may publish. or cause to he published. any false, misleading or fraudulent advertisement, or take undue advantage of patrons or commit any fraudulent act in the conduct of business, or do any othcr act not in accord with the rules established by the department of health and family services and the examining hoard and not in accord with proper business practice as applied to the business or profession of funeral directing and embalming,

(5) Any licensed funeral director who knowingly permits any person not licensed as a funeral director to embalm or prepare for burial any body undcr his or her jurisdiction, or who permits any person not licensed as a funeral director to hold or conduct any funcral service for which he or she is responsible, or who permits auy person not licensed as a funeral director to remove any dead human body from any home, hospital or institution for preparation, or who permits any person under his or her supervision or associated with him or her to violate the provisions of this chapter. shall be guilty of violating the provisions of this chapter and subject to the penalties provided therein. The foregoing provisions shall not he construed as to restrict the activities of a duly registered apprentice operating undcr the supervision of a licensed funeral dircctor.

(6) No licensed funeral director or operator of a funeral establishment may operate a mortuary or funeral establishment that is located in a cemetery or that is financially, through an ownership or operation interest or otherwise, connected with a cemetery. No licensed funeral director or his or her employee may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from any cemetery. mausoleum or crematory or from any owner, employee or agent thereof in connection with the sale or transfer of any cemetery lot, outer burial container, burial privilege or cremation, nor act, directly or indirectly. as a hrokcr or jobber of any cemetery property or intcrest therein.

(7) No licensed funeral dircctor or opcrator of a funeral establishment may sell or cause to he sold any shares of stocks, certificates of membership or any othcr form of certificate which provides for any burial benefit or any rebate at the time of death to the holders thereof. This subsection does not prohibit the sale of burial agreements to the extent permitted under, and that are in conformity with, s. 445.125 (3m).

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

Cross Reference: See also chs. FD 2 and HFS 135 and 136, Wis. adm. code.

If subsidiary corporations have prohibited financial connections, their corporate structure will not save them from the prohibitions of ss. 157.067 (2) and 445.12 (6) Those statutes are not unconstitutionally vague. Cemetery Service, Inc. v. Department of Regulation and Licensing, 221 Wis. 2d 817, 586 N.W.2d 191 (Ct. App. 1998)

Whether parent and subsidiary corporations violate sub. (6), which prohibits an operator of a funeral establishment from being connected with a cemetery, depends upon the facts relating to legal separateness of the parent and subsidiary corporations. 78 Atty. Gen. 5.

445.125 Burial agreements. (1) BURIAL AGREEMENTS FUNDED BY TRUSTS. (a) 1. Except as provided in sub. (3m), whenever a person, referred to in this subsection as the depositor, makes an agreement with another person selling or offering for sale funeral or burial merchandise or services, referred to in this subsection as the beneficiary, for the purchase of a casket, outer burial container not preplaced into the burial excavation of a grave, combination casket outer burial container or other receptacle not described in sub. (4) (b) for the burial or other disposition of human remains or for the furnishing of funeral or burial services, either of which is intended to be provided for the final disposition of the hody of a person, referred to in this snhsection as the potential decedent, wherein the use of such personal property or the furnishing of such services is not immediately required, all payments made under the agreement shall be and remain trust funds, including interest and dividends if any, until occurrence of the death of the potential decedent, unless the funds are sooner released upon demand to the depositor, after written notice to the beneficiary.

2. Notwithstanding s. 701.12 (1), such agreements may bc made irrevocable as to the first $2,500 of the funds paid under the agreement by each dcpositor.

NOTE: Subd. 2. is amended eff. 7–1–03 by 2001 Wis. Act 16 to read:

***2.* Notwithstanding s. 701.12 (1), such agreements may be made irrevocable as to the first $3,000 of the funds paid under the agreement by each depositor.**

3. Any interest or dividends accruing to a trust fund under subd. 2. may he made irrevocable.

4. Any depositor who made an irrevocable agreement under subd. 2. may designate a different beneficiary at any time prior to death, after written notice to the current beneficiary.

(b) All trust funds under par. (a) shall he deposited with a bank or trust company within the state whosc deposits arc insured by the federal deposit insurance corporation, deposited in a savings and loan association or savings hank within the state whose deposits arc insured by the federal deposit insurance corporation or invested in a crcdit anion withiii the state whose savings are insured by the national hoard, as defined in s. 186.01 (3m), or by the Wisconsin credit union savings insurance corporation and shall he held in a separate account in the name of the depositor. in trust for the beneficiary until the trust fund is released under either of the conditions provided in par. (a) 1. In the event of the death of the depositor before the death of the potential decedent, title to such funds shall vest in the potential decedent, and the funds shall be used for the personal property and services to be furnished under the contract for the fiineral of the potential decedent. The depositor shall be furnished with a copy of the receipts, certificates or other appropriate documentary cvidcnce showing that the funds have been deposited or invested in accordance with this subsection. The depositor or the beneficiary shall furnish the bank. trust company, savings bank, savings and loan association or credit union with a copy of the contract. Upon receipt of a certified copy of the certificate of death of the potential decedcnt, together

with the written statement of the beneficiary that the agreement was complied with, the bank. trust company, savings bank, savings and loan association or credit union shall release such trust Funds to the beneficiary.

(c) The payment pursuant to this suhsection of such fund and any interest or dividends which may have accumulated shall relieve the bank, trust company, savings hank. savings and loan association or credit union of any further liability for such funds, interest or dividends. A bank need not comply with ch. 223 to accept and disburse *deposits* under *this* subsection.

(3m) BURIAL AGREEMENTS FUNDED WITH PROCEEDS OF LIFE INSURANCE POLICIES (a) in this subsection:

1. "Agent" means an authorized representative of a funcral director or operator of a funeral establishment.

2. "Burial agreement" means a written agreement between an operator of a funeral estahlishmcnt or funeral director and a person in which the operator of the funeral establishment or funeral director agrees to provide to a person, after that person is deceased, funeral merchandise or funcral services.

3. "Cash advance item" means personal property or a service that is obtained by a funeral director or operator of a funeral establishment from a 3rd party and that is paid Tor by the funeral director or operator of the funeral *establishment* on *behalf of*, and subject to reimbursement from, a person purchasing funeral merchandise or funeral services fr ɯ the funeral director or operator of the fiineral establishment. "Cash advance item" includes cemetery or crematory services. pallbearers, public transportation; clergy honoraria. flowers, musicians or vocalists. nurses, obituary notices. gratuities and death certificates.

4. "Funeral merchandise or funeral services" means personal property or services typically sold or provided in connection with the final disposition of human remains, including caskets or other primary containers not preplaced into the burial excavation of a grave, rental, temporary or disposable caskets or containers, outer burial containers not preplaced into the burial excavation of a grave, transportation containers, funeral clothing and accessories, embalming services and funcral directing services. "Funeral merchandise or funeral services" docs not include a cash advance item or opening and closing costs that are associated with the burial of a deceased person.

(b) 1. **A** liccnsed funeral director, an operator of a funeral establishment. an agcnt of a licensed funeral director or, subject to par. (c), an agcnt of an operator of a *funeral establishment may* sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy if all of the following apply:

a. The burial agreement meets the requirements specified in pars. (d) to (f) and in the rules promulgated by the examining board under par. (j) 1. b.

b. The licensed funeral dircctor. operator of the funeral establishment or agent is licensed as an insurance intermediary under ch. 628.

2. a. A licensed funeral director or operator of a fiineral establishment may authorize an agent who is an insurance intermediary licensed under ch. 628, and who meets the training requirements established by the examining board under par. (j) 1. a., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy and that meets the requirements specified in pars. (d) to (f).

b. **A** licensed funcral director or operator of a funeral establishment shall report to the examining board the identity of any agent authorized by the licensed funeral director or operator of the funeral establishment under suhd. 2. a. and provide evidence satisfactory to the examining board that such agent meets the training requirements established by the examining board by rule under par. (j) 1. a. The examining board shall promulgate rules establishing requircmeiits and procedures for making reports and providing the evidence required under this suhd. 2. b.

c. **A** licensed funeral director or operator of a funeral establishment is responsible for and bound by any act of an agent, authorized by the licensed funcrai director or operator of the funeral establishment under suhd. 2. a., that is within the scope of the agent's apparent authority. while a contract under par. (c) 1 between the agent and the licensed funeral dircctor or opcrator of the funeral establishment remains in force. and after that time until the licensed fiineral director or operator of the funeral establishment has made reasonable efforts to recover from the agcnt any forms for burial agreements provided to the agcnt by the licensed funeral director or operator of the funeral establishment and other indicia of agency. Reasonable efforts shall include a formal demand in writing for return of the indicia, and notice to the examining board if the agent does not comply with the demand promptly.

(c) 1. No agcnt of an opcrator of a funeral establishment may solicit the sale of or sell a burial agreement funded with the proceeds of a life insurance policy unless he or she has a contract with the operator of the funeral establishment that authorizes him or her to act as the agent of the operator of the funeral establishment and that satisfies the requirements established by the examining board by rule under par. (j) 1. c.

2. If an agent of an operator of a funeral establishment solicits the sale of or sells a burial agreement funded with the proceeds of a life insurance policy, the agent shall do all of the following at the time of solicitation:

a. Disclose to the prospective purchaser of the burial agreement the identitv of the funeral establishment of which he or she is an agcnt.

b. Furnish to the applicant a copy of the booklet prepared and distributed by the exaniining board under par. (j) 3. that describes the differences between funding a burial agreement with the procccds of a life insurance policy under this subsection and entering into a burial agreement funded by a trust under sub. (1).

(d) **A** burial agreement that is funded with the proceeds of a life *insurance* policy shall *specify* in *the* agreement the *funeral* establishment that will be used to provide the fiineral services or funeral nierchandise to be provided under the agreement.

(e) 1. A burial agrecmcnt that is funded with the pro ɔeeds from a life insurance policy shall include a provision setting forth the nature and extent of any price guarantee for the funeral merchandise or funeral services that are to be provided under the burial agreement.

2. If an agent solicits and sells a burial agrecmcnt that is funded with the proceeds of a life insurance policy, the licensed funeral director who owns the funeral establishment or is an agent of the operator of the funeral cstablishmcnt that will provide funeral merchandise or funeral services under the burial agreement **shall** *ratify* the burial agreement in *writing* and with his or her signature.

(f) The price of any funeral merchandise or funeral services provided under a burial agreement funded with the procceds of a life insurance policy may not exceed the pricc for the merchandise or services that, at the time that the merchandise is provided or the services arc performed, is set forth in the funeral establishment's gcncral price list required under the funeral industry praciices regulations of the federal trade commission.

(g) Before an agent. a licensed funeral director or an operator of a funeral establishment accepts an applicant's initial premium for a burial agreement that is funded or will be funded by a life insurance policy, the agent, funeral director or operator of a funeral *establishment shall* comply with *the requirements* under par. (h) and shall, in a writing that is clear arid conspicuous. disclose the following information to the applicant:

1. The fact that a life insurance policy is involved in or connected to. or is being used to fund, the burial agreement.

2. The type of insurance instminent that is funding the burial agreement.

3. The effect on tlic burial agrecmcnt of all of tlic following:

a. Changing the life insurance policy. including changing the assignment of the policy proceeds, changing the beneficiary designation or changing the use of the proceeds.

b. Any penalties incurred by the policyholder as a result of failing to make premium payments.

c. Any penalties incurred or money received as a result of cancellation or surrender of the lifc insurance policy.

4. The nature of the relationship between the insurance intermediary who solicited or is selling the life insurance policy and the funcral establishment that will be providing funeral or burial merchandise or services under the burial agreement.

5. The relationship of thc life insurance policy to the funding of the burial agreement and the existence and terms of any guarantees. other than a guarantee specificd in subd. 6., relating to the burial agreement.

6. A list of the funeral merchandise and funeral services that are applied for or contracted for under the burial agreement and all relevant information concemiiig the price of the funeral services provided under the burial agreement, including a statement as to whether the purchase price of the funcral merchandise or funeral services provided undcr the burial agreement is guaranteed at the time of the purchase of the burial agreement or whether the purchase price of the funeral merchandise or funeral services provided under the burial agrccment is to be determined at the time of need. and a statement that the price of the funeral merchandise or funeral services is subject to the limit specified in par. (f).

7. All relevant infomiation concerning what occurs. and whether any entitlements or obligations arise, if there is a difference between the proceeds of the life insurance policy and the amount of money actually needed to fund the burial agreement.

8. Any restrictions, including geographic restrictions, or penalties relating to delivery or performance under the burial agreement, including any restrictions or penalties relating to the inability of the operator of the funeral establishment to perform.

9. A statement as to whether a sales commission or other form of compensation is being paid to the agent who sold or solicited the sale of a burial agreement and, if so, the identity of the prisons to whom the commission or other compensation is paid.

(h) If an applicant under par. (g) is terminating a trust established under sub. (1), the agent, licensed funeral director or operator of the funeral establishment shall, before accepting the applicant's initial premium, furnish written notice to the examining board that satisfies requirements established by the examining board by rule tinder par. (j) 1. d., and may nof accept the applicant's initial premium until 30 days after providing written notice under this paragraph.

(hni) An agent authorized by a licensed funeral director or operator of a funeral establishment under par. (b) 2. a. may not engage in unfair or deceptive acts or practices specified in the funeral industry practices regulations of the federal trade commission, and shall comply with requirements to prevent unfair or deceptive acts or practices specified in such regulations.

(i) 1. A licensed funeral director or operator of a funeral establishment who, either directly or through an agcnt, solicits the sale of or sells a burial agreement funded with the proceeds of a life insurance policy shall maintain a record of the burial agreement that identifies the life insurance policy used to fund the agreement.

2. The funeral director under subd. 1. or the funeral director in charge of the funeral establishment under subd. 1. shall make a record maintained under subd. 1. available to the examining board if the board submits a written request to examine the record to the funeral director at least 3 days before the examination is to occur.

(j) 1. The examining board shall promulgate rules establishing all of the following:

a. Training requirements that an insurance intermediary licensed under ch. 628 must satisfy to sell or solicit the sale of a burial agreement under this suhsccti on.

b. Minimum standards that an individual burial agreement must satisfy if it is funded with the pi-occcds of a lifc insurance policy.

c. Minimum standards that a contract between an agent and an operator of a funeral cstablishment must satisfy to authorize the agent to sell or solicit the sale of a burial agrccment funded with the proceeds of a life insurance policy on behalf of the operator of the funeral establishment.

d. The form and content of written notice that a licensed funeral director, operator of a funeral establishment or agent of a licensed funeral director or operator of a funcral establishment is required to provide to the examining board under par. (h).

2. The examining board may promulgate rules establishing standards for marketing practices for a burial agreement that is fiinded with the proceeds of a life insurance policy, including standards for telephone solicitation of prospective purchasers. The rules promulgated under this subdivision may prohibit a method of telephone solicitation if the examining board determines that the prohibition is necessary to protect the public.

3. The examining hoard shall prepare and distribute a booklet that describes the differences between funding a burial agreement with the proceeds of a life insurance policy under this subsection and entering into a burial agreement funded by a trust under soh. (l). The examining board may charge a reasonable fee for the cost of preparation and distribution of the booklet.

(4) APPLICABILITY. This section shall not apply to any of the following:

(a) A contract to provide funeral and burial service for any person if such contract is incidental to maintaining such person in a home, hospital or institution.

(b) The sale or delivery of cemetery lots, graves, onter burial containers preplaced into tlic burial excavation of a grave, cremation urns, mausoleum spaces, as dcfincd in s. 157.061 (10), or grave or cemetery lot markers or monuments before their use is required or the sale of undeveloped spaces. as defined in s. 157.061 (17).

History: 1973 c. 227; 1977 c. 40; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.125; 1981 c. 64; 1983 a. 448, 485, 538; 1985 a. 29; 1989 a. 307; 1991 a. 39, 221; 1995 a. 295; 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. FD 6, Wis. adm. code.

445.13 Investigations; hearing; revocation of licenses. (1) Subject to the rules promulgated under s. 440.03 (1), the examining hoard may make investigations, subpoena witnesses, conduct hearings, limit, suspend or revoke a license of a funeral director, a certificate of registration of an apprentice or a pcnnit of an operator of a funeral establishment and reprimand a funeral director, apprentice or operator of a funeral establishment for any violation of 15 USC 45 and 57. of this chapter or of any rule of the department of health and family services or the examining board, for unprofessional conduct. including misrepresentation or fiaud in obtaining the license, permit or certificate of registration, or for any violation of this chapter or any rule of the examining hoard by an agent authorized by the funeral director or operator of the funeral establishment under s. 445.125 (3m) (b) 2. a.

(1e) In addition to or in lieu of a reprimand or limitation, suspension or revocation of a license or permit under sub. (I), the examining board may assess against any person who violates s. 445.12 (3g) or (3r) or 445.125 (3m) or a rule promulgated under s. 445.125 (3m) (j) a forfeiture of no more than $1,000 for each violation.

(1m) The examining board shall investigate an allegation that a funeral director has failed to do any of the following:

(a) Mail or present a death certificate within 10 days after receipt from the person responsible for completing the medical certification under s. 69.18 (2).

(h) Within any period of 180 days, mail or present 6 or more death certificates within the 2–day time limit under s. 69.18 (1) (bm).

(c) Obtain the written permission to effect final disposition required under s. 69.18 (3) (h).

(d) Mail a report of final disposition required under s. 69.18 (3) (a) before effecting a final disposition, as dcfincd in s. 69.01 (11).

(2) No reprimand or order limiting, suspending or revoking a license, certificate of registration or permit, or no assessment of forfeiture, shall be made until aficr a hearing conducted by the examining hoard. This subsection docs not apply to a license, certificate ofrcgistration or permit that is limited or suspcndcd under s. 440.13 (2) (c) or that is revoked under s. 440.12.

History: 1975 c 39 ss. 657j, 657o, 732 (2); 1977 c. 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.13; 1983 a. 485; 1985 a. 315; 1995 a. 27 s. 9126(19); 1995 a. 295; 1997 a. 191, 237.

Cross Reference: See also ch. FD 3, Wis. adm. code.

445.14 Funeral directors; who to employ. No pnhlic officer, employee or officer of any public institution; physician or surgeon shall send, or cause to be sent, to any funeral director, the corpse of any deceased person, without having first made due inquiry as to the desires of the next of kin, or any persons who may be chargeable with the funeral expenses of such deceased person. and if any such kin or person is found, his or her authority or direction shall be received as to the disposal of such corpse.

History: 1979 c. 175 s. 29; 1979 c. 221 s. 662: Stats. 1979 s. 445.14; 1983 a. 485

445.15 Penalties. (1) Except as provided in sub. (1m), any person violating any provision of this chapter or any rule of the department of health and family services and the examining board relating to its subject matter, shall be fined not less than $50 nor more than $200, or imprisoned not less than 30 days nor more than 3 months.

(1m) A funeral director or operator of a funeral establishment who violates s. 445.12 (3r) shall he fined not more than $5,000 for each violation. Each day that an insurance intcrnicdiary authorized by a funeral director or operator of a funeral establishment fails to meet the training requiremenis established by the examining board hy rule under s. 445.125 (3m) (j) 1. a. constitutes a separate violation of s. 445.12 (3r) (h).

(2) A funeral director who fails to do the acts dcscrihed undcr s. 445.13 (1m) (b) or who fails to do the act dcscrihcd undcr s. 445.13 (1m) (c), upon being convicted and fined for a 2nd offcnsc, may have his or her license suspended or revoked, and, if revoked, may not he relicensed for at least one year and only afier a regular examination

History: 1975 c. 39; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.15; 1985 a. 315; 1995 a. 27 s. 9126 (19); 1995 a. 295.

445.16 Exceptions. No provision of this chapter shall apply to, or in any way interfere with the duties of any officer of any public institution, nor with the duties of any officer of a medical collegs, county medical society, anatomical association, accredited college of embalming or any other recognized person carrying out the statutes prescribing the conditions under which donated or indigent dead human bodies are held subject for anatomical study; nor with the customs or rites of any religious sect in the burial of their dead.

History: 1979 c 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.16; 1981 c 390; 1983 a. 485.

CHAPTER 630

GENERAL PUBLIC POLICY PROVISIONS APPLICABLE TO INSURERS AND OTHERS

630.15 Prohibited relationships between life insurers and funeral directors or cemeteries

Cross–reference: See definitions in ss. 600.03 and 628.02.

630.15 Prohibited relationships between life insurers and funeral directors or cemeteries. No life insurer may invest directly in or, except as a loan secured by a mortgage on real estate or as a policy loan, lend money to a funeral director or cemetery or any association of funeral directors or cemeteries. No funeral director or cemetery or association of funeral directors or cemeteries may control a life insurer.

History: 1979 c. 102.

CHAPTER 632
INSURANCE CONTRACTS IN SPECIFIC LINES

SUBCHAPTER V
LIFE INSURANCE AND ANNUITIES

632.41 Prohibited provisions in life insurance.
632.415 Funeral policies.

Cross-reference: See definitions in ss. 600.03 and *628.02.*
Cross Reference: *See* also ch. Ins 3, Wis. adm. code.

NOTE: Chapter 375, laws of 1975, which created subchapters I to VIII of Chapter 632 of the statutes, contains notes explaining the revision.

632.41 Prohibited provisions in life insurance.

(1) ASSESSABLE POLICIES. No insurer may issue assessable life insurance policies under which assessments or calls may be made upon policyholders or others.

(2) BURIAL INSURANCE. Except as provided in s. 632.415, no contract in which the insurer agrees to provide benefits to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials.

History: 1975 c. 373. 375. 422; 1979 c. 102; **1995a.295;** 1999 a. 191.

Cross Reference: *See* also ch. Ins *23,* Wis. adm. **code. Sub.** (2) **doer** not prohibit naming funeral director as beneficiary of life insurance policy in conjunction with separate agreement between insured and funeral director that proceeds will be used for funeral and burial expenses. 71 Atty. Gen. 7.

Purpose of (2) is to prevent monopolistic or unfair trade practices. 76 Atty. Gen. 291.

632.415 Funeral policies. (1)

In this section; "multi-premium funeral policy" means a life insurance policy sold under sub. (2) for which premiums to fund the policy are paid over time.

(2) A life insurance policy may provide for the assignment of the proceeds of the policy to a funeral director. or operator of a funeral establishment if the insurance intermediary who sells or solicits the sale of the policy is not an agent of the funeral director or operator of the funeral establishment or if the assignment of proceeds is contingent on the provision of funeral merchandise or funeral services as provided for in a burial agreement that satisfies the requirements of s. 445.125 (3m) and rules promulgated by the funeral directors examining hoard under s. 445.125 (3m) (j) 1. b.

(3) A life insurance policy sold under sub. (2) shall permit the policyholder to designate a different beneficiary, upon written notice to the insurer, and a different funeral director or operator of a funeral establishment that is to receive the assignment of proceeds, after written notice to the current funeral director or operator of the funeral establishment.

(4) (a) **An** insurer may issue a multi-premium funeral policy only if, at the time that the policy is issued, the face amount of the policy is not less than the value of funeral merchandise and services to be provided under a burial agreement under s. 445.I25 (3m). (b) The death benefit under a multi-premium funeral policy may not be less than the face amount of the policy unless all of the following apply:

1. The policy contains a detailed explanation of the lower death benefit, as well as full disclosure of the lower death benefit on the first page of the policy.

2. The applicant does not apply for, or qualify for, any full face amount multi-premium funeral policy that the insurer offers.

3. The death benefit is not less than at least one of the following:

a. Twenty-five percent of the face amount of the policy during the first year that the policy is in effect, 50% of the face amount of the policy during the 2nd year that the policy is in effect and the full face amount of the policy afier the end of the 2nd year that the policy is in effect, hut in no event less than the total of the premiums actually paid.

h. During the first 2 years that the policy is in effect, an amount equal to the actual premiums paid plus simple interest at the rate of 3% per year, and, after the end of the 2nd year that the policy is in effect, the full face amount of the policy.

(c) The period over which premiums may be payable under a multi-premium funeral policy may not exceed the following applicable period

1. Twenty years, if the insured is less 60 years of age when the policy is issued.

2. Ten years, if the insured is at least 60 years of age but less than 80 years of age when the policy is issued.

3. Five years, if the insured is at least 80 years of age when the policy is issued.

(d) At the time that an applicant applies for coverage under a multi-premium funeral policy, the insurance intermediary or other person selling or soliciting the sale of the policy shall disclose the maximum number of premium payments to be made over the life of the policy, the frequency of the premium payments and the amount of each premium payment.

(5) Subject to subs. (3) and (4), the commissioner shall by rule establish minimum standards for claims payments, marketing practices and reporting practices for life insurance policies sold under sub. (2).

History: 1999 a. 191 ss. *2* to *5.*

Cross Reference: *See* also ch. Ins *23.* Wis. adm. code.

CHAPTER 863
CLOSING ESTATES

563.09 Allowance for tombstone and care of grave.

Cross–reference: ***See*** definitions in ch. 851

863.09 Allowance for tombstone and care of grave.

(1) TOMBSTONE. In case no provision is made in the will for a tombstone or monument or marker at the grave of the decedent, and none has been erected, the personal reprcsentative may expend a reasonable sum for that purpose. The expenditure is subject to the approval of the court and is classed as funeral expense.

(2) *CARE OF GRAVE*. The court may order the personal representative to pay a suitable amount **for** the care of the grave of the decedent. The expenditure is classed as funeral expense.

History: 1989 a. 309.

Cross–reference: For court orders concerning perpetual care of graves, see ss 157.11 and 157.125.

CHAPTER 940
CRIMES AGAINST LIFE AND BODILY SECURITY

BODILY SECURITY

940.22 Sexual exploitation h i therapist; duty to report
940.225 Sexual assault.

940.22 Sexual exploitation by therapist; duty to report.

(1) **DEFINITIONS.** In this section: *(a)* "Department" means the department ofregulation and licensing.

(b) .'Physician" has the meaning designated in s. 448.01 (5).

(c) "Psychologist" means a person who practices psychology. as described in s. 455.01 (5).

(d) "Psychotherapy" has the meaning designated ins. 455.01 (G).

(e) "Record" means any document relating to the investigation. assessment and disposition of a report under this section,

(f) "Reporter" means a thcrapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

(i) "Therapist" means a physician. psychologist; social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to he a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist –patient or therapist–client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class **F** felony. Consent is not an issue in an action under this subsection.

VOTE Sub. (2) is shown as amended eff. 2–143 by 2001 wis. Act 109. Prior to 2–1–03 it reads:

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during an) ongoing therapist–patient or therapist–client relationship, regardless of whether if occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

(3) REPORTS OF SEXUAL. CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or 3 person who holds himselfor herself out to he a therapist in violation of sub.(2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the rcport, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par.(a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing hoard.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1 is not applicable.

(c) **A** report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub.(2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par.(a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars.(a) to (c) is guilty of a Class **A** misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub.(3) and maintained by the department, examining hoards, affiliated crcdentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub.(3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may he disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject,

2. If the department receives 2 or more reports under sub.(3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub.(3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another renort was reckived regardingthe same subject.

(c) **A** person to whom a report or record is disclosed undcr this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of **a** report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to he acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

History: 1983 a. 434; 1985 a. *275:* 1987 **a.** 352, 380; 1991 **a.** 160; 1993 **a** 107; 1995 **a.** 300; 2001 **a.** 109.

This **section** applies lo persons engaged in professional therapist–patient **relationships. A** teacher **who** conducts informal **counseling** is not **engaged** as a professional therapist. **Slate** v. Ambrose, 196 Wis. **2d** 768. 540 N.W.2d 208 (Ct. App. 1995).

940.225 Sexual assault. **(1) FIRST DECREE SEXUAL ASSAULT.** Whoever does any of the following is guilty o f a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use o f a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:

NOTE: Sub. (2) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has Sexual contact or sexual intercourse with another person without consent of that person by use or threat of farce or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(9 Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or **(k)** and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub.(5) (b) 2. with a person without the consent of that person is guilty of a Class G felony.

SOTE Sub. (3) is shown as amended off. 2–1–03 bv 2001 Wis. A d 109. Prior to 2–1–03 it reads:

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilt) of a Class D felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. with a person without the consent or that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub.(3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) CONSENT. "Consent". as used in this section. means words or oven actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub.(2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent hut the presumption may he rebutted by competent evidence, subject to the provisions of s. 972.11 (2): (b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section: (ag) "Inpatient facility" has the meaning designated ins. 51.01 (10).

(ai) "Intoxicant" means any controlled substance. controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substancc, controlled substancc analog or other drug. "Intoxicant" does not include any alcohol beverage.

(am) "Patient" means any person who does any of the following: 1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or **(k),** from an employee of a facility or program or from a person providing services under contract with a facility or program. 2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or **(k)** for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), **(h)** or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly **or** through clothing by the use of any body pan or object, of the complainant's or defendant's intimate pans if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (l).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the deiendant's instruction. The emission of semen *is* not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE SOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1975 c. 184, 421; 1977 c. 173: 1979 c. 24, 25. 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134: 1987 a. 245. 332. 352: 1987 **a.** 403 ss. 235, *236,256:* 1993 **a.** 445; 1995 **a.** 69; 1997 a. *220* 2001 a. 109.

Legislative Council Note, 1981: Presently, [in sub.(5) (a)] the definition of "sexual intercourse" in **the** sexual assault statute **includes any** intrusion of any part of a **person's body** or of **any** object into the genital or and opening **of** another **person.** This proposal **clarifies** that the intrusion of **the body** part or object may **be** caused hy the direct act **of** the **offender** (defendant) or may occur **as** a result of an act by **the** victim which **is** done in compliance with instructions **of** the offender **(defendant).** [Bill 630–S] **Failure to** resist is not consent **under** sub.(4). **State** v. Clark, 87 Wis. **2d 804,** *275* N.W.2d 715 (1979).

Injury by conduct regardless of life is not a lesser–included crime of first–degree sexual assault. Hagenkord v. State, 94 Wis. 2d 250, 287 N.W.2d 834 (Ct. App. 1979).

Separate acts of sexual intercourse, each different in kind from the others and differently defined in the statutes, constitute separate chargeable offenses. State v. Eisch, 96 Wis. 2d 25, 291 N.W.2d 800 (1980).

The trial court did not err in denying the accused's motions to compel psychiatric examination of the victim and for discovery of the victim's past addresses. State v. Lederer, 99 Wis. 2d 430, 299 N.W.2d 457 (Ct. App. 1980).

The verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. State v. Lomagro, 113 Wis. 2d 582, 335 N.W.2d 583 (1983).

A jury instruction that touching the "vaginal area" constituted sexual contact was correct. State v. Morse, 126 Wis. 2d 1, 374 N.W.2d 388 (Ct. App. 1985).

"Unconscious" as used in sub.(2) (d) is a loss of awareness that may be caused by sleep. State v. Curtis, 144 Wis. 2d 691, 424 N.W.2d 719 (Ct. App. 1988).

The probability of exclusion and paternity are generally admissible in a sexual assault action in which the assault allegedly resulted in the birth of a child, but the probability of paternity is not generally admissible. HLA and red blood cell test results showing the paternity index and probability of exclusion were admissible statistics. State v. Hartman, 145 Wis. 2d 1, 426 N.W.2d 320 (1988).

Attempted fourth–degree sexual assault is not an offense under Wisconsin law. State v. Cvorovic, 158 Wis. 2d 630, 462 N.W.2d 897 (Ct. App. 1990).

The "use or threat of force or violence" under sub.(2) (a) does not require that the force be directed toward compelling the victim's submission, but includes forcible contact or the force used as the means of making contact. State v. Bonds, 165 Wis. 2d 27, 477 N.W.2d 265 (1991).

A dog may be a dangerous weapon under sub.(1) (b). State v. Sinks, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

Convictions under both subs.(1) (d) and (2) (d) did not violate double jeopardy. State v. Sauceda, 168 Wis. 2d 486, 485 N.W.2d 1 (1992). A defendant's lack of intent to make a victim believe that he was armed was irrelevant in finding a violation of sub.(1) (b); if the victim's belief that the defendant was armed was reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Sub.(2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation similar, but not identical, to the facts of the case was inadmissible. State v. Pittman, 174 Wis. 2d 255, 496 N.W.2d 74 (1993).

Convictions under both sub.(2) (a) and (e) did not violate double jeopardy. State v. Selmon, 175 Wis. 2d 155, 877 N.W.2d 498 (Ct. App. 1993).

"Great bodily harm" is a distinct element under sub.(1) (a) and need not be caused by the sexual act. State v. Schambow, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

Intent is not an element of sub.(2) (a); lack of an intent element does not render this provision constitutionally invalid. State v. Neumann, 179 Wis. 2d 687, 508 N.W.2d 54 (Ct. App. 1993).

A previous use of **force,** and **the** victim's resulting **fear, was** an **appropriate** basis for **finding that** a threat of force existed **under** sub.(2) **(a). State** v. Speese, 191 Wis. 2d *205,* **528** N.W.2d **63** (Ct. App. 1995).

Violation **of** any **of** the provisions of this section docs not immunize the defendant from violating the same or another provision **in the** course **of** sexual misconduct. Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub.(1) (d). State v. Kruzycki, 192 Wis. 2d 509, 531 N.W.2d 429 (Ct. App. 1995).

Sub.(2) (c) is not unconstitutionally vague. State v. Smith, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct. App. 1997).

For a guilty plea to a sexual assault **charge** to **he knowingly** made, **a defendant** need not be informed of the **potential** of being **required** to register as a convicted sex offender under s. 301.45 or that failure to register **could** result in imprisonment, **as** the commitment is a collateral, not **direct,** consequence **of** the plea. State v. Bollig, 2000 WI 6. 232 Wis. 2d 561, 605 N.W.2d 199.

Conviction on 2 counts of rape, **for** acts occurring *25* minutes apart in the same location, **did** not violate double jeopardy. Harrell v. Israel. *478* F. Supp. *752* (1979).

A conviction for attempted 1st degree sexual assault **based** on circumstantial evidence **did** not **deny due** process. Upshaw v. Powell, 478 F. Supp. 1264 (1979)

CHAPTER 943
CRIMES AGAINST PROPERTY

SUBCHAPTER III
MISAPPROPRIATION

943.20 Theft.

Cross-reference: See definitions in s. 939.22.

943.20 Theft. (1) ACTS. Whoever does any of the following may be penalized as provided in sub. (3):

(a) Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.

(b) By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.

(c) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of such property.

(d) Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made wiih intent not to perform it if it is a part of a false and fraudulent scheme.

(e) Intentionally fails to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

(2) DEFINITIONS. In this section: (a) "Movable property" is property whose physical location can be changed, without limitation including electricity and gas, documents which represent or embody intangible rights, and things growing on, affixed to or found in land. (am) "Patient" has the meaning given in s. 940.295 (1) (L).

(b) "Property" means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a chose in action or other intangible rights.

(c) "Property of another" includes property in which the actor is a co-owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.

(cm) '.Resident" has the meaning given in s. 940.295 (1) (p).

(d) "Value" means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less, but if the property stolen is a document evidencing a chose in action or other intangible right, value means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the thief gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.

(e) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

(3) PENALTIES. Whoever violates sub. (1):

(a) If the value of the property does not exceed $2,500, is guilty of a Class A misdemeanor.

(bf) If the value of the property exceeds $2,500 hut does not exceed $5,000, is guilty of a Class I felony.

(bm) If the value of the property exceeds $5,000 hut does not exceed $10,000, is guilty of a Class H felony.

(c) If the value of the property exceeds $10,000, is guilty of a Class G felony.

(d) If any of the following circumstances exists, is guilty of a Class H felony:

1. The property is a domestic animal.

3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle.

4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building.

5. The property is a firearm.

6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from a vulnerable adult.

(e) If the property is taken from the person of another or from a corpse, is guilty of a Class G felony.

NOTE: Sub. (3) is shown as affected eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:

(3) PENALTIES. Whoever violates sub. (1): (a) If the value of the property does not exceed 62,500, is guilty of a Class A misdemeanor.

(c) If the value of the property exceeds 62,500, is guilty of a Class *C* felony.

(d) If the value of the property dots not exceed $2,500 and any of the following circumstances exist, is guilty of a Class D felony:

1. The property is a domestic animal; or

2. The property is taken from the person of another or from a corpse; or

3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle: or

4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building; or

5. The property is a firearm.

6. The property is taken from a patient or resident of a facility or program under I. 940.295 (2) or from a vulnerable adult.

(4) USE OF PHOTOGRAPHS AS EVIDENCE In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c. 173, 255, 447; 1983 a. 189; 1987 a. *266;* 1991 a. 39; 1993 a. 213. 445,486: 2001 a. 16. 109.

Cross-reference: Misappropriation of **funds** by contractor **or** subcontractor as theft, ***see*** s. 779.02 (5).

If one person **taker** property from the person of another, and a 2nd person carries it away, the evidence may show **a** theft from the person **under** subs. (1) (a) and (3) (d) 2., either on a theory of conspiracy or of complicity. Hawpetoss v. State. *52* Wis. 2d 71, 187 N.W.2d 823 (1971).

Theft is a **lesser** included offense of robbery. Moore v. State, ***55*** Wis. **2d** 1, 197 N.W.2d 820 (1972).

Attempted theft by false representation (signing another's name to a car purchase contract) is not an included crime of forgery (signing the owner's name to a car title to be traded in). State v. Fuller, 57 Wis. 2d 408, 204 N.W.2d 452 (1973).

Under sub. (1) (d), it is not necessary that the person who parts with property be induced to do so by a false and fraudulent scheme; the person must be deceived by a false representation that is part of such a scheme. Schneider v. State, 60 Wis. 2d 765, 211 N.W.2d 511 (1973).

In abolishing the action for breach of promise to marry, the legislature did not sanction either civil or criminal fraud by the breaching party against the property of a duped victim. Restrictions on civil actions for fraud are not applicable to related criminal actions. Lambert v. **State,** 73 Wis. **2d** 590, **243** N.W.2d 524 (1976).

Sub. (1) (a) should he read in the disjunctive so as **to** prohibit both the taking of, **and** the exercise of unauthorized control over, property of another. The sale of stolen property **is** thus prohibited. State v. Genova, 77 Wis. 2d 141, ***252*** N.W.2d **380** (1977).

The state may not **charge** a defendant under sub. (1) **(a) in** the disjunctive by alleging that the defendant **rook** and carried away or **used** or transferred. Jackson v. State. 92 Wis. 2d 1. **284** N.W.2d 685 (Ct. App. 1979).

Circumstantial evidence of owner nonconsent was sufficient to support a **jury's** verdict. State v. Lund, 99 Wis. 2d 152, 298 N.W.2d 533 (1980).

Section 943.20 (1) (e) does not unconstitutionally imprison one for debt. State v. Roth. 115 Wis. 2d 163. 339 N.W.2d 807 (Ct. App. 1983).

A person may be convicted under s. 943.20 (1) (a) for concealing property and be separately **convicted** for transferring that property. State v. Tappa, 127 Wis. 2d 155, 378 N.W.2d **883** (1985).

A violation of sub. (1) (d) does not require proof that the accused personally received property. State v. O'Neil, 141 Wis. 2d 535, 416 N.W.2d 77 (Ct. App. 1987).

"Obtains title to property," as used in sub. (1) (d), includes obtaining property under a lease by fraudulent misrepresentation. State v. Meado, 163 Wis. 2d 789, 472 N.W.2d 567 (Ct. App. 1991).

The federal tax on a fraudulently obtained airline ticket was properly included in its value for determining whether the offense was a felony under sub. (3). State v. McNearney, 175 Wis. 2d 485, N.W.2d (Ct. App. 1993).

The definition of "bailee" under s. 407.102 (1) is not applicable to sub. (1) (b);

definitions of "bailment" and are "bailee" discussed. State v. Kuhn, 178 Wis. 2d 428, 504 N.W.2d 405 (Ct. App. 1993).

When the factual basis for a plea to felony theft does not establish the value of the property taken, the conviction must be set aside and replaced with a misdemeanor conviction. State v. Harrington, 181 Wis. 2d 985, 512 N.W.2d 261 (Ct. App. 1994).

The words "uses," "transfers," "conceals," and "retains possession" in sub. (1) (b) are not synonyms describing the crime of theft but describe separate offenses. A jury must be instructed that there must be unanimous agreement on the manner in which the statute was violated. State v. Seymour, 183 Wis. 2d 682, 515 N.W.2d 874 (1994).

Theft from the person includes theft of a purse from the handle of an occupied wheelchair. State v. Hughes, 218 Wis. 2d 538, 582 N.W.2d 49 (Ct. App. 1998).

When the victim had pushed her purse against a car door with her leg and the defendant's action caused her to fall back, dislodging the purse, his act of taking it constituted taking property from the victim's person under sub. (3) (d) 2. State v. Graham, 2000 WI App 138, 237 Wis. 2d 620, 614 N.W.2d 504.

Multiple convictions for the theft of an equal number of firearms arising from one incident did not violate the protection against double jeopardy. State v. Trawitzki, 2001 WI 77, 244 Wis. 2d 523, 628 N.W.2d 801.

A landlord who failed to return or account for a security deposit ordinarily could not be prosecuted under this section. 60 Atty. Gen. 1.

State court rulings that unauthorized control was sufficient to support a conviction under sub. (1) (d) were not an unlawful broadening of the offense so as to deprive the defendant of notice and the opportunity to defend. Hawkins v. Mathews, 495 F. Supp. 323 (1980).

CHAPTER 979

INVESTIGATION OF DEATHS

979.01 Reporting deaths required; penalty; taking specimens by coroner or medical examiner.
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Cross–reference: See definitions in s. 967.02.

979.01 Reporting deaths required; penalty: taking specimens by coroner or medical examiner. (1) All physicians, authorities of hospitals, sanatoriums. public and private institutions, convalescent homes, authoritics of any institution of a **like** nature, and other persons having knowledge of the death of any person who has died under any of the following circumstances. shall immediately report the death to the sheriff, police chief, or medical examiner or coroner of the county where the death took place:

(a) All deaths in which there are unexplained. unusual or suspicious circumstances.

(b) All homicides.

(c) **All** suicides.

(d) **All** deaths following an abortion.

(e) All deaths due to poisoning, whether homicidal, suicidal or accidental.

(f) All deaths following accidents, whether the injury is or is not the primary cause of death.

(g) When there was no physician. or accredited practitioner of a bona fidc religious denomination relying upon prayer or spiritual means for healing in attendance within 30 days preceding death.

(h) When a physician refuses *to* sign the death certificate.

(i) When, after reasonable efforts, a physician cannot be obtained to sign the medical certification as required under s. 69.18 (2)(b) or (c) within 6 days after the pronouncement of dcath or sooner under circumstances which the coroner or medical examiner determines to he an emergency.

(lg) A sheriff or police chief shall; immediately upon notification of a death under suh. (1), notify the coroner or the medical examiner. and the coroner or medical examiner of the county where death look place, if the crime, injury. or event occurred in another county, shall immediately report the death to the coroner or medical examiner of that county.

(lm) The coroner or medical examiner receiving notification under sub. (1) or (1g) shall immediately notify the district attorney.

(lr) If the coroner or medical examiner is notified of a death under sub. (1) or (1g) and determines that his or her notification of the death was not required under suh. (1) or (1g), he or she shall notify the director of the historical society under s. 157.70(3).

(2) Any person who violates this section shall he fined not more than $1,000 or imprisoned not more than 90 days.

(3) In all cases of death reportable under sub. (1) where an autopsy is not performed, the coroner or medical examiner may take for analysis any and all specimens, body fluids and any other material which will assist him or her in determining the cause of death The specimens, body fluids and other material taken under this subsection shall not be admissible in evidence in any civil action against the deceased or the deceased's estate, as the result of any act of the deceased.

(3m) In all cases of death reportable under sub. (1) where an autopsy is not performed, the coroner or medical examiner shall take for analysis any and all specimens, body fluids and any other material that will assist him or her in determining the cause of death if requested to do so by a spouse, parent, child or sibling of the deceased person and not ohjcctcd to hy any of those family members. The specimens. body fluids and other material taken under this subsection shall not be admissible in evidence in any civil action against the deceased or his or her estate. as the result of any act of the deceased.

(4) No person may embalm or perform an autopsy on the body of any person who has died undcr any of the circumstances listed in this section unless the person obtains the written authorization of the coroner of the county in which the injury or cause of death occurred. Such authorization shall he issued by the coroner or a deputy within 12 hours after notification of the reportable death, or as soon thereafter as possible in the event of unexplained, unusual or suspicious circumstances.

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

Cross Reference: See also s. HFS 135.09. Wis. adm. code.

Admission of a blood sample is not barred by sub. (3) when the action is brought by the deceased's estate. Luedtke v. Shedivy, 51 Wis. 2d 110. 186 N.W.2d 220 (1971).

If an accident occurs in one county and the victim is transported to another county. and death occurs there. the coroner where the death occurs has a duty to immediately report the death to the coroner of county where the crime. injury, or event occurred, and the coroner of the latter county has authority to investigate and a duty to hold an inquest if he or she considers it necessary or if directed by the district attorney of his or her county. 62 Atty. Gen. 127.

979.012 Reporting deaths of public health concern. (1) If a coroner or medical examiner is aware of the death of a person who, at the time of his or her death. had an illness or a health condition that satisfies s. 166.02 (71 (a). the coroner or medical examiner shall report the illness or health condition to the department of health and family services and to the local health department, as defined in s. 250.01 (4), in whose jurisdiction the coroner or medical examiner is locarcd in writing or by electronic transmission within 24 hours of learning of the deceased's illness or health condition.

(2) In a report under sub. (I), the coroner or medical examiner shall include all of thc following information if such information is available:

(a) The illness or health condition of the deceased.

(b) The name, date of birth. gender, race, occopation. and home and work addresses of the deceased.

(c) The name and address of the coroner or medical examiner.

(d) If the illness or health condition was related to an animal or insect bite, the suspected location where the bite occurred and the name and address of the owner of the animal or insect, if an owner is identified.

History: 2001 a. 109.

979.015 Subpoena for documents. Cpon the request of the coroner, medical examiner or district attoniey. a court shall issue a subpoena requiring the production of documents necessary for the determination of a decedent's cause of death. The documents may include the decedent's patient health care records and treatment records, as defined in ss. 51.30 and 116.81(4). The documents shall he returnable to the officer named in the subpoena.

History: 1983 a. 279.

979.02 Autopsies. The coroner, medical examiner or district attorney may order the conducting of an autopsy upon the body of a dead person any place within the state in cases where an inquest might be had as provided in s. 979.04 notwithstanding the fact that no such inquest is ordered or conducted. The autopsv shall be conducted by a licensed physician who has specialized training in pathology. The district attorney may inove the circuit court for the county iii which the body is buried for an order disinterring the body for purposes of autopsy. The ordcr shall be granted by the circuit court **upon** a reasonable showing that any of the criteria specified in s. 979.04 exists. Phis section docs not prevent additional autopsies or examinations of the body if there arc unanswered pathological questions concerning the death and the causes of death.

History: 1983 a. 279 s. **12;** Stats. 1983 s. 979.02.

979.025 Autopsy of correctional inmate. (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual dies while he or she is in the legal custody of the department and confined to a correctional facility located in this state, the coroner or medical examiner of the county where the death occurred shall perform an autopsy on the deceased individual. If the coroner or niedical examiner who performs the autopsy determines that the individual's death may have been the result of any of the situations that would permit the district attorney to order an inquest under s. 979.04 (1), the coroner or medical examiner shall follow the procedures under s. 979.04 (2).

(2) INMATE CONFINED IN AN INSTITUTION IN ANOTHER STATE. If **an** individual dies while he or she is in the legal custody of the department and confined to a correctional facility in another state under a contract under s. 301.07. 301.21, or 302.25, the department shall have an autopsy performed by an appropriate authority in the othcr state or by the coroner or medical examiner of the county in which the circuit court is located that sentenced the individual to the custody of the depamnent. If the coroner or medical examiner who performs the autopsy in this state determines that the individual's death may have been the result of any of the situations that would permit the district attorney to order an inquest under s. 979.04 (1), the coroner or medical examiner shall forward the results of the autopsy to the appropriate authority in the other state.

(3) COSTS OF **AN** AUTOPSY. The costs of an autopsy performed under sub. (1) or (2) shall he paid hy the department.

History: 2001 a. 16.

979.03 Autopsy for sudden infant death syndrome. Jf a child under the age of 2 years dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner or medical examiner shall notify the child's parents or guardian that an autopsy will be performed, at no cost to the parents or guardian, unless the parents or guardian object to the autopsy. The coroner or medical examiner shall conduct or shall order the conducting of an autopsy at county expense. unless parent or guardian requests in writing that an autopsy not be performed. if the autopsy reveals that sudden infant death syndrome is ths cause of death, that fact shall be so stated in the autopsy report. The parents or guardian of the child shall be promptly notified of the cause of death and of the availability of counseling services.

History: 1977 c. 246; 1983 a. 279 s. 13; Stats. **1983** s. 979.03.

Only when a coroner **has no** reason to believe that a death was caused by circumstances **under** s. 979.01 [now s. 979.04] other than sudden infant death syndrome **docs** a written objection **under** s. 979.125 [now s 979 03] bar an autopsy under s. 979.121 [now s. 979.02]. 68 Atty. Gen. 55.

979.04 Inquests: when called. (1) If the district attorney has notice of the death of any person and there is reason to believe from the circumstances surrounding the death that felony murder, first degree or 2nd degree intentional homicide. first degree or 2nd degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by negligent operation of vehicle, homicide resulting from negligent control of a vicious animal or homicide hy intoxicated user of a vehicle or firearm may have been committed, or that death may have been due to suicide or unexplained or suspicious circumstances, the district attorney may order that an inquest be conducted for the purpose of inquiring how the person died. The district attorney shall appear in any such inquest representing the swte in presenting all evidence which may be relevant or material to the inquiry of the inquest. The inquest may he held in any county in this state in which venue would lie for the trial of any offense charged as the result of or involving the death. An inquest may only be ordered by the district attorney under this subsection or hv tlie circuit judge under sub. (2).

(2) If the coroner or medical examiner has knowledge of the death of any person in the manner described under sub. (1), he or she shall immediately notify the district attorney. The notification shall include information concerning the circumstances surrounding the death. The coroner or medical examiner may request the district attorney to order an inquest under sub. (1). Jf the district attorney refuses to order the inquest. a coroner or medical examiner may petition the circuit court to order an inquest. The court may issue the order if it finds that the district attorney has abused his or her discretion in not ordering an inquest.

(3) Subsequent to receipt of notice of the death, the district attorney may request the coroner or medical examiner to conduct a preliminary investigation and report hack to the district attorney. The district attorney may determine the scope of the preliminary investigation. This subsection does not limit or prevent any other investigation into the death by any law enforcement agency with jurisdiction over the investigation.

History: 1983 *a.* 279; 1985 a. 135; 1987 a. 399.

979.05 Inquests: procedure. (1) An inquest shall be conducted by a circuit judge or a circuit court commissioner.

(2) The inquest shall be conducted before a jury unless the district attorney, coroner, or medical examiner reqiicsts that the inquest be conducted before the judge *or* circuit court commissioncr only. If the inquest is to he conducted before a jury, a sufficient number of names of prospective jurors shall be selected from the prospective juror list for the county in which the inquest is to be held by the clerk of circuit court in the manner provided in s. 756.06. The judge or circuit court commissioner conducting the inquest shall summon the prospective jurors to appear before the judge or circuit court commissioner at the time fixed in the summons. The summons may he served by mail, or by personal service if the judge, circuit court commissioner, or district attorney determines personal service to he appropriate. The summons shall he in the form used to summon petit jurors in the circuit courts of the county. Any person who fails to appear when summoned as an inqucst juror is subject to a forfeiture of not more tlian $40. The inquest jury shall consist of **6** jurors. If 6 jurors do not remain from the number originally summoned after establishment of qualifications, the judge or circuit court commissioner conducting the inquest may require the clerk of the circuit court to select sufficient additional jurors' names. Those persons shall be summoned forthwith by the sheriff of the county

(3) The judge or circuit court commissioner shall examine on oath or affirmation each person who is called as a juror to discover whether the juror is related by blood, marriage or adoption to the decedent, any member of the decedent's family, the district attorney. any other attorncy appearing in the case or any members of the office of the district attorney or of the office of any other attorney appearing in the case, has expressed or formed any opinion regarding rhe matters being inquired into in the inquest or is aware

of or has any bias or prejudice concerning the matters being inquired intu in the inqucst. If any prospective juror is found to be not indifferent or is found to have formed an opinion which cannot be laid aside, that juror shall be excused. The judge or circuit commissioncr may select one or more alternate jurors if the inquest is likely to hc protracted. This subsection does not limit the right of the district attorney to supplement the judge's or circuit commissioner's examination of any prospective jurors as to qualifications.

(4) When **6** jurors have been selected, the judge or circuit court commissioncr shall administer to them an oath or affirmation which shall bc substantially in the following form:

You do solemnly swear (affirm) that you will diligently inquire **and** determine on behalf of this state when, and in what manner and by what means, the person known as .... who is now dead came to his or her death and that you will retuni a true verdict thereon according to your knowledge, according to the evidence presented and according to the instructions given to you by the .... (judge) (circuit court commissioner).

(5) Prior to the submission of evidence to the jury, the judge or circuit court commissioner may instruct the jury on its duties and on the substantive law regarding the issues which may he inquired into before the jury. The district attorney may, at any time during the course of the inquest, make statements to the jury relating to procedural or evidentiary matters he or she and the judge or circuit court coinmissioner deem appropriate. Section 972.12 applies to the conduct of the inquest jury.

(6) The judge or circuit court commissioner conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs.

(7) Inquest jurors shall receive the same compensation as jurors under s. 756.25.

History: 1983 a. 279: Sup. Ct. Order No. 96 US. *207* Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61

979.06 Inquests: witnesses, (1) The judge or circuit court cornmissioner may issue subpoenas for witnesses at the request of the coroner or medical examiner and shall issue subpoenas for witnesses requested by the district attorncy. Subpoenas arc returnable at the time and place stated therein. Persons who are served with a subpoena may be compelled to attend proceedings in the manner provided ins. 885.12.

(2) The judge or circuit court commissioner conducting the inquest and the district attorney may require by subpoena the attcndancc of one or more expert witnesses, including physicians, surgeons and pathologists, for the purposes of conducting an examination of the body and all relevant and material scientific and medical tests connected with the examination and testifying as to the results of the examination and tests. The expert witnesses so subpoenaed shall receive reasonable fees determined by the district attorney and the judge or circuit court commissioner conducting the inquest.

(3) Any witness examined at an inquest may have counsel present during the examination of that witness. The counsel may not examine or cross examine his or her client, cross–examine or call other witnesses or argue before the judge or circuit court commissioner holding the inquest.

(4) The judge or circuit court commissioner shall administer an oath or affirmation to each witness which shall be substantially in the following form:

You do solemnly swear (affirm) that the cridence and testimony you give to this inquest concerning the death of the person known as .... shall be the truth, the whole truth and nothing but the truth.

(5) The judge or circuit court commissioner conducting the inquest shall cause the testimony given by all witnesses to be reduced *to* writing or rccordcd and may employ stenographers to take and transcribe all of the testimony. The stenographer shall receive mimbursement at a reasonable rate for each appearance and transcription at rates in accordance with the customary charges in the area for similar services.

(6) Inquest witnesses shall receive the sanic compensation as witnesses in circuit court tinder s. 814.67.

History: 1983 a 279; 2001 a. hi

979.07 Incriminating testimony compelled; immunity. (1) (a) If a person refuses *to* testify or to produce books, papers or documents when required to do so before an inquest for the reason that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her *to* a forfeiture or penalty. the person may be compelled to testify or produce the evidcncc by order of the circuit court of the county in which the inquest is convened on motion of the district attorney. A person who testifies or produces evidence in obedience to the comrndnd of the court in that case is not subject to any forfeiture or penalty for or on account of testifying or producing evidence, except the person is subject to prosecution and punishment for perjury or false swearing committed in *so* testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(2) If a witness appearing before an inquest fails or refuses without just cause to comply with an ordcr of the court under this section to give testimony in response to a question or with respect to any matter, the court, upon the failure or refusal or when the failure or refusal is duly brought to its attention, may punish the witness for contempt under ch. *185*.

History: 19x3 a. 279; 19x9a. 122.

979.08 Inquests: instructions, burden of proof and verdict. (1) When the evidence is concluded and the testimony closed, the judge or circuit court commissioncr shall instruct the jury on its duties and on the substantive law regarding the issues inquired into before the jury. The district attorney shall prepare a written set of appropriate requested instructions and shall submit them to the judge or circuit court commissioncr who, together with the dishict attorney, shall compile the final set of instructions which shall be given. The instructions shall include those criminal offenses for which the judge or circuit court commissioner believes a reasonable jury might return a verdict based upon a finding of probable causc.

(2) The jury's verdict shall be based upon a finding of probable cause and shall be unanimous.

(3) The jury shall retire to consider its verdict after hearing all of the testimony and evidence; making all necessary inquiries and having been instructed in the law. The judge or circuit court commissioner shall provide the jury with one complete set of written instructions providing the substantive law to bc applied to the issues to be decided. The verdict shall be in a form which permits the following findings:

(a) Whether the deceased came to his or her death by criminal means and, if so, the specific crimes committed and *the* name of the person or persons; if known, having committed the crimes.

(b) Whether the deceased came to his or her death by natural causes. accident. suicide or an act privileged by law.

(4) The jury shall render its verdict in writing, signed by all of its members. The verdict shall set forth its findings from the evidence produced according to the instructions.

(5) The verdict delivered by the inquest jury is advisory and docs not preclude or require the issuance of any criminal charges by the district attorney.

(6) Any verdict so rendered, after being validated and signed by the judge or circuit court commissioner, together with the record of the inquest, shall be delivered to the district attorney for consideration. After considering the verdict and record, the district attorney may deliver the entire inquest record or any part thereof to the coroner or medical examiner for safekeeping.

(7) The record of a secret inqucst proceeding shall not be open for inspection unless so ordered by the judge or circuit court com-

missioner conducting the inquest upon petition by the district attorney,

History: 1983 a. 279; 2001 a 61.

979.09 Burial of body. If any judge or circuit court commissioner conducts an inquest as to the dcath of a stranger or of n person whose identity is unknown or whose body is unclaimed or if the district attorney determines that no inquest into the death of such a pcrson is necessary and the circuit judge has not ordered an inquest undcr s. 979.04 (2), the coroner or medical examiner shall cause the body to he decently buried or cremated and shall certify to all the charges incurred in taking any inquest by him or her and to the cxpenscs of burial or cremation of the dead body. The charges and expenses shall bc audited by the county board of the proper county and paid out of the county treasury.

History: 1983 a 279 s. 14; Stats. 1983 s. 979.09; 2001 a. 61

979.10 Cremation. (1) (a) No person may cremate the corpse of a deceased person within 48 hours after the death, or the discovery of the dcath. of the deceased person unless the death was caused by a contagious or infectious disease. No person may cremate a corpse unless the person has received a cremation permit from:

1. The coroner or medical examiner in the county where the death occurred if the death occurred in this state;

2. The coroner or medical examiner in the county where the went which caused the death occurred if the dcath occurred in this statc and if the death is the subject of an investigation under s. 979.01; or

3. The coroner or medical examiner of the county where the corpse is to be cremated if the death occurred outside this state. A cremation pemiit issued undcr this subdivision may not be used in any county except the county in which the cremation permit is issued.

(b) A coroner or medical examiner shall include in any cremation permit issued under par. (a) a statement that he or she has viewed the corpse which is the subject of the permit and made personal inquiry into the cause and manner of death undcr sub. (2) and is of the opinion that no further examination or judicial inquiry is necessary.

(c) No person may deposit any cremated remains of a corpse in any cemetery without the permission of the person who owns or is in charge of the cemetery.

(2) if a corpse is to be cremated, the coroner or medical examiner shall make a careful personal inquiry into the cause and manner of dcath. and conduct an autopsy or order the conducting of an autopsy, if in his or her or the district attorney's opinion it is necessary to determine the cause and manner of dcath. If the coroner or medical examiner determines that no further examination or judicial inquiry is necessary he or she shall certify that Fact. Upon written request by the districr anomey the coroner or medical examiner shall obtain the concurrence of the district attorney before issuing the certification. If the coroner or medical examiner determines that further examination or judicial inquiry is necessary. he or she shall notify the district attorney under s. 979.04 (2).

(3) The coroner shall receive a fee of $25, to be paid out of the county treasury, for each corpse viewed or inquiry made under sub. (2), unless an annual salary has been established by the county board under s. 979.11

(4) Whoever accepts, receives, or takes any corpse of a deceased person with intent to destroy the corpse by means of cremation. or who cremates or aids and assists in the cremation of any corpsc of a deceased person without having presented the permit specified in sub. (1) shall he fined not more than $10,000 or imprisoned not more than 9 months or both

History: 1971 c. 164 s. 86; 1973 c. 272; 1979 c. 177; 1983 a. 146; 1983 a. 279 s. 20; Stats. 1983 s 979 10; 1985 a. 315; 2001 a. 104.

Cross Reference: See also s HFS 135.06, Wis. adm. code

Chapters 69 and 157 are not alternatives to the requirement in this section that anyone cremating a corpse first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a *corpse* can receive a corpse for research without first obtaining a permit. This section only requires that a permit he obtained before cremation. *77* Atty. Gen. 218.

979.11 Compensation of officers. The sole compensation of the coroner and deputy coroners for attendance at an inquest and for any preliminary investigation under this chapter at the direction of the district attorney shall he a reasonable sum set by the county board for each day actually and necessarily required for the purpose, and a sum set by the county board for each mile actually and necessarily traveled in performing the duty. Any coroner or dcputy coroner may be paid an annual salary and allowance for traveling expenses to be established by the county hoard undcr s. 59.22 which shall be in lieu of all fees, per diem and compensation for services rendered.

History: 1975 c. 294; 1977 c. 187 s. 135; 1977 c. 449 s. 497; 1983a. 279 s. 15; Stats. 1983 s. 979.11; 1995 a. 201

979.12 Fees for morgue services. A county board may establish a fee for the retention of a body at the morgue after the first day, not to exceed an amount reasonably related to the actual and necessary cost of retaining the body. This charge shall not apply to indigents.

History: 1983 a 146; 1983 a. 279 s. *23;* Stats. 1983 s. 979.12.

979.22 Autopsies and toxicological services by medical examiners. A medical examiner may perform autopsies and toxicological services not required under this chapter and may charge a fee established by the county board for such autopsies and services. The fee may not exceed an amount reasonably related to the actual and necessary cost of providing the service.

History: 1983 a. 146; 1985 a. 93; 1987 a. 403 s. 256; 1989 a. 298.

Chapter FD 1

LICENSES AND PERMITS

FD 1.01 Authority and intent.
FD 1.02 Examination applications.
FD 1.03 Examination grade.
FD 1.035 Examination review.
FD 1.04 Two academic years of instruction
FD 1.05 Mortuary school.
FD 1.06 Proof of academic training.
FD 1.07 Apprenticeship credit.
FD 1.08 Permits.
FD 1.09 Preparation rooms.
FD 1.10 Requirements for renewal; restoration of licenses.
FD 1.11 Renewal of Wisconsin licenses of out-of-state funeral directors.

Note: Chapter FDE 1 was renumbered chapter FD 1 under s. **11.43** (2m) (b) 1., Stats , Register, September, 1993, No. 453.

FD 1.01 Authority and intent. This chapter is adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 and 445.03, Stats., to clarify and establish licensure criteria for funeral directors and funeral establishments.

History: Cr. Register, July, 1988, No. 391, eff. 8–1–88.

FD 1.02 Examination applications. Applications for taking the examination for a funeral director must be on file at least 30 days before the date of the examination. The board may accept applications after the 30–day limit if the circumstances warrant such procedure.

Note: Application forms are available upon request to the board *office* located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

Note: *ha* otherwise qualified applicant with a **disability shall** be provided with reasonable accommodations.

History: Cr. Register. **June,** 1478, No. 270, eff. 7–1 78. renum. from FDE 2.01, Register, July, 1988, No. 391, eff. 8–1–88; am., R :gister, November, 1998, No. 515, eff. 12 t 98.

FD 1.03 Examination grade. (1) To pass the initial licensure examination each applicant shall receive a grade determined by the hoard to represent minimum competence to practice. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.

(2) The release of grades or the issuance of a funeral director license may be denied **if** the hoard determines that an applicant violated the rules of conduct of the examination or otherwise acted dishonestly.

History: Cr. Register, July, 1988, *No.* 391, eff. 8–1-88; r. and recr., Register, November, 1998, No. 515, eff. 12–1 98.

FD 1.035 Examination review. (1) An applicant who fails the state board examination may request a review of that examination by filing a written request with the hoard within 30 days of the date on which the examination results were mailed.

(2) Examination reviews are by appointment only.

(3) The time for review shall be limited to 4 hours.

(4) An applicant may not be accompanied during the review by any person other than the proctor.

(5) An applicant shall be provided with a copy of the questions, a copy of the applicant's answer sheet and a copy of the master answer sheet.

(6) An applicant may review the examination in the presence of a proctor, An applicant shall be provided with a form on which to write comments. questions or claims of error regarding any items in the examination. Bound reference books shall be permitted. An applicant shall not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination nor attempt to refute claims of error during the review

(7) An applicant may not review the examination more than once.

History: Cr. Register, November, 1998, No. 515, eff. 12 1-YX.

FD 1.04 Two academic years of instruction. Ti, meet the requirements of 2 academic years of instruction specified in s. 445.045 (1) (d), Stats., an applicant must submit to the board an official transcript of courses from a college or university recognized by the north central association of colleges and secondary schools. showing that the applicant has completed at least the semester credit hours shown below in the following areas:

		Minimum Semester Credit Hours
(1)	English & Speech	6
(2)	Social Sciences such as:	12
	(a) Psychology	
	(b) History	
	(c) Sociology	
	(d) Political Science	
	(e) Economics	
(3)	Natural Sciences such as:	15
	(a) Anatomy	
	(b) Physiology	
	(c) Chemistry	
	(d) Microbiology	
	(e) Biology	
	(f) Bacteriology	
(4)	Business Studies	13
(5)	Electives	14
	TOTAL —	60

History: Cr. Register, June, 1978, No. 270, eff. 7–1–78; r. and recr. (4), r. (5) and renum. (6) to be (5), Register, June, 1979, No. 282, eff. 7–1–79; am. Register, January, 1980, No. 289, eff. 2–1–80; renum. from FDE 2.03 and am., Register, July, 1988, No. 391, eff. 8 1-88

FD 1.05 Mortuary school. The following shall be accepted as compliance with s. 445.045 (1) (e), Stats. The candidate shall have satisfactorily completed 9 months or more instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American board of funeral service education or otherwise deemed to be equivalent by the funeral directors examining board.

History: Cr. Register, June, 1978, No. *270.* eff. 7 1 78; renum. from FDE **2.04** and am., Register, July, 1988, *No.* 391, eff. 8–1–88; correction **made** under s. 13.93 (2m) (b) 6., Stats., Register, December, 1989, **No.** 408.

FD 1.06 Proof *of* academic training. The following shall be accepted by the board as proof that the academic training requirements of s. 445.095 (1) (a), Stats., concerning registration as an apprentice funeral director or embalmer have been **met:** A signed statement by the registrar of any college or university recognized by the north central association of colleges and secondary

schools that the applicant has successfully completed one academic year of instruction in the college or university or has an equivalent education which will permit admission to the college or university with sophomore status.

History: Cr Register, June, 1978, No 270, eff. 7–1–78; r. (2), Register, January, 1980, No. 289, eff. 2–1 80; renum. from FDE 2.05 and am., Register, July, 1988, No. 391, eff. 8–1–88.

FD 1.07 Apprenticeship credit. (1) An apprentice certified under s. 445.095 (1), Stats., shall be granted credit toward the term of his or her apprenticeship for a period of employment of no less than 40 hours in each of 2 consecutive weeks. However, credit for a shorter period of employment may be approved if an apprentice submits evidence satisfactory to the board that an exception be made.

(2) An apprentice may receive credit for no more than 9 embalmings in any one quarter of his or her apprenticeship. At the conclusion of an apprenticeship, an apprentice shall have completed a total of 25 embalmings.

History: Cr. Register, November, 1983, No. 335, eff. 12–1–83; renum. from FDE 2.135, Register, July, 1988, No. 391, eff. 8–1–88; **CR 01–063: renum. to be (1) and cr. (2), Register November 2001 No. 551, eff. 12–1–01.**

FD 1.08 Permits. (1) Before opening for business, and every 2 years thereafter, a funeral establishment operator shall obtain a permit from the board through application upon a form furnished by the board. An original permit may not be granted to an operator of a funeral establishment without an inspection. No permit may be granted to a funeral establishment which does not meet requirements in s. 445.01, Stats.

(2) Prior to granting a permit to a licensed funeral establishment following a change in ownership, the board shall review the application to determine if an inspection is necessary.

(3) A funeral establishment permit is not transferable from one premises to another or from one operator to another.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

History: Cr. Register, June, 1978, No. 270, eff. 7–1–78; am. (1), renum. (2) to be (3) and am., cr. (2), Register, May, 1983, No. 329, eff. 6–1–83; cr. (4), Register, July, 1986, No. 367, eff. 8–1–86; renum. from FDE 2.10 and r. (4), Register, July, 1988, No. 391, eff. 8–1–88.

FD 1.09 Preparation rooms. (1) Every installation used for embalming operations must contain a floor area of not less than 100 square feet per embalming table and must be used solely for this purpose. It must he isolated hy walls or adequate partitions. The walls and furniture must he constructed of material that is easily washed and disinfected. The installation must he equipped with hot and cold running water supply under pressure and in a quantity sufficient for the operations performed therein as well as for cleaning the room. Waste water must flow into the main sewer if availahlc or into an adequate septic tank. Hand washing facilities should he easily accessible.

(2) All preparation rooms in funeral establishments must be equipped with adequate sanitary facilities so that no health hazards are produced as a result of embalming operations performed therein

(3) All preparation rooms shall he equipped with a ventilating system capable of expelling gases or fumes to the outside at a point so as not to create a nuisance, and shall also be equipped with a hard surface, metal or porcelain top embalming table, a set of essential embalming instruments and a supply of disinfectants.

History: Cr. Register, July, 1988, No. 391, eff. 8 1 88.

FD 1.10 Requirements for renewal; restoration of licenses. (1) To renew a funeral director license a licensee shall, by January 1 of each even–numbered year following initial licensure, provide all of the following to the board

(a) An application for renewal on a form provided by the department.

(h) Evidence that the licensee has. during the biennial period immediately preceding application. completed the continuing education requirements specified in s. FD 4.03.

(c) A fee in the amount required under s. 440.08 (2) **(a),** Slats.

(2) A licensee who fails to meet the requirements of sub. (1) by the renewal date shall cease and desist from practicing as a funeral director. A licensee who fails to meet the requirements of sub. (1) and who applies for renewal less than 5 years after the expiration date of his or her license may renew by furnishing the following to the hoard:

(a) An application for renewal on a form provided by the department.

(b) Evidence that the licensee has completed at least 15 hours of continuing education during the previous 2 year licensure period as required under s. 445.06, Slats.. and s. FD 4.03.

(c) The renewal fee specified in s. 440.08 (2) **(a)** and (3) (a), Stats.

(3) A funeral director who files an application for renewal more than 5 years after the expiration date of his or her license may he reinstated by filing with the hoard an application and fees specified in s. 440.08 (2) and (3) (a). Stats. The board may also require demonstration of competence by various methods, including, hut not limited to. written or oral examination, doctimentation of funeral directing work in other jurisdictions, or documentation of current education or experience in the field. Any examination or education required under this section shall not be more extensive than the educational or examination requirements for an initial credential from the hoard.

(4) The time limitations prescribed in this section shall not include the service period of a funeral director as an active member of the U.S. armed forces.

History: Cr. Register, September, 1993, No. **423,** eff. 10–1–93; r. and recr. (1) and (2), am. (3), Register, November, 1998, No. 515, eff. 12 1–98.

FD 1.11 Renewal of Wisconsin licenses of out–of–state funeral directors. (1) INTENT. The intent of the hoard in adopting this section is to clarify the hoard's interpretation of s. 445.06, Stats., that a licensee seeking renewal of a funeral director's license who is doing business at a legally operating funeral establishment in a jurisdiction outside the state of Wisconsin and who meets all other requirements for license may obtain a funeral director's license.

(2) RECOGNIZED FUNERAL ESTABLISHMENT Fur purposes of renewal of licenses under s. 445.06, Stats., "recognized funeral establishment" means any building or part of a building used and held out to the public as being used in the care and preparation for burial and transportation of dead human bodies or for holding or conducting of funeral services.

History: Renum. from FD 2.12 and am. (2), Register, November, 1998, No. 515, eff. 12–1 98.

Chapter FD 2

STANDARDS OF PRACTICE

FD 2.01	Authority and intent.
FD 2.02	Definitions.
FD 2.03	Operation of a funeral establishment.
FD 2.04	Discrimination.
FD 2.05	Business telephone listings and advertising.
FD 2.06	Supervision of apprentices.
FD 2.07	Changes in apprenticeship assignment.
FD 2.08	Business practices.
FD 2.09	Commission prohibited.
FD 2.10	Sanitation.
FD 2.11	Radioactive materials.
FD 2.13	Confidentiality.

Note: Chapter FDE 2 was renumbered chapter FD 2 under s. 13.93 (2m) (b) 1., Stats., Register, September, 1993, No. 453.

FD 2.01 Authority and intent. This chapter is adopted pursuant to authority of ss. 15.08(5) (b), 227.11 and 445.03, Stats., and specifies the minimum standards of operation of funeral establishments and conduct of funeral directors under ch. 445, Stats.

Note: Funeral directors must comply with the standards adopted by the federal trade commission and set forth in 16 CRF 453.

History: Cr. Register, July, 1988, No. 391, eff. 8–1–88.

FD 2.02 Definitions. As used in this chapter

(1) "Funeral arrangements" means the provision of information or advice on selection and cost of merchandise, facilities, equipment or personal services provided for final disposition of a dead human body in the course of formulating a contractual agreement between a funeral director or funeral home and client.

(2) "Funeral services" means the ceremonies held in conjunction with disposition of the dead, including visitation, religious rites, memorials and graveside services.

(3) "Personal supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.

(4) "Supervision" means regularly to coordinate, direct and inspect the practice of another.

History: Cr. Register, July, 1988, No. 391, eff. 8–1–88; correction in (1) made under s. 13.93 (2m) (b) 12., Stats., Register, September, 1993, No. 453; am. (1), Register, November, 1998, No. 515, eff. 12–1–98.

FD 2.03 Operation of a funeral establishment. Even though persons other than licensed funeral directors may own a funeral establishment:

(1) Funeral arrangements may be made only by licensed funeral directors; and

(2) Any other dealings on behalf of the establishment, including the conducting of funeral services, shall be performed only by or under the supervision of licensed funeral directors.

History: Cr. Register, July, 1988, No. 391, eff. 8–1–88.

FD 2.04 Discrimination. No funeral director licensed in Wisconsin, or apprentice funeral director holding a certificate of apprenticeship in this state, or person holding a funeral establishment permit herein, shall deny services or the use of an establishment to any person because of race, color, creed, national origin or ancestry, HIV infection, or sexual orientation; provided, however, that this section shall not apply where a funeral establishment is, for religious reasons, so operated that its services are provided to members of only one religious faith.

History: Cr. Register, June, 1978, No. 270, eff. 7–1–78; renum. from FDE 2.06 and am., Register, July, 1988, No. 391, eff. 8–1–88; am. Register, June, 1996, No. 486, eff. 7–1–96.

FD 2.05 Business telephone listings and advertising. (1) Each funeral establishment shall insure that only true funeral establishment names and addresses as registered with the funeral directors examining board shall appear in telephone listings or other publications and in advertising by any media whatsoever. A funeral establishment may list under a previous establishment name in a telephone or business directory, provided that the listing contains a reference to the establishment name currently registered with the board.

(2) If the names or pictures of unlicensed persons are used in any form of advertising for a funeral establishment, the advertisement must distinguish between the Wisconsin licensed funeral director and the non–licensed personnel.

History: Cr. Register, June, 1978, No. 270, eff. 7–1–78; renum. from FDE 2.10 and am., Register, July, 1988, No. 391, eff. 8–1–88.

FD 2.06 Supervision of apprentices. (1) Apprentices may engage in the following activities only when under the personal supervision of a licensed funeral director: embalming and other preparing of dead human bodies for burial or transportation, and making funeral arrangements.

(2) Apprentices may conduct funeral services or make removals of bodies under the supervision of a licensed funeral director.

History: Cr. Register, July, 1988, No. 391, eff. 8–1–88.

FD 2.07 Changes in apprenticeship assignment. (1) Whenever any licensed funeral director discharges an apprentice the funeral director shall within 5 days notify in writing the funeral directors examining board, giving the name and address of the apprentice, and the date of discharge.

(2) Whenever any apprentice leaves his or her apprenticeship at a funeral establishment, the funeral director and apprentice shall within 5 days notify in writing the funeral directors examining board, giving the name and address of the apprentice and date of the apprentice leaving the apprenticeship.

History: Cr. Register, June, 1978, No. 270, eff. 7–1–78; (1) renum. from FDE 2.13 and am., cr. (2), Register, July, 1988, No. 391, eff. 8–1–88.

FD 2.08 Business practices. (1) Each funeral establishment shall offer a broad range of personal services, caskets, merchandise and prices consistent with the needs and desires of the families in the community. Records documenting these needs and desires shall be available for review by the board.

(2) If a funeral director offers package funerals, the funeral director shall provide the consumer with a comparison between the package price and the total cost, calculated on an itemized basis, of the components actually desired by the consumer.

History: Cr. (2), (1) renum. from FDE 2.15 (3) and am., Register, July, 1988, No. 391, eff. 8–1–88.

FD 2.09 Commission prohibited. Except as provided in s. 445.125 (3m), Stats., paying or accepting a commission or a salary based upon the selling price or number of funeral services sold shall be considered unethical and is therefore prohibited.

History: Cr. Register, June, 1978, No. 270, eff. 7–1–78; renum. from FDE 2.12, Register, July, 1988, No. 391, eff. 8–1–88; am., Register, November, 1998, No. 515, eff. 12–1–98.

FD 2.10 Sanitation. (1) All preparation rooms, equipment, instruments and supplies in funeral establishments shall be maintained in a clean and sanitary condition.

(2) All post–mortem procedures shall be performed and all preparation rooms, equipment, instruments and supplies in

funeral establishments shall be maintained in compliance with the terms and conditions set forth in the United States occupational safety and health administration standard for occupational exposure to blood–borne pathogens under 29 CFR 1910.1030. In cases of HIV infection, after the hody has been prepared in accordance with s. *HFS 136.04*, the usual and customary procedures may be followed for restoration and cosmetology. Following embalming and body preparation, no special precautions need to he observed during visitation.

History: Cr. Register, July, 1988, No 391, eff. 8–1–88; r. and recr. (2), r. (3), Register, June, 1996, No. 486, eff ? 1 96: am. (2), Register, November, 1998, No. 515, eff. 12 1 98.

FD 2.11 Radioactive materials. A funeral director or embalmer who takes possession of a dead human body which might possibly contain radioisotope must take all necessary steps to protect the members of the staff who are called upon to handle the body.

History: Cr. Register. June, 1978, No. 270, eff. 7–1–78; renum. from FDE 2.17 and am., Register, July, 1988, No. 391, eff. 8–1–88

FD 2.13 Confidentiality. All personnel involved in the post-mortem care of the deceased shall be informed of the confidentiality provisions under s. 252.15 (5), Stats., and the consequences of violaring these confidentiality provisions.

History: Cr. Register. June, 1996, No. 486, eff. 7 1–96.

Chapter FD 3

RULES OF CONDUCT

Note: Chapter FDE 3 was renumbered chapter FD 3 under s. 13.93 (2m) (b) 1.. Stats.. Register, September, 1993, No. 453

FD 3.01 Authority and intent. This chapter is promulgated under the authority of ss. 15.08 (5)(b), 227.11 and 445.03. Stats.. to interpret and contribute to the implementation of s. 445.13, Stats.. relating to grounds for discipline of funeral directors. funeral director apprentices and holders of funeral establishment permits.

History: Cr. Register, July, 1988, No. 391, eff. 8-1-88

FD 3.02 Unprofessional conduct. Any occurrence of the following shall constitute unprofessional conduct by a licensed funeral director, registered apprentice funeral director or owner of a funeral establishment:

(1) Violating or aiding and abetting a violation of any state or federal law substantially related to the practice of funeral directing.

(2) Violating any of the standards of practice set forth in ch. FD 2.

(3) Giving misleading or deceptive information to family or persons involved in the arranging of a funeral of final disposition including, but not limited to, information on: funeral costs, burial agreements, legal requirements or religious propriety.

(4) Performing of any funeral director duty while under the influence of alcohol or controlled substances. Controlled substances are listed inch. 961, Stats.

(5) Refusing to comply with a duly authorized request for information by the hoard in a timely manner, or falsifying records of any kind which are made public or requested by the board. There is a rebuttable presumption that a person who takes more than 30 days to provide infomiation requested by the hoard has not acted in a timely manner.

(6) Providing and performing the services of funeral directing or embalming in a manner which falls below minimal standards established by statute, rule or practice in the profession.

(7) Disclosing confidential infomiation obtained in the performance of official duties.

(8) Performing services or providing merchandise not authorized for which charges are made; unless authorization for such items as removal or preparation of remains was not obtained because next of kin or othcr person responsible for payment of charges could not he located within a reasonable time.

(9) Engaging in misleading or dceptivc conduct in the conduct of business or the profession.

(10) Failing to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process.

(11) Failing to provide to the depositor, within 15 working days of receipt of a payment, written confirmation of receipt and deposit of payment made pursuant to a funeral trust agreement in accordance with s. 445.125 (1) (b), Stats. Such written confirmation shall include the name of the hank. savings hank, trust company, savings and loan association or credit union, the account number, the date of deposit. and a copy of the deposit slip or other documentary evidence of a payment deposited.

(12) Engaging in solicitation. A funeral director may not initiate written communication, personal or telephone contact for the purpose of obtaining professional employment with persons known to he in need of such services, or where the need of funeral services is imminent.

(13) Engaging in inappropriate sexual contact with clients of the funeral establishment.

(14) Engaging in unsolicited communications to the board or any board member regarding a matter undcr investigation by the hoard. Nothing in this section shall prohibit a licensee from addressing communication on a matter under investigation to the division of enforcement or other appropriate department personncl.

(15) Failing to transfer control over s. 445.125, Stats., trust funds pursuant to the depositor's written request made during the lifetime of the potential decedent. Burial trust funds are not the property of the funeral director named as beneficiary under the tnist agreement. A funeral director may not impede the inter vivos designation of a different beneficiary by withholding delivery of a passbook or other indicia ofcontrol over the hinds, or by other behavior.

(16) Failure by the holder of a funeral establishment permit, upon the closing of the funeral establishment, to notify all depositors of funeral trust agreements of the closing of the establishment. Notification shall he in writing and shall he mailed or personally delivered to the depositor or the depositor's representative within 15 days of the date that the cstablishmcnt ceases its operation.

(17) Violating or attempting to violate any term, provision, or condition of any order of the board.

History: Cr. (1), (2), (8), (9), (12) to (16); (intro.), (3) to (7), (9) and (11) renum. from FDE 3.01 (intro.), (1), (3) to (6), (8) and (11) and am. (3) to (6) and (9), Register, July, 1988, No. 391, eff. 8-1-88; cr. (17), Register, September, 1993, No. 453, eff. 10-1-93; am. (4), (7), (11) and (13), Register, November, 1998, No. 515, eff. 12-1-98.

Chapter FD 4

CONTINUING EDUCATION REQUIREMENTS

FD 4.01 Authority.
FD 4.112 Definitions.
FD 4.03 Continuing education.
FD 4.04 Approval of continuing education programs.
FD 4.045 Qualifications for continuing education instructors
FD 4.05 Exemption.

Note: Chapter FDE 5 was renumbered chapter FDE 4 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1988, No. 391, eff. 8–1–88. Chapter FDE 4 was renumbered chapter FD 4 under s. 13.93 (2m) (b) 1., Stats., Register, September, 1993, No. 453.

FD 4.01 Authority. The rules in this chapter arc adopted under authority in ss. 15.08 (5)(b), 227.11 and 445.06, Stats.

History: Cr. Register. July, 1986, No 367, eff. 8–1–86; correction made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1993, No 453.

FD 4.02 Definitions. In this chapter,

(1) "Board" means the funeral directors examining board.

(2) "Evidencc of attendance" means an official transcript, student grade report or a written form furnished by a prograin provider which specifies satisfactory completion of a continuing cducation program.

(3) "Funeral director" means a person as defined in s. 445.01 (5), Stats.

(4) "Program providcr" means an educational institution; governmental agency, professional or trade association or foundation or a private firm or individual whose primary function is continuing education.

History: Cr. Register, July, 1986, No. 367, eff. 8–1–86

FD 4.03 Continuing education. **(1)** Every fiineral director, as defined in s. 445.01 (5), Stats., shall complete at least 15 hours of approved continuing education programs in each biennial registration period, specified under s. 445.06, Stats., except as described in s. FD 4.05.

(2) Approved continuing cducation hours may apply only to the biennial registration period in which the hours are acquired.

(3) To obtain credit for completion of the continuing cducation requirement, a funeral director shall submit certificates of attendance issued by the program provider or other evidence of attendance satisfactory to the board.

(4) At least 3 hours of the 15 hour rcquirement shall be in approved programs in the subject area spccified in s. FD 4.04 (1) (a) 2.

(4m) At least 3 hours of the 15–hour requirement shall be in each of the subject areas specified in s. FD 4.04 (1) (a) 1. to 4.

(5) No more than 7 hours of all of the 15 hour requirement may he in approved programs in s. FD 4.04 (7).

(6) No more than 2 hours of the 15–hour requirement may be acquired for presentation of any continuing education program by a fiineral director.

(7) No more than 10 hours of thc 15 hour requirement may he acquired through participation in non–contact home study programs.

(8) Each contact or clock hour or lesson or tape completed in a home study program is equivalent to 1.0 continuing education credit hour.

(9) Continuing cducation credit for participation in a multiple day program, in which rach day of thc program is a prerequisite for each succeeding day. shall be granted only for completion of the entire proyram.

(10) A funeral director may receive credit for attendance at a continuing education program which received approval alter he or she attcndcd the program, if the funeral director provides evidence of attendance satisfactory to the board.

History: Cr. Register, July, 1986, No. 367, eff. 8–1–86; am. (7), Register, November, 1998, No. 515, eff. 12–1–98; **CR 01–063: cr. (4m) and am. (5), Register November 2001 No. 551, eff. 12–1–01.**

FD 4.04 Approval of continuing education programs. **(1)** To obtain approval of a continuiny education program. the program provider shall submit an application to the board on a form provided by the board which shall include:

(a) The program relates to one or more of the following subject content areas:

1. Grief counseling or communication.

2. Professional conduct, business ethics or legal aspects specifically related to practice in the profession.

3. Business management concepts relating specifically to delivery of services to a consumer.

4. Technical or practical aspects of the profession;

(b) The program is available to all funeral directors regardless of membership in or affiliation with any organization; and,

(c) The program provider of the continuing education program agrees to monitor the continuous attendance of participants and to furnish to each participant evidence of having attended and completed the program at the location of thc program, or

(d) The program provider of a home–study continuing cducation program includes in the program a method satisfactory to the board of determining a participant's successful completion of the hoinc study program

(2) An application for a continuing education program shall include all of the following:

(a) Date and location of thc program.

(b) Time segments scheduled in the program for presentation of subject areas specified in sub. (2).

(c) Name and title of the instructor.

(d) Name and title of the person requesting program approval on behalf of the provider.

Note: Forms are available upon request to the board office, PO Box 8935, Madison, WI 53708.

(3) A separate application shall he submitted for each continuing education program. Approval of a continuing education program expires on December 31 of each odd nuinbercd year.

(4) A program provider shall apply for approval of a continuing education program at least 30 days prior to its presentation.

(5) A continuing education program may include subject content other than that specified in sub. (1); however. the hoard shall limit its approval only lo that pail and time segments of the program which relate to subject areas specified in sub. (I).

(6) A home study program or course taken for academic crcdit shall be eligible for credit if the program or course relates to subject areas spccified in sub. (1) and meets all other requirements in this section.

(7) In–service continuing education programs sponsored by a funeral establishment are not eligible for credit unless the pro-

grams are available to all licensed funeral directors and meet all other requirements in this section.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86; correction in (hi made under s. 13.93 (2m) (b) 1?. Stats., Register, September, 1993, No. 453; am. (2) (intro.), Register, November, 1998, No. 515, eff. 12-1-98.

FD 4.045 Qualifications for continuing education instructors. Instructors for continuing education shall possess one of the following minimum qualifications:

(1) Be an instructor of funeral directing who is or has been engaged in the practice of teaching at an accredited institution of higher education.

(2) He a properly licensed or certified person for the 5 years immediately before becoming a continuing education instructor.

(3) Be a person who, in the judgment of the board, is qualified by experience or education, or both, to supervise a course of study.

History: CR 01-063: Cr. Register November 2001 No. 551, eff. 12-1-01.

FD 4.05 Exemption. Any funeral director who holds a certificate in good standing granted under s. 445.06, Stats., shall be exempt from meeting the continuing education requirement for the duration of the period that the funeral director is not engaged in professional practice. A funeral director who holds a certificate shall notify the board and shall submit proof of having completed 15 hours of approved continuing education programs in the 2-year period immediately preceding notification to the board of his or her intent to return to professional practice in a licensed funeral establishment.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

Chapter FD 5

LICENSURE BY RECIPROCITY

Note: Chapter FDE 5 was renumbered chapter FD 5 under s. 13.93 (2m) (b) 1., Stats., Register, September, 1993, No. 453.

FD 5.01 Qualifications. A person licensed as a funeral director in another state may obtain a license as a funeral director under this chapter if the applicant meets all of the following criteria:

(1) Has met requirements in another state substantially equal to those in this state.

(2) Has never been disciplined by the licensing authority in any other state. territory or country for any misconduct or violations which demonstrate lack of competcncc to practice as a funeral director in Wisconsin as dctcrmined by the board.

(3) Is not under any current investigation and is not a party in a proceeding involving a complaint against the applicant which relates to the applicant's practice as a funeral director.

(4) Does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats.

(5) Was satisfactorily completed 9 months or more of instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American board of funeral service education or deemed to be equivalent by the board.

(6) Passes the board's examination on Wisconsin law. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.

History: Cr. Register, December, 1989, No. 408, eff. 1–1–90; am., Register, November, 1998, No. 515, eff. 12–1–98.

FD 5.02 Application procedure. (1) An applicant for a license under this chapter shall file an application with the board no later than 30 days prior to the examination under s. 445.08 (4), Stats. The applicant shall pay the costs and fees necessary to obtain the information required in subs. (2) and (4). The application shall be on the board's form and include:

(a) Infomiation relating to the requirements in s. FD 5.01 and the signature of the applicant.

(b) The fee specified under s. 440.05 (2), Stats.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(2) The applicant shall request that rhe school of mortuary science attended by the applicant forward to the hoard a certified transcript of the applicant's record.

(3) The applicant shall request the authorized official in each state in which the applicant holds or has held a license to forward to the board a certified statement showing the qualifications upon which the license was grantcd, the current status of the applicant's license. and a dcscnption of any complaints filed against the applicant and the disposition of all complaints.

(4) Applicants who have a pending criminal charge or huvc been convicted of any crime shall provide the board all related information necessary for the board to determine whether the circumstances of the pcnding criminal charge or conviction are substantially related to the circumstances of the licensed activity.

(5) An application is not complete until all the information described in this section is received by the board. An applicant shall be scheduled to take the examination after completing sub. (1). However, the board shall not grant a license under this section until the application is complctc.

History: Cr. Register, December, 1989, No. 408, eff. 1–1–90

Chapter FD 6

BURIAL AGREEMENTS FUNDED WITH LIFE INSURANCE

FD 6.01 Authority and purpose.
FD 6.02 Definitions.
FD 6.03 Registration requirements.
FD 6.04 Change of employment.
FD 6.05 Training requirements.
FD 6.06 Approval of educational training programs
FD 6.07 Standards for burial agreements funded by life insurance proceeds.
FD 6.08 Contractual standards for agents and operators of funeral establishments.
FD 6.09 Requirements for terminating a burial trust.
FD 6.10 Solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

FD 6.01 Authority and purpose. The rules in this chapter are adopted by the hoard under the authority of ss. 15.08(5)(b), 227.11 (2), 445.125 (3m) (b) 2. b. and (j) I. and ?., Slats., and govern the registration and regulation of agents.

History: Cr Register. October, 1997, No. 502, eff. 11-1 97.

FD 6.02 Definitions. In this chapter:

(1) "Agent" means an authorized representative of a funeral director or an operator of a funeral establishment who sells or solicits the sale of a burial agreement that is funded with the proceeds of a life insurance policy.

(2) "Board" means the funeral directors examining hoard.

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

(4) "Evidence of attendance" means an official transcript, student grade report, or a written form furnished by a program provider which specifics satisfactory completion of an educational training program.

(5) "Program provider" means an educational institution, governmental agency, professional or trade association or foundation or a private firm or individual whose function is educational training programming.

History: Cr. Register, October, 1997, No. 502, eff. 11-1 97

FD 6.03 Registration requirements. (1) A licensed funeral director or operator of a funeral establishment shall submit an application with all of the following information:

(a) The identity of any agent authorized by s. 445.125 (3m), Stats., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy on hchalf of the licensed funeral director or operator of a funeral establishment.

(h) The agent's Wisconsin life insurance intermediary's license number and expiration date, and the insurer or insurers whom the agent is listed to represent.

(c) Evidence satisfactory to the hoard that the agent has successfully completed at least 20 hours of approved educational training as provided in s. FD 6.05. An agent who is a Wisconsin licensed funeral director and a Wisconsin licensed insurance intermediary shall he exempt from having to complete the 20 hours of approved educational training as provided ins. FD 6.05.

(2) A copy of each contract between an agent and an operator of a funeral establishment shall accompany the application.

(3) The application shall be accompanied by the fee authorized in s. 440.05(1), Stats.

(4) Upon receipt of an application and payment of the fees, the board shall issue a registration card to an agent.

(5) No agent may sell or solicit the sale of a burial agreement funded with the proceeds of a life insurance policy unless he or she is registered by the board.

Note: Application forms are available upon request to the Funeral Directors Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register. October. 1997. No. 502. eff. 11–1–97.

FD 6.04 Change of employment. A licensed funeral director or operator of a funeral establishment shall notify the board within 30 calendar days of the termination of any contract Ire or she has with an agent.

History: Cr. Register. October, 1997, No 502, eff. 11 1 97.

FD 6.05 Training requirements. (1) Educational training shall include the following subjects:

(a) The funeral industry practice regulations of the federal trade commission, and any other applicable federal statutes and regulations related to the funeral service industry including, hut not limited to, the occupational safety and health act.

(b) The funcral industry practice regulations contained in the Wisconsin statutes and administrative code including, but not limited to. burial agreements and any applicable impoverishment provisions.

(c) The ethics of funeral service marketing.

(d) Funeral service and final disposition options

(e) Funding mechanisms for burial agreements.

(f) Financial benefits available at the time of death including, hut not limited to, veteran's benefits, social security income, pensions, and human services benefits.

(g) Grief communication skills.

(2) Educational training credit for participation in a multiple-day program. in which each day of the program is a prerequisite for each succeeding day, shall he granted only for completion of the entire program

(3) Credit for attendance at an educational training program shall he given to an agent if all ofthe following apply:

(a) The program has been approved by the hoard under s. FD 6.06.

(h) The agent provides evidence of attendance satisfactory to the hoard.

(c) The agent takes and successfully passes a comprehensive examination administered by the program provider.

History: Cr. Register, October, 1997, No. 502, eff. 11–1–97.

FD 6.06 Approval of educational training programs. (1) To obtain approval of an educational training program, the program provider shall submit an application to the hoard on a fonn provided by the hoard which shall include evidence of all of the following:

(a) Information that the prograin relates to the following subject areas:

1. The funeral industry practice regulations of the federal trade commission, and any other applicable federal statutes and regulations related to the funeral service industry including, but not limited to, the occupational safety and health act.

2. The funeral industry practice regulations contained in the Wisconsin statutes and administrative code including, but not limited to, burial agreements and applicable impoverishment provisions.

3. The ethics of funeral service marketing.

4. Funeral service and find disposition options.

5. Funding mechanisms for burial agreements.

6. Financial benefits available at the time of death including, but not limited to, veteran's benefits, social security income. pensions; and human services benefits.

7. Grief communication skills.

(b) The program is available to all agents regardless of membership or affiliation with any organization.

(c) The program provider agrees to monitor the continuous attendance of participants and to furnish to each participant with evidence of attendance.

(2) A separate application shall be submitted for each educational training program. Approval of an educational training program expires on December 31 of each odd numbered year.

(3) A program provider shall apply for approval of an educational training program at least 30 days prior to its presentation.

(4) An educational training program may include subject content other than that specified in sub. (1); however. the board shall limit its approval only to that part and time segments of the program which relate to subject areas specified in sub. (1).

(5) In-service educational training programs sponsored by a funeral establishment or insurance company are not eligible for credit unless the programs are available to all agents and meet all other requirements in this section.

Note: Application forms are available upon request to the Funeral Directors Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97.

FD 6.07 Standards for burial agreements funded by life insurance proceeds. A burial agreement shall be in written form that is clear and conspicuous, and shall include all of the following:

(1) The identity of the funeral establishment and the insurer or insurers that the agent represents.

(2) The identity of the funeral establishment that will be used to provide the funeral services or merchandise under the agreement.

(3) The nature and extent of any price guarantees for the funeral merchandise or funeral services. or any other guarantees that exist.

(4) Information that a life insurance policy is involved in or connected to. or is being used to fund, the burial agreement.

(5) The type of insurance instrument that is being used to fund the burial agreement.

(6) The effect on the burial agreement of all of the following:

(a) Changing the life insurance policy, including, but not limited to. changing the assignment of the policy proceeds, changing the beneficiary designation, or changing the use of the proceeds.

(b) Any penalties incurred by the policyholder as a result of failing to make premium payments.

(c) Any penalties incurred or money received as a result of cancellation or surrender of the life insurance policy.

(7) A statement of funeral goods and services selected under the burial agreement and the price of each item or service provided under the burial agreement, including a statement as to whether the purchase price of the funeral merchandise and services are guaranteed at the time the burial agreement is arranged or whether the price is to be determined at the time of need. If the price of funeral merchandise or services is to be determined at the time of need, those prices may not exceed the prices as set forth in the funeral establishment's general price list required under the funeral industry practices regulations of the federal trade commission.

(8) All information concerning what occurs, and whether any entitlements arise, if there is a difference between the proceeds of the life insurance policy and the amount of money actually needed to fund the burial agreement.

(9) Any restrictions, including geographic restrictions, or penalties relating to delivery or performance under the burial agreement, including any restrictions or penalties relating to the inability of the operator of the funeral establishment to perform.

(10) A statement as to whether the sales commission or other form of compensation is being paid to the agent who sells or solicits the sale of a burial agreement and the life insurance used to fund the burial agreement and, if so. the identity of any other persons to whom the commission or other compensation is paid.

(11) The following statement in not less than 12 point boldface type: **"Burial agreements are regulated by the Wisconsin Funeral Directors Examining Board. Should you have a complaint. please contact the Board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or by telephone at (608) 266-5511."**

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97.

FD 6.08 Contractual standards for agents and operators of funeral establishments. A copy of each contract between an agent and an operator of a funeral establishment shall be sent to the board along with the agent's application for registration as required in s. FD 6.03. A contract between an agent and an operator of a funeral establishment shall include all of the following:

(1) A statement that the agent is currently licensed as a life insurance intermediary in Wisconsin and is currently listed with an insurer or insurers who is authorized to sell life insurance used to fund a burial agreement in Wisconsin.

(2) A statement that the agent has received the required training pursuant to s. 445.125 (3m) (b) 2. a., Stats., and will obtain any additional training as required by the board.

(3) A statement that the agent shall immediately notify the operator of the funeral establishment at any time while the contract between the agent and operator of the funeral establishment is in effect if any of the following occur:

(a) The agent's life insurance license is suspended or revoked.

(b) There are any changes to listings with insurers.

(4) A statement that the agent will abide by the funeral industry practices regulations of the federal trade commission; and all applicable Wisconsin statutes and rules.

(5) A statement as to whether the sales commission or other form of compensation is being paid to the agent who sells or solicits the sale of a burial agreement and the life insurance used to fund the burial agreement and, if so, the identity of any other persons to whom the commission or other compensation is paid

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97.

FD 6.09 Requirements for terminating a burial trust. Written notice shall be sent to the board by an agent, licensed funeral director or operator of the funeral establishment when a consumer terminates a trust as established under s. 445.125 (1), Stats. The following information shall be included in the written notice that an agent. funeral director. or operator of a funeral establishment gives to a consumer and to the board when the consumer terminates a burial trust and converts to a burial agreement funded by the proceeds of a life insurance policy:

(1) The name of the individual for whom the existing burial trust is intended.

(2) The date on which the original burial trust agreement was made.

(3) The name of the funeral establishment that was designated on the original burial trust agreement.

(4) The name of the bank, trust company, savings and loan association, or savings bank in which the burial trust funds have been held.

(5) The current value of the trust.

(6) The name of the life insurance company issuing the life insurance policy intended to fund the burial agreement.

(7) The name of the agent who sells the life insurance policy.

(8) The name of the funeral establishment that will be designated on the life insurance policy as the beneficiary.

History: Cr. Register, October, IVY?. No 502, eff 11 1 97.

FD 6.10 Solicitation of prospective purchasers of burial agreements funded with the proceeds *of* a life insurance policy. (1) AUTOMATED TELEPHONE CALLS. A funeral director. owner of a funeral establishment, or agent may only initiate a telephone call using an automated telephone dialing system or an artificial or prerecorded voice system for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy when calling a residential or business telephone line, provided that the fiincral director, owner of a funeral cstablishmcnt. or agent obtains the prior express written consent of the parry to be called.

(2) LIVE–VOICE TELEPHONE CALLS **A** funeral dircctor. owner of **a** funeral cstablishmcnt, or an agent may initiate a telephone call by live voice for the purpose of selling or soliciting a burial agreement funded with the proceeds of a life insurance policy only if all of the following apply:

(a) A funeral director, owner of a funeral cstablishment, or agent sends written notice to the prospective purchaser at least I0 days in advance of the call, advising the prospective purchaser of all of the following:

1. The name of the funeral director, owner of a funeral establishment, or agent who will be calling, the name of the person or cntity upon whose behalf the call is being made. and **a** telephone number or address at which the person or entity may be contacted.

2. That the call will only be made between the hours of 9:00 a.m. to 7:00 p.m. central time.

3. The specific reason for the call in no less thnn 12 -point type.

4. That a prospective purchaser may call the **person** or cntity upon whose behalf the call is being made to request that no call he made. This statement shall be in no less than 14–point, hold faced type.

(b) The telephone caller immediately begins the conversation by providing the called party with the name of the funeral director, owner of the funeral establishment, or agent. the name of the person or cntity upon whose behalf the call is being made, and a telephone number or address at which the person or entity **may** be contactcd.

(c) The telephone caller records the name and telephone number of persons who request placement on a do–not–call list at the time the request is made and the caller agrees to make no further calls to a person who has requested placement on the list.

(d) A telephone call is only made to a prospective purchaser or the prospective purchaser's authonzcd representative, in a hospital, health care facility, elderly home or similar establishment, if the prospective purchaser or the prospective purchaser's authorized representative requests the call.

(e) A telephone call is only made to a prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy whose death is imminent or appears to he imminent. if the prospecrive purchaser or the prospective purchaser's authorized representative requests the call.

(3) DOOR–TO–DOOR SOLICITATION A fiineral director, owner of **a** funeral establishment, or an agent may not contact a prospective purchaser of a burial agreement funded with the proceeds of a life insurance policy by door to door solicitation

History: Cr. Register, October, 1997, No. 502, eff. 11–1–97; renum. and am. (1) (intro.) to be (1), (2) (b) (intro.), 1. to 4., to be (2) (a) (intro.), 1. to 4., r. (1) (a) to (c), (2) (a), (4) and (5), cr. (2) (b) to (e), r. and recr. (3), Register, July, 1999, No. 523, eff. 8–1–99; reprinted to correct printing error in (3), Register, November, 1999, No. 527.

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01 Authority and scope.
RL 1.03 Definitions.
RL 1.04 Examination failure: retake and hearing.
RL 1.05 Notice of intent to deny and notice of denial
RL 1.06 Parties to a denial review proceeding.
RL 1.07 Request for hearing.
RL 1.08 Procedure.
KL 1.09 Conduct of hearing.
RL 1 10 Service.
RL 1.11 Failure to appear.
RL 1.12 Withdrawal of request
RL 1.13 Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Slats., for the purpose of governing review of a decision to dcny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.02 Scope. History: Cr Register, October. 1985. No. 358. eff. 11–1–85; **r., Register, July, 1996, Nu. 487, eff. 8–1–96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 410 to 480. Stats.

(3) "Credentialing authority" means the department or an attached examining board; affiliated credentialing board or board having authority to issue or dcny a crcdcntial.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) **(a),** Stats., in which a crcdcntialing authority reviews a decision to deny a completed application for a credential.

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

(6) "Division" means the division of enforcement in the department.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; **am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.04 Examination failure: retake and hearing. **(1)** An applicant may request a hearing lo challenge the validity, scoring or administration of an exaniination if the applicant has exhausted other available administrative remedies, including, **but** not limited to, internal examination review and regrading. and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within **6** months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing ifthc applicant is eligible to retake the examination and reexamination is available within **6** months from the date of the applicant's last examination,

Note: An applicant is not eligible for a license until his or her application is complete. **An** application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it **within** 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr., Register. July, 1996, No. 487. eff. 8–1–96.

RL 1.05 Request for hearing. History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in (2 (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988. No. 389; **r. Register, July, 1996, No. 487, eff. &I–96.**

RL 1.05 Notice of intent to deny and notice of denial. **(1)** NOTICE OF INTENT TO DENY. (a) **A** notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to dcny shall contain a short statement in plain laiiguagc of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless. within 45 calendar days from the date of the mailing of the notice. the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the crcdcntialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for 3 credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant docs not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based; and bc substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. &I–96.

RL 1.06 Parties to a denial review proceeding. Partics to a denial review proceeding are the applicant. the credentialing authority and any pcrson admitted to appear under s. 227.44 (2m), Stars.

History: Cr. Register, October, 1985, No. 358, eff. 11 1 85; **renum. from RL 1.04 and am., Register, July, 1996. No. 487, cff. 8–1–96.**

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the crcdcntialing authority The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the reuuest shall include a statement of the law upon which the applicant

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements ins. RL 1.07 are met, and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority

(2) DESIGNATION OF PRESIDING OFFICER An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an cmpioye borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term cmployc by the dcpartmcnt, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the hurden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96

RL **1.09 Conduct Of hearing. (1)** RECORD. A stenographic, electronic or other record shall he made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may he issued in accordance with s. 227.45 (6m), Stats.

(h) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall he in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hcaring the motion.

(5) EVIDENCE The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross–examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credciitialiiig authority prior to dcnial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL **1.10 Service.** Service of any document on an applicant may he made hy mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL **1.11 Failure to appear.** In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing. the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL **1.12 Withdrawal of request.** A request for hearing may he withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL **1.13 Transcription fees. (1)** The fee charged for a transcript of a proceeding under this chapter shall he computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall chargc a transcription fee of $1.75 per page and a copying chargc of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, hut may divide the transcript fee equitahly among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the tianscription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who rcquircs a transcript for appeal or other reasonable purposes shall he furnished with a tianscript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination ofiiidigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional infomiation which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority)

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01	Authority.
RL 2.02	Scope; kinds of proceedings.
RL 2.03	Definitions.
RL 2.035	Receiving informal complaints.
RL 2.036	Procedure for settlement conferences.
RL 2.037	Parties to a disciplinary proceeding.
RL 2.04	Commencement of disciplinary proceedings.
RL 2.05	Pleadings to be captioned.
RL 2.06	Complaint.
RL 2.07	Notice of hearing.
RL 2.08	Service and filing of complaint, notice of hearing and other papers.
RL 2.09	Answer.
RL 2.10	Administrative law judge.
RL 2.11	Prehearing conference.
RL 2.12	Settlements.
RL 2.13	Discovery.
RL 2.14	Default.
RL 2.15	Conduct of hearing.
RL 2.16	Witness fees and costs.
RL 2.17	Transcription fees.
RL 2.18	Assessment of costs.

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

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

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, eff. 6–1–82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), am. (5), (7) and (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; am. (intro.) and (3), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; renum. from RL 2.036 and am., Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3–1–79; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (intro.), (3) and (4), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4), Register, February, 1979, No. 278, eff. 3–1–79; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. (1), Register, November, 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1), (5) and (6), cr. (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) Register, May, 1982, No. 317, eff. 6–1–82; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92; am. (1) (b), Register, August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date:	(#6)
Time:	(#7)
Location:	Room (#8) 1400 East Washington Ave Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day of, _____20___ .

_____
Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.	RL 3.09	Administrative law judge.
RL 3.02	Scope; kinds of proceedings.	RL 3.10	Prehearing conference.
RL 3.03	Definitions.	RL 3.11	Settlements.
RL 3.04	Pleadings to be captioned.	RL 3.12	Discovery.
RL 3.05	Petition for administrative injunction.	RL 3.13	Default.
RL 3.06	Notice of hearing.	RL 3.14	Conduct of hearing.
RL 3.07	Service and filing of petition, notice of hearing and other papers.	RL 3.15	Witness fees and costs.
RL 3.08	Answer.	RL 3.16	Transcription fees.

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

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

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats.A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from the Department of Administration, State Bureau of Procurement, 101 E. Wilson Street, 6th Floor, P.O. Box 7867, Madison, Wisconsin 53707–7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE; INJUNCTION INVOLVING	:	NOTICE OF HEARING
(#1),:	:	
Respondent.	:	

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____day of____20__ .

_____
(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01	Authorization.	RL 4.04	Fees for examinations, reexaminations and proctoring examinations.
RL 4.02	Definitions.	RL 4.05	Fee for test review.
RL 4.03	Time for review and determination of credential applications.	RL 4.06	Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; **am. Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

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

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; **renum. (1) to (4) to be (4), (3), (1), (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. A delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under s. 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, 1992, No. 440, eff. 9–1–92; **renum. from RL 4.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. 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.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. Register, May, 1986, No. 365, eff. 6–1–86; am. Register, December, 1986, No. 372, eff. 1–1–87; am. Register, September, 1987, No. 381, eff. 10–1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am. (3), Register, September, 1990, No. 417, eff. 10–1–90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register, April, 1992, No. 436, eff. 5–1–92; am. (4) Figure, cr. (5), Register, July, 1993, No. 451, eff. 8–1–93; r. and recr. Register, November, 1993, No. 455, eff. 12–1–93; **r. (2), am. (3) (a), (b), (c), (e), (4), (5), Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992, No. 436, eff. 5–1–92; **am. Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, May, 1986, No. 365, eff. 6–1–86; am. (1) and (2) (intro.), renum. (2) (c) and (3) to be (3) and (4), cr. (5), Register, September, 1987, No. 381, eff. 10–1–87; r. and recr. (1) and (4), Register, April, 1992, No. 436, eff. 5–1–92; r. (2), renum. (3) to (5) to be (2) to (4), Register, July, 1993, No. 451, eff. 8–1–93; **renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01	Authority and intent.
RL 6.02	Scope.
RL 6.03	Definitions.
RL 6.04	Petition for summary suspension.
RL 6.05	Notice of petition to respondent.
RL 6.06	Issuance of summary suspension order.
RL 6.07	Contents of summary suspension order.
RL 6.08	Service of summary suspension order.
RL 6.09	Hearing to show cause.
RL 6.10	Commencement of disciplinary proceeding.
RL 6.11	Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

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

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross–examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.11 Delegation. (1) A board may by a two–thirds vote:

(a) Designate under s. 227.46 (1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two–thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01	Authority and intent.
RL 7.02	Definitions.
RL 7.03	Referral to and eligibility for the procedure.
RL 7.04	Requirements for participation.
RL 7.05	Agreement for participation.
RL 7.06	Standards for approval of treatment facilities or individual therapists.
RL 7.07	Intradepartmental referral.
RL 7.08	Records.
RL 7.09	Report.
RL 7.10	Applicability of procedures to direct licensing by the department.
RL 7.11	Approval of drug testing programs.

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

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

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1), (2), (5), cr. (2a), (2b), r. (6), Register, July, 1996, No. 487, eff. 8–1–96; **cr. (6) and (8), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (2) to (6), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05.

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96; **am. (1) (e), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL 2.

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1) (a) to (g) and (2), Register, July, 1996, No. 487, eff. 8–1–96; **am. (1) (d), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96; **r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who are dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1), (3) (a) to (d), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain–of–custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19___.

_____ _____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.	RL 8.05	Request for a review of an administrative warning.
RL 8.02	Definitions.	RL 8.06	Procedures.
RL 8.03	Findings before issuance of an administrative warning.	RL 8.07	Transcription fees.
RL 8.04	Issuance of an administrative warning.		

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

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

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority} to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

1) That there is evidence of professional misconduct by {credential holder}, to wit:

2) That this misconduct is a first occurrence for {credential holder}.

3) That this misconduct is a minor violation of {statute or rule}.

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority} issues this administrative warning and hereby puts the {credential holder} on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the {disciplinary authority}.

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority.
RL 9.02 Scope; nature of proceedings.
RL 9.03 Definitions.
RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in s. 440.03, Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for renewal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

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

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96; **correction in (4) made under s. 13.93 (2m) (b) 7., Stats.**

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. Act 191 repealed s. 440.08 (2g) (b), Stats.

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES. The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 (4) (b) 3., Stats., referred to here was repealed by 1997 Wis. Act 237 and a new, unrelated s. 440.08 (4) (b) recreated.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

Chapter HFS 135

HUMAN CORPSES AND STILLBIRTHS

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Note: Chapter HSS 135 as it existed on January 31, 1993, was repealed and a new chapter HSS 135 was created effective February 1, 1993.

Note: Chapter HSS 135 was renumbered chapter HFS 135 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6 and 7, Stats.

HFS 135.01 Purpose and authority. This chapter and ch. HFS 136 regulate the preparation, transportation and disposition of human corpses and stillbirths for purposes of protecting the health of the public and properly registering deaths. The chapter is promulgated under the authority of ss. 69.02 (2), 250.04 (7) and 157.01, Stats., to interpret and contribute to the implementation of ss. 69.01 to 69.12, 69.18, 250.04 (1), 157.01 and 979.10, Stats. Nothing in this chapter shall prevent a member of the immediate family from preparing the corpse of a family member for burial, except as provided in s. HFS 135.05 (1) (b), or from conducting the funeral of a deceased family member.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

HFS 135.02 Definitions. In this chapter:

(1) "Common carrier" has the meaning prescribed for "common motor carrier" in s. 194.01 (1), Stats., and in addition includes a vehicle using rails, air or water to transport persons or property.

(2) "Cremation permit" has the meaning prescribed for a release to cremate in sub. (18).

(3) "Death certificate" means the form prescribed and supplied by the department which contains such items of information as the department judges necessary to identify the decedent and to certify the cause or causes of death.

(4) "Department" means the Wisconsin department of health and family services.

(5) "Disinterment permit" means the form prescribed by the coroner or medical examiner to authorize removal of a human corpse from a grave or tomb and which contains items of information that are necessary to identify the deceased, the date and place of death, the current place of interment, the intended place of interment, the name of the person requesting the disinterment and the name of the person in charge of the disinterment.

(6) "Disposition" means, in reference to a human corpse or stillbirth, burial, entombment in a mausoleum or separate vault, temporary storage, cremation or donation for scientific research or teaching use.

(7) "Embalming" has the meaning designated in s. HFS 136.02 (1).

(8) "Fetal death report" means the form prescribed and supplied by the department for reporting a stillbirth resulting from miscarriage, of gestational age 20 weeks or more or having a birthweight of 350 grams or more.

(9) "Final disposition" means, in reference to a human corpse or stillbirth, burial, entombment in a mausoleum or separate vault, cremation, delivery to a university or school under s. 157.02 (3), Stats., or delivery to a medical or dental school anatomy department under s. 157.06, Stats.

Note: For cremation after burial, entombment or donation, a cremation permit must be obtained under s. HFS 135.06 (3) (a).

(10) "Funeral director" means a person who is licensed under s. 445.04, Stats., to prepare human corpses for burial or other disposition, or to direct and supervise the burial or other disposition of human corpses.

(11) "Gestational age" means, in reference to stillbirths, the age of a fetus expressed in weeks, dating from the first day of the mother's last normal menses to the date of delivery.

(12) "Immediate family" means, in order of decisionmaking priority, spouse, adult children, parents, adult brothers and sisters, grandparents, and adult grandchildren of the decedent.

(13) "Interment" means, in reference to a human corpse, burial or entombment in a mausoleum or separate vault.

(14) "Local health officer" has the meaning prescribed in s. 250.01 (5), Stats.

(15) "Local registrar" means the county register of deeds or the city health officer in a city which has been approved by the state registrar under s. 69.04 (1), Stats., as a registration district.

(16) "Notice of removal" means the form prescribed and supplied by the department or reproduced from the form prescribed and supplied by the department for notifying and recording the removal of a human corpse from a hospital or nursing home by a funeral director, member of the immediate family or other authorized person.

(17) "Registered apprentice funeral director" means a person who is issued a certificate of apprenticeship under s. 445.095 (1), Stats., to be employed as an apprentice to a funeral director.

(18) "Release to cremate" means the form supplied by the county coroner or medical examiner which provides written permission required under s. 979.10 (1), Stats., for cremation of a human corpse and which contains information necessary to identify the deceased, the date and place of death, a description of the cause and manner of death, the name of the person requesting the cremation, the name of the funeral director or person acting in place of the funeral director and the date and time the release takes effect, and which specifies that no authorization is given to override the wishes of the next of kin.

(19) "Release to embalm" means the form supplied by the county coroner or medical examiner which provides written permission required under s. 979.01 (4), Stats., for embalming a human corpse in the case of a death subject to investigation under s. 979.01, Stats., and which contains information necessary to identify the deceased, the date and place of death, the name of the funeral director or person acting in place of the funeral director and which specifies that no authorization is given to override the wishes of the next of kin.

(20) "Report for final disposition" means the form prescribed and supplied by the department or reproduced from the form prescribed and supplied by the department for the purpose of recording the facts of a death and reporting those facts to the coroner or medical examiner of jurisdiction under s. 69.18 (3), Stats., and to the local registrar in the registration district in which death was pronounced. This form serves as the official "burial transit permit" for transporting a human corpse out of state or by common carrier.

(21) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(22) "Universal precautions" means universal blood and body fluid precautions to be practiced by funeral directors and registered apprentice funeral directors in removing bodies and preparing them for burial or entombment or for transportation, as recommended by the U.S. public health service's centers for disease control, to prevent transmission of blood–borne and body fluid–borne infections.

Note: A copy of the universal precautions may be obtained from the Bureau of Occupational Health, Division of Public Health, P.O. Box 2659, Madison, WI 53703.

Note: Inquiries concerning death certificates, fetal death reports, notices of removal, reports for final disposition and disinterment permits should be sent to Vital Records Section, Division of Health Care Financing, P.O. Box 309, Madison, Wisconsin 53701.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93; correction in (14) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

HFS 135.03 Responsibility for notification of death. (1) When a person dies, the funeral director or, if a funeral director is not involved, a member of the immediate family of the deceased, shall present or mail a completed death certificate to the local registrar in the registration district where death was pronounced within 9 days after the date of pronouncement of death.

(2) For a stillbirth resulting from miscarriage and of a gestational age 20 weeks or more or weighing 350 grams or more, the hospital, clinic or midwife or, if a hospital, clinic or midwife was not involved with the delivery, a parent, shall within 5 days after the delivery mail a completed fetal death report to the local registrar in the registration district where the delivery took place.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93.

HFS 135.04 Removal from a hospital or nursing home. (1) HOLDING, PENDING DECISION OF RELATIVE, FRIEND OR PUBLIC AUTHORITIES. Hospital or nursing home authorities shall make provision for holding a human corpse until a relative, friend or the public authorities determine what disposition shall be made of the remains. The hospital or nursing home may cause a body to be removed that is unclaimed after 12 hours from the time of death and following due notice to the local health officer, unless a longer period of time is required to complete an autopsy.

Note: See s. 157.02, Stats., for disposition of the corpses of persons who have died at state, county or municipal institutions.

(2) DELAY FOR AUTOPSY. Except for cases which involve a coroner or medical examiner because a death has occurred under circumstances specified in s. 979.01, Stats., whenever the immediate family has requested or approved an autopsy, the funeral director or member of the immediate family or other person authorized to remove the body from the hospital shall delay making the removal for up to 10 hours after death, or for a longer period of time if the pathologist and funeral director mutually agree on a longer period of time, to permit completion of the autopsy.

(3) PRESENTATION OF REMOVAL NOTICE. The hospital or nursing home may not release a corpse to a funeral director, member of the immediate family or other person authorized to remove the body until the funeral director or other person making the removal presents a notice of removal, in duplicate, to the administrator of the hospital or nursing home or to his or her representative. The hospital or nursing home administrator or that person's representative shall complete, to the best of his or her knowledge, the portion of the notice which specifies if isolation techniques should be used in the embalming process and shall indicate whether the death is reportable to the coroner or medical examiner under s. 979.01, Stats. One copy of the removal notice shall be retained on file by the hospital or nursing home for a minimum of 30 days and the other shall be forwarded immediately by the hospital or nursing home to the local registrar in the registration district where death was pronounced. No presentation of a notice of removal is necessary for removal of a stillbirth unless a hospital requires that notice for internal recordkeeping purposes, in which case no copy of the notice is forwarded to the local registrar.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93.

HFS 135.05 Preparation and funeral. (1) PREPARATION FOR BURIAL OR FOR ENTOMBMENT. (a) In removing bodies and preparing them for burial or other disposition or for transportation, the funeral director and registered apprentice funeral director shall use universal precautions and otherwise exercise all reasonable precautions to minimize the risk of transmitting any reportable communicable disease from the corpse.

Note: Reportable communicable diseases are those listed in ch. HFS 145.

(b) Any member of the immediate family of a deceased person may prepare the body for burial or other final disposition, except that no person may embalm a corpse unless that person is licensed as a funeral director, and no member of the immediate family may prepare a corpse for burial or other final disposition if there is risk of transmitting a communicable disease from the corpse, either because a communicable disease was the cause of death or the individual had a communicable disease at the time of death, unless the local health officer determines that the risks of transmitting the disease from the corpse are minimal.

(c) A corpse need not be embalmed when prepared for burial, entombment or cremation unless it is to be shipped by common carrier as provided under par. (d).

(d) Every corpse to be shipped by common carrier shall be embalmed except a corpse that it is not possible to embalm, a corpse donated to a school for research and training purposes under s. HFS 135.06 (2), or when the immediate family of the deceased objects to embalming on religious grounds. Whenever a corpse to be shipped by common carrier is not embalmed or is in a state of decomposition, the corpse may be shipped only after being enclosed in a strong, tightly sealed outer case.

(e) Embalming standards shall be as specified in ch. HFS 136.

(f) No one other than the licensed funeral director and registered apprentice funeral director shall be allowed in the embalming room during the embalming except at the request of or with the permission of the immediate family of the deceased. Apart from these exceptions, the preparation of human corpses for final disposition shall be entirely private.

(g) A large–type copy of par. (f) shall be permanently fastened to the door of the preparation or embalming room in all funeral establishments.

(h) A licensed funeral director may embalm and otherwise prepare for burial or other disposition a human corpse in the home of a deceased person or in the home of a relative of the deceased person.

Note: When a death has occurred under any of the circumstances listed in s. 979.01 (1), Stats., embalming must be delayed until authorized in writing by the coroner or medical examiner of the county in which the injury or other cause of death occurred, pursuant to s. 979.01 (4), Stats.

(2) FUNERALS. A funeral may be conducted from the home of the deceased person or from the home of a relative of the deceased person.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93.

HFS 135.06 Transportation and burial or other disposition. (1) REPORT FOR FINAL DISPOSITION. (a) 1. Except for transportation under s. HFS 135.07 for purposes of reinterment, a report for final disposition completed by the funeral director or other person preparing the body for burial or other final disposition shall accompany each human corpse shipped by common carrier.

2. The report for final disposition shall be attached in a strong envelope to the shipping case when a human corpse is transported by common carrier.

3. No human corpse may be buried or otherwise finally disposed of unless accompanied by a report for final disposition which shall serve as authorization for burial or other disposition except cremation. Every person in charge of a place in which burial or other final disposition takes place shall keep a written

record of every corpse interred there. A copy of the report for final disposition may serve as that record.

(b) 1. No human corpse of a person who died in Wisconsin may be shipped or otherwise transported out of the state unless accompanied by a copy of the completed report for final disposition. In addition, if the death was subject to investigation and certification by a coroner or medical examiner under s. 69.18 (2) (d), Stats., the corpse shall be accompanied by written permission of the coroner or medical examiner to embalm the corpse and carry out its final disposition. If the corpse is to be cremated, written permission of the coroner or medical examiner with jurisdiction under s. 979.10 (1) (a), Stats., is required.

2. No stillbirth delivered in Wisconsin may be shipped or otherwise transported out of the state unless accompanied by a completed report for final disposition.

(c) No human corpse or stillbirth may be shipped or transported into Wisconsin from another state or territory or from a foreign country unless accompanied by an official burial document from the state or territory where the death occurred or from the federal government in connection with a death in a foreign country. In this paragraph, "official burial document" means a burial permit or equivalent official document provided for in the laws of the state or territory of origin or by the federal government, which identifies the body, indicates the date and place of death and provides information on the cause of death.

(2) DONATION OF BODIES FOR RESEARCH AND TEACHING. (a) A human corpse may be donated to a medical or dental school anatomy department under s. 157.06, Stats., or to a medical school or school of mortuary science under s. 157.02 (3), Stats.

(b) Because all or part of a donated body will eventually be cremated, the corpse of a person who died in Wisconsin which is being donated for research or training may not be transported out of the county in which the death occurred until the coroner or medical examiner having jurisdiction under s. 979.10 (1) (a), Stats., has been notified for the purpose of issuing a cremation permit.

(c) A human corpse donated to a school identified in par. (a) shall be transported to arrive at the school within 24 hours after death unless prior arrangements have been made with the receiving school or unless, pursuant to s. 157.06 (8) (a), Stats., a funeral service or other last rites are conducted in which case embalming techniques specified by the school shall be used to preserve the body and the corpse shall be transported to arrive at the school as soon as possible after the rites have been concluded.

(3) CREMATION. (a) No person may cremate a human corpse unless the person has received a cremation permit from the appropriate county coroner or medical examiner under s. 979.10 (1) (a), Stats.

(b) Cremation of a human corpse shall be considered final disposition of that body. No additional permit covering transportation of the ashes of a cremated body or interment or other disposal of the ashes of a cremated body is required.

(c) No cremation permit is required for cremation of a stillbirth.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93.

HFS 135.07 Disinterment. (1) No human remains that are buried or resting in a permanent vault may be disinterred, transported and reinterred unless a disinterment permit is first obtained from the coroner or medical examiner of the county in which the disinterment is to take place.

(2) The coroner or medical examiner shall issue a disinterment permit, without requiring as a condition the presentation of a death certificate or report for final disposition, upon receipt of an order of a court of competent jurisdiction or upon receipt of a written application signed by the person in charge of the disinterment and by any person listed in s. 69.18 (4) (a), Stats., in order of priority stated and under the stated conditions.

(3) The disinterment permit shall constitute authorization to transport and reinter the disinterred remains.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93; **correction in (2) made under s. 13.93 (2m) (b) 7., Stats.**

HFS 135.08 Pronouncement of death outside of a hospital or nursing home. The coroner or medical examiner of a county shall establish procedures for use within that county for the legal pronouncement of death outside of a hospital or nursing home.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93.

HFS 135.09 Jurisdiction and duties of coroner or medical examiner. (1) DEATHS REPORTABLE UNDER S. 979.01, STATS. For a death that is reportable under s. 979.01, Stats.:

(a) If the death–producing incident occurred in the state, the coroner or medical examiner of the county in which the death–producing incident occurred shall be sent the report for final disposition, shall investigate the death and sign the medical certification portion of the death certificate and shall sign any release to embalm or release to cremate; and

(b) If the death–producing incident occurred outside the state, the coroner or medical examiner of the county in which death was pronounced shall be sent the report for final disposition, shall investigate the death and sign the medical certification portion of the death certificate and shall sign any release to embalm or release to cremate.

(2) DEATHS NOT REPORTABLE UNDER S. 979.01, STATS. For a death that is not reportable under s. 979.01, Stats., the funeral director or other person preparing the body for burial or other final disposition shall send the report for final disposition to the coroner or medical examiner of the county in which the death was pronounced who shall, if a cremation permit is requested, sign the release to cremate.

History: Cr. Register, January, 1993, No. 445, eff. 2–1–93.

Chapter HFS 136

EMBALMING STANDARDS

HFS 136.01 Minimum embalming standards.
HFS 136.02 Definitions.
HFS 136.03 License or certificate required.
HFS 136.04 Preparation of bodies prior to embalming.
HFS 136.05 Embalming procedures.
HFS 136.06 Treatment for advanced decomposition.
HFS 136.07 Partial embalming.

Note: Chapter HSS 136 was renumbered chapter HFS 136 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1997, No. 493.

HFS 136.01 Minimum embalming standards. Rules in this chapter establish minimum standards for embalming dead human bodies.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80.

HFS 136.02 Definitions. (1) "Embalming" means the use of procedures specified in this chapter for the preservation and disinfection of dead human bodies.

(2) "Embalming fluid" means a chemical solution injected in arteries, and placed in body cavities, to preserve and disinfect a dead human body.

(3) "Autopsy compound" means an absorbent powder or gel desiccant used to preserve, disinfect and harden body organs after autopsy or the remains of a dead human body in the state of advanced decomposition.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80.

HFS 136.03 License or certificate required. (1) No person may embalm a dead human body unless the person holds a funeral director's license, pursuant to ss. 445.04 to 445.06, Stats., or an apprentice funeral director's certificate pursuant to s. 445.095, Stats.

(2) Embalming may only be performed in:

(a) Funeral establishments holding a current establishment permit issued by the funeral directors examining board;

(b) Hospitals;

(c) Facilities approved by a local medical examiner or coroner if a disaster occurs; or

(d) Private homes as provided in ch. HFS 135.

Note: See s. HSS 135.05 for additional restrictions on preparation of dead human bodies.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80; correction in (2) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; am. (1) and (2), Register, January, 1997, no. 493, eff. 2–1–97; **correction in (2) (d) made under s. 13.93 (2m) (b) 7., Stats.**

HFS 136.04 Preparation of bodies prior to embalming. (1) Prior to embalming, or prior to public viewing or final disposition of the body if embalming is not performed, the funeral director shall do all of the following:

(a) Remove all clothing from the body and wash the entire body thoroughly with a germicidal soap or detergent;

(b) Clean the body orifices and treat with a topical disinfectant; and

(c) Perform pars. (a) and (b) in compliance with the terms and conditions set forth in the U.S. Occupational Safety and Health Administration (OSHA) standard for occupational exposure to bloodborne pathogens, 29 CFR 1910.1030.

(2) The funeral director shall return clothing removed from a dead human body to the family or other appropriate individual. Any soiled clothing shall be disinfected and sanitized before it is returned.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80; **r. and recr., Register, January, 1997, No. 493, eff. 2–1–97.**

HFS 136.05 Embalming procedures. In every embalming, the embalmer shall perform at least the following procedures:

(1) ARTERIAL INJECTION. (a) For each 50 pounds of body weight, at least one gallon of arterial embalming fluid shall be injected into the arteries of the body. The embalming fluid should be diluted to the percentage of concentration recommended by the manufacturer of the embalming fluid.

(b) Multiple injection sites shall be used if arterial circulation is impaired by:

1. Arterial blockage
2. Trauma
3. Autopsy procedures

(2) TREATMENT OF BODY CAVITIES. The embalmer shall treat body cavities by:

(a) Removing liquids and semi–solids contained in the body by aspiration;

(b) Injecting in body cavities at least 8 ounces of concentrated cavity chemicals for each 50 pounds of body weight except that no more than 32 ounces must be injected for body weight in excess of 200 pounds; and

(c) Repeating cavity treatment if distension or purging occurs after reaspiration.

(3) TREATMENT AFTER AUTOPSY. The embalmer shall treat bodies after autopsy by:

(a) Hypodermically injecting embalming fluid into areas where the arterial system has been destroyed by autopsy procedures;

(b) Removing the visceral contents placed in the body after autopsy and immersing the contents in concentrated cavity chemicals or other accepted embalming chemicals for at least one hour; and

(c) Applying an autopsy compound to the visceral contents following replacement of the contents in the body.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80.

HFS 136.06 Treatment for advanced decomposition. Bodies in a state of advanced decomposition shall be embalmed according to procedures specified in s. HFS 136.05 unless the degree of decomposition prevents use of those procedures in which case the embalmer shall:

(1) Cover the body in cotton saturated with liquid disinfectant, disinfectant gel or powder; and

(2) Place the body in an impermeable disaster or body pouch and completely seal the pouch.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80.

HFS 136.07 Partial embalming. If only partial embalming is requested, the body shall be prepared as specified in s. HFS 136.04 and only procedures authorized by next of kin or other designated persons may be performed.

History: Cr. Register, November, 1980, No. 299, eff. 12–1–80.

Chapter Ins 23

STANDARDS FOR INSURANCE MARKETED TO FUND PREARRANGED FUNERAL PLANS

Ins 23.01	Purpose.
Ins 23.10	Definitions.
Ins 23.20	General.
Ins 23.25	Agent representation of affiliation.
Ins 23.30	Requirements for funeral policies.
Ins 23.50	Minimum standards for claims payments under a funeral policy.
Ins 23.60	Requirements for advertisements of funeral policies.
Ins 23.70	Marketing procedures.
Ins 23.80	Suitability.
Ins 23.90	Solicitation and disclosure requirements.

Ins 23.01 Purpose. The rule establishes minimum standards for benefits, claims payments, marketing practices, compensation arrangements and reporting practices for funeral policies.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.10 Definitions. In this chapter:

(1) "Advertisement" has the meaning given in s. Ins 2.16 (3) (a) 1.

(2) "Consideration" means remuneration of any kind including, but not limited to, commission payments, cash, services, benefits, bonuses, goods or the benefit of marketing efforts.

(3) "Cumulative premiums" means all sums paid as consideration, net of dividends paid in cash in an orderly progression, for the coverage during the first 10 years of the policy, excluding amounts which are designated in the policy or certificate as providing for annuity benefits.

(4) "Funeral director" has the meaning given in s. 445.01(5), Stats.

(5) "Funeral establishment" has the meaning given in s. 445.01(6), Stats.

(6) "Funeral policy" means a life insurance or annuity policy sold for the purpose of funding a prearranged funeral plan which is sold by an insurance intermediary who is the authorized and appointed agent of the funeral director or funeral establishment providing the prearranged funeral plan.

(7) "Prearranged funeral plan" has the meaning given in s. 445.125 (3m) (a) 2., Stats.

(8) "Solicitation" means offering a policy for sale by telephone or personal contact or by written or printed communication at any location including the insurance intermediary's regular place of business.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.20 General. (1) An insurance intermediary may sell a life insurance or annuity policy for the purpose of funding a prearranged funeral plan only if:

(a) The insurance intermediary is an authorized and appointed agent under s. 445.125 (3m), Stats. of the funeral director or funeral establishment which provides the prearranged funeral plan; or

(b) The insurance intermediary does not, directly or indirectly, receive referrals or other marketing information from a funeral director or operator of a funeral establishment or an agent of the funeral director or funeral establishment, sell the prearranged funeral plan, or participate in the sale of the prearranged funeral plan.

(2) No insurer may accept an application which an insurance intermediary solicited in violation of sub. (1) or another provision of this chapter.

(3) An insurer shall establish reasonable procedures to prevent violations of subs. (1) and (2).

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.25 Agent representation of affiliation. (1) No insurance intermediary may represent that he or she is affiliated with or representing a funeral operator or funeral establishment unless he or she is an authorized agent of the funeral operator or funeral establishment under s. 445.125 (3m), Stats.

(2) An insurer shall establish reasonable procedures to prevent violations of sub. (1).

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.30 Requirements for funeral policies. (1) No insurer may sell or issue a policy as a funeral policy unless all of the following occur:

(a) The policy is an individual whole life or group whole life or an annuity policy.

(b) The funeral policy if issued on a multi–premium basis provides an unintentional lapse provision which requires written notification to the insured and to one person designated by the insured to receive notification if no premium is received by the insurer during a grace period of no less than 30 days.

(c) The funeral policy provides that death benefits which exceed the actual final costs of the burial expenses shall be paid to the insured's beneficiary or if no beneficiary is named, the insured's estate.

(d) The funeral policy provides the unrestricted right to return the policy or certificate within 30 days of the date it is received by the policyholder. If the policyholder returns the policy or certificate, the insurance contract is void and all payments made under it shall be refunded directly to the policyholder by the insurer.

(e) Notification of the right to return is conspicuously printed on the front page of the funeral policy or conspicuously attached to the funeral policy.

(f) The insurance intermediary obtains a delivery receipt from the insured when the policy is given to the insured.

(g) The funeral policy provides that cancellation of the prearranged funeral plan does not automatically cancel the policy.

(2) No insurer may submit policy forms for funeral policies pursuant to s. 631.20, Stats. unless the forms comply with ch. Ins 2 and all of the following are included in the filing:

(a) An application form with provisions for signature by the applicant and insurance intermediary.

(b) A consideration plan and, within 30 days of any revisions to the consideration plan, the revised consideration plan including all of the following:

1. A description of consideration which may be paid to any person relating to the sale or renewal of a funeral policy.

2. A listing describing all consideration the insurer provides to the funeral director or operator of the funeral establishment for endorsing the insurer's product or direct or indirect assistance in marketing of the product.

(c) A specimen policy delivery receipt.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97; **r. (1) (b) and (2) (d), renum. (1) (c) to (h) to be (1) (b) to (g), am. (2) (b), Register, January, 2001, No. 541, eff. 2–1–01.**

Ins 23.35 Minimum benefit requirements. Cr. Register, July, 1997, No. 499, eff. 10–1–97; **r. Register, January, 2001, No. 541, eff. 2–1–01.**

Ins 23.40 Consideration plans. Cr. Register, July, 1997, No. 499, eff. 10–1–97; **r. Register, January, 2001, No. 541, eff. 2–1–01.**

Ins 23.50 Minimum standards for claims payments under a funeral policy. (1) The insurer shall not pay policy death benefits to a funeral director or funeral establishment unless the prearranged funeral plan is in effect at the time of the insured's death.

(2) In the event of the insured's death, the insurer shall not pay to the funeral director or establishment more than the actual final costs billed by the funeral director or funeral establishment. The remainder or excess due under the policy is to be paid to the beneficiary designated by the insured to receive any policy benefits which exceed the actual final costs or, if no beneficiary has been designated by the insured, the insured's estate.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.60 Requirements for advertisements of funeral policies. (1) Advertisements for funeral policies shall comply with all relevant statutes and rules, including but not limited to ch. Ins 2.

(2) An insurer or insurance intermediary placing or using or publishing an advertisement which may be utilized directly or indirectly in the solicitation or sale of a funeral policy shall disclose the following in a clear and conspicuous manner:

(a) That a purpose of the advertisement is the solicitation of insurance.

(b) That an insurance intermediary may contact any person who responds to the advertisement.

(c) The identity of the insurer.

(3) No insurer or insurance intermediary may use a response from an advertisement of a prearranged funeral plan regardless of who placed or published the advertisement unless the advertisement includes the disclosures required under sub. (2).

(4) The insurer whose policy is advertised has the responsibility for the content, form and method of dissemination of all advertisements, regardless of who designed, created, wrote, printed or utilized them.

(5) An insurer shall require its insurance intermediaries, and all other persons or agencies acting on its behalf in preparing advertisements, to submit advertisements to it for approval prior to use of the advertisement.

(6) An insurer shall maintain a copy of every advertisement and all correspondence for each advertisement submitted for approval or used in Wisconsin for 3 years after the advertisement was last used.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.70 Marketing procedures. (1) The insurer shall establish and implement written marketing procedures for funeral policies to ensure compliance with solicitation, disclosure, and suitability requirements.

(2) The insurer shall train and monitor its agent force to ensure compliance with the written marketing procedures and provide each a copy of the written procedures.

(3) The insurer shall maintain a copy of the marketing procedures.

(4) The insurer shall maintain a copy of the list of funeral goods and services contracted for in the prearranged funeral plan at the time of the application.

(5) No insurer may accept an application unless the application is complete and on a form approved under s. 631.20, Stats., and in compliance with this section.

(6) The insurer shall provide the following disclosures and statements and ask the following questions on the application form in print no less than 12 point type:

[Disclosures]

The total price of the prearranged funeral plan.

Whether the cost of the final expenses is or is not guaranteed.

The minimum dollar amount of the death benefit payable under the funeral policy.

1.The total amount of premium the applicant will pay for the funeral policy, including total premium to be paid for a multi-pay policy.

[Statements]

You should not need more than one life insurance policy to fund a prearranged funeral plan.

If you have an existing life insurance policy or annuity, you may be able to assign some or all of an existing policy's benefits to fund the prearranged funeral plan rather than purchase an additional insurance policy.

It may not be in your best interests to borrow on the cash value of an existing life insurance policy to pay the premium on a funeral policy that will be used to fund a prearranged funeral plan.

The life insurance or annuity policy you are purchasing may not fully fund the costs of the funeral goods and services provided.

[Questions]

Do you have another life insurance or annuity policy in force?

a. If so, with which company?

b. If so, do you intend to replace your current insurance policy with this policy?

Do you presently have a prearranged funeral plan of any kind with a funeral home?

If so, do you intend to replace the funding of your existing prearranged plan with this policy?

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

Ins 23.80 Suitability. (1) An insurer shall establish written suitability standards to assure that inappropriate, unsuitable or excessive insurance is not sold or issued to fund prearranged funeral plans.

(2) An insurer shall require that the suitability standards include, but not limited to the following:

(a) The appropriateness of using a funeral policy to fund a prearranged funeral plan.

(b) The appropriateness of using an existing insurance policy to fund the prearranged funeral plan.

(c) The appropriateness of replacing any existing policy with a funeral policy.

(3) The insurer shall train and monitor its insurance intermediaries to ensure compliance with the suitability standards in their sales practices.

(4) An insurer or an insurance intermediary shall take an application or issue a funeral policy only if the funeral policy is suitable for the applicant.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97; **correction in (2) made under s. 13.93 (2m) (b) 1., Stats., Register, January, 2001, No. 541.**

Ins 23.90 Solicitation and disclosure requirements. (1) Any insurance intermediary who solicits funeral policies shall comply with all applicable statutes and rules, including but not limited to s. 628.34 (1), Stats. and ch. Ins 20.

(2) Every insurance intermediary intending to solicit the sale of a funeral policy shall at the time of the initial contact or communication with the prospective buyer, clearly and expressly disclose:

(a) The name of the individual insurance intermediary who solicited the sale of the funeral policy.

(b) The name of the funeral home represented.

(c) A statement that insurance is being sold.

(d) The identity of the insurer.

(e) The type of insurance being solicited.

(3) Insurance intermediaries shall not:

(a) Make any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) Employ undue pressure to purchase or recommend the purchase of insurance or any method of marketing having the effect of inducing or tending to induce, the purchase of insurance through force, fright, or threat, whether explicit or implied.

(c) Make use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose is solicitation of the purchase of insurance and that contact will be made by an insurance intermediary.

(d) Use any advertisement, or responses from any advertisement, which has not been approved by the insurer.

(4) No insurance intermediary may directly or indirectly prevent or dissuade or attempt to prevent or dissuade any person from filing a complaint with the office of the commissioner of insurance, cooperating with the office of the commissioner of insurance in any investigation or attending or giving testimony at any proceeding authorized by law.

(5) An insurance intermediary shall provide the insurer at the time the funeral policy application is submitted, a list of the funeral goods and services contracted for by the insured in the prearranged funeral plan.

(6) After receiving a funeral policy from the insurer, the insurance intermediary shall:

(a) Promptly deliver the policy to the policyholder.

(b) Obtain from the insured a signed policy delivery receipt.

(c) Keep a copy of the signed policy delivery receipt for at least 3 years after termination of the policy.

(d) Forward a copy of the signed policy delivery receipt to the insurer within 7 days of delivery.

History: Cr. Register, July, 1997, No. 499, eff. 10–1–97.

PART 453
FUNERAL INDUSTRY PRACTICES

Sec.
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AUTHORITY: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

SOURCE: 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

§ 453.1 Definitions. (a) ***Alternative container.*** An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) ***Cash advance item.*** A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) ***Casket.*** A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) ***Commission.*** "Commission" refers to the Federal Trade Commission.

(e) ***Cremation.*** "Cremation" is a heating process which incinerates human remains.

(f) ***Crematory.*** A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) ***Direct cremation.*** A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) ***Funeral goods.*** "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) ***Funeral provider.*** A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) ***Funeral services.*** "Funeral services" are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) ***Immediate burial.*** An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) ***Memorial service.*** A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) ***Funeral ceremony.*** A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) ***Outer burial container.*** An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) ***Person.*** A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) ***Services of funeral director and staff.*** The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price disclosures. (a) ***Unfair or deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) ***Preventive requirements.*** To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) ***Telephone price disclosure.*** Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) ***Casket price list.*** *(i)* Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) ***Outer burial container price list.*** *(i)* Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) ***General price list.*** *(i)*(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services;

(2) The overall type of funeral service or disposition; or

(*3*) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(*1*) The name, address, and telephone number of the funeral provider's place of business;

(*2*) A caption describing the list as a ''general price list''; and

(*3*) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

(*1*) A separate price for a direct cremation where the purchaser provides the container;

(*2*) Separate prices for each direct cremation offered including an alternative container; and

(*3*) A description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(*1*) A separate price for an immediate burial where the purchaser provides the casket;

(*2*) Separate prices for each immediate burial offered including a casket or alternative container; and

(*3*) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(*1*) The price range for the caskets offered by the funeral provider, together with the statement: ''A complete price list will be provided at the funeral home.''; or

(*2*) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(*1*) The price range for the outer burial containers offered by the funeral provider, together with the statement: ''A complete price list will be provided at the funeral home.''; or

(*2*) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(*1*) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: ''This fee for our basic services will be added to the total cost of the funeral arrangements you select.(This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)''. If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase ''and overhead'' after the word ''services''; or

(*2*) The following statement: ''Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify).'' The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase ''and overhead'' after the word ''services.'' The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(*1*) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(*2*) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(*1*) or (C)(*2*) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) ***Statement of funeral goods and services selected.*** (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items.(These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) ***Other pricing methods.*** Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations. (a) ***Embalming provisions.***

(1) ***Deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) ***Preventive requirements.*** To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: ''Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.'' The phrase ''except in certain special cases'' need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) ***Casket for cremation provisions*—(1)** ***Deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) ***Preventive requirements.*** To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) ***Outer burial container provisions*— (1)** ***Deceptive acts or practices.*** In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) ***Preventive requirement.*** To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) ***General provisions on legal and cemetery requirements*— (1)** ***Deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) ***Preventive requirements.*** To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) ***Provisions on preservative and protective value claims.*** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) ***Cash advance provisions*—(1)** ***Deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) ***Preventive requirements.*** To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services. (a) ***Casket for cremation provisions*—(1)** ***Unfair or deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) ***Preventive requirement.*** To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) ***Other required purchases of funeral goods or funeral services*—(1)** ***Unfair or deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C);

(2) other funeral services and funeral goods selected by the purchaser; and

(3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) ***Preventive requirements.*** (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)

(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)

(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.(a) ***Unfair or deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider

must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) ***Preventive requirement.*** To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents. To prevent the unfair or deceptive acts or practices specified in §§ 453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of disclosures. To prevent the unfair or deceptive acts or practices specified in §§ 453.2 through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)–(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

§ 453.8 Declaration of intent. (a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions. If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

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§1910.1030 Bloodborne Pathogens.

(a) Scope and Application. This section applies to all occupational exposure to blood or other potentially infectious materials as defined by paragraph (b) of this section.

(b) Definitions. For purposes of this section, the following shall apply:

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

Blood means human blood, human blood components, and products made from human blood.

Bloodborne Pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Clinical Laboratory means a workplace where diagnostic or other screening procedures are performed on blood or other potentially infectious materials.

Contaminated means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Contaminated Laundry means laundry which has been soiled with blood or other potentially infectious materials or may contain sharps.

Contaminated Sharps means any contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.

Decontamination means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative.

Engineering Controls means controls (e.g., sharps disposal containers, self-sheathing needles, safer medical devices, such as sharps with engineered sharps injury protections and needleless systems) that isolate or remove the bloodborne pathogens hazard from the workplace.

Exposure Incident means a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.

Handwashing Facilities means a facility providing an adequate supply of running potable water, soap and single use towels or hot air drying machines.

Licensed Healthcare Professional is a person whose legally permitted scope of practice allows him or her to independently perform the activities required by paragraph (f) Hepatitis B Vaccination and Post-exposure Evaluation and Follow-up.

HBV means hepatitis B virus.

HIV means human immunodeficiency virus.

Needleless systems means a device that does not use needles for:
(1) The collection of bodily fluids or withdrawal of body fluids after initial venous or arterial access is established;
(2) The administration of medication or fluids; or
(3) Any other procedure involving the potential for occupational exposure to bloodborne pathogens due to percutaneous injuries from contaminated sharps.

Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

Other Potentially Infectious Materials means (1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids; (2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and (3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

Parenteral means piercing mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts, and abrasions.

Personal Protective Equipment is specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.

Production Facility means a facility engaged in industrial-scale, large-volume or high concentration production of HIV or HBV.

Regulated Waste means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps; and pathological and microbiological wastes containing blood or other potentially infectious materials.

Research Laboratory means a laboratory producing or using research-laboratory-scale amounts of HIV or HBV. Research laboratories may produce high concentrations of HIV or HBV but not in the volume found in production facilities.

Sharps with engineered sharps injury protections means a nonneedle sharp or a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, with a built-in safety feature or mechanism that effectively reduces the risk of an exposure incident.

Source Individual means any individual, living or dead, whose blood or other potentially infectious materials may be a source of occupational exposure to the employee. Examples include, but are not limited to, hospital and clinic patients; clients in institutions for the developmentally disabled; trauma victims; clients of drug and alcohol treatment facilities; residents of hospices and nursing homes; human remains; and individuals who donate or sell blood or blood components.

Sterilize means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Universal Precautions is an approach to infection control. According to the concept of Universal Precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.

Work Practice Controls means controls that reduce the likelihood of exposure by altering the manner in which a task is performed (e.g., prohibiting recapping of needles by a two-handed technique).

1910.1030(c)(1)(i) Exposure Control Plan Each employer having an employee(s) with occupational exposure as defined by paragraph (b) of this section shall establish a written Exposure Control Plan designed to eliminate or minimize employee exposure.

(ii) The Exposure Control Plan shall contain at least the following elements:

(A) The exposure determine-ation required by paragraph (c)(2),

(B) The schedule and method of implementation for paragraphs (d) Methods of Compliance, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, (g) Communication of Hazards to Employees, and (h) Recordkeeping, of this standard, and

(C) The procedure for the evaluation of circumstances surrounding exposure incidents as required by paragraph (f)(3)(i) of this standard.

(iii) Each employer shall ensure that a copy of the Exposure Control Plan is accessible to employees in accordance with 29 CFR 1910.1020(e).

(iv) The Exposure Control Plan shall be reviewed and updated at least annually and whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or revised employee positions with occupational exposure. The review and update of such plans shall also:

(A) Reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens; and

(B) Document annually consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure.

(v) An employer, who is required to establish an Exposure Control Plan shall solicit input from non-managerial employees responsible for direct patient care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation, and selection of effective engineering and work practice controls and shall document the solicitation in the Exposure Control Plan.

(vi) The Exposure Control Plan shall be made available to the Assistant Secretary and the Director upon request for examination and copying.

(2) Exposure Determination.

(i) Each employer who has an employee(s) with occupational exposure as defined by paragraph (b) of this section shall prepare an exposure determination. This exposure determination shall contain the following:

(A) A list of all job classifications in which all employees in those job classifications have occupational exposure;

(B) A list of job classifications in which some employees have occupational exposure, and

(C) A list of all tasks and procedures or groups of closely related task and procedures in which occupational exposure occurs and that are performed by employees in job classifications listed in accordance with the provisions of paragraph (c)(2)(i)(B) of this standard.

(ii) This exposure determination shall be made without regard to the use of personal protective equipment.

1910.1030(d) Methods of Compliance –

(1) General. Universal precautions shall be observed to prevent contact with blood or other potentially infectious materials. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

(2) Engineering and Work Practice Controls.

(i) Engineering and work practice controls shall be used to eliminate or minimize employee exposure. Where occupational exposure remains after institution of these controls, personal protective equipment shall also be used.

(ii) Engineering controls shall be examined and maintained or replaced on a regular schedule to ensure their effectiveness.

(iii) Employers shall provide handwashing facilities which are readily accessible to employees.

(iv) When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, hands shall be washed with soap and running water as soon as feasible.

(v) Employers shall ensure that employees wash their hands immediately or as soon as feasible after removal of gloves or other personal protective equipment.

(vi) Employers shall ensure that employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or other potentially infectious materials.

(vii) Contaminated needles and other contaminated sharps shall not be bent, recapped, or removed except as noted in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) below. Shearing or breaking of contaminated needles is prohibited.

(A) Contaminated needles and other contaminated sharps shall not be bent, recapped or removed unless the employer can demonstrate that no alternative is feasible or that such action is required by a specific medical or dental procedure.

(B) Such bending, recapping or needle removal must be accomplished through the use of a mechanical device or a one-handed technique.

(viii) Immediately or as soon as possible after use, contaminated reusable sharps shall be placed in appropriate containers until properly reprocessed. These containers shall be:

(A) Puncture resistant;

(B) Labeled or color-coded in accordance with this standard;

(C) Leakproof on the sides and bottom; and

(D) In accordance with the requirements set forth in paragraph (d)(4)(ii)(E) for reusable sharps.

(ix) Eating, drinking, smoking, applying cosmetics or lip balm, and handling contact lenses are prohibited in work areas where there is a reasonable likelihood of occupational exposure.

(x) Food and drink shall not be kept in refrigerators, freezers, shelves, cabinets or on countertops or benchtops where blood or other potentially infectious materials are present.

(xi) All procedures involving blood or other potentially infectious materials shall be performed in such a manner as to minimize splashing, spraying, spattering, and generation of droplets of these substances.

(xii) Mouth pipetting/suctioning of blood or other potentially infectious materials is prohibited.

(xiii) Specimens of blood or other potentially infectious materials shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport, or shipping.

(A) The container for storage, transport, or shipping shall be labeled or color-coded according to paragraph (g)(1)(i) and closed prior to being stored, transported, or shipped. When a facility utilizes Universal Precautions in the handling of all specimens, the labeling/color-coding of specimens is not necessary provided containers are recognizable as containing specimens. This exemption only applies while such specimens/containers remain within the facility. Labeling or color-coding in accordance with paragraph (g)(1)(i) is required when such specimens/containers leave the facility.

(B) If outside contamination of the primary container occurs, the primary container shall be placed within a second container which prevents leakage during handling, processing, storage, transport, or shipping and is labeled or color-coded according to the requirements of this standard.

(C) If the specimen could puncture the primary container, the primary container shall be placed within a secondary container which is puncture-resistant in addition to the above characteristics.

(xiv) Equipment which may become contaminated with blood or other potentially infectious materials shall be examined prior to

servicing or shipping and shall be decontaminated as necessary, unless the employer can demonstrate that decontamination of such equipment or portions of such equipment is not feasible.

(A) A readily observable label in accordance with paragraph (g)(1)(i)(H) shall be attached to the equipment stating which portions remain contaminated.

(B) The employer shall ensure that this information is conveyed to all affected employees, the servicing representative, and/or the manufacturer, as appropriate, prior to handling, servicing, or shipping so that appropriate precautions will be taken.

(3) Personal Protective Equipment -

(i) Provision. When there is occupational exposure, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time which the protective equipment will be used.

(ii) Use. The employer shall ensure that the employee uses appropriate personal protective equipment unless the employer shows that the employee temporarily and briefly declined to use personal protective equipment when, under rare and extraordinary circumstances, it was the employee's professional judgment that in the specific instance its use would have prevented the delivery of health care or public safety services or would have posed an increased hazard to the safety of the worker or co-worker. When the employee makes this judgement, the circumstances shall be investigated and documented in order to determine whether changes can be instituted to prevent such occurrences in the future.

(iii) Accessibility. The employer shall ensure that appropriate personal protective equipment in the appropriate sizes is readily accessible at the worksite or is issued to employees. Hypoallergenic gloves, glove liners, powderless gloves, or other similar alternatives shall be readily accessible to those employees who are allergic to the gloves normally provided.

(iv) Cleaning, Laundering, and Disposal. The employer shall clean, launder, and dispose of personal protective equipment required by paragraphs (d) and (e) of this standard, at no cost to the employee.

(v) Repair and Replacement. The employer shall repair or replace personal protective equipment as needed to maintain its effectiveness, at no cost to the employee.

(vi) If a garment(s) is penetrated by blood or other potentially infectious materials, the garment(s) shall be removed immediately or as soon as feasible.

(vii) All personal protective equipment shall be removed prior to leaving the work area.

(viii) When personal protective equipment is removed it shall be placed in an appropriately designated area or container for storage, washing, decontamination or disposal.

(ix) Gloves. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes, and non-intact skin; when performing vascular access procedures except as specified in paragraph (d)(3)(ix)(D); and when handling or touching contaminated items or surfaces.

(A) Disposable (single use) gloves such as surgical or examination gloves, shall be replaced as soon as practical when contaminated or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised.

(B) Disposable (single use) gloves shall not be washed or decontaminated for re-use.

(C) Utility gloves may be decontaminated for re-use if the integrity of the glove is not compromised. However, they must be discarded if they are cracked, peeling, torn, punctured, or exhibit other signs of deterioration or when their ability to function as a barrier is compromised.

(D) If an employer in a volunteer blood donation center judges that routine gloving for all phlebotomies is not necessary then the employer shall:

(1) Periodically reevaluate this policy;

(2) Make gloves available to all employees who wish to use them for phlebotomy;

(3) Not discourage the use of gloves for phlebotomy; and

(4) Require that gloves be used for phlebotomy in the following circumstances:

(i) When the employee has cuts, scratches, or other breaks in his or her skin;

(ii) When the employee judges that hand contamination with blood may occur, for example, when performing phlebotomy on an uncooperative source individual; and

(iii) When the employee is receiving training in phlebotomy.

(x) Masks, Eye Protection, and Face Shields. Masks in combination with eye protection devices, such as goggles or glasses with solid side shields, or chin-length face shields, shall be worn whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials may be generated and eye, nose, or mouth contamination can be reasonably anticipated.

(xi) Gowns, Aprons, and Other Protective Body Clothing. Appropriate protective clothing such as, but not limited to, gowns, aprons, lab coats, clinic jackets, or similar outer garments shall be worn in occupational exposure situations. The type and characteristics will depend upon the task and degree of exposure anticipated.

(xii) Surgical caps or hoods and/or shoe covers or boots shall be worn in instances when gross contamination can reasonably be anticipated (e.g., autopsies, orthopaedic surgery).

(4) Housekeeping --

(i) General. Employers shall ensure that the worksite is maintained in a clean and sanitary condition. The employer shall determine and implement an appropriate written schedule for cleaning and method of decontamination based upon the location within the facility, type of surface to be cleaned, type of soil present, and tasks or procedures being performed in the area.

(ii) All equipment and environmental and working surfaces shall be cleaned and decontaminated after contact with blood or other potentially infectious materials.

(A) Contaminated work surfaces shall be decontaminated with an appropriate disinfectant after completion of procedures; immediately or as soon as feasible when surfaces are overtly contaminated or after any spill of blood or other potentially infectious materials; and at the end of the work shift if the surface may have become contaminated since the last cleaning.

(B) Protective coverings, such as plastic wrap, aluminum foil, or imperviously-backed absorbent paper used to cover equipment and environmental surfaces, shall be removed and replaced as soon as feasible when they become overtly contaminated or at the end of the workshift if they may have become contaminated during the shift.

(C) All bins, pails, cans, and similar receptacles intended for reuse which have a reasonable likelihood for becoming contaminated with blood or other potentially infectious materials shall be inspected and decontaminated on a regularly scheduled basis and cleaned and decontaminated immediately or as soon as feasible upon visible contamination.

(D) Broken glassware which may be contaminated shall not be picked up directly with the hands. It shall be cleaned up using mechanical means, such as a brush and dust pan, tongs, or forceps.

(E) Reusable sharps that are contaminated with blood or other potentially infectious materials shall not be stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.

(iii) Regulated Waste --

(A) Contaminated Sharps Discarding and Containment.

(1) Contaminated sharps shall be discarded immediately or as soon as feasible in containers that are:

(i) Closable;

(ii) Puncture resistant;

(iii) Leakproof on sides and bottom; and

(iv) Labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard.

(2) During use, containers for contaminated sharps shall be:

(i) Easily accessible to personnel and located as close as is feasible to the immediate area where sharps are used or can be reasonably anticipated to be found (e.g., laundries);

(ii) Maintained upright throughout use; and

(iii) Replaced routinely and not be allowed to overfill.

(3) When moving containers of contaminated sharps from the area of use, the containers shall be:

(i) Closed immediately prior to removal or replacement to prevent spillage or protrusion of contents during handling, storage, transport, or shipping;

(ii) Placed in a secondary container if leakage is possible. The second container shall be:

(A) Closable;

(B) Constructed to contain all contents and prevent leakage during handling, storage, transport, or shipping; and

(C) Labeled or color-coded according to paragraph (g)(1)(i) of this standard.

(4) Reusable containers shall not be opened, emptied, or cleaned manually or in any other manner which would expose employees to the risk of percutaneous injury.

(B) Other Regulated Waste Containment --

(1) Regulated waste shall be placed in containers which are:

(i) Closable;

(ii) Constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping;

(iii) Labeled or color-coded in accordance with paragraph (g)(1)(i) this standard; and

(iv) Closed prior to removal to prevent spillage or protrusion of contents during handling, storage, transport, or shipping.

(2) If outside contam-ination of the regulated waste container occurs, it shall be placed in a second container. The second container shall be:

(i) Closable;

(ii) Constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping;

(iii) Labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard; and

(iv) Closed prior to removal to prevent spillage or protrusion of contents during handling, storage, transport, or shipping.

(C) Disposal of all regulated waste shall be in accordance with applicable regulations of the United States, States and Territories, and political subdivisions of States and Territories.

1910.1030(d)(4)(iv) Laundry.

(A) Contaminated laundry shall be handled as little as possible with a minimum of agitation.

(1) Contaminated laundry shall be bagged or containerized at the location where it was used and shall not be sorted or rinsed in the location of use.

(2) Contaminated laundry shall be placed and transported in bags or containers labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard. When a facility utilizes Universal Precautions in the handling of all soiled laundry, alternative labeling or color-coding is sufficient if it permits all employees to recognize the containers as requiring compliance with Universal Precautions.

(3) Whenever contaminated laundry is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the laundry shall be placed and transported in bags or containers which prevent soak-through and/or leakage of fluids to the exterior.

(B) The employer shall ensure that employees who have contact with contaminated laundry wear protective gloves and other appropriate personal protective equipment.

(C) When a facility ships contaminated laundry off-site to a second facility which does not utilize Universal Precautions in the handling of all laundry, the facility generating the contaminated laundry must place such laundry in bags or containers which are labeled or color-coded in accordance with paragraph (g)(1)(i).

1910.1030(e) HIV and HBV Research Laboratories and Production Facilities.

(1) This paragraph applies to research laboratories and production facilities engaged in the culture, production, concentration, experimentation, and manipulation of HIV and HBV. It does not apply to clinical or diagnostic laboratories engaged solely in the analysis of blood, tissues, or organs. These requirements apply in addition to the other requirements of the standard.

(2) Research laboratories and production facilities shall meet the following criteria:

(i) Standard Microbiological Practices. All regulated waste shall either be incinerated or decontaminated by a method such as autoclaving known to effectively destroy bloodborne pathogens.

(ii) Special Practices.

(A) Laboratory doors shall be kept closed when work involving HIV or HBV is in progress.

(B) Contaminated materials that are to be decontaminated at a site away from the work area shall be placed in a durable, leakproof, labeled or color-coded container that is closed before being removed from the work area.

(C) Access to the work area shall be limited to authorized persons. Written policies and procedures shall be established whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements, and who comply with all entry and exit procedures shall be allowed to enter the work areas and animal rooms.

(D) When other potentially infectious materials or infected animals are present in the work area or containment module, a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors. The hazard warning sign shall comply with paragraph (g)(1)(ii) of this standard.

(E) All activities involving other potentially infectious materials shall be conducted in biological safety cabinets or other physical-containment devices within the containment module. No work with these other potentially infectious materials shall be conducted on the open bench.

(F) Laboratory coats, gowns, smocks, uniforms, or other appropriate protective clothing shall be used in the work area and animal rooms. Protective clothing shall not be worn outside of the work area and shall be decontaminated before being laundered.

(G) Special care shall be taken to avoid skin contact with other potentially infectious materials. Gloves shall be worn when handling infected animals and when making hand contact with other potentially infectious materials is unavoidable.

(H) Before disposal all waste from work areas and from animal rooms shall either be incinerated or decontaminated by a method such as autoclaving known to effectively destroy bloodborne pathogens.

(I) Vacuum lines shall be protected with liquid disinfectant traps and high-efficiency particulate air (HEPA) filters or filters of equivalent or superior efficiency and which are checked routinely and maintained or replaced as necessary.

(J) Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., the needle is integral to the syringe) shall be used for the injection or aspiration of other potentially infectious materials. Extreme caution shall be used when handling needles and syringes. A needle shall not be bent, sheared, replaced in the sheath or guard, or removed from the syringe following use. The needle and syringe shall be promptly placed in a puncture-resistant container and autoclaved or decontaminated before reuse or disposal.

(K) All spills shall be immediately contained and cleaned up by appropriate professional staff or others properly trained and equipped to work with potentially concentrated infectious materials.

(L) A spill or accident that results in an exposure incident shall be immediately reported to the laboratory director or other responsible person.

(M) A biosafety manual shall be prepared or adopted and periodically reviewed and updated at least annually or more often if necessary. Personnel shall be advised of potential hazards, shall be required to read instructions on practices and procedures, and shall be required to follow them.

(iii) Containment Equipment.

(A) Certified biological safety cabinets (Class I, II, or III) or other appropriate combinations of personal protection or physical containment devices, such as special protective clothing, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals, shall be used for all activities with other potentially infectious materials that pose a threat of exposure to droplets, splashes, spills, or aerosols.

(B) Biological safety cabinets shall be certified when installed, whenever they are moved and at least annually.

(3)HIV and HBV research laboratories shall meet the following criteria:

(i) Each laboratory shall contain a facility for hand washing and an eye wash facility which is readily available within the work area.

(ii) An autoclave for decontamination of reguiated waste shall be available

(4) HIV and HBV production facilities shall meet the following criteria:

(i) The work areas shall be separated from areas that are open to unrestricted traffic flow within the building. Passage through two sets of doors shall he the basic requirement for entry into the work area from access corridors or other contiguous areas. Physical separation of the high-containment work area from access corridors or other areas or activities may also he provided by a double-doored clothes-change room (showers may be included), airlock, or other access facility that requires passing through two sets of doors before entering the work area.

(ii) The surfaces of doors, walls, floors and ceilings in the work area shall be water resistant so that they can be easily cleaned. Penetrations in these surfaces shall he sealed or capable of being sealed to facilitate decontamination.

(iii) Each work area shall contain a sink for washing hands and a readily available eye wash facility. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door of the work area.

(iv) Access doors to the work area or containment module shall be self-closing.

(v) An autoclave for decontamination of regulated waste shall be available within or as near as possible to the work area.

(vi) A ducted exhaust-air ventilation system shall be provided. This system shall create directional airflow that draws air into the work area through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes. The proper direction of the airflow shall be verified (i.e., into the work area).

(5) Training Requirements. Additional training requirements for employees in HIV and HBV research laboratories and HIV and HBV production facilities are specified in paragraph (g)(2)(ix).

1910.1030~1) Hepatitis B Vaccination and Post-exposure Evaluation and Follow-UP–

(1) General.

(i) The emolover shall make available the hepatitis B vaccine and vaccination-series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident.

(ii) **The employer shall ensure** that all medieal evaluations and procedures including the hepatitis B vaccine and vaccination series and post-exposure evaluation and follow-up, including prophylaxis, are:

(A) Made available at no cost to the employee;

(B) Made available to the employee at a reasonable time and place;

(C) Performed by or under the supervision of a licensed physician or by or under the supervision of another licensed healthcare professional; and

(D) Provided according to recommendations of the U.S. Public Health Service current at the time these evaluations and procedures take place, except as specified by this paragraph (f).

(iii) The employer shall ensure that all laboratory tests are conducted by an accredited laboratory at no cost to the employee.

(2)Hepatitis B Vaccination.

(i) Hepatitis B vaccination shall be made available after the employee has received the training required in paragraph (g)(2)(vii)(I) and within 10 working days of initial assignment to all employees who have occupational exposure unless the employee has previously received the complete hepatitis B vaccination series, antibody testing has revealed that the employee is immune, or the vaccine is contraindicated for medical reasons.

(ii) The employer shall not make participation in a prescreening program a prerequisite for receiving hepatitis B vaccination.

(iii) If the employee initially declines hepatitis B vaccination but at a later date while still covered under the standard decides to accept the vaccination, the employer shall make available hepatitis B vaccination at that time.

(iv) The employer shall assure that employees who decline to accept hepatitis B vaccination offered by the employer sign the statement in Appendix A.

(v) If a routine booster dose(s) of hepatitis B vaccine is recommended by the U S Pubhc Health Service at a future date, such booster dose(s) shall be made available in accordance with section (f)(1)(ii).

(3) Post-exposure Evaluation and Follow-up. Following a report of an exposure incident. the employer shall make immediately available' to the exposed employee a confidential medical evaluation and follow-up, including at least the following **elements**.

(i) Documentation of the route(s) of exposure, and the circumstances under which the exposure incident occurred;

(ii) Identification and documentation of the source individual, unless the employer can establish that identification is infeasible or prohibited by state or local law;

(A) The source individual's blood shall be tested as soon as feasible and after consent is obtained in order to determine HBV and HIV infectivity. If consent is not obtained, the employer shall establish that legally required consent cannot be obtained. When the source individual's consent is not required by law, the source individual's blood, if available, shall be **tested** and the results documented.

(B) When the source individual is already known to be infected with HBV or HIV, testing for the source individual's known MBV or HIV status need not be repeated.

(C) Results of the source individual's testing shall be made available to the exposed employee, and the employee shall be informed of applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual.

(iii) Collection and testing of blood for HBV and HIV serological status;

(A) The exposed employee's blood shall be collected as soon as feasible and tested after consent is obtained.

(B) If the employee consents to baseline blood collection, hut does not give consent at that time for HIV serologic testing, the sample shall be preserved for at least 90 days. If, within 90 days of the exposure incident, the employee elects to have the baseline sample tested, such testing shall be done as soon as feasible.

(iv) Post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service;

(v) Counseling; and

(vi) Evaluation of reported illnesses.

(4) Information Provided to the Healthcare Professional.

(i) The employer shall ensure that the healthcare professional responsible for the employee's Hepatitis B vaccination is provided a copy of this regulation.

(ii) The employer shall ensure that the healthcare professional evaluating an employee after an exposure incident is provided the following information:

(A) A copv of this regulation:

(B) A description of the exposed employee's duties as they relate to the exposure incident;

(C) Documentation of the route(s) of exposure and circumstances under which exposure occurred;

(D) Results of the source individual's blood testing, if available; and

(E) All medical records relevant to the appropriate treatment of the employee including vaccination status which are the employer's responsibility to maintain.

(5) Healthcare Professional's Written Opinion. The employer shall obtain and provide the employee with a copy of the evaluating healthcare professional's written opinion within 15 days of the completion of the evaluation.

(i) The healthcare professional's written opinion for Hepatitis B vaccination shall be limited to whether Hepatitis B vaccination is indicated for an employec, and if the employee has received such vaccination.

(ii) The healthcare professional's written opinion for post-exposure evaluation and follow-up shall be limited to the following information:

(A) That the employee has been informed of the results of the evaluation; and

(B) That the employee has been told about any medical conditions resulting from exposure to blood or other potentially infectious materials which require further evaluation or treatment.

(iii) All other findings or diagnoses shall remain confidential and shall not he included in the written report.

(6) Medical Recordkeeping. Medical records required by this standard shall be maintained in accordance with paragraph (h)(1) of this section.

1910.1030(g) Communication **of** Hazards to Employees –

(1) Labels **and** Signs –

(i) Labels.

(A) Waming labels shall be aftixed to containers of regulated waste. refrigerators and freezers containing blood or other potentially infectious material; and other containers used to store, transport or ship blood or other potentially infectious materials, except as provided in paragraph (g)(1)(i)(E), (F) and (C).

(B) Labels required by this section shall include the following legend:

BIOHAZARD

(C) These labels shall be fluorescent orange or orange-red or predominantly so, with lettering and symbols in a contrasting color.

(D) Labels shall he affixed as close as feasible to the container by string, wire, adhesive, or other method that prevents their loss or unintentional removal.

(E) Red bags or red containers may be substituted for labels.

(F) Containers of blood, blood components, or blood products that are labeled as to their contents and have been released for transfusion or other clinical use are exempted from the labeling requirements of paragraph (g).

(C) Individual containers of blood or other potentially infectious materials that are placed in a labeled container during storage, transport, shipment or disposal are exempted from the labeling requirement.

(H) Labels required for contaminated equipment shall be in accordance with this paragraph and shall also state which portions of the equipment remain contaminated.

(I) Regulated waste that has been decontaminated need not he labeled or color-coded.

(ii) Signs.

(A) The employer shall post signs at the entrance to work areas specified in paragraph (e), HIV and HBV Research Laboratory and Production Facilities, which shall bear the following legend

BIOHAZARD

(Name of the Infectious Agent)
(Special requirements for entering the area)
(Name, telephone number of the laboratory director or other responsible person)

(B) These signs shall be fluorescent orange-red or predominantly so, with lettering and symbols in a contrasting color.

(2) Information and Training.

(i) Employers shall ensure that all employees with occupational exposure participate in a training program which must be provided at no cost to the employee and during working hours.

(ii) Training shall be provided as follows:

(A) At the time of initial assignment to tasks where occupational exposure may take place;

(B) Within **90** days after the effective date of the standard; and

(C) At least annually thereafter.

(iii) For employees who have received training on bloodborne pathogens in the year preceding the effective date of the standard, only training with respect to the provisions of the standard which were not included need be provided.

(iv) Annual training for all employees shall he provided within one year of their previous training.

(v) Employers shall provide additional training when changes such as modification of tasks or procedures or institution of new tasks or procedures affect the employee's occupational exposure. The additional training may he limited to addressing the new exposures created.

(vi) Material appropriate in content and vocabulary to educational level, literacy, and language of employees shall be used.

(vii) The training program shall contain at a minimum the following elements:

(A) An accessible copy of the regulatory text of this standard and an exylanation of its contents:

(B) **A** general explanation of the epidemiology and symptoms of bloodborne diseases,

(C) An explanation of the modes of transmission of bloodborne pathogens;

(D) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;

(E) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

(F) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;

(G) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equiyment;

(H) An explanation of the basis for selection of personal protective equipment;

(I) Information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free ofcharge;

(J) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;

(K) An explanation of the procedure to follow if an exposure incident occurs, including the method ofreporting the incident and the medical follow-up that will be made available;

(L) Information on the post-exposure evaluation and follow-up that the employer **is** required to provide for the employee following an exposure incident;

(M) An explanation of the signs and labels and/or color coding required by paragraph (g)(1); and

(N) An opportunity for interactive questions and answers with the person conducting the training session.

(viii) The person conducting the training shall he knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address.

(ix) Additional Initial Training for Employees in HIV and HBV Laboratories and Production Facilities. Employees in HIV or HBV research laboratories and HIV or HBV production facilities shall receive the following initial training in addition to the above training requirements.

(A) The employer shall assure that employees demonstrate proficiency in standard microbiological practices and techniques and in the practices and operations specific to the facility before being allowed to work with HIV or HBV.

(B) The employer shall assure that employees have prior experience in the handling of human pathogens or tissue cultures before working with HIV or HBV.

(C) The employer shall provide a training program to employees who have no prior experience in handling human pathogens. Initial work activities shall not include the handling of infectious agents. A progression of work activities shall be assigned as techniques are learned and proficiency is developed. The employer shall assure that employees participate in work activities involving infectious agents only after proficiency has been demonstrated.

1910.1030(h) Recordkeeping –

(1) Medical Records.

(i) The employer shall establish and maintain an accurate record for each employee with occupational exposure, in accordance with 29 CFR 1910.1020.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) A copy of the employee's hepatitis B vaccination status including the dates of all the hepatitis B vaccinations and any medical records relative to the 'employee's ability to receive vaccination as required by paragraph (f)(2);

(C) A copy of all results of examinations, medical testing, and follow-up procedures as required by paragraph (f)(3);

(D) The employer's copy of the healthcare professional's written opinion as required by paragraph (f)(5); and

(E) A copy of the information provided to the healthcare professional as required by paragraphs (f)(4)(ii)(B)(C) and (D).

(iii) Confidentiality. The employer shall ensure that employee mcdical records required by paragraph (h)(1) are:

(A) Kept confidential; and

(B) Not disclosed or reported without the employee's express written consent to any person within or outside the workplace except as required by this section or as may be required by law.

(iv) The employer shall maintain the records required by paragraph (h) for at least the duration of employment plus 30 years in accordance with 29 CFR 1910.1020.

(2) Training Records.

(i) Training records shall include the following information:

(A) The dates of the training sessions;

(B) The contents or a summary of the training sessions;

(C) The names and qualifications of persons conducting the training; and

(D) The names and job titles of all persons attending the training sessions.

(ii) Training records shall be maintained for 3 years from the date on which the training occurred.

(3) Availability.

(i) The employer shall ensure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee training records required by this paragraph shall be provided upon request for examination and copying to employees, to employee representatives, to the Director, and to the Assistant Secretary.

(iii) Employee medical records required by this paragraph shall be provided upon request for examination and copying to the subject employee, to anyone having written consent of the subject employee, to the Director, and to the Assistant Secretary in accordance with 29 CFR 1910.1020.

(4) Transfer **of** Records,

(i) The employer shall comply with the requirements involving transfer ofrecords set forth in 29 CFR 1910.1020(h).

(ii) If the cmployer ceases to do business and there is no successor cmployer to receive and retain the records for the prescribed period, the employer shall notify the Direcror, at least three months prior to their disposal and transmit them to the Director, if required by the Director to do so, within that three month period.

(5) Sharps injury log.

(i) The employer shall establish and maintain a sharps injury log for the recording of percutaneous injuries from contaminated sharps. The information in the sharps injury log shall be recorded and maintained in such manner as to protect the confidentiality of the injured employee. The sharps injury log shall contain, at a minimum:

(A) The type and brand of device involved in the incident,

(B) The department or work area where the exposure incident occurred, and

(C) An explanation of how the incident occurred.

(ii) The requirement to establish and maintain a sharps injury log shall apply to any employer who is required to maintain a log of occupational injuries and illnesses under 29 CFR 1904.

(iii) The sharps injury log shall be maintained for the period required by 29 CFR 1904.6.

1910.1030(i) Dates –

(1) Effective Date. The standard shall become effective on March 6, 1992.

(2) The Exposure Control Plan required by paragraph (c) of this section shall be completed on or before May 5, 1992.

(3) Paragraph (g)(2) Information and Training and (h) Recordkeeping shall take effect on or before June 4, 1992.

(4) Paragraphs (d)(2) Engineering and **Work** Practice Controls, (d)(3) Personal Protective Equipment, (d)(4) Housekeeping, (e) HIV and NBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, and (g)(1) Labels and Signs, shall take effect July **6,** 1992.

[56 FR 64004, Dec. 06, 1991, as amended at 57 FR 12717, April 13, 1992; 57 FR 29206, July 1, 1992; 61 FR 5507, Feb. 13, 1996; 66 FR 5325 Jan., 18, 2001]

APPENDIX A TO SECTION 1910.1030 – HEPATITIS B VACCINE DECLINATION (MANDATORY)

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hcpatitis B vaccine, I can receive the vaccination series at no charge to me.

[56 FR 64004, Dec. 06, 1991, as amended at 57 FR 12717, April 13, 1992; 57 FR 29206, July 1, 1992; 61 FR 5507, Feb. 13, 1996]

TITLE 29

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

§1910.1048 Formaldehyde.

$1910.1048 Formaldehyde.

(a) ***Scope and application*** This standard applies to all occupational exposures to formaldehyde, i e from formaldehyde gas, its solutions, and materials that release formaldehyde

(b) *Definitions.* For purposes of this standard, the following definitions shall apply:

Action ***level*** means a concentration of 0.5 part formaldehyde per million parts of air (0.5 ppm) calculated as an eight (8)-hour time-weighted average (TWA) concentration.

Assistant Secretary means the Assistant Secretary of Labor for the Occupational Safety and Health Administration, U.S. Department of Labor, or designee.

Authorized person means any person required by work duties to be present in regulated areas, or authorized to do so by the employer, by this section, or by the OSH Act of 1970.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee

Emergency. is any occurrence, such as but not limited to equipment failure, rupture of containers, or failure of control equipment that results in an uncontrolled release of a significant amount of formaldehyde.

Employee exposure means the exposure to airbome formaldehyde which would occur without corrections for protection provided by any respirator that is in use.

Formaldehyde means the chemical substance, HCHO, Chemical Abstracts Service Registry No. 50-00-0.

(c) ***Permissible Exposure Limit (PEL)*** -- (I j ***TWA:*** The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds 0.75 parts formaldehyde per million parts of air (0.75 ppm) as an 8-hour TWA.

(2) ***Short Term Exposure Limit (STEL):*** The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds two parts formaldehyde per million parts of air (2 ppm) as a 15-minute STEL.

(d) ***Exposure monitoring*** -- (1) *General.* (ij Each employer who has a workplace covered by this standard shall monitor employees to determine their exposure to formaldehyde.

(ii) ***Exception.*** Where the employer documents, using objective data, that the presence of formaldehyde or formaldehyde-releasing products in the workplace cannot result in airborne concentrations of formaldehyde that would cause any employee to be exposed at or above the action level or the STEL under foreseeable conditions of use, the employer will not be required to measure employee exposure to formaldehyde

(iii) When an employee's exposure is determined from representative sampling, the measurements used shall be representative of the employee's full shift or short-term exposure to formaldehyde, as appropriate.

(iv) Representative samples for each job classification in each work area shall be taken for each shift unless the employer can document with objective data that exposure levels for a given job classification are equivalent for different work shifts.

(2) *Initial monitoring.* The employer shall identify all employees who may be exposed at or abovc the action level or at or above the

STEL and accurately determine the exposure of each employee so identified.

(i) Unless the employer chooses to measure the exposure of each employee potentially exposed to formaldehyde, the employer shall develop a representative sampling strategy and measure sufficient exposures within each job classification for each workshift to correctly characterize and not underestimate the exposure of any employee within each exposure group.

(ii) The initial monitoring process shall hc repeated each time there is a change in production, equipment, process, personnel, or control measures which may result in new or additional exposure to formaldehyde.

(iii) If the employer receives reports of signs or symptoms of respiratory or dermal conditions associated with formaldehyde exposure, the employer shall promptly monitor the affected employee's exposure.

(3) ***Periodic monitoring.*** (i) The employer shall periodically measure and accurately determine exposure to formaldehyde for employees shown by the initial monitoring to be exposed at or above the action level or at or above the STEL.

(ii) If the last monitoring results reveal employee exposure at or above the action level, the employer shall repeat monitoring of the employees at least every ***6*** months.

(iii) If the last monitoring results reveal employee exposure at or above the STEL, the employer shall repeat monitoring of the employees at least once a year under worst conditions.

(4) ***Termination*** of *monitoring.* The employer may discontinue periodic monitoring for employees if results from two consecutive sampling periods taken at least 7 days apart show that employee exposure is below the action level and the STEL. The results must be statistically representative and consistent with the employer's knowledge of the job and work operation.

(5) ***Accuracy*** of *monitoring.* Monitoring shall be accurate, at the 95 percent confidence level, to within plus or minus 25 percent for airborne Concentrations of formaldehyde at the TWA and the STEL and to within plus or minus 35 percent for airborne concentrations of formaldehyde at the action level.

(6) *Employee notification of monitoring results.* Within 15 days of receiving the results of exposure monitoring conducted under this standard, the employer shall notify the affected employees of these results. Notification shall be in writing, either by distributing copies of the results to the employees or by posting the results. If the employee exposure is over either PEL, the employer shall develop and implement a written plan to reduce employee exposure to or below both PELs, and give written notice to employees. The written notice shall contain a description of the corrective action being taken by the employer to decrease exposure.

(7) ***Observation*** *of monitoring.* (i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to formaldehyde required by this standard.

(ii) When observation of the monitoring of employee exposure to formaldehyde requires entry into an area where the use of

protective clothing or equipment is required, the employer shall provide the clothing and equipment to the observer, require the observer to use such clothing and equipment, and assure that the observer complies with all other applicable safety and health procedures.

(e) *Regulated areas.* (1j The employer shall establish regulated areas where the concentratiun of airborne formaldehyde exceeds either the TWA or the STEL and post all entrances and accessways with signs bearing the following information:

DANGER

FORMALDEHYDE

IRRITANT AND POTENTIAL CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(2) The employer shall limit access to regulated areas to authorized persons who have been trained to recognize the hazards of formaldehyde.

(3) An employer at a multiemployer worksite who establishes a regulated area shall communicate the access restrictions and locations of these areas to other employers with work operations at that worksite

(f) ***Methods of*** *compliance* -- (1) ***Engineering*** *controls* ***and work practicer.*** The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to formaldehyde at or below the TWA and the STEL.

(2) ***Exception.*** Whenever the employer has established that feasible engineering and work practice controls cannot reduce employee exposure to or below either of the PELs, the employer shall apply these controls to reduce employee exposures to the extent feasible and shall supplement them with respirators which satisfy this standard.

(g) ***Respiratoryprotecfion*** -- (1) ***General.*** For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this paragraph. Respirators must he used during:

(i) Periods necessary to install or implement feasible engineering and work-practice controls.

(ii) Work operations, such as maintenance and repair activities or vessel cleaning, for which the employer establishes that engineering and work-practice controls are not feasible.

(iiij Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the PELs.

(iv) Emergencies.

(2) ***Respirator program.*** (ij The employer must implement a respiratory protection program in accordance with 29 CFR 1910.134 (b) through (d) (except (d)(1)(iii), (d)(3)(iii)(B)(1), and (2)), and (f) through (m).

(iij If air-purifying chemical-cartridge respirators are used, the employer must:

(A) Replace the cartridge after three (3) hours of use or at the end of the workshift, whichever occurs first, unless the cartridge contains a NIOSH-approved end-of-service-life indicator (ESLI) to show when breakthrough occurs.

(Bj Unless the canister contains a NIOSH-approved ESLI to show when breakthrough occurs, replace canisters used in atmospheres up to 7.5 ppm (10xPEL) every four (4) hours and industrial-sired canisters used in atmospheres up to 75 ppm (100xPEL) every two (2) hours, or at the end of the workshift, whichever occurs first.

(3) ***Respirator selection.*** (i) The employer must select appropriate respirators from Table I in this section.

TABLE I
MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST FORMALDEHYDE

Condition of use or Formaldehyde concentration(ppm)	Minimum respirator required \I\
Up to 7 5 ppm (10 x PFI)	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde \2\
Up to 75 ppm (100 x PEL) or	Full-face mask with chin style or chest or back mounted type, with industrial size canister specifically approved for protection against formaldehyde. Type C supplied air respirator, demand type, or continuous flow type, with full facepiece, hood, or helmet.
Above 75 ppm or unknown. (emergencies). (100 x PEL)	Self-contained breathing apparatus (SCBA) with positive pressure full facepiece. Combination supplied-air, full facepiece positive pressure respirator with auxiliary self-contained air supply.
Firefighting	SCBA with positive pressure in full facepiece.
Escape	SCBA in demand or pressure demand mode. Full-face mask with chin style or front or back mounted type industrial sire canister specifically approved for protection against formaldehyde.

\1\Respirators specified for : at higher concentrations may be used at lower concentrations.
\2\A half-mask ***respirator*** *with cartridges specifically approved for* ***protection*** *against formaldehyde can be substituted for the full facepiece respirator providing that* ***effective*** *gas-proof goggles are provided and* ***used*** *in combination with* ***the*** *half-mask* ***respirator.***

(ii) The employer must provide a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who has difficulty using a negative-pressure respirator.

(h) *Protective equipment and clothing.* Employers shall comply with the provisions of 29 CFR 1910.132 and 29 CFR 1910.133. When protective equipment or clothing is provided under these provisibns, the employer shall provide these protective devices at no cost to the employee and assure that the employee wears them.

(I) ***Selection.*** The employer shall select protective clothing and equipment based upon the form of formaldehyde to be encountered, the conditions of use, and the hazard to he prevented.

(i) All contact of the eyes and skin with liquids containing 1 percent or more formaldehyde shall be prevented by the use of chemical protective clothing made of material impervious to formaldehyde and the use of other personal protective equipment, such as goggles and face shields, as appropriate to the operation.

(iij Contact with irritating or sensitizing materials shall be prevented *to* the extent necessary to eliminate the hazard.

(iii) Where a face shield is wom, chemical safety goggles are also required if there is a danger of formaldehyde reaching the area of the eye

(iv) Full body protection shall be worn for entry into areas where concentrations exceed 100 ppm and for emergency reentry into areas of unknown concentration.

(2) *Maintenance* d ***protective equipment*** *and clothing.* (i) The employer shall assure that protective equipment and clothing that

has become contaminated with formaldehyde is cleaned or laundered bcforc its reuse.

(ii) When ventilating formaldehyde-contaminated clothing and equipment, the employer shall establish a storage area so that employee exposure is minimized. Containers for contaminated clothing and equipment and storage areas shall have labels and signs containing the following information:

DANGER

FORMALDEHYDE-CONTAMINATED [CLOTHING] EQUIPMENT

AVOID INHALATION AND SKIN CONTACT

(iii) The eniployer shall assure that only persons trained to recognize the hazards of formaldehyde remove the contaminated material from the storage area for purposes of cleaning, laundering, or disposal.

(iv) The employer shall assure that no employee takes home equipment or clothing that is contaminated with formaldehyde.

(v) The employer shall repair or replace all required protective clothing and equipment for each affected employee as necessary to assure its effectiveness.

(vi) The employer shall inform any person who launders, cleans, or repairs such clothing or equipment of formaldehyde's potentially harmful effects and of procedures to safely handle the clothing and equipment.

(i) *Hygiene protection.* **(1)** The employer shall provide change rooms, as described in 29 CFR 1910.141 for employees who are required to change from work clothing into protective clothing to prevent skin contact with formaldehyde

(2) If employees' skin may become spashed with solutions containing 1 percent or greater formaldehyde, for example, because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately.

(3) If there is any possibility that an employee's eyes may he splashed with solutions containing 0.1 percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use.

(j) *Housekeeping.* For operations involving formaldehyde liquids or gas, the employer shall conduct a program to detect leaks and spills, including regular visual inspections.

(1) Preventative maintenance of equipment, including surveys for leaks, shall be undertaken at regular intervals.

(2) In work areas where spillage may occur, the employer shall makc provisions to contain the spill, to decontaminate the work area, and to dispose of the waste.

(3) The employer shall assure that all leaks are repaired and spills arc cleaned promptly by employees wearing suitable protective equipment and trained in proper methods for cleanup and decontamination.

(4) Formaldehyde-contaminated waste and debris resulting from leaks or spills shall be placed for disposal in scaled containers hearing a label warning of formaldehyde's presence and of the hazards associated with formaldehyde.

(k) *Emergencies.* For each workplace where there is the possibility of an emergency involving formaldehyde, the employer shall assure appropriate procedures arc adopted to minimize injury and loss of life. Appropriate procedures shall be implemented in the event of an emergency.

(l) *Medical surveillance* -- (I) *Employees covered.* (i) The employer shall institute medical surveillance programs for all employees exposed to formaldehyde at concentrations at or exceeding the action level or exceeding the STEL.

(ii) The employer shall makc medical surveillance available for employees who develop signs and symptoms of overexposure to formaldehyde and for all employees exposed to formaldehyde in emergencies. When determining whether an employee may he experiencing signs and symptoms of possible overexposure to formaldehyde, the cmployer may rely on the evidence that signs and symptoms associated with formaldehyde exposure will occur only in exceptional circumstances when airborne exposure is less than 0.1 ppm and when formaldehyde is present in material in concentrations less than 0.1 percent.

(2) Examination by a physician. All medical procedures, including administration of medical disease questionnaires, shall be performed by or under the supervision of a licensed physician and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(3) Medical disease questionnaire. The employer shall make the following medical surveillance available to employees prior to assignment to a job where formaldehyde exposure is at or above the action level or above the STEL and annually thereafter. The employer shall also make the following medical surveillance availahlc promptly upon determining that an employee is experiencing signs and symptoms indicative of possible overexposure to formaldehyde.

(i) Administration of a medical disease questionnaire, such as in appendix D, which is designed to elicit information on work history, smoking history, any evidence of eye, nose, or throat irritation; chronic airway problems or hyperreactive airway disease: allergic skin conditions or dermatitis; and upper or lower respiratory problems.

(ii) A determination by the physician, based on evaluation of the medical disease questionnaire, of whether a medical examination is necessary for employees not required to wear respirators to reduce exposure to formaldehyde.

(4) *Medical examinations.* Medical examinations shall be given to any employee who the physician feels, based on information in the medical disease questionnaire, may be at increased risk from exposure to formaldehyde and at the time of initial assignment and at least annually thereafter to all employees required to wear a respirator to reduce exposure to formaldehyde. The medical examination shall include:

(i) A physical examination with emphasis on evidence of irritation or sensitization of the skin and respiratory system, shortness of breath, or irritation of the eyes.

(ii) Laboratory examinations for respirator wearers consisting of baseline and annual pulmonary function tests. As a minimum, these tests shall consist of forced vital capacity (FVC), forced expiratory volume in one second (FEVI), and forced expiratory flow (FEF).

(iii) Any other test which the examining physician deems necessary to complete the written opinion.

(iv) Counseling of employees having medical conditions that would be directly or indirectly aggravated by exposure to formaldehyde on the increased risk of impairment of their health.

(5) Examinations for employees exposed in an emergency. The employer shall make medical examinations available as soon as possible to all employees who have been exposed to formaldehvde in an emergency.

(i) The examination shall include a medical and work history with emphasis on any evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation.

(ii) Other examinations shall consist of those elements considered appropriate by the examining physician.

(6) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendix A, C, D, and E;

(ii) A description of the affected employee's job duties as they relate to the employee's exposure to formaldehyde;

(iii) The representative exposure level for the employee's job assignment;

(iv) Information concerning any personal protective equipment and respiratory protection used or to be used by the employee; and

(v) Information from previous medical examinations of the affected employee within the control of the employer.

(vi) In the event of a nonroutine examination because of an emergency, the employer shall provide to the physician as soon as possible: A description of how the emergency occurred and the exposure the victim may have received.

(7) Physician's ***written opinion.*** **(i)** For each examination required under this standard, the employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination except that it shall not reveal specific findings or diagnoses unrelated to occupational exposure to formaldehyde. The written opinion shall include:

(A) The physician's opinion as to whether the employee has any medical condition that would place the employee at an increased risk of material impairment of health from exposure to formaldehyde;

(B) Any recommended limitations on the employee's exposure or changes in the use of personal protective equipment, including respirators;

(C) A statement that the employee has been informed by the physician of any medical conditions which would be aggravated by exposure to formaldehyde, whether these conditions may have resulted from past formaldehyde exposure or from exposure in an emergency, and whether there is a need for further examination or treatment.

(ii) The employer shall provide for retention of the results of the medical examination and tests conducted by the physician.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days of its receipt.

(8) *Medical removal.* (i) The provisions of paragraph (l)(8) apply when an employee reports significant irritation of the mucosa of the eyes or the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization attributed to workplace formaldehyde exposure. Medical removal provisions do not apply in the case of dermal irritation or dermal sensitization when the product suspected of causing the dermal condition contains less than 0.05% formaldehyde.

(ii) An employee's report of signs or symptoms of possible overexposure to formaldehyde shall be evaluated by a physician selected by the employer pursuant to paragraph (l)(3). If the physician determines that a medical examination is not necessary under paragraph (l)(3)(ii), there shall be a two-week evaluation and remediation period to permit the employer to ascertain whether the signs or symptoms subside untreated or with the use of creams, gloves, first aid treatment or personal protective equipment. Industrial hygiene measures that limit the employee's exposure to formaldehyde may also he implemented during this period. The employee shall be referred immediately to a physician prior to expiration of the two-week period if the signs or symptoms worsen. Earnings, seniority and benefits may not be altered during the two-week period by virtue of the report.

(iii) If the signs or symptoms have not subsided or been remedied by the end of the two-week period, or earlier if signs or symptoms warrant, the employee shall he examined by a physician selected by the employer. The physician shall presume, absent contrary evidence, that observed dermal irritation or dermal sensitization are not attributable to formaldehyde when products to which the affected employee is exposed contain less rhan 0.1% formaldehyde.

(iv) Medical examinations shall be conducted in compliance with the requirements of paragraph (l)(5) (i) and (ii). Additional guidelines for conducting medical exams are contained in appendix C.

(v) If the physician finds that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal, the employer shall promptly comply with the restrictions or recommendation of removal. In the event of a recommendation of removal, the employer shall remove the effected employee from the current formaldehyde exposure and if possible, transfer the employee to work having no or significantly less exposure to formaldehyde.

(vi) When an employee is removed pursuant to paragraph (l)(8)(v), the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the formaldehyde exposures are as low as possible, but not higher than the action level. The employeer shall maintain the employee's current earnings, seniority, and other benefits. If there is no such work available, the employer shall maintain the employee's current earnings, seniority and other benefits until such work becomes available, until the employee is determined to he unable to return to workplace formaldehyde exposure, until the employee is determined to be able to return to the original job status, or for six months, whichever comes first.

(vii) The employer shall arrange for a follow-up medical examination to take place within six months after the employee is removed pursuant to this paragraph. This examination shall determine if the employee can return to the original job status, or if the removal is to he permanent. The physician shall make a decision within six months of the date the employee was removed as to whether the employee can he returned to the original job status, or if the removal is to he permanent.

(viii) An employer's obligation to provide earnings, seniority and other benefits to a removed employee may he reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(ix) In making determinations of the formaldehyde content of materials under this paragraph the employer may rely on objective data.

(9) Multiple physician review. (i) After the employer selects the initial physician who conducts any medical examination or consultation to determine whether medical removal or restriction is appropriate, the employee may designate a second physician to review any findings, determinations or recommendations of the initial physician and to conduct such examinations, consultations, and laboratory tests as the second physician deems necessary and appropriate to evaluate the effects of formaldehyde exposure and to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation for the purpose of medical removal or restriction.

(iii) The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the notification of the right to seek a second medical opinion, or receipt of the initial physician's written opinion, whichever is later;

(A) The employee informs the employer of the intention to seek a second medical opinion, and

(B) The employee initiates steps to make an appointment with a second physician.

(iv) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the

employer and the employee shall assure that efforts are made for the two physicians to resolve the disagreement. If the two physicians are unable to quickly resolve their disagrecmcnt, then the employer and the employee through their respective physicians shall designate a third physician who shall be a specialist in the field at issue:

(A) To review the findings, determinations or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) In the alternative, the employer and the employee or authorized employee representative may jointly designate such third physician.

(vi) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recornmendations of at least one of the three physicians.

(m) *Hazard communication* -- (1) ***General.*** Communication of the hazards associated with formaldehyde in the workplace shall be governed by the requirements of paragraph (m). The definitions of 29 CFR 1910.1200(c) shall apply under this paragraph.

(i) The following shall be subject to the hazard communication requirements of this paragraph: Formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air, under reasonably foreseeable conditions of use, at concentrations reaching or exceeding 0.1 ppm.

(ii) As a minimum, specific health hazards that the employer shall address are: Cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(2) Manufacturers and importers who produce or import formaldehyde or formaldehyde-containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs if these items may constitute a health hazard within the meaning of 29 CFR 1910.1200(d) under normal conditions of use.

(3) Labels. (i) The employer shall assure that hazard warning labels complying with the requirements of 29 CFR 1910.1200(f) arc affixed to all containers of materials listed in paragraph (m)(1)(i), except to the extent that 29 CFR 1910.1200(f) is inconsistent with this paragraph.

(ii) *Information on labels.* As a minimum, for all materials listed in paragraph (m)(1)(i) capable of releasing formaldehyde at levels of 0.1 ppm to *0.5* ppm, labels shall identify that the product contains formaldehyde; list the name and address of the responsible party; and state that physical and health hazard information is readily available from the employer and from material safety data sheets.

(iii) For materials listed in paragraph (m)(1)(i) capable of releasing formaldehyde at levels above 0.5 ppm, labels shall appropriately address all hazards as defined in 29 CFR 1910.1200(d) and 29 CFR 1910.1200 appendices A and B, including respiratory sensitization, and shall contain the words "Potential Cancer Hazard."

(iv) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

(v) *Substitute warning labels.* The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements reauircd bv this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials listed in paragraph (m)(1)(i) shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of material safety data sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde-containing materials listed in paragraph (m)(1)(i) shall assure that material safety data sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a material safety data sheet is updated.

*(5) **Written** hazard communication **program.*** The employer shall develop, implement, and maintain at the workplace, a written hazard communication program for formaldehyde exposures in the workplace, which at a minimum describes how the requirements specified in this paragraph for labels and other forms of warning and material safety data sheets, and paragraph (n) for employee information and training, will be met. Employers in multi-employer workplaces shall comply with the requirements of 29 CFR 1910.1200(e)(2).

(n) *Employee information and training* -- (1) *Participation.* The employer shall assure that all employees who are assigned to workplaces where there is exposure to formaldehyde participate in a training program, except that where the employer can show, using objective data, that employees are not exposed to formaldehyde at or above 0.1 ppm, the employer is not required to provide training.

(2) ***Frequency.*** Employers shall provide such information and training to employees at the time of initial assignment, and whcnevcr a new exposure to formaldehyde is introduced into the work area. The training shall be repeated at least annually.

(3) *Training program.* The training program shall be conducted in a manner which the employee is able to understand and shall include:

(i) **A** discussion of the contents of this regulation and the contents of the Material Safety Data Sheet.

(ii) The purpose for and a description of the medical surveillance program required by this standard, including:

(A) A description of the potential health hazards associated with exposure to formaldehyde and a description of the signs and symptoms of exposure to formaldehyde.

(B) Instructions to immediately report to the employer the development of any adverse signs or symptoms that the employee suspects is attributable to formaldehyde exposure.

(iii) Description of operations in the work area where formaldehyde is present and an explanation of the safe work practices appropriate for limiting exposure to formaldehyde in each job;

(iv) The purpose for, proper use of, and limitations of personal protective clothing and equipment;

(v) Instructions for the handling of spills, emergencies, and clean-up procedures;

(vi) An explanation of the importance of engineering and work practice controls for employee protection and any necessary instruction in the use of these controls; and

(vii) A review of emergency procedures including the specific duties or assignments of each employee in the event of an emergency.

(4) ***Access** to training materials.* (i) The employer shall inform all affected employees of the location of written training materials and shall make these materials readily available, without cost, to the affected employees.

(ii) The employer shall provide, upon request, all training materials relating to the employee training program to the Assistant Secretary and the Director.

(o) *Recordkeeping* -- (1) *Exposure measurements.* The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to formaldehyde. This record shall include:

(i) The date ofmeasuremcnt;

(iij The operation being monitored;

(iii) The methods of sampling and analysis and evidence of their accuracy and precision;

(iv) The number, durations, time, and results of samples taken;

(v) The types ofprotective devices worn; and

(vi) The names, job classifications., social security numbers., and exposure estimates of the employees whose exposures are represented by the actual monitoring results.

(2) ***Exposure** determinations.* Where the employcr has determined that no monitoring is required under this standard, the employer shall maintain a record of the objective data relied upon to support the determination that no employee is exposed to formaldehyde at or above the action level.

(3) ***Medical surveillance.*** The employer shall establish and maintain an accurate record for each employee subject to medical surveillance under this standard. This record shall include:

(i) The name and social security number of the employee;

(ii) The physician's written opinion;

(iii) A list of any employee health complaints that may be related to exposure to formaldehyde; and

(iv) A copy of the medical examination results, including medical disease questionnaires and results of any medical tests required by the standard or mandated by the examining physician.

(4) ***Respirator** fit **testing.*** (i) The employer shall establish and maintain accurate records for employees subject to negative pressure respirator fit testing required by this standard.

(ii) This record shall include:

(A) **A** copy of the protocol selected for respirator fit testing

(B) **A** copy of the results of any fit testing performed.

(C) The size and manufacturer of the types of respirators available for selection.

(D) The date of the most recent fit testing, the name and social security number of each tested employee, and the respirator type and facepiece selected.

(5) ***Record retention.*** The employer shall retain records required by this standard for at least the following periods:

(i) Exposure records and determinations shall be kept for at least 30 years.

(ii) Medical records shall be kept for the duration of employment plus 30 years.

(iii) Respirator fit testing records shall be kept until replaced by a more recent record.

(6) Availability** of **records. (i) Upon request, the employer shall make all records maintained as a reauirement of this standard available for examination and copying'to the Assistant Secretary and the Director.

(ii) **The** employer shall make employee exposure records, including estimates made from representative monitoring and available upon request for examination, and copying to the subject employee, or former employee, and employee representatives in accordance with 29 CFR 1910.20 (a)-(c) and (g)-(i).

(iii) Employee medical records required by this standard shall be provided upon request for examination and coying, to the subject employee or former employee or to anyone having the specific written consent of the subject employee or former employee in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i).

(p) *Dates* -- (1) *Effective **dates*** -- (i) ***General.*** This section shall become effective February 2, 1988, except as noted below.

(ii) ***Laboratories.*** This standard shall become effective for anatomy, histology, and pathology laboratories February 2, 1988, except as noted in the start-up date section. For all other laboratories, paragraphs (a) and (c) of this standard shall become effective February 2, 1988, and paragraphs (b) and (d)-(o) of this standard shall become effective on September 1, 1988 except as noted in the start-up date section.

(2) ***Start-up dates*** -- (i) *Exposure determinations.* Initial monitoring or objective determinations that no monitoring is required by the standard shall he completed by 6 months after the effective date of the standard.

(ii) ***Medical surveillance.*** The initial medical surveillance of all eligible employees shall be completed by 6 months after the effective date of the standard.

(iii) ***Emergencies.*** The emergency procedures required by this standard shall be implemented by 6 months after the effective date of the standard.

(iv) ***Respiratory protection.*** Respiratory protection as required in this standard shall be provided as soon as possible and no later than 9 months after the effective date of the standard.

(v) ***Engineering and** work practice controls.* Engineering and work practice controls required by this standard shall he implemented as soon as possible, but no later than one year after the effective date of the standard.

(vi) ***Employee training.*** Written materials for employee training shall be updated as soon as possible, but no later than 2 months after the effective date of the standard.

(3) ***Start-up dates** of amended **paragraphs*** – (i) ***Respiratory protection.*** Respiratory protection required to meet the amended PEL of 0.75 ppm TWA shall be provided as soon as possible hut no later than September 24, 1992.

(ii) ***Engineering** and **work practice** controls.* Engineering and work practice controls required to meet the amended PEL of 0.75 ppm TWA shall be implemented as soon as possible, but no later than June 26, 1993.

(iii) ***Medical** removal **protection.*** The medical removal protection provisions including the multiple physician review mechanism shall be implemented no later than December 28, 1992.

(iv) ***Hazard communication.*** The labeling provisions contained in amended paragraph (m) of this standard shall be implemented no latcr than December 28, 1992. Labeling of containers of formaldehyde products shall continue to comply with the provisions of29 CFR 1910.1200(e)-(j) until that time.

(v) *Training.* The oeriodic training mandated for all emoloyees exposed to–formaldehyde between 0.1 ppm and 0 5 ppm shall begin no later than August 25, 1992.

APPENDIX A TO §1910.1048 – SUBSTANCE TECHNICAL GUIDELINES FOR FORMALIN

The following Substance Technical Guideline for Formalin provides information on uninhibited formalin solution (37% formaldehyde, no methanol stabilizer). It is designed to inform employees at the production level of thcii rights and duties under the formaldehyde standard whether their job title defines them as workers or supervisors. Much of the information provided is general; however, some information is specific for formalin. When employee exposure to formaldehyde is from resins capable of releasing formaldehyde, the resin itself and other impurities or decomposition products may also be toxic, and employers should include this information as well when informing employees of the hazards associated with the materials they handle. The precise hazards associated with exposure to formaldehyde depend both on

the form (solid, liquid, or gas) of the material and the concentration of formaldehyde present. For example, 37-50 percent solutions of formaldehyde present a much greater hazard to the skin and eyes from spills or splashes than solutions containing less than 1 percent formaldehyde. Individual Substance Technical Guidelines used by the employer for training employees should be modified to properly give information on the material actually being used

Substance identification
Chemical Name: Formaldehyde
Chemical Family: Aldehyde
Chemical Formula: HCHO
Molecular Weight: 30.03
Chemical Abstracts Service Number (CAS Number): 50-00-0
Synonyms: Formalin; Formic Aldehyde; Paraform; Formal; Formalin (Methanol-free); Fyde; Formalith; Methanal; Methyl Aldehyde; Methylene Glycol; Methylene Oxide; Tetraoxymethalene; Oxomethane; Oxymethylene

Components and Contaminants
Percent: 37.0 Formaldehyde
Percent: 63.0 Water
(Note -- Inhibited solutions contain methanol.)
Other Contaminants: Formic acid (alcohol free)
Exposure Limits:
OSHA TWA -- 0 75 ppm
OSHA STEL -- 2 ppm

Physical Data
Description: Colorless liquid, pungent odor
Boiling point: 214 °F (101 "C)
Specific Gravity; 1.08 (M2 O=1 @ 20 "C)
pH: 2.8-4.0
Solubility in Water: Miscible
***Solvent** Solubility:* Soluble in alcohol and acetone
Vapor Density: 1.04(Air=1 @ 20 "C)
Odor Threshold: 0.8-1 ppm

Fire and Explosion Hazard

Moderate fire and explosion hazard when exposed to heat or flame.

The flash point of 37% formaldehyde solutions is above normal room temperature, but the explosion range is very wide, from 7 to 73% by volume in air.

Reaction of formaldehyde with nitrogen dioxide, nitromethane, perchloric acid and aniline, or peroxyformic acid yields explosive compounds.

Flash Point: I85 °F (85 "C) closed cup
Lower Explosion Limit: 7%
Upper Explosion Limit: 73%
Autoignition Temperature: 806 °F (430 "C)
Flammability Class (OSHA): III A

***Extinguishing** Media:* Use dry chemical, "alcohol foam", carbon dioxide. or water in flooding amounts as fog. Solid streams mav not be 'effective. Cool fire-exposed containers with water from side until well after fire is out.

Use of water spray to flush spills can also dilute the spill to produce nonflammable mixtures Water runoff, however, should be contained for treatment

National Fire Protection Association Section 325M Designation:

Health: 2 -- Materials hazardous to health, but areas may he entered with full-faced mask self-contained breathing apparatus which provides eye protection

Flammability: 2 -- Materials which must be moderately heated before ignition will occur. Water spray may be used to extinguish the fire because the material can be cooled below its flash point.

Reactivity: D -- Materials which (in themselves) are normally stable even under fire exposure conditions and which are not reactive with water. Normal fire fighting procedures may be used.

Reactivitj

Stability: Formaldehyde solutions may self-polymerize to form paraformaldehyde which precipitates.

Incompatibility (Materials to Avoid): Strong oxidizing agents, caustics, strong alkalies, isocyanates, anhydrides, oxides, and inorganic acids. Formaldehyde reacts with hydrochloric acid to form the potent carcinogen, bis-chloromethyl ether. Formaldehyde reacts with nitrogen dioxide, nitromethane, perchloric acid and aniline, or peroxyformic acid to yield explosive compounds. A violent reaction occurs when formaldehyde is mixed with strong oxidizers.

Hazardous Combustion or Decomposition Products: Oxygen from the air can oxidize formaldehyde to formic acid, especially when heated. Formic acid is corrosive.

Health Hazard Data

Acute Effects of Exposure

Ingestion (Swallowing): Liquids containing 10 to 40% formaldehyde cause severe irritation and inflammation of the mouth, throat, and stomach. Severe stomach pains will follow ingestion with possible loss of consciousness and death. Ingestion of dilute formaldehyde solutions (0.03-0.04%) may cause discomfort in the stomach and pharynx.

Inhalation (Breathing): Formaldehyde is highly irritating to the upper respiratory tract and eyes. Concentrations of 0.5 to 2.0 ppm may irritate the eyes, nose, and throat of some individuals. Concentrations of **3 to** 5 ppm also cause tearing of the eyes and are intolerable to some persons. Concentrations of 10 to 20 ppm cause difficulty in breathing, burning of the nose and throat, cough, and heavy tearing of the eyes, and 25 to 30 ppm causes severe respiratory tract injury leading to pulmonary edema and pneumonitis. A concentration of 100 ppm is immediately dangerous to life and health. Deaths from accidental exposure to high concentrations of formaldehyde have been reported.

***Skin** (Dermal):* Formalin is a severe skin irritant and a sensitizer. Contact with formalin causes white discoloration, smarting, drying, cracking, and scaling. Prolonged and repeated contact can cause numbness and a hardening or tanning of the skin. Previously exposed persons may react to future exposure with an allergic eczematous dermatitis or hives.

*Eye **Contact:*** Formaldehyde solutions splashed in the eye can cause injuries ranging from transient discomfort to severe, permanent corneal clouding and loss of vision. The severity of the effect depends on the concentration of formaldehyde in the solution and whether or not the eyes arc flushed with water immediately after the accident.

Note. -- The perception of formaldehyde by odor and eye irritation becomes less sensitive with time as one adapts to formaldehyde, This can lead to overexposure if a worker is relying on formaldehyde's warning properties to alert him or her to the potential for exposure.

Acute Animal Toxicity:
Oral, rats: LD50=800 mg/kg
Oral, mouse: LD50=42 mg/kg
Inhalation, rats: LCLo=250 mg/kg
Inhalation, mouse: LCLo–900 mg/kg
Inhalation, rats: LC50=590 mgkg

Chronic Effects of Exposure

Carcinogenicity: Formaldehyde has the potential to cause cancer in humans. Repeated and prolonged exposure increases the risk. Various animal experiments have conclusively shown formaldehyde to be a carcinogen in rats. In humans, formaldehyde exposure has been associated with cancers of the lung, nasopharynx and oropharynx, and nasal passages.

Mutagenicity: Formaldehyde is genotoxic in several *in vitro* test systems showing properties of both an initiator and a promoter.

Toxicity: Prolonged or repeated exposure to formaldehyde may result in respiratory impairment. Rais exposed to formaldehyde at 2 ppm developed benign nasal tumors and changes of the cell structure in the nose as well as inflamed mucous membranes of the nose. Structural changes in the epithelial cells in the human nose have also been observed. Some persons have developed asthma or bronchitis following exposure to formaldehyde, most often as the result of an accidental spill involving a single exposure to a high concentration of formaldehyde.

Emergency and First Aid Procedures

Ingestion (Swallowing): If the victim is conscious, dilute, inactivate, or absorb the ingested formaldehyde by giving milk, activated charcoal, or water. Any organic material will inactivate formaldehyde. Keep affected person warm and at rest. Get medical attention immediately. If vomiting occurs, keep head lower than hips.

Inhalation ***(Breathing):*** Remove the victim from the exposure area to fresh air immediately. Where the formaldehyde concentration may be very high, each rescuer must put on a self-contained breathing apparatus before attempting to remove the victim, and medical personnel should be informed of the formaldehyde exposure immediately. If breathing has stopped, give artificial respiration. Keep the affected person warm and at rest. Qualified first-aid or medical personnel should administer oxygen, if available, and maintain the patient's airways and blood pressure until the victim can be transported to a medical facility. If exposure results in a highly irritated upper respiratory tract and coughing continues for more than 10 minutes, the worker should be hospitalized for observation and treatment.

Skin *Contact:* Remove contaminated clothing (including shoes) immediately. Wash the affected area of your body with soap or mild detergent and large amounts of water until no evidence ofthc chemical remains (at least 15 to 20 minutes). If there are chemical hums, get first aid to cover the area with sterile, dry dressing, and bandages. Get medical attention if you experience appreciable eye or respiratory irritation.

Eye Contact: Wash the eyes immediately with large amounts of water occasionally lifting lower and upper lids, until no evidence of chemical remains (at least 15 to 20 minutes). In case of bums, apply sterile bandages loosely without medication. Get medical attention immediately. If you have experienced appreciable eye irritation from a splash or excessive exposure, you should be referred promptly to an optbamologist for evaluation.

Emergency Procedures

Emergencies: If you work in an area where a large amount of formaldehyde could he released in an accident or from equipment failure, your employer must develop procedures to he followed in event of an emergency. You should he trained in your specific duties in the event of an emergency, and it is important that you clearly understand these duties. Emergency equipment must be accessible and you should he trained to use any equipment that you might need. Formaldehyde contaminated equipment must be cleaned before reuse.

If a spill of appreciable quantity occurs, leave the area quickly unless you have specific emergency duties. Do not touch spilled material. Designated persons may stop the leak and shut off ignition sources if these procedures can he done without risk. Designated persons should isolate the hazard area and deny entry except for necessary people protcctcd by suitable protective clothing and respirators adequate for the exposure. Use water spray to reduce vapors. Do not smoke, and prohibit all flames or flares in the hazard area.

Special Firefighting Procedures: Leam procedures and responsibilities in the event of a fire in your workplace. Become familiar with the appropriate equipment and supplies and their location. In firefighting, withdraw immediately in case of rising sound from venting safety device or any discoloration of storage tank due to fire.

Spill, Leak, and Disposal Procedures

Occupational Spill: For small containers, place the leaking container in a well ventilated area. Take up small spills with absorbent material and place the waste into properly labeled containers for later disposal. For larger spills, dike the spill to minimize contamination and facilitate salvage or disposal. You may be able to neutralize the spill with sodium hydroxide or sodium sulfite. Your employer must comply with **EPA** rules regarding the clean-up of toxic waste and notify state and local authorities, ifrcquired. If the spill is greater than 1,000 lb/day, it is reportable under EPA's Superfund legislation.

Waste Disposal: Your employer must dispose of waste containing formaldehyde in accordance with applicable local, state, and Federal law and in a manner that minimizes exposure of employees at the site and of the clean-up crew.

Monitoring and Measurement Procedures

Monitoring Requirements: If your exposure to formaldehyde exceeds the 0.5 ppm action level or the 2 ppm STEL, your employer must monitor your exposure. Your employer need not measure every exposure if a "high exposure" employee can he identified. This person usually spends the greatest amount of time nearest the process equipment. If you are a "representative employee"; you will he asked to wear a sampling device to collect formaldehyde. This device may be a passive badge, a sorhent tube attached to a pump, or an impinger containing liquid. You should perform your work as usual, but inform the person who is conducting the monitoring of any difficulties you are having wearing the device.

Evaluation of 8-hour Exposure: Measurements taken for the purpose of determining time-weighted average (TWA) exposures are best taken with samples covering the full shift Samples collected must be taken from the employee's breathing zone air.

Short-term Exposure Evaluation: If there are tasks that involve brief but intense exposure to formaldehyde, employee exposure must be measured to assure compliance with the STEL. Sample collections are for brief periods, only 15 minutes, but several samples may be needed to identify the peak exposure.

Monitoring Techniques: OSHA's only requirement for selecting a method for sampling and analysis is that the methods used accurately evaluate the concentration of formaldehyde in employees' breathing zones. Sampling and analysis may he performed by collection of formaldehyde on liquid or solid sorhents with subsequent chemical analysis. Sampling and analysis may also be performed by passive diffusion monitors and short-term exposure may he measured by instruments such as real-time continuous monitoring systems and portable direct reading instruments.

Notification of Results: Your employer must inform you of the results of exposure monitoring representative of your job. You may he informed in writing, but posting the results where you have ready access to them constitutes compliance with the standard.

Protective Equipment and Clothing

[Material impervious to formaldehyde is needed if the employee handles formaldehyde solutions of 1% or more. Otber employees may also require protective clothing or equipment to prevent dermatitis.]

Respiratory Protection: Use NIOSH-approved full facepiece negative pressure respirators equipped with approved cartridges or canisters within the use limitations of these devices. (Present restrictions on cartridges and canisters do not permit them to be used for a full workshift.) In all other situations, use positive pressure respirators such as the positive-pressure air purifying respirator or the self-contained breathing apparatus (SCBA). If you use a negative pressure respirator, your employer must

provide you with fit testing of the respirator at least once a year in accordance with the procedures outlined in Appendix E.

***Protective** Gloves:* Wear protective (impervious) gloves provided by your employer, at no cost, to prevent contact with formalin. Your employer should select these gloves based on the results of permeation testing and in accordance with the ACGIH Guidelines for Selection of Chemical Protective Clothing.

Eye Protection: If you might be splashed in the eyes with formalin, it is essential that you wear goggles or some other type of complete protection for the eye. You may also need a face shield if your face is likely to he splashed with formalin, but you must not substitute face shields for eye protection. (This section pertains to formaldehyde Solutions of 1% or more.)

Other Protective Equipment: You must wear protective (impervious) clothing and equipment provided by your employer at no cost to prevent repeated or prolonged contact with formaldehyde liquids. If you are required to change into whole-body chemical protective clothing, your employer must provide a change room for your privacy and for storage of your normal clothing.

If you are splashed with formaldehyde, use the emergency showers and eyewash fountains provided by your employer immediately to prevent serious injury. Report the incident to your supervisor and obtain necessary medical support.

ENTRY INTO AN IDLH ATMOSPHERE

Enter areas where the formaldehyde concentration might be 100 ppm or more only with complete body protection including a self-contained breathing apparatus with a full facepiece operated in a positive pressure mode or a supplied air respirator with full facepiece and operated in a positive pressure mode. This equipment is essential to protect your life and health under such extreme conditions.

Engineering Controls

Ventilation is the most widely applied engineering control method for reducing the concentration of airborne substances in the breathing zones of workers. There are two distinct types of ventilation.

Local Exhaust: Local exhaust ventilation is designed to capture airborne contaminants as near to the point of generation as possible. To protect you, the direction of contaminant flow must always be toward the local exhaust system inlet and away from you.

***General** (Mechanical):* General dilution ventilation involves continuous introduction of fresh air into the workroom to mix with the contaminated air and lower your breathing zone concentration of formaldehyde. Effectiveness depends on the number of air changes per hour. Where devices emitting formaldehyde are spread out over a large area, general dilution ventilation may be the only practical method of control.

Work Practices: Work practices and administrative procedures are an important part of a control system. If you are asked to perform a task in a certain manner to limit your exposure to formaldehyde, it is extremely important that you follow these procedures.

Medical Surveillance

Medical surveillance helps to protect employees' health. You are encouraged strongly to participate in the medical surveillance program.

Your employer must make a medical surveillance program available at no expense to you and at a reasonable time and place if you are exposed to formaldehyde at concentrations above 0.5 ppm as an 8-hour average or 2 ppm over any 15-minute period. You will be offered medical surveillance at the time of your initial assignment and once a year afterward as long as your exposure is at least 0.5 ppm (TWA) or 2 ppm (SI'EL). Even if your exposure is below these levels, you should inform your employer if you have signs and symptoms that you suspect, through your training, are related to your formaldehyde cxposure because you may need medical surveillance to determine if your health is being impaired by your exposure

The surveillance plan includes:

(a) A medical disease questionnaire.
(b) A physical examination if the physician determines this is necessary.

If you are required to wear a respirator, your employer must offer you a physical examination and a pulmonary function test every year.

The physician must collect all information needed to determine if you are at increased risk from your exposure to formaldehyde. At the physician's discretion, the medical examination may include other tests, such as a chest x-ray, to make this determination.

After a medical examination the physician will provide your employer with a written opinion which includes any special protective measures recommended and any restrictions on your exposure. The physician must inform you of any medical conditions you have which would be aggravated by exposure to formaldehyde.

All records from your medical examinations, including disease surveys, must be retained at your employer's expense.

EMERGENCIES

If you are exposed to formaldehyde in an emergency and develop signs or symptoms associated with acute toxicity from formaldehyde exposure, your employer must provide you with a medical examination as soon as possible. This medical examination will include all steps necessary to stabilize your health. You may be kept in the hospital for observation if your symptoms are severe to ensure that any delayed effects are recognized and treated.

APPENDIX B TO §1910.1048
SAMPLING STRATEGY AND ANALYTICAL METHODS FOR FORMALDEHYDE

To protect the health of employees, exposure measurements must be unbiased and representative of employee exposure. The proper measurement of employee exposure requires more than a token commitment on the part of the employer. OSHA's mandatory requirements establish a baseline; under the best of circumstances all questions regarding employee exposure will bc answered. Many employers, however, will wish to conduct marc extensive monitoring before undertaking expensive commitments, such as engineering controls, to assure that the modifications are truly necessary. The following sampling strategy, which was developed at NIOSH by Nelson A. Leidel, Kenneth A. Busch, and Jeremiah R. Lynch and described in NIOSH publication No. 77-173 (Occupational Exposure Sampling Strategy Manual) will assist the employer in developing a strategy for determining the exposure of his or her employees.

There is no one correct way to determine employee exposure. Obviously, measuring the exposure of every employee exposed to formaldehyde will provide the most information on any given day. Where few employees are exposed, this may be a practical solution. For most employers, however, use of the following strategy will give just as much information at less cost.

Exposure data collected on a single day will not automatically guarantee the employer that his or her workplace is always in compliance with the formaldehyde standard. This does not imply, however, that it is impossible for an employer to he sure that his or her worksite is in compliance with the standard. Indeed, a properly designed sampling strategy showing that all employees are exposed below the PELs, at least with a 95 percent certainty, is compelling evidence that the exposure limits are being achieved provided that measurements are conducted using valid sampling strategy and approved analytical methods.

There are two PELs, the TWA concentration and the STEL. Most employers will find that one of these two limits is more critical in

the control of their operations, and OSHA expects that the employer will concentrate monitoring efforts on the critical component. If the more difficult exposure is controlled, this information, along with calculations to support the assumptions, should he adequate to show that the other exposure limit is also being achieved.

Sampling Strategy

Determination of the Need for Exposure Measurements

The employer must determine whether employees may be exposed to concentrations in excess of the action level. This determination becomes the first step in an employee exposure monitoring program that minimizes employer sampling burdens while providing adequate employee protection. If employees may be exposed above the action level, the employer must measure exposure. Otherwise, an objective determination that employee exposure is low provides adequate evidence that exposure potential has been examined.

The employer should examine all available relevant information, *eg.* insurance company and trade association data and information from suppliers or exposure data collected from similar operations. The employer may also use previously-conducted sampling including area monitoring. The employer must make a determination relevant to each operation although this need not be on a separate piece of paper. If the employer can demonstrate conclusively that no employee is exposed above the action level or the STEL through the use of objective data, the employer need proceed no further on employee exposure monitoring until such time that conditions have changed and the determination is no longer valid.

If the employer cannot determine that employee exposure is less than the action level and the STEL, employee exposure monitoring will have to be conducted.

Workplace Material Survey

The primary purpose of a survey of raw material is to determine if formaldehyde is being used in the work environment and if so, the conditions under which formaldehyde is being used.

The first step is to tabulate all situations where formaldehyde is used in a manner such that it may he released into the workplace atmosphere or contaminate the skin. This information should he available through analysis of company records and information on the MSDSs available through provisions of this standard and the Hazard Communication standard.

If there is an indication from materials handling records and accompanying MSDSs that formaldehyde is being used in the following types of processes or work operations, there may be a potential for releasing formaldehyde into the workplace atmosphere:

(1) Any operation that involves grinding, sanding, sawing, cutting, crushing, screening, sieving, or any other manipulation of material that generates formaldehyde-bearing dust
(2) Any processes where there have been employee complaints or symptoms indicative of exposure to formaldehyde
(3) Any liquid or spray process involving formaldehyde
(4) Any process that uses formaldehyde in preserved tissue
(5) Any process that involves the heating of a formaldehyde-bearing resin

Processes and work operations that use formaldehyde in these manners will probably require further investigation at the worksite to determine the extent of employee monitoring that should be conducted.

Workplace Observations

To this point, the only intention has been to provide an indication as to the existence of potentially exposed employees. With this information, a visit to the workplace is needed to observe work operations, to identify potential health hazards, and to determine whether any employees may be exposed to hazardous concentrations of formaldchydc.

In many circumstances, sources of formaldehyde can he identified through the sense of smell. However, this method of detection should be used with caution because of olfactory fatigue.

Employee location in relation to source of formaldehyde is important in determining if an employee may be significantly exposed to formaldehyde. In most instances. the closer a worker is to the source, the higher the probability that a significant exposure will occur.

Other characteristics should be considered. Certain high temperature operations give rise to higher evaporation rates. Locations of open doors and windows provide natural ventilation that tend to dilute formaldehyde emissions. General room ventilation also provides a measure of control.

Calculation of Potential Exposure Concentrations

By knowing the ventilation rate in a workplace and the quantity of formaldehyde generated, the employer may be able to determine by calculation if the PELs might be exceeded. To account for poor mixing of formaldehyde into the entire room, locations of fans and proximity of employees to the work operation, the employer must include a safety factor. If an employee is relatively close to a source, particularly if he or she is located downwind, a safety factor of 100 may he necessary. For other situations, a factor of 10 may be acceptable. If the employer can demonstrate through such calculations that employee exposure does not exceed **the** action level or the STEL, the employer may use this information as objective data to demonstrate compliance with the standard.

Sampling Strategy

Once the employer determines that there is a possibility of substantial employee exposure to formaldehyde, the employer is obligated to measure employee exposure.

The next step is selection of a maximum risk employee. When there are different processes where employees may be exposed to formaldehyde, a maximum risk employee should be selected for each work operation.

Selection of the maximum risk employee requires professional judgment. The best procedure for selecting the maximum risk employee is to observe employees and select the person closest to the source of formaldehyde. Employee mobility may affect this selection; *eg.* if the closest employee is mobile in his tasks, he may not be the maximum risk employee. Air movement patterns and differences in work habits will also affect selection of the maximum risk employee.

When many employees perform essentially the same task, a maximum risk employee cannot be selected. In this circumstance, it is necessary to resort to random sampling of the group of workers. The objective is to select a subgroup of adequate size so that there is a high probability that the random sample will contain at least one worker with high exposure if one exists. The number of persons in the group influences the number that need to be sampled to ensure that at least one individual from the highest 10 percent exposure group is contained in the sample. For example, to have 90 percent confidence in the results, if the group size is 10, nine should be sampled; for 50, only 18 need to he sampled.

If measurement shows exposure to formaldehyde at or above the action level or the STEL, the employer needs to identify all other employees who may be exposed at or above the action level or STEL and measure or otherwise accurately characterize the exposure of these employees.

Whether representative monitoring or random sampling are conducted, the purpose remains the same -- to determine if the exposure of any employee is above the action level. If the exposure of the most exposed employee is less than the action level and the STEL, regardless of how the employoce is identified, then it is reasonable to assume that measurements of exposure of the other employees in that operation would be below the action level and the STEL.

Exposure Measurements

There is no "best" measurement strategy for all situations. Some elements to consider in developing a strategy are:

(1) Availability and cost of sampling equipment
(2) Availability and cost of analytic facilities
(3) Availability and cost of personnel to take samples
(4) Location of employees and work operations
(5) Intraday and interday variations in the process
(6) Precision and accuracy of sampling and analytic methods, and
(7) Number of samples needed.

Samples taken for determining compliance with the STEL differ from those that measure the TWA concentration in important ways. STEL samples are best taken in a nonrandom fashion using all available knowledge relating to the area, the individual, and the process to obtain samples during periods of maximum expected concentrations. At least three measurements on a shift are generally needed to spot gross errors or mistakes; however, only the highest value represents the STEL.

If an operation remains constant throughout the workshift, a much greater number of samples would need to be taken over the 32 discrete nonoverlapping periods in an 8-hour workshifi to verify compliance with a STEL. If employee exposure is truly uniform throughout the workshift, however, an employer in compliance with the l ppm TWA would be in compliance with the 2 ppm STEL, and this determination can probably bc made using objective data.

Need to Repeat the Monitoring Strategy

Interday and intraday fluctuations in employee exposure are mostly influenced by the physical processes that generate formaldehyde and the work habits of the employee. Hence, in-plant process variations influence the employer's determination of whether or not additional controls need to be imposed. Measurements that employee exposure is low on a day that is not representative of worst conditions may not provide sufficient information to determine whether or not additional engineering controls should be installed to achieve the PELs.

The person responsible for conducting sampling must be aware of Systematic changes which will negate the validity of the sampling results. Systematic changes in formaldehyde exposure concentration for an employee can occur due to:

(1) The employee changing patterns of movement **in** the workplace
(2) Closing of plant doors and windows
(3) Changes in ventilation from season to season
(4) Decreases in ventilation efficiency or abrupt failure of engineering control equipment
(5) Changes in the production process or work habits of the employee.

Any of these changes, if they may result in additional exposure that reaches the next level of action (*i.e.* 0.5 or 1.0 ppm as an 8-hr average or 2 ppm over 15 minutes) require the employer to perform additional monitoring to reassess employee exposure.

A number of methods are suitable for measuring employee exposure to formaldehyde or for characterizing emissions within the worksite. The preamble to this standard describes some methods that have been widely used or subjected to validation testing. A detailed analytical procedure derived from the OSHA Method 52 for acrolein and formaldehyde is presented below for informational purposes.

Inclusion of OSHA's method in this appendix in no way implies that it is the only acceptable way to measure employee exposure to formaldehyde. Other methods that are free from significant interferences and that can determine formaldehyde at the permissible exposure limits within 125 percent of the "true" value at the 95 percent confidence level are also acceptable. Where applicable, the method should also be capable of measuring formaldehyde at the action level to 135 pcrcent of the "true" value with a 95 percent confidence level. OSHA encourages employers to choose methods that will be best for their individual needs. The employer must exercise caution, however, in choosing an appropriate method since some techniques suffer from interferences that are likely to be present in workplaces of certain industry sectors where formaldehyde is used.

OSHA's Analytical Laboratory Method

Method No: 52
Matrix: Air
Target Concentration: 1 ppm (1.2 mg/m^3)
Procedures: Air samples are collected by drawing known volumes of air through sampling tubes containing XAD-2 adsorbent which have been coated with 2-(hydroxymethyl) piperidine. The samples **am** desorbed with toluene and then analyzed by gas chromatography using a nitrogen selective detector.
Recommended Sampling Rate and **Air** *Volumes:* 0.1 L/min and 24 L
Reliable Quantitation Limit: 16 ppb (20 µg/m^3)
Standard **Error** *of Estimate at the Target* **Concentration:** ***7.3%***
Status of the Method: A sampling and analytical method that has been subjected to the established evaluation procedures of the Organic Methods Evaluation Branch.
Date: March 1985

1. General Discussion

1.1 ***Background:*** The current OSHA method for collecting acrolein vapor recommends the use of activated 13X molecular sieves. The samples must he stored in an ice bath during and after sampling and also they must be analyzed within 48 hours of collection. The current OSHA method for collecting formaldehyde vapor recommends the use of bubblers containing 10% methanol in water as the trapping solution.

This work was undertaken to resolve the sample stability problems associated with acrolein and also to eliminate the need to use bubblers to sample formaldehyde. **A** goal of this work was to develop and/or to evaluate a common sampling and analytical procedure for acrolein and formaldehyde.

NIOSH has developed independent methodologies for acrolein and formaldehyde which recommend the use of reagent-coated adsorbent tubes to collect the aldehydes as stable derivatives. The formaldehyde sampling tubes contain Chromosorb 102 adsorbent coated with N-benzylethanolamine (BEA) which reacts with formaldehyde vapor to form a stable oxazolidine compound. The acrolein sampling tubes contain XAD-2 adsorbent coated with 2-(hydroxymethyl)piperidine (2-HMP) which reacts with acrolein vapor to form a different, stable oxazolidine derivative. Acrolein does not appear to react with BEA to give a suitable reaction product. Therefore, the formaldehyde procedure cannot provide a common method for both aldehydes. However, formaldehyde does react with 2-HMP to form a very suitable reaction product. It is the quantitative reaction of acrolein and formaldehyde with 2-HMP that provides the basis for this evaluation.

This sampling and analytical procedure is very similar to the method recommended by NIOSH for acrolein. Some changes in the NIOSH methodology were necessary to permit the simultaneous determination of both aldehydes and also to accommodate OSHA laboratory equipment and analytical techniques.

1.2 *Limit-defining parameters:* The analyte air concentrations reported in this method are based on the recommended air volume for each analyte collected separately and a desorption volume of 1 mL. The amounts are presented as acrolein and/or formaldehyde, even though the derivatives are the actual species analyzed.

1.2.1 *Detection limits of the analytical* ***procedure:*** The detection limit of the analytical procedure was 386 pg per injection for formaldehyde. This was the amount of analyte which gave a peak whose height was about five times the height of the peak given by the residual formaldehyde derivative in a typical blank front section of the recommended sampling tube.

1.2.2 ***Defection*** *limits of the overall* ***procedure:*** The detection limits of the overall procedure were 482 ng per sample (16 ppb or

20 μg/m³ for formaldehyde) This was the amount of analyte spiked on the sampling device which allowed recoveries approximately equal to the detection limit of the analytical procedure

1.2.3 *Reliable quantitation limits:* The reliable quantitation limit was 482 ng per sample (16 ppb or 20 μg/m³) for formaldehyde. These were the smallest amounts of analyte which could be quantitated within the limits of a recovery of at least 75% and a precision (±1.96 SD) of ±25% or better.

The reliable quantitation limit arid detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters.

1.2.4 *Sensitivity:* The sensitivity of the analytical procedure over concentration ranges representing 0.4 to 2 times the target concentration, based on the recommended air volumes, was 7,589 area units per μg/mL for formaldehyde. This value was determined from the slope of the calibration curve. The sensitivity may vary with the particular instrument used in the analysis.

1.2.5 *Recovery:* The recovery of formaldehyde from samples used in an IS-day storage test remained above 92% when the samples were stored at ambient temperature. These values were determined from regression lines which were calculated from the storage data. The recovery of the analyte from the collection device **must** be at least **78%** following storage.

1.2.6 *Precision (analytical method only):* The pooled coefficient of variation obtained from replicate determinations of analytical standards over the range of 0.4 to 2 times the target concentration was 0.0052 for formaldehyde (Section 4.3).

1.2.7 *Precision (overall procedure):* The precision at the 95% confidence level for the ambient temperature storage tests was 114.3% for formaldehyde. lhese values each include an additional ±5% for sampling error. The overall procedure must provide results at the target concentrations that are 125% at the 95% confidence level.

1.2.8 *Reproducibility:* Samples collcted from controlled test atmospheres and a draft copy of this procedure were given to a chemist unassociated with this evaluation. The formaldehyde samples were analyzed following 15 days storage. The average recovery was 96.3% and the standard deviation was 1.7%.

1.3 *Advantages:*

1.3.1 The sampling and analytical procedures permit the simultaneous determination of acrolein and formaldehyde.

1.3.2 Samples are stable following storage at ambient temperature for at least 18 days.

1.4 *Disadvantages:* None.

2. Sampling Procedure

2.1 *Apparatus:*

2.1.1 Samples are collected by use of a personal sampling pump that can be calibrated to within ±5% of the recommended 0.1 Umin sampling rate with the sampling tube in line.

2.1.2 Samples arc collected with laboratory prepared sampling tubes. The sampling tubc is constructed of silane treated glass and is about 8-cm long. The ID is 4 mm and the OD is **6** mm. One end of the tube is tapered so that a glass wool end plug will hold the contents of the tube in place during sampling. The other end of the sampling tube is open to its full 4-mm ID to facilitate packing of the tube. Both ends of the tube arc fire-polished for safety. The tube is packed with a 75-mg backup section, located nearest the tapered end and a 150-mg sampling section of pretreated XAD-2 adsorbent which has been coated with 2-HMP. The two sections of coated adsorbent arc separated and retained with small plugs of silanized glass wool. Following packing, the sampling tubes are sealed with two 7/32 inch OD plastic end caps. Instructions for the pretreatment and the coating of XAD-2 adsorbent are presented in Section 4 of this method.

2.1.3 Sampling tubes, similar to those recommended in this method, are marketed by Supclco, Inc. These tubes were not available when this work was initiated; therefore, they were not evaluated.

2.2 *Reagents:* None required.

2.3 ***Technique:***

2.3.1 Properly label the sampling tubc before sampling and then remove the plastic end caps.

2.3.2 Attach the sampling tube to the pump using a section of flexible plastic tubing such that the large, front section of the sampling tube is exposed directly to the atmosphere. Do not place any tubing ahead of the sampling tube. The sampling tubc should be attached in the worker's breathing zone in a vertical manner such that it does not impede work performance.

2.3.3 After sampling for the appropriate time, remove the sampling tube from the pump and then seal the tube with plastic end caps.

2.3.4 Include at least one blank for each sampling set. The blank should be handled in the same manner as the samples with the exception that air is not drawn through it.

2.3.5 List any potential interferences on the sample data sheet.

2.4 ***Breakthrough.***

2.4.1 Breakthrough was defined as the relative amount of analyte found on a backup sample in relation *to* the total amount of analyte collected on the sampling train.

2.4.2 For formaldehyde collected from test atmospheres containing **6** times the PEL, the average **5%** breakthrough air volume was 41 L. The sampling rate was 0.1 L/min and the average mass of formaldehyde collected was 250 μg.

2.5 *Desorption Efficiency:* No desorption efficiency corrections are necessary to compute air sample results because analytical standards are prepared using coated adsorbent. Desorption efficiencies were determined, however, to investigate the recoveries of the analytes from the sampling device. The average recovery over the range of 0.4 to 2 times the target concentration, based on the recommended air volumes, was 96.2% for formaldehyde. Desorption efficiencies were essentially constant over the ranges studied.

2.6 *Recommended **Air** Volume and Sampling Rate:*

2.6.1 The recommended air volume for formaldehyde is 24 L.

2.6.2 The recornmended sampling rate is 0.1 L/min.

2.7 ***Interferences:***

2.7.1 Any collected substance that is capable of reacting 2-HMP and thereby depleting the derivatizing agent is a potential interference. Chemicals which contain a carhonyl group, such as acetone, may be capable or reacting with 2-HMP.

2.7.2 There are no other known interferences to the sampling method.

2.8 *Safety Precautions:*

2.8.1 Attach the sampling equipment to the worker in such a manner that it well not interfere with work performance or safety.

2.8.2 Follow all safety practices that apply to the work area being sampled.

3. Analytical Procedure

3.1 *Apparatus.*

3.1.1 **A** gas chromatograph (GC), equipped with a nitrogen selective detector. A Hewlett-Packard Model 5840A GC fitted with a nitrogen-phosphorus flame ionization detector (NPD) was

used for this evaluation. Injections were performed using a Hewlett-Packard Model 7671A automatic sampler.

3.1.2 A GC column capable of resolving the analytes from any interference. **A** 6 ft **x** 1/4 in OD (2mm ID) glass GC column containing 10% UCON 50-HB-5100 + 2% KOH on 80/100 mesh Chromosorb W-AW was used for the evaluation. Injections were performed on-column.

3.1.3 Vials, glass 2-mL with Teflon-lined caps.

3.1.4 Volumetric flasks, pipets, and syringes for preparing standards, making dilutions, and performing injections.

3.2 *Reagents:*

3.2.1 Toluene and dimethylformamide. Burdick and Jackson solvents were used in this evaluation.

3.2.2 Helium, hydrogen, and air, GC grade.

3.2.3 Formaldehyde, 37%, by weight, in water. Aldrich Chemical, ACS Reagent Grade formaldehyde was used in this evaluation.

3.2.4 Amberlite XAD-2 adsorbent coated with 2-(hydroxymethyl -- piperidine (2-HMP), 10% by weight (Section 4).

3.2.5 Desorbing solution with internal standard. This solution was prepared by adding 20 µL of dimethylformamide to 100 mL of toluene.

3.3 *Standard preparation:*

3.3.1 *Formaldehyde:* Prepare stock standards by diluting known volumes of 37% formaldehyde solution with methanol. A procedure to determine the formaldehyde content of these standards is presented in Section 4. A standard containing 7.7 mg/mL formaldehyde was prepared by diluting 1 mL of the 37% reagent to 50 mL with methanol.

3.3.2 It is recommended that analytical standards be prepared about 16 hours before the air samples are to he analyzed in order to ensure the complete reaction of the analytes with 2-MMP. However, rate studies have shown the reaction to be greater than 95% complete after 4 hours. Therefore, one or two standards can be analyzed after this reduced time if sample results are outside the concentration range of the prepared standards.

3.3.3 Place 150-mg portions of coated XAD-2 adsorbent, from the same lot number as used to collect the air samples, into each of several glass 2-mL vials. Seal each vial with a Teflon-lined cap.

3.3.4 Prepare fresh analytical standards each day by injecting appropriate amounts of the diluted analyte directly onto 150-mg portions of coated adsorbent. It is permissible to inject both acrolein and formaldehyde on the same adsorbent portion. Allow the standards to stand at room temperature. A standard, approximately the target levels. was prepared by injecting 11 µL of the acrolein and 12 µL of the formaldehyde stock standards unto a single coated XAD-2 adsorbent portion.

3.3.5 Prepare a sufficient number of standards to generate the calibration curves. Analytical standard concentrations should bracket sample concentrations. Thus, if samples arc not in the concentration range of the prepared standards, additional standards must be prepared to determine detector response.

3.3.7 Desorb the standards in the same manner as the samples following the 16-hour reaction time.

3.4 *Sample preparation:*

3.4.1 Transfer the 150-mg section of the sampling tube to a 2-mL vial. Place the 75-mg section in a separate vial. If the glass wool plugs contain a significant number of adsorbent beads, place them with the appropriate sampling tube section. Discard the glass wool plugs if they do not contain a significant number of adsorbent beads.

3.4.2 Add 1 mL ofdesorbing solution to each vial.

3.4.3 Seal the vials with Teflon-lined caps and then allow them to desorb for one hour. Shake the vials by hand with vigorous force several times during the desorption time.

3.4.4 Save the used sampling tubes to be cleaned and recycled.

3.5 *Analysis:*

3.5.1 GC *Conditions*

Column Temperature:

Bi-level temperature program -- First level: 100 to 140 ° C at 4 ° C/min following completion of the first level.

Second level: 140 to 180 ° C at 20 ° C/min following completion of the first level.

Isothermal period: Hold column at 180 ° C until the recorder pen returns to baseline (usually about 25 min after injection).

Injector ***temperature:*** 180 ° C

Helium flow rate: 30 mL/min (detector response will be reduced if nitrogen is substituted for helium carrier gas).

Injection volume: 0.8 µL

GC column: Six-ft **x** 1/4-in OD (2 mm ID) glass GC column containing 10% UCON 50-HB-5100+2% KOH on 80/100 Chromosorb W-AW.

NPD conditions:

Hydrogen flow rate: 3 mL/min

Air flow rate: 50 mL/min

Detector temperature: 275 ° C

3.5.2 *Chromatogram:* For an example of a typical chromatogram, see Figure 4.11 in OSHA Method 52.

3.5.3 Use a suitable method, such as electronic integration, to measure detector response.

3.5.4 Use an internal standard method to prepare the calibration curve with several standard solutions of different concentrations. Prepare the calibration curve daily. Program the integrator to report results in µg/mL.

3.5.5 Bracket sample concentrations with standards.

3.6 ***Interferences*** *(Analytical)*

3.6.1 Any compound with the same general retention time as the analytes and which also gives a detector response is a potential interference. Possible interferences should be reported to the laboratory with submitted samples by the industrial hygienist.

3.6.2 GC parameters (temperature, column, etc.) may be changed to circumvent interferences.

3.6.3 A useful means of structure designation is GC/MS. It is recommended this procedure be used to confirm samples whenever possible.

3.6.4 The coated adsorbent usually contains a very small amount of residual formaldehyde derivative (Section 4.8).

3.7 *Calculations:*

3.7.1 Results are obtained by use of calibration curves. Calibration curves are prepared by plotting detector response against concentration for each standard. The best line through the data points is determined by curve fining.

3.7.2 The concentration, in µg/mL, for a particular sample is determined by comparing its detector response to the calibration curve. If either of the analytes is found on the backup section, it is added to the amount found on the front section. Blank corrections should be performed before adding the results together.

3.7.3 The acrolein and/or formaldehyde air concentration can be expressed using the following equation:

mg/m^3=(A)(B)/C

where A=µg/mL from 3.7.2. B=desorption volume, and C=L of air sampled.

No desorption efficiency corrections are required

3.7.4 The following equation can be used to convert results in mg/m^3 to ppm.

ppm=(mg/m^3)(24.45)/MW

where mg/m^3=result from 3.7.3, 24.45=molar volume of an ideal gas at 760 mm Hg and 25 ° C. MW=molecular weight (30.0).

4. Backup Data

4.1 Backup data on detection limits, reliable quantitation limits. sensitivity and precision of the analytical method, breakthrough; dcsorption efficiency, storage, reproducibility, and generation of test atmospheres are available in OSHA Method 52, developed by the Organics Methods Evaluation Branch, OSHA Analytical Laboratory, Salt Lake City, Utah

4.2 ***Procedure to Coat XAD-2 Adsorbent with 2-HMP:***

4.2.1 ***Apparatus:*** Soxhlct extraction apparatus, rotary evaporation apparatus, vacuum dessicator, 1-L vacuum flask, I-L round-bottomed evaporative flask, I-L Erlenmeyer flask, 250-mL Buchner funnel with a coarse fritted disc, etc.

4.2.2 *Reagents:*

4.2.2.1 Methanol, isooctane, and toluene.

4.2.2.2 2-(Hydroxymethyl)piperidine.

4.2.2.3 Amberlite XAD-2 non-ionic polymeric adsorbent, 20 to 60 mesh, Aldrich Chemical XAD-2 was used in this evaluation.

4.2.3 ***Procedure:*** Weigh 125 g of crude XAD-2 adsorbent into a I-L Erlenmeyer flask. Add about 200 mL of water to the flask and then swirl the mixture to wash the adsorbent. Discard any adsorbent that floats to the top of the water and then filter the mixture using a fritted Buchner funnel. Air dry the adsorbent for 2 minutes. Transfer the adsorbent back to the Erlenmeyer flask and then add about 200 mL of methanol to the flask. Swirl and then filter the mixture as before. Transfer the washed adsorbent back to the Erlenmeyer flask and then add about 200 mL of methanol to the flask. Swirl and then filter the mixture as before. Transfer the washed adsorbent to a I-L round-bottomed evaporative flask, add 13 g of 2-HMP and then 200 mL of methanol, swirl the mixture and then allow if to stand for one hour. Remove the methanol **at** about 40 ° C and reduced pressure using a rotary evaporation apparatus. Transfer the coated adsorbent to a suitable container and store it in a vacuum desiccator at room temperature overnight. Transfer the coated adsorbent **to** a Soxhlet extractor and then extract the material with toluene for about 24 hours. Discard the contaminated toluene, add methanol in its place and then continue the Soxhlet extraction for an additional 4 hours. Transfer the adsorbent to a weighted I-L round-hottom evaporative flask and remove the methanol using the rotary evaporation apparatus. Determine the weight of the adsorbent and then add an amount of 2-HMP, which is 10% by weight of the adsorbent. Add 200 mL of methanol and then swirl the mixture. Allow the mixture to stand for one hour. Remove the methanol by rotary evaporation. Transfer the coated adsorbent to a suitable container and store it in a vacuum desiccator until all traces of solvents arc gone. Typically, this will take 2-3 days. The coated adsorbent should be protected from contamination. XAD-2 adsorbent treated in this manner will probably not contain residual acrolein derivative. However, this adsorbent will often contain residual formaldehyde derivative levels of about 0.1 µg per 150 mg of adsorbent. If the blank values for a batch of coated adsorbent are too high, then the batch should be returned to the Soxhlet extractor, extracted with toluene again and then recoated. This process can be repeated until the desired blank levels are attained.

The coated adsorbent is now ready to be packed into sampling tubes. The sampling tubes should be stored in a sealed container to prevent contamination. Sampling tubes should be stored in the dark at room temperature. The sampling tubes should be segregated by coated adsorbent lot number. A sufficient amount of each lot number of coated adsorbent should be retained to prepare analytical standards for use with air samples from that lot number.

4.3 ***A Procedure to Determine Formaldehyde by Acid Titration:*** Standardize the 0.1 N HCI solution using sodium carbonate and methyl orange indicator.

Place 50 mL of 0.1 M sodium sulfite and three drops of thymophthalein indicator into a 250-mL Erlenmeyer flask. Titrate the contents of the flask to a colorless endpoint with 0.1 N HCI (usually one or two drops is sufficient). Transfer 10 mL of the formaldehyde/methanol solution (prepared in 3.3.1) into the same flask and titrate the mixture with 0.1 N HCl, again, to a colorless endpoint. The formaldehyde concentration of the standard may be calculated by the following equation:

$$\text{Formaldehyde, mg/mL} = \frac{\text{acid titer} \times \text{acid normality} \times 30.0}{\text{mL of sample}}$$

This method is based on the quantitative liberation of sodium hydroxide when formaldehyde reacts with sodium sulfite to form the formaldehyde-bisulfite addition product. The volume of sample may be varied depending on the formaldehyde content but the solution to be titrated must contain excess sodium sulfite. Formaldehyde solutions containing substantial amounts of acid or base must be neutralized before analysis.

APPENDIX C TO §1910.1048 – MEDICAL SURVEILLANCE -- FORMALDEHYDE

I. Health Hazards

The occupational health hazards of formaldehyde are primarily due to its toxic effects after inhalation, after direct contact with the skin or eyes by formaldehyde in liquid or vapor form, and after ingestion.

II. Toxicology

A. Acute Effects **of** Exposure

1. *Inhalation (breathing):* Formaldehyde is highly irritating to the upper airways. The concentration of formaldehyde that is immediately dangerous to life and health is 100 ppm. Concentrations above 50 ppm can cause severe pulmonary reactions within minutes. These include pulmonary edema, pneumonia, and bronchial irritation which can result in death. Concentrations above 5 ppm readily cause lower airway irritation characterized by cough, chest tightness and wheezing. There is some controversy regarding whether formaldehyde gas is a pulmonary sensitizer which can cause occupational asthma in a previously normal individual. Formaldehyde can produce symptoms of bronchial asthma in humans. The mechanism may be either sensitization of the individual by exposure to formaldehyde or direct irritation by formaldehyde in persons with pre-existing asthma. Upper airway irritation is the most common respiratory effect reported by workers and can occur over a wide range of concentrations, most frequently above 1 ppm. However, airway irritation has occurred in some workers with exposures to formaldehyde as low as 0.1 ppm. Symptoms of upper airway irritation include dry or sore throat, itching and burning sensations of the nose, and nasal congestion. Tolerance to this level of exposure may develop within 1-2 hours. This tolerance can permit workers remaining in an environment of gradually increasing formaldehyde concentrations to be unaware of their increasingly hazardous exposure.

2. *Eye contact:* Concentrations of formaldehyde between 0.05 ppm and 0.5 ppm produce a sensation of irritation in the eyes with burning, itching, redness, and tearing. Increased rate of blinking and eye closure generally protects the eye from damage at these low levels, but these protective mechanisms may interfere with some workers' work abilities. Tolerance can occur in workers continuously exposed to concentrations of formaldehyde in this range. Accidental splash injuries of human eyes to aqueous

solutions of formaldchyde (formalin) have resulted in a wide range of ocular injuries including corneal opacities and blindness. The severity of the reactions have been directly dependent on the concentration of formaldehyde in solution and the amount of time lapsed bcforc emergency and medical intervention.

3. ***Skin** contact:* Exposure to formaldehyde solutions can cause irritation of the skin and allergic contact dermatitis. These skin diseases and disorders can occur at levels well bclow those encountered by many formaldehyde workers. Symptoms include erythema, edema, and vesiculation or hives. Exposure to liquid formalin or formaldehyde vapor can provoke skin reactions in sensitized individuals even when airborne concentrations of formaldehyde are well below 1 ppm.

4. *Ingestion:* Ingestion of as little as 30 ml of a 37 percent solution of formaldehyde (formalin) can result in death. Gastrointestinal toxicity after ingestion is most severe in the stomach and results in symptoms which can include nausea, vomiting, and servere abdominal pain. Diverse damage to other organ systems including the liver, kidney, spleen, pancreas, brain, and central nervous systems can occur from the acute response to ingestion of formaldehyde.

B. Chronic Effects of Exposure

Long term exposure to formaldehyde has been shown to be associated with an increased risk of cancer of the nose and accessory sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer in humans. Animal experiments provide conclusive evidence of a causal relationship between nasal cancer in rats and formaldehyde exposure. Concordant evidence of carcinogenicity includes DNA binding, genotoxicity in short-term tests, and cytotoxic changes in the cells of the target organ suggesting both preneoplastic changes and a dose-rate effect. Formaldehyde is a complete carcinogen and appears *to* exert an effect on at least two stages of the carcinogenic process.

111. Surveillance considerations

A. **History**

1. *Medical and occupational hisrory:* Along with its acute irritative effects, formaldehyde can cause allergic sensitization and cancer. One of the goals of the work history should he to elicit information on any prior or additional exposure to formaldehyde in either the occupational or the non-occupational setting.

2. *Respiratory history:* As noted above, formaldehyde has recognized properties as an airway irritant and has been reported by some authors as a cause of occupational asthma. In addition, formaldehyde has been associated with cancer of the entire respiratory system of humans. For these reasons, it is appropriate to include a comprehensive review of the respiratory system in the medical history. Components of this history might include questions regarding dyspnca on exertion, shortness of breath, chronic airway complaints, hyperreactive airway disease, rhinitis, bronchitis, bronchiolitis, asthma, emphysema, respiratory allergic reaction, or other preexisting pulmonary disease.

In addition, generalized airway hypersensitivity can result from exposures to a single sensitizing agent. The examiner should, therefore, elicit any prior history of exposure to pulmonary irritants, and any short- or long-term effects of that exposure.

Smoking is known to decrease mucociliary clearance of materials deposited during respiration in the nose and upper airways. This may increase a worker's exposure to inhaled materials such as formaldehyde vapor. In addition, smoking is a potential confounding factor in the investigation of any chronic respiratory disease, including cancer. For these reasons, a complete smoking history should be obtained.

3. *Skin Disorders* Bccause of the dermal irritant and sensitizing effects of formaldehyde, a history of skin disorders should be obtained. Such a history might include the existence of skin irritation, previously documented skin sensitivity, and othcr dermatologic disorders. Previous exposure to formaldehyde and other dermal sensitizers should be recorded.

4. *History of atopic or allergic diseases:* Since formaldehyde can cause allergic sensitization of the skin and airways, it might be useful to identify individuals with prior allergen sensitization. A history of atopic disease and allergies to formaldehyde or any other substances should also be obtained. It is not definitely known at this time whether atopic diseases and allergies to formaldehyde or any othcr substances should also he obtained. Also it is not definitely known at this time whether atopic individuals have a greater propensity to develop formaldehyde sensitivity than the general population, but identification of these individuals may be useful for ongoing surveillance.

5. ***Use** of disease questionnaires:* Comparison of the results from previous years with present results provides the best method for detecting a general deterioration in health when toxic signs and symptoms are measured subjectively In this way recall bias does not affect the results of the analysis Consequently, OSHA has determined that the findings of the medical and work histories should be kept in a standardized form for comparison of the year-to-year results.

B. Physical Examination

1. *Mucosa of eyes and airways:* Because of the irritant effects of formaldehyde, the examining physician should he alert to evidence of this irritation. A speculum examination of the nasal mucosa may be helpful in assessing possible irritation and cytotoxic changes, as may be indirect inspection of the posterior pharynx by mirror.

2. *Pulmonary **system:*** A conventional respiratory examination, including inspection of the thorax and auscultation and percussion of the lung fields should be performed as part of the periodic medical examination. Although routine pulmonary function testing is only required by the standard once every year for persons who are exposed over the TWA concentration limit, these tests have an obvious value in investigating possible respiratory dysfunction and should be used wherever deemed appropriate by the physician. In cases of alleged formaldehyde-induccd airway disease, other possible causes of pulmonary disfunction (including exposures to other substances) should be ruled out. A chest radiograph may be useful in these circumstances. In cases of suspected airway hypersensitivity or allergy, it may be appropriate to use bronchial challenge testing with formaldehyde or methacholine to determine the nature of the disorder. Such testing should be performed by or under the supervision of a physician experienced in the procedures involved.

3. *Skin:* The physician should be alert to evidence of dermal irritation of sensitization, including reddening and inflammation, urticaria, blistering, scaling, formation of skin fissures, or other symptoms. Since the integrity of the skin barrier is compromised by other dermal diseases, the presence of such disease should be noted. Skin sensitivity testing carries with it some risk of inducing sensitivity, and therefore, skin testing for formaldehyde sensitivity should not he used as a routine screening test. Sensitivity testing may be indicated in the investigation of a suspected existing sensitivity. Guidelines for such testing have been prepared by the North American Contact Dermatitis Group.

C. Additional Examinations or Tests

The physician may deem it necessary *to* perform other medical examinations or tests as indicated. The standard provides a mechanism whereby these additional investigations are covered under the standard for occupational exposure to formaldehyde.

D. Emergencies

The examination of workers exposed in an emergency should be dircctcd at the organ systems most likely to be affected. Much of the content of the examination will be similar to the periodic examination unless the patient has received a severe acute exposure requiring immediate attention to prevent serious consequences. If a severe ovcrcxposure requiring medical intervention or hospitalization has occurred, the physician must be alert to the possibility of delayed symptoms. Followup nonroutine examinations may be necessary to assure the patient's well-being.

E. Employer Obligations

The employer is required to provide the physician with the following information: A copy of this standard and appendices A, C, D, and E; a description of the affected employee's duties as they relate to his or her exposure concentration; an estimate of the employee's exposure including duration (*e.g.* 15 hr/wk, three 8-hour shifts, full-time); a description of any personal protective equipment, including respirators, used by the employee; and the results of any previous medical determinations for the affected employee related to formaldehyde exposure to the extent that this information is within the employer's control.

F. Physician's Obligations

The standard requires the employer to obtain a written statement from the physician. This statement must contain the physician's opinion as to whether the employee has any medical condition which would place him or her at increased risk of impaired health from exposure to formaldehyde or use of respirators, as appropriate. The physician must also state his opinion regarding any restrictions that should be placed on the employee's exposure to formaldehyde or upon the use of protective clothing or equipment such as respirators. If the employee wears a respirator as a result of his or her exposure to formaldehyde, the physician's opinion must also contain a statement regarding the suitability of the employee to wear the type of respirator assigned. Finally, the physician must inform the employer that the employee has been told the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion is not to contain any information on specific findings or diagnoses unrelated to occupational exposure to formaldehyde.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employcr with a medical basis to assist the employer in placing employees initially, in assuring that their health is not being inpaired by formaldehyde, and to assess the employee's ability to use any required protective equipment.

APPENDIX D TO §1910.1048 – NONMANDATORY MEDICAL DISEASE QUESTIONNAIRE

A. Identification

Plant Name _____
Date _____
Employee Name _____
S.S. _____
Job Title _____
Birthdate : _____
Age : _____
Sex: _____
Height : _____
Weight _____

B. Medical History

1. Have you ever been in the hospital as a patient?
Yes [ ] No [ ] If yes, what kind of problem were you having? _____
2. Have you ever had any kind of operation'?
Yes [ ] No [ ] If yes, what kind? _____
3. Do you take any kind of medicine regularly?
Yes [ ] No [ ] If yes, what kind? _____
4. Are you allergic to any drugs, foods, or chemicals?
Yes [ ] No [ ] If yes, what kind of allergy is it? _____ What causes the allergy? _____
5. Have you ever been told that you have asthma, hayfever, or sinusitis?
Yes [ ] No [ ]
6. Have you ever been told that you have emphysema, bronchitis, or any other respiratory problems?
Yes [ ] No [ ]
7. Have you ever been told you bad hepatitis'?
Yes [ ] No [ ]
8. Have you ever been told that you had cirrhosis'?
Yes [ ] No [ ]
9. Have you ever been told that you had cancer?
Yes [ ] No [ ]
10. Have you ever had arthritis or joint pain?
Yes [ ] No [ ]
11. Have you ever been told that you had high blood pressure'?
Yes [ ] No [ ]
12. Have you ever had a heart attack or heart trouble'?
Yes [ ] No [ ]

B-1. Medical History Update

1. Have you been in the hospital as a patient any time within the past year?
Yes [ ] No [ ] If so, for what condition? _____
2. Have you been under the care of a physician during the past year?
Yes [ ] No [ ] If so, for what condition? _____
3. Is there any change in your breathing since last year?
Yes [ ] No [ ] Better? _____ Worse? _____ No change? _____ If change, do you know why? _____
4. Is your general health different this year from last year?
Yes [ ] No [ ] If different, in what way? _____
5. Have you in the past year or are you now taking any medication on a regular basis?
Yes [ ] No [ ] Name Rx _____ Condition being treated _____

C. Occupational History

1. How long have you worked for your present employer? _____
2. What jobs have you held with this employer? Include job title and length of time in each job. _____
3. In each of these jobs, how many hours a day were you exposed to chemicals? _____
4. What chemicals have you worked with most of the time'? _____
5. Have you ever noticed any type of skin rash you feel was related to your work?
Yes [ ] No [ ]
6. Have you ever noticed that any kind of chemical makes you cough?
Yes [ ] No [ ];
Wheeze?
Yes [ ] No [ ]
Become short of breath or cause your chest to become tight?
Yes [ ] No [ ]
7. Are you exposed to any dust or chemicals at home?
Yes [ ] No [ ] If yes, explain: _____
8. In other jobs, have you ever had exposure to:
Wood dust?
Yes [ ] No [ ]
Nickel or chromium?
Yes [ ] No [ ]
Silica (foundry, sand blasting)?
Yes [ ] No [ ]
Arsenic or asbestos?
Yes [ ] No [ ]
Organic solvents?
Yes [ ] No [ ]
Urethane foams?
Yes [ ] No [ ]

C-1. Occupational History Update

1. Arc vou working on the same iob this vear as vou were last year'?
Yes [ ] No [ ] If not, how has your job changed? _____
2. What chemicals are you exposed to on your job? _____
3. How many hours a day are you exposed to chemicals? _____
4. Have you noticed any skin rash within the past year you feel was related to your work?
Yes [ ] No [ ] If so, explain circumstances: _____
5. Have you noticed that any chemical makes you cough, be short of breath, or wheeze'?
Yes [ ] No [ ] If so, can you identify it? _____

D. Miscellaneous

1. Do you smoke?
Yes [ ] No [ ] If so, how much and for how long?_____
Pipe_____ Cigars_____ Cigarettes_____
2. Do you drink alcohol in any form?
Yes [ ] No [ ] If so, how much, how long, and how oftcn'?_____
3. Do you wear glasses or contact lenscs'?
Yes [ ] No [ ]
4 Do you get any physical exercise other than that required to do your job?
Yes [ ] No [ ] If so, explain:_____
5. Do you have any hobbies or "side jobs" that require you to use chemicals, such as furniturc stripping, sand blasting, insulation or manufacture of urethane foam, furniture, etc?
Yes [ ] No [ ]
If so, please describe, giving type of business or hobby, chemicals used and length of exposures _____

E. Symptoms Questionnaire

1 Do you ever have any shortness of breath?
Yes [ ] No [ ]
If yes, do you have to rest after climbing several flights of stairs?
Yes [ ] No [ ]
If yes, if you walk on the level with people your own age, do you walk slower than they do?
Yes [ ] No [1
If yes, if you walk slower than a normal pace, do you have to limit the distance that you walk?
Yes [ ] No [1
If yes, do you have to stop and rest while bathing or dressing?
Yes [ ] No [ ]
2. Do you cough as much as three months out of the year?
Yes [ ] No [ ]
If yes, have you had this cough for more than two years?
Yes [ ] No [ ]
If yes, do you ever cough anything up from chest?
Yes [ ] No [ ]
3. Do you ever have a feeling of smothering, unable to take a deep breath, or tightness in your chest?
Yes [ ] No [ ]
If yes, do you notice that this on any particular day of the week?
Yes [ ] No [ ]
If yes, what day or the week?
Yes [ ] No [ ]
If yes, do you notice that this occurs at any particular place?
Yes [ ] No [1
If yes, do you noticc that this is worse after you have returned to work after being off for several days'?
Yes [ ] No [ ]
4. Have you ever noticed any wheezing in your chest?
Yes [ ] No [ ]
If yes, is this only with colds or othcr infections?
Yes [ ] No [ ]
Is this caused by exposure to any kind of dust or othcr material?
Yes [ ] No [ ] If yes, what **kind?**_____
5. Have you noticed any burning, tearing, or rcdncss of your eyes when you arc at work?
Yes [ ] No [ ] If so, explain circumstances: _____
6. Have you noticed anv sore or burning throat or itchv or burning nose when you are at wbrk?
Yes [ ] No [ ] If so, explain circumstances: _____
7. Have you noticed any stuffiness or dryness of your nose?
Yes [ ] No [ ]
8. Do you ever have swelling ofthe eyelids or face'?
Yes [ ] No [ ]
9. Have you ever been jaundiced?
Yes [ ] No [ ]
If yes, was this accompanied by any pain'?
Yes [ ] No [ ]
10. Have you ever had a tendency to bruise easily or bleed excessively?
Yes [ ] No [ ]
11. Do you have frequent headaches that are not relieved by aspirin or tylenol?
Yes [ ] No [ ]
If yes, do they occur at any particular time of the day or week?
Yes [ ] No [ ] If yes, when do thcy occur?_____
12. Do you have frequent episodes ofnervousness or irritability?
Yes 11 No [ ]
13. Do you tend to have trouble concentrating or remembering?
Yes [ ] No [ ]
14. Do you ever feel dizzy, light-headed, excessively drowsy or like you have been drugged?
Yes [ ] No [ ]
15. Docs your vision ever become blurred?
Yes [ ] No [ ]
16. Do you have numbness or tingling of the hands or feet or other parts of your body?
Yes [1 No [1
17. Have you ever had chronic weakness or fatigue?
Yes [ ] No [ ]
18. Have you ever had any swelling of vour feet or ankles to the point where you could not wear your shoes?
Yes [ ] No [ ]
19. Are you bothered by heartburn or indigestion?
Yes [1 No [ ]
20. Do you ever have itching, dryness, or peeling and scaling of the hands'?
Yes [ ] No [1
21. Do you ever have **a** burning sensation in the hands, or reddening ofthe skin?
Yes [ ] No [ ]
22. Do you ever have cracking or bleeding of the skin on your hands?
Yes [ ] No [1
23. Are you under a physician's care?
Yes [ ] No [ ] If yes, for what are you being treated?_____
24. Do you have any physical complaints today'?
Yes [ ] No [ ] If yes, explain?_____
25. Do you have other health conditions not covered by these questions?
Yes [ ] No [ ] If yes, explain:_____

[57 FR 22310, May 27, 1992, 57 FR 27161, June 18, 1992, 61 FR 5508, Feb 13, 1996; 63 FR 1292, Jan 8, 1998; 63 FR 20099, Apr 23, 1998]

TITLE 29

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

§1910.1200 HAZARD COMMUNICATION

Sec. 1910.1200 Hazard communication ***(a) Purpose.*** (1) The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training.

(2) This occupational safety and health standard is intended to address comprehensively the issue of evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legal requirements of a state, or political subdivision of a state, pertaining to this subject. Evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, may include, for example, but is not limited to, provisions for: developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers; and development and implementation of employee training programs regarding hazards of chemicals and protective measures. Under section 18 of the Act, no state or political subdivision of a state may adopt or enforce, through any court or agency, any requirement relating to the issue addressed by this Federal standard, except pursuant to a Federally-approved state plan.

(b) Scope and application. (1) This section requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers. (Employers who do not produce or import chemicals need only focus on those parts of this rule that deal with establishing a workplace program and communicating information to their workers. Appendix E of this section is a general guide for such employers to help them determine their compliance obligations under the rule.)

(2) This section applies to any chemical which is known to he present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

(3) This section applies to laboratories only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible during each work shift to laboratory employees when they are in their work areas;

(iii) Employers shall ensure that laboratory employees are provided information and training in accordance with paragraph (h) of this section; except for the location and availability of the written hazard communication program under paragraph (h)(2)(iii) of this section; and,

(iv) Laboratory employers that ship hazardous chemicals are considered to be either a chemical manufacturer or a distributor under this rule, and thus must ensure that any containers of hazardous chemicals leaving the laboratory are labeled in accordance with paragraph (f)(1) of this section, and that a material safety data sheet is provided to distributors and other employers in accordance with paragraphs (g)(6) and (g)(7) of this section.

(4) In work operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), this section applies to these operations only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals arc not removed or defaced;

(ii) Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet as soon as possible for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

(iii) Employers shall ensure that employees are provided with information and training in accordance with paragraph (h) of this section (except for the location and availability of the written hazard communication program under paragraph (h)(2)(iii) **of** this section), to the extent necessary to protect them in the event of a spill or leak of **a** hazardous chemical from a sealed container.

(5) This section does not require labeling of the following chemicals:

(i) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 13G et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(ii) Any chemical substance or mixture as such terms are defined in the Toxic Substances Control Act (15 U.S.C. **2601** et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency.

(iii) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product, including materials intended for use as ingredients in such products (e.g. flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Virus-Serum-Toxin Act of **1913** (21 U.S.C. 151 et seq.), and regulations issued under those Acts, when they are subject to the labeling requirements under those Acts by either the Food and Drug Administration or the Department of Agriculture;

(iv) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for non-industrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms;

(v) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 **U.S.C.** 2051 et scq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts bv the Consumer Product Safety Commission; and,

(vi) Agricultural or vegetable seed treated with pesticides and labeled in accordance with the Federal Seed Act (7 U.S.C. 1551 et seq.) and the labeling regulations issued under that Act by the Department of Agriculture

(6) This section does not apply to

(i) Any hatardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U S C 6901 et seq),

when subject to regulations issued under that Act by the Environmental Protection Agency;

(ii) Any hazardous substance as such term is defincd by the Comprehensive Environmental Response, Compensation and Liability ACT (CERCLA) (42 U.S.C. 9601 et seq.) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with Environmental Protection Agency regulations;

(iii) Tobacco or tobacco products;

(iv) Wood or wood products, including lumber which will not bc processed, where the chemical manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility (wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut, generating dust, are not exempted);

(v) Articles (as that term is defined in paragraph (c) of this section);

(vi) Food or alcoholic beverages which are sold, used, or prepared in a retail establishment (such as a grocery store, restaurant, or drinking place), and foods intended for personal consumption by employees while in the workplace;

(vii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), when it is in solid, final form for direct administration to the patient (e.g., tablets or pills); drugs which are packaged by the chemical manufacturer for sale to consumers in a retail establishment (e.g., over-the-counter drugs); and drugs intended for personal consumption by employees while in the workplace (e.g., first aid supplies);

(viii) Cosmetics which are packaged for sale to consumers in a retail establishment, and cosmetics intended for personal consumption by employees while in the workplace;

(ix) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended;

(x) Nuisance particulates where the chemical manufacturer or importer can establish that they do not pose any physical or health hazard covered under this section;

(xi) Ionizing and non-ionizing radiation; and,

(xii) Biological hazards.

(c) Definitions. ***Article*** means a manufactured item other than a fluid or particle:

(i) which is formed lo a specific shape or design during manufacture;

(ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and

(iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical (as determined under paragraph (d) of this section), and does not pose a physical hazard or health risk to employees.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Chemical means any element, chemical compound or mixture of elements and/or compounds

Chemical manufacturer means an employer with a workplace where chemical(s) are produced for use or distribution.

Chemical name means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

Combustible liquid mcans any liquid having a flashpoint at or above 100 deg.F (37.8 deg.C), but below 200 deg.F (93.3 deg.C), except any mixture having components with flashpoints of 200 deg.F (93.3 deg.C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

Commercial account means an arrangement whereby a retail distributor sells hazardous chemicals to an employer, generally in large quantities over time and/or at costs that are below the regular retail price.

Common name means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

Compressed gas means: (i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 deg.F (21.1 deg.C); or

(ii) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 deg.F (54.4 deg.C) regardless of the pressure at 70 deg.F (21.1 deg.C); or (iii) A liquid having a vapor pressure exceeding 40 psi at 100 deg.F (37.8 deg.C) as determined by ASTM D-323-72.

Container means any bag, barrel, bottle, box, can, cylinder, drum; reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

Designated representative means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

Director mcans the Director, National Institute for Occupational Safety and Health, U S Department of Health and Human Services, or designee.

Distributor means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

Employee means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered.

Employer means a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor.

Explosive means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

Exposure or exposed means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard, and includes potential (e.g. accidental or possible) exposure. "Subjected in terms of health hazards includes any route of entry (e.g. inhalation, ingestion, skin contact or absorption.)

Flammable means a chemical that falls into one of the following categories:

(i) Aerosol, flammable means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) ***Gus, flammable*** means:(A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(iii) ***Liquid, flammable*** means any liquid having a flashpoint below 100 deg.F (37.8 deg.C), except any mixture having components with flashpoints of 100 deg.F (37.8 deg.C) or higher, the total of which make up 99 perccnt or more of the total volume of the mixture.

(iv) ***Solid, flammable*** means a solid, other than a blasting agent or explosive as defined in Sec. 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and bums with a self-

sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flashpoint means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed ***Tester*** (See American National Standard Method of Test ior Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56- 79)) for liquids with **a** viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100 deg.F (37.8 deg.C), that do not contain suspended solids and do not have a tendency **to** form a surface film under test; or

(ii) Pensky-Martens Closed ***Tester*** (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7- 1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 deg.F (37.8 deg.C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78)). Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

Foreseeable emergency means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

Hazardous chemical means any chemical which is a physical hazard or a health hazard.

Hazard warning means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s). (See the definitions for "physical hazard and "health hazard to determine the hazards which must be covered.)

Health hazard means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopvietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix **A** provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

Identity means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

Immediate use means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

Importer means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

Label means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

Material safety data sheet (MSDS) means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section.

Mixture means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

Organicperoxide means an organic compound that contains the bivalent -0-0-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

Oxidizer means a chemical other than a blasting agent or explosive as defined in Sec. 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

Physical hazard means a chemical for which there is scientifically valid evidence that it is **a** combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

Produce means to manufacture, process, formulate, blend, extract, generate, emit, or repackage.

Pyrophoric means a chemical that will ignite spontaneously in air at a temperature of 130 deg.F (54.4 deg.C) or below.

Responsible parry means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

Specific chemical identity means the chemical name, Chemical Abshacts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

Trade secret means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D sets out the criteria to be used in evaluating trade secrets.

Unstable (reactive) means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-rcactive under conditions ofshocks, pressure or temperature.

Use means to package, handle, react, emit, extract, generate as a byproduct, or transfer.

Wafer-reactive means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

Work area means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

Workplace means an establishment, job site, or project, at one geographical location containing one or more work areas.

(d) Hazard determination. (1**j** Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement.

(2) Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall bc consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The chemical manufacturer, importer or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

(i) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or,

(ii) ***Threshold*** *Limit Values for Chemical Substances and Physical* ***Agents*** *in the* ***Work*** *Environment,* American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition). The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this standard

(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(i) National Toxicology Program (NTP), *Annual Report on Carcinogens* (latest edition);

(ii) International Agency for Research on Cancer (IARC) Monographs (latest editions); or

(iii) 29 CFR part 1910. subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

Note: *The Registry of Toxic Effects of Chemical Substances* published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen.

(5) The chemical manufacturer, importer or employer shall determine the hazards ofmixtures of chemicals as follows:

(i) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(ii) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section;

(iii) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and,

(iv) If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The written procedures are to he made available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director. The written description may be incorporated into the written hazard communication program required under paragraph (e) of this section.

(e) Written hazard communication program. (1) Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and,

(ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.

(2) ***Multi-employer workplaces.*** Employers who produce, use, or store hazardous chemicals at a workplace in such a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor working on-site) shall additionally ensure that the hazard communication programs developed and implemented under this paragraph (e) include the following:

(i) The methods the employer will use to provide the other employer(s) on-site access to material safety data sheets for each hazardous chemical the other employer(s)' employees may be exposed to while working;

(ii) The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

(iii) The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

(3) The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in this paragraph (e).

(4) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director, in accordance with the requirements of 29 CFR 1910.20 (e).

(5) Where employees must travel between workplaces during a work shift, i.e., their work is carried out at more than one geographical location, the written hazard communication program may be kept at the primary workplace facility.

(f) Labels and other forms of warning. (1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s);

(ii) Appropriate hazard warnings; and

(iii) Name and address of the chemical manufacturer, importer, or other responsible party.

(2)(i) For solid metal (such as a steel beam or a metal casting), solid wood, or plastic items that arc not exempted as articles due to their downstream use, or shipments of whole grain, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes;

(ii) The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment; and,

(iii) This exception to requiring labels on every container of hazardous chemicals is only for the solid material itself, and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the material and to which employees handling the items in transit may be exposed (for example, cutting fluids or pesticides in grains).

(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which docs not conflict with the requirements of the Hazardous Materials Transportation Act **(49** U.S.C. 1801 et seq.) and regulations issued under that Act by the Department of Transportation.

(4) If the hazardous chemical is regulated by OSHA in a substance- specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used arc in accordance with the requirements of that standard.

(5) Except as provided in paragraphs (f)(6) and (f)(7) of this section, the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s) contained therein; and,

(ii) Appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.

(6) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by paragraph (f)(5) of this section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(7) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which arc intended only for the immediate use of the employee who performs the transfer. For purposes of this section, drugs which are dispensed by a pharmacy to a health care provider for direct administration to a patient arc exempted from labeling.

(8) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(9) The employer shall ensure that labels or other forms of waming are legible, in English, and prominently displayed on the

container, or readily available in the work area throughout each **work** shih. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented **in** English as well.

(10) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(11) Chemical manufacturers, importers, distributors, or employers who become newly aware of any significant information regarding the hazards of a chemical shall revise the labels for the chemical within three months of becoming aware of the new information. Labels on containers of hazardous chemicals shipped aher that time shall contain the new information. If the chemical is not currently produced or imported, the chemical manufacturer, importers, distributor, or employer shall add the information to the label before the chemical is shipped or introduced into the workplace again.

(g) Material safety data sheets. (1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet in the workplace for each hazardous chemical which they use.

(2) Each material safety data sheet shall be in English (although the employer may maintain copies in other languages as well), and shall contain at least the following information:

(i) The identity used on the label, and, except as provided for in paragraph (i) of this section on trade secrets:

(A) If the hazardous chemical is a single substance, its chemical and common name(s);

(B) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or,

(C) If the hazardous chemical is a mixture which has not been tested as a whole:

(1) The chemical and common name(s) of all ingredients which have been determined to bc health hazards, and which comprise 1% or greater of the composition, except that chemicals identified as carcinogens under paragraph (d) of this section shall be listed if the concentrations are 0.1% or greater; and,

(2) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise **less** than 1% (0.1% for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees; and,

(3) The chemical and common name(s) of all ingredients which have been determined to present **a** physical hazard when present in the mixture:

(ii) Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

(iii) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

(iv) The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

(v) The primary route(s) of entry;

(vi) The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

(vii) Whether the hazardous chemical is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or by **OSHA.**

(viii) Any generally applicable precautions for safe handling and use which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

(ix) Any generally applicable control measures which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(x) Emergency and first aid procedures;

(xi) The date of preparation of the material safety data sheet or the last change to it; and,

(xii) The name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

(3) If no relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

(4) Where complex mixtures have similar hazards and contents (i.e. the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chcmical manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(5) The chemical manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

(6)(i) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated;

(ii) The chcmical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the distributor or employer prior to or at the time of the shipment;

(iii) If the material safety data sheet is not provided with a shipment that has been labeled as a hazardous chemical. the distributor or employer shall obtain one from the chemical manufacturer or importer as soon as possible, and,

(iv) The chemical manufacturer or importer shall also provide distributors or employers with a material safety data sheet upon request.

(7)(i) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers with their initial shipment and with the [[Page 476]] first shipment after a material safety data sheet is updated;

(ii) The distributor shall either provide material safety data sheets with the shipped containers, or send them to the othcr distributor or employer prior to or at the time of the shipment;

(iii) Retail distributors selling hazardous chemicals to employers having a commercial account shall provide a material safety data sheet to such employers upon request, and shall post a sign **or** otherwise inform them that a material safety data sheet **is** available;

(iv) Wholesale distributors selling hazardous chemicals to employers over-the-counter may also provide material safety data sheets upon the request of the employer at the time of the over-the-counter purchase, and shall post a sign or otherwise inform such employers that a material safety data sheet is available;

(v) If an employer without a commercial account purchases a hazardous chemical from a retail distributor not required to have material safety data sheets **on** file (i.e., the retail distributor does not have commercial accounts and does not use the materials), the retail distributor shall provide the employer, upon request, with the name, address, and telephone number of the chemical manufacturer, importer, or distributor from which a material safety data sheet can be obtained;

(vi) Wholesale distributors shall also provide material safety data sheets to employers or other distributors upon request; and,

(vii) Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors that have informed them that the retail distributor does not sell the product to commercial accounts or open the scaled container to use it in their own workplaces.

(8) The employer shall maintain in the workplace copies of the required material safety data sheets for cach hazardous chemical, and shall ensure that they are readily accessible during cach work shift to employees when they are in their work area(s). (Electronic access, microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.).

(9) Where employees must travel between workplaces during a work shift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(10) Material safety data sheets may be kept in any form, including operating procedures, and may be dcsigncd to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. However, the employer shall ensure that in all cases the required information is provided for cach hazardous chemical, and is readily accessible during each work shift to employees when they are in their work area(s).

(11) Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.20(e). The Director shall also be given access to material safety data sheets in the same manner.

***(h)* Employee information and training. (1) Employers** shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or spccific chemicals. Chemical-specific information must always he available through labels and material safety data sheets.

(2) Information. Employees shall be informed of:

(i) The requirements of this section;

(ii) Any operations in their work area where hazardous chemicals are present: and,

(iii) The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this section.

(3) Training. Employee training shall include at least:

(i) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

(ii) The physical and health hazards of the chemicals in the work area;

(iii) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to bc used; and,

(iv) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

***(i)* Trade seerefs.** (1) The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

(i) The claim that the information withheld is a trade secret can be supported;

(ii) Information contained in the material safety data sheet concerning the properties and effects of the hazardous chcmical is disclosed;

(iii) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and,

(iv) The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this paragraph.

(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (i) (3) and (4) of this section, as soon as circumstances permit.

(3j In non-emergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (i)(1) of this section, to a health professional (i.e. physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

(i) The request is in writing;

(ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:

(A) To assess the hazards of the chemicals to which employees will be exposed,

(B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(C) To conduct pre-assignment or periodic medical surveillance of exposed employees;

(D) To provide medical treatment to exposed employees;

(E) To select or assess appropriate personal protective equipment for exposed employees;

(F) To design or assess engineering controls or other protective measures for exposed employees; and,

(G) To conduct studies to determine the health effects of exposure.

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in paragraph (i)(3)(ii) of this section:

(A) The properties and effects of the chemical;

(B) Measures for controlling workers' exposure to the chemical;

(C) Methods of monitoring and analyzing worker exposure to the chemical; and,

(D) Methods of diagnosing and treating harmful exposures to the chemical;

(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(v) The health professional, and the employer or contractor of the services of the health professional (i.e. downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (i)(6) of this section, except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

(4) The confidentiality agreement authorized by paragraph (i)(3)(iv) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(iii) May not include requirements for the posting of a penalty bond.

(5) Nothing in this standard is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law

(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) If the chemical manufacturer, importer; or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(i) Be provided to the health professional, employee, or designated representative, within thirty days of the request;

(ii) Be in writing;

(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;

(iv) State the specific reasons why the request is being denied; and,

(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) The health professional, employee, or designated representative whose request for information is denied under paragraph (i)(3) of this section may refer the request and the written denial of the request to OSHA for consideration.

(9) When a health professional, employee, or designated representative refers the denial to OSHA under paragraph (i)(8) of this section, OSHA shall consider the evidence to determine if.

(i) The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional, employee, or designated representative has supported the claim that there is **a** medical or occupational health need for the information; and,

(iii) The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

(10)(i) If OSHA determines that the specific chemical identity reauested under paragraph (i)(3) of this section is not a *bona fide* trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the informaiion, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by OSHA.

(ii) If a chemical manufacturer, importer, or employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as rnay be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the Occupational Safety and Health Review Commission in accordance with the Act's enforcement scheme and the applicable Commission rules of procedure. In accordance with the Commission rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality of such matters.

(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, such claim shall he made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

(j) Effective dates. Chemical manufacturers, importers, distributors, and employers shall he in compliance with all provisions of this section by March 11, 1994.

Note: The effective date of the clarification, that the exemption of wood and wood products from the Hazard Communication standard in paragraph (b)(6)(iv) only applies to wood and wood products including lumber which will not he processed, where the manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility, and that the exemption does not apply to wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut generating dust has been stayed from March 11, 1994 to August 11, 1994.

APPENDIX A TO SEC. 1910.1200--HEALTH HAZARD DEFINITIONS (MANDATORY)

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements (e.g. flammability), health hazard definitions are less precise and more subjective. Health hazards rnay cause measurable changes in the body— such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees—such as shortness of breath, a non-measurable, subjective feeling. Employees exposed to such hazards must he apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in non-occupationally exposed populations, so that effects of exposure are difficult to separate from normally occurring illnesses. Occasionally, a substance causes an effect that is rarely seen in the population at large, such as angiosarcomas caused by vinyl chloride exposure, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been adequately tested to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposures, and are of short duration. "Chronic" effects generally occur as a result of long-term exposure, and are of long duration.

The acute effects referred to most frequently are those defined by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1-1988)--irritation, corrosivity, sensitization and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects which may occur as a result of occupational exposure, such as, for example, narcosis.

Similarly, the term chronic effect is often used to cover only carcinogenicity, teratogenicity, and mutagenicity. These effects are obviously a concern in the workplace, hut again, do not adequately cover the area of chronic effects, excluding, for example, blood dyscrasias (such as anemia), chronic bronchitis and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposures cannot realistically he accomplished. This does not negate the need for employees to be informed of such effects and protected from them. Appendix B, which is also mandatory, outlines the principles and procedures of hazard assessment.

For purposes of this section, any chemicals which meet any of the following definitions, as determined by the criteria set forth in Appendix B are health hazards. However, this is not intended to be

an exclusive categorization scheme. lfthcrc are available scientific data that involve other animal species or test methods, they must also be evaluated to determine the applicability of the HCS.7

1. Carcinogen A chemical is considered to be a carcinogen if:

(a) It has been evaluated by the International Agency for Research on Cancer (IARC), and found to be a carcinogen or potential carcinogen; or

(b) It is listed as a carcinogen or potential carcinogen in the Annual Report on Carcinogens published by the National Toxicology Program (NTP) (latest edition); or,

(c) It is regulated by OSHA as a carcinogen.

2. Corrosive: A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in appendix A to 49 CFR part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

3. *Highly toxic*: A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration in air of 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

4. Irritant; A chemical, which is not corrosive, but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact, A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

5. Sensitizer: A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

6. Toxic. A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

7. Target organ effects. The following is a target organ categorization of effects which may occur, including examples of signs and symptoms and chemicals which have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace. and the broad scope employers must consider in this area, but are not intended to be all-inclusive.

a. Hepatotoxins: Chemicals which produce liver damage. 3 Signs & Symptoms: Jaundice; liver enlargement Chemicals: Carbon tetrachloride; nitrosamines

b. Nephrotoxins: Chemicals which produce kidney damage Signs & Symptoms: Edema; proteinuria Chcmicals: Halogenated hydrocarbons: uranium

c. Neurotoxins: Chemicals which produce their primary toxic effects on the nervous system Signs & Symptoms: Narcosis; behavioral changes; decrease in motor functions Chemicals: Mercury; carbon disulfide

d. Agents which act on the blood or hemato-poietic system: Decrease hemoglobin function; deprive the body tissues of oxygen Signs & Symptoms: Cyanosis; loss of consciousness Chemicals: Carbon monoxide; cyanides

e. Agents which damage the lung: Chemicals which irritate or damage pulmonary tissue Signs & Symptoms: Cough; tightness in chest; shortness of breath Chemicals: Silica; asbestos

f. Reproductive toxins: Chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis) Signs & Symptoms: Birth defects; sterility Chemicals: Lead; DBCP

g. Cutaneous hazards: Chemicals which affect the dermal layer of the body Signs & Symptoms: Dcfatting of the skin; rashes; irritation Chemicals: Ketones; chlorinated compounds

h. Eye hazards: Chemicals which affect the eye or visual capacity Signs & Symptoms: Conjunctivitis; corneal damage Chemicals: Organic solvents; acids

APPENDIX B TO SEC. 1910.1200--HAZARD DETERMINATION (MANDATORY)

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The hazard determination requirement of this standard is performance-oriented. Chemical manufacturers, importers, and employers evaluating chemicals are not required to follow any specific methods for determining hazards, but they must be able to demonstrate that they have adequately ascertained the hazards of the Chemicals produced or imported in accordance with the criteria set forth in this Appendix.

Hazard evaluation is a process which relies heavily on the professional judgment of the evaluator, particularly in the area of chronic hazards. The performance-orientation of the hazard determination does not diminish the duty of the chemical manufacturer, importer or employer to conduct a thorough evaluation, examining all relevant data and producing a scientifically defensible evaluation. For purposes of this standard, the following criteria shall be used in making hazard determinations that meet the requirements ofthis standard.

1. Carcinogenicity: As described in paragraph (d)(4) ofthis section and Appendix A of this section, a determination by the National Toxicology Program, the International Agency for Research on Cancer, or OSHA that a chemical is a carcinogen or potential carcinogen will be considered conclusive evidence for purposes ofthis section. In addition, however, all available scientific data on carcinogenicity must be evaluated in accordance with the provisions ofthis Appendix and the requirements of the rule.

2. Human data: Where available, epidemiological studies and case reports of adverse health effects shall be considered in the evaluation.

3. *Animal data:* Human evidence of health effects in exposed populations is generally not available for the majority of chemicals produced or used in the workplace. Therefore, the available results oftoxicological testing in animal populations shall be used to predict the health effects that may be experienced by exposed workers. In particular, the definitions of certain acute hazards refer to specific animal testing results (see Appendix A).

4. Adequacy and reporting of data. The results of any studies which are designed and conducted according to established scientific principles, and which report statistically significant conclusions regarding the health effects of a chemical. shall be a sufficient basis for a hazard determination and reported on any material safety data sheet. In vitro studies alone generally do not form the basis for a definitive finding of hazard under the HCS since they have a positive or negative result rather than a statistically significant finding.

The chemical manufacturer, importer, or employer may also report the results of other scientifically valid studies which tend to refute the findings of hazard.

APPENDIX C TO SEC. 1910.1200--[RESERVED]

APPENDIX D TO SEC. 1910.1200--DEFINITION OF ``TRADE SECRET'' (MANDATORY)

The following is a reprint of the Restatement of Torts section 757, comment h (1939):

b. Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see s759 of the Restatement of Torts which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are:

(1) The extent to which the information is known outside of his business;

(2) the extent to which it is known by employees and others involved in his business;

(3) the extent of measures taken by him to guard the secrecy of the information;

(4) the value of the information to him and his competitors:

(5) the amount of effort or money expended by him in developing the information;

(6) the ease or difficulty with which the information could he properly acquired or duplicated by others.

Novelty *and prior art.* A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements arc essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this Section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may he limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

APPENDIX E TO SEC. 1910.1200-(ADVISORY)-- GUIDELINES FOR EMPLOYER COMPLIANCE

The Hazard Communication Standard (HCS) is based on a simple concept—that employees have both a need and a right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help employers provide safer workplaces for their employees. When employers have information about the chemicals being used, they can take steps to reduce exposures, substitute less hazardous materials, and establish proper work practices. These efforts will help prevent the occurrence of work- related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to workers. Evaluation of chemical hazards involves a number of technical concepts, and is a process that requires the professional judgment of experienced experts. That's why the HCS is designed so that employers who simply use chemicals, rather than produce or import them, arc not required to evaluate the hazards of those chemicals. Hazard determination is the responsibility of the producers and importers of the materials. Producers and importers of chemicals arc then required to provide the hazard information to employers that purchase their products.

Employers that don't produce or import chemicals need only focus on those naris of the rule that deal with establishing a workplace program and communicating information to their workers. This appendix is a general guide for such employers to help them determine what's required under the rule. It docs not supplant or substitute for the regulatory provisions, but rather provides a simplified outline of the steps an average employer would follow to meet those requirements.

1. Becoming Familiar With The Rule.

OSHA has provided a simple summary of the HCS in a pamphlet entitled "Chemical Hazard Communication," OSHA Publication Number *3084.* Some employers prefer to begin to become familiar with the rule's requirements by reading this pamphlet. A copy may he obtained from your local OSHA Area Office, or by contacting the OSHA Publications Office at (202) *523-9661.*

The standard is long, and some parts of it are technical, but the basic concepts are simple. In fact, the requirements reflect what many employers have been doing for years. You may find that you arc already largely in compliance with many of the provisions, and will simply have to modify your existing programs somewhat. If you arc operating in an OSHA-approved State Plan State, you must comply with the State's requirements, which may he different than those of the Federal rule. Many of the State Plan States had hazard communication or "right-to- know" laws prior to promulgation of the Federal rule. Employers in State Plan States should contact their State OSHA offices for more information regarding applicable requirements. The HCS requires information to be prepared and transmitted regarding all hazardous chemicals.

The HCS covers both physical hazards (such as flammability), and health hazards (such as irritation, lung damage, and cancer). Most chemicals used in the workplace have some hazard potential, and thus will he covered by the rule.

One difference between this rule and many others adopted by OSHA is that this one is performance-oriented. That means that you have the flexibility to adapt the rule to the needs of your workplace, rather than having to follow specific, rigid requirements. It also means that you have to exercise more judgment to iniplement an appropriate and effective program.

The standards design is simple. Chemical manufacturers and importers must evaluate the hazards of the chemicals they produce or import. Using that information, they must then prepare labels for containers, and more detailed technical bulletins called material safety data sheets (MSDS).

Chemical manufacturers, importers, and distributors of hazardous chemicals are all required to provide the appropriate labels and material safety data sheets to the cmploycrs to which they ship the chemicals. The information is to be provided automatically. Every container of hazardous chemicals you receive must be labeled, tagged, or marked with the required information. Your suppliers must also send you a properly completed material safety data sheet (MSDS) at the time of the first shipment of the chemical, and with the next shipment after the MSDS is updated with new and significant information about the hazards.

You can rely on the information received from your suppliers. You have no independent duty to analyze the chemical or evaluate the hazards of it.

Employers that "use" hazardous chemicals must have a program to ensure the infomiation is provided to exposed employees. "Use" means to package, handle, react, or transfer. This is an intentionally broad scope, and includes any situation where a chemical is present in such a way that employees may be exposed under normal conditions of use or in a foreseeable emergency.

The requirements of the rule that deal specifically with the hazard communication program are found in this section in paragraphs (e), written hazard communication program; (f), labels and other forms of warning; (gj, material safety data sheets; and (hj, employee information and training. The requirements of these paragraphs should be the focus of your attention. Concentrate on becoming familiar with them, using paragraphs (b), scope and application, and (cj. definitions, as references when needed to help explain the provisions.

There are two types of work operations where the coverage of the rule is limited. These are laboratories and operations where chemicals are only handled in scaled containers (e.g., a warehouse). The limited provisions for these workplaces can be found in paragraph (b) of this section, scope and application. Basically, employers having these types of work operations need only keep labels on containers as they are received; maintain material safety data sheets that are received, and give employees access to them; and provide information and training for employees. Employers do not have to have written hazard communication programs and lists of chemicals for these types of operations.

The limited coverage of laboratories and sealed container operations addresses the obligation of an employer to the workers in the operations involved, and does not affect the employer's duties as a distributor of chemicals. For example, a distributor may have warehouse operations where employees would be protected under the limited sealed container provisions. In this situation, requirements for obtaining and maintaining MSDSs are limited to providing access to those received with containers while the substance is in the workplace, and requesting MSDSs when employees request access for those not received with the containers. However, as a distributor of hazardous chemicals, that employer will still have responsibilities for providing MSDSs to downstream customers at the time of the first shipment and when the MSDS is updated. Therefore, although they may not be required for the employees in the work operation, the distributor may, nevertheless, have to have MSDSs to satisfy other requirements of the rule.

2. *Identify* Responsible *Staff*

Hazard communication is going to be a continuing program in your facility. Compliance with the HCS is not a "one shot deal." In order to have a successful program, it will be necessary to assign responsibility for both the initial and ongoing activities that have to be undertaken to comply with the rule. In some cases, these activities may already be part of current Job assignments. For example, site supervisors are frequently responsible for on-the-job training sessions. Early identification of the responsible employees, and involvement of them in the development of your plan of action, will result in a more effective program design. Evaluation of the effectiveness of your program will also be enhanced by involvement of affected cmployecs.

For any safety and health program, success depends on commitment at every level of the organization. This is particularly true for hazard communication, where success requires a change in behavior. This will only occur if employers understand the program, and are committed to its success, and if employees are motivated by the people presenting the information to them.

3. *Identify Hazardous Chemicals in the* Workplace.

The standard requires a list of hazardous chemicals in the workplace as part of the written hazard communication program. The list will eventually serve as an inventory of everything for which an MSDS must be maintained. At this point, however, preparing the list will help you complete the rest of the program since it will give you some idea of the scope of the program required for compliance in your facility.

The best way to prepare a comprehensive list is to survey the workplace. Purchasing records may also help, and certainly employers should establish procedures to ensure that in the future purchasing procedures result in MSDSs being received before a material is used in the workplace.

The broadest possible perspective should be taken when doing the survey. Sometimes people think of "chemicals" as being only liquids in containers. The HCS covers chemicals in all physical forms--liquids, solids, gases, vapors, fumes, and mists—whether they are "contained or not. The hazardous nature of the chemical and the potential for exposure are the factors which determine whether a chemical is covered. If it's not hazardous, it's not covered. If there is no potential for exposure (e.g., the chemical is inextricably bound and cannot be released), the rule does not cover the chemical.

Look around. Identify chemicals in containers, including pipes, but also think about chemicals generated in the work operations. For example, welding fumes, dusts, and exhaust fumes are, all sources of chemical exposures. Read labels provided by suppliers for hazard information. Make a list of all chemicals in the workplace that are potentially hazardous. For your own information and planning, you may also want to note on the list the location(s) of the products within the workplace, and an indication of the hazards as found on the label. This will help you as you prepare the rest of your program.

Paragraph (bj of this section, scope and application, includes exemptions for various chemicals or workplace situations. After compiling the complete list of chemicals, you should review paragraph (b) of this section to determine if any of the items can be eliminated from the list because they are exempted materials. For example, food, drugs, and cosmetics brought into the workplace for employee consumption are exempt. So rubbing alcohol in the first aid kit would not be covered.

Once you have compiled as complete a list as possible of the potentially hazardous chemicals in the workplace, the next step is to determine if you have received material safety data sheets for all of them. Check your files against the inventory you have just compiled. If any are missing, contact your supplier and request one. It is a good idea to document these requests, either by copy of a letter or a note regarding telephone conversations. If you have MSDSs for chemicals that are not on your list, figure out why. Maybe you don't use the chemical anymore. Or maybe you missed it in your survey. Some suppliers do provide MSDSs for products that are not hazardous. These do not have to be maintained by you.

You should not allow employees to use any chemicals for which you have not received an MSDS. The MSDS provides information you need to ensure proper protective measures are implemented prior to exposure.

4. Preparing and Implementing a Hazard Communication Program

All workplaces where employees are exposed to hazardous chemicals must have a written plan which describes how the standard will be implemented in that facility. Preparation of a plan is not just a paper exercise--all of the elements must be implemented in the workplace in order to be in compliance with the rule. See paragraph (e) of this section for the specific requirements regarding written hazard communication programs. The only work operations which do not have to comply with the written plan requirements are laboratories and work operations where employees only handle chemicals in sealed containers. See paragraph (b) of this section, scope and application, for the specific requirements for these two types of workplaces.

The plan does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program--an assurance that all aspects of the requirements have been addressed.

Many trade associations and other professional groups have provided sample programs and other assistance materials to affected employers. These have been very helpful to many employers since they tend to be tailored to the particular industry involved. You may wish to investigate whether your industry trade groups have developed such materials.

Although such general guidance may be helpful, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program it must be adapted to address the facility it covers. For example, the written plan must list the chemicals present at the site, indicate who is to be responsible for the various aspects of the program in your facility, and indicate where written materials will be made available to employees.

If **OSHA** inspects your workplace for compliance with the HCS, the OSHA compliance officer will ask to see your written plan at the outset of the inspection. In general, the following items will be considered in evaluating your program.

The written program must describe how the requirements for labels and other forms of warning, material safety data sheets, and employee information and training, arc going to be met in your facility. The following discussion provides the type of information compliance officers will be looking for to decide whether these elements of the hazard communication program have been properly addressed:

A. Labels and Other Forms of Warning

In-plant containers of hazardous chemicals must be labeled, tagged, or marked with the identity of the material and appropriate hazard warnings. Chemical manufacturers, importers, and distributors are required to ensure that every container of hazardous chemicals they ship is appropriately labeled with such information and with the name and address of the producer or other responsible party. Employers purchasing chemicals can rely on the labels provided by their suppliers. If the material is subsequently transferred by the employer from a labeled container to another container, the employer will have to label that container unless it is subject to the portable container exemption. See paragraph (f) of this section for specific labeling requirements.

The primary information to be obtained from an OSHA-required label is an identity for the material, and appropriate hazard warnings. The identity is any term which appears on the label, the MSDS, and the list of chemicals, and thus links these three sources of information. The identity used by the supplier may be a common or trade name ("Black Magic Formula"), or a chemical name (1,1,1,-trichloroethane). The hazard warning is a brief statement of the hazardous effects of the chemical ("flammable," "causes lung damage"). Labels frequently contain other information, such as precautionary measures ("do not use near open flame"), but this information is provided voluntarily and is not required by the rule. Labels must be legible, and prominently displayed. There are no specific requirements for size or color, or any specified text.

With these requirements in mind, the compliance officer will be looking for the following types of information to ensure that labeling will be properly implemented in your facility:

1. Designation of person(s) responsible for ensuring labeling of in- plant containers;
2. Designation of person(s) responsible for ensuring labeling of any shipped containers;
3. Description of labeling system(s) used;
4. Description of written alternatives to labeling of in-plant containers (if used); and,
5. Procedures to review and update label information when necessary.

Employers that arc purchasing and using hazardous chemicals-. rather than producing or distributing them--will primarily be concerned with ensuring that every purchased container is labeled. If materials are transferred into other containers, the employer must ensure that these are labeled as well, unless they fall under the portable container exemption (paragraph (f)(7) of this section). In terms of labeling systems, you can simply choose to use the labels provided by your suppliers on the containers. These will generally be verbal text labels, and do not usually include numerical rating systems or symbols that require special training. The most important thing to remember is that this is a continuing duty--all in-plant containers of hazardous chemicals must always be labeled. Therefore, it is important to designate someone to be responsible for ensuring that the labels are maintained as required on the containers in your facility, and that newly purchased materials are checked for labels prior to use.

B. Material Safety Data Sheets

Chemical manufacturers and importers arc required to obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Distributors arc responsible for ensuring that their customers are provided a copy of these MSDSs. Employers must have an MSDS for each hazardous chemical which they use. Employers may rely on the information received from their suppliers. The specific requirements for material safety data sheets are in paragraph (g) of this section.

There is no specified format for the MSDS under the rule, although there are specific information requirements. OSHA has developed a non- mandatory format, OSHA Form 174, which may be used by chemical manufacturers and importers to comply with the rule. The MSDS must be in English. You are entitled to receive from your supplier a data sheet which includes all of the information required under the rule. If you do not receive one automatically, you should request one. If you receive one that is obviously inadequate, with, for example, blank spaces that are not completed, you should request an appropriately completed one. If your request for a data sheet or for a corrected data sheet does not produce the information needed, you should contact your local OSHA Area Office for assistance in obtaining the MSDS.

The role of MSDSs under the rule is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics, and recommendations for appropriate protective measures. This information should be useful to you as the employer responsible for designing protective programs, as well as to the workers. If you are not familiar with material safety data sheets and with chemical terminology, you may need to learn to use them yourself. A glossary of MSDS terms may be helpful in this regard. Generally speaking, most employers using hazardous chemicals will primarily be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDS that are applicable to your situation.

MSDSs must be readily accessible to employees when they arc in their work areas during their work shifts. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some employers keep the MSDSs in a binder in a central location (e.g., in the pick-up truck on a construction site). Others, particularly in workplaces with large numbers of chemicals, computerize the information and provide access through terminals. As lung as employees can get the information when they need it, any approach may be used. The employees must have access to the MSDSs themselves--simply having a system where the information can be read to them over the phone is only permitted under the mobile worksite provision, paragraph (g)(9) of this section; when employees must travel between workplaces during the shift. In this situation, they have access to the MSDSs prior to leaving the primary worksite, and

when they return, so the telephone system is simply an emergency arrangement.

In order to ensure that you have a current MSDS for each chemical in the plant as required, and that employee access is provided, the compliance officers will be looking for the following types of information in your written program:

1. Designation of person(s) responsible for obtaining and maintaining the MSDSs;
2. How such sheets are to be maintained in the workplace (e.g., in notebooks in the work area(s) or in a computer with terminal access), and how employees can obtain access to them when they are in their work area during the work shift;
3. Procedures to follow when the MSDS is not received at the time of the first shipment;
4. For producers, procedures to update the MSDS when new and significant health information is found; and,
5. Description of alternatives to actual data sheets in the workplace, if used.

For employers using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory As new chemicals are purchased, the list should be updated. Many companies have found it convenient to include on their purchase orders the name and address of the person designated in their company to receive MSDSs.

C. Employee Information and Training

Each employee who may be "exposed" to hazardous chemicals when working must be provided information and trained prior to initial assignment to work with a hazardous chemical, and whenever the hazard changes. "Exposure" or "exposed under the rule means that "an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g., accidental or possible) exposure." See paragraph (h) of this section for specific requirements. Information and training may be done either by individual chemical, or by categories of hazards (such as flammability or carcinogenicity). If there are only a few chemicals in the workplace, then you may want to discuss each one individually. Where there are large numbers of chemicals, or the chemicals change frequently, you will probably want to train generally based on the hazard categories (e.g., flammable liquids, corrosive materials, carcinogens). Employees will have access to the substance-specific information on the labels and MSDSs. Information and training is a critical part of the hazard communication program.

Information regarding hazards and protective measures are provided to workers through written labels and material safety data sheets. However, through effective information and training, workers will learn to read and understand such information, determine how it can be obtained and used in their own workplaces, and understand the risks of exposure to the chemicals in their workplaces as well as the ways to protect themselves. A properly conducted training program will ensure cornprehension and understanding. It is not sufficient to either just read material to the workers, or simply hand them material to read. You want to create a climate where workers feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses and injuries. This will be accomplished by modifying behavior through the provision of hazard information and information about protective measures. If your program works, you and your workers will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing, storage, and handling of these chemicals will improve, and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your workers' comprehension will also be increased, and proper work practices will be followed in your workplace.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the workers to learn. This is not always an easy task, but the benefits are worth the effort. More information regarding appropriate training can be found in OSHA Publication No. 2254 which contains voluntary training guidelines prepared by OSHA's Training Institute. A copy of this document is available from OSHA's Publications Office at (202) 219-4667.

In reviewing your written program with regard to information and training, the following items need to be considered:

1. Designation of person(s) responsible for conducting training;
2. Format of the program to be used (audiovisuals, classroom instruction, etc.);
3. Elements of the training program (should be consistent with the elements in paragraph (h) of this section); and,
4. Procedure to train new employees at the time of their initial assignment to work with a hazardous chemical, and to train employees when a new hazard is introduced into the workplace.

The written program should provide enough details about the employer's plans in this area to assess whether or not a good faith effort is being made to train employees. OSHA does not expect that every worker will be able to recite all of the information about each chemical in the workplace. In general, the most important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use labels and material safety data sheets, and that, as a consequence of learning this information, they arc following the appropriate protective measures established by the employer. OSHA compliance officers will be talking to employces to detemiine if they have received training, if they know they are exposed to hazardous chemicals, and if they know where to obtain substance-specific information on labels and MSDSs.

The rule does not require employers to maintain records of employee training, but many employers choose to do so. This may help you monitor your own program to ensure that all employees are appropriately trained. If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, construction employers that are already in compliance with the construction training standard (29 CFR 1926.21) will have little extra training to do.

An employer can provide employees information and training through whatever means arc found appropriate and protective. Although there would always have to be some training on-site (such as informing employees of the location and availability of the written program and MSDSs), employee training may be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. In addition, previous training, education and experience of a worker may relieve the employer of some of the burdens of informing and training that worker. Regardless of the method relied upon, however, the employer is always ultimately responsible for ensuring that employees are adequately trained. If the compliance officer finds that the training is deficient, the employer will be cited for the deficiency regardless of who actually provided the
training on behalf of thc employer.

D. Other Requirements

In addition to these specific items, compliance officers will also be asking the following questions in assessing the adequacy of the program:

Does a list of the hazardous chemicals exist in each work area or at a central location?

Are methods the employer will use to inform employces of the hazards of non-routine tasks outlined?

Are employees informed of the hazards associated with chemicals contained in unlabeled pipes in their work areas?

On multi-employer worksites, has the employer provided other employers with information about labeling systems and precautionary measures where the other employeis have employees exposed to the initial employer's chemicals?

Is the written program made available to employees and their designated representatives'? If your program adequately addresses the means of communicating information to employees in your

workplace, and provides answers to the basic questions outlined above, it will be found to be in compliance with the rule.

5. Checklist for Compliance

The following checklist will help to ensure you are in compliance with the rule:

Obtained a copy of the rule_____
Read and understood the requirements_____
Assigned responsibility for tasks _____
Prepared an inventory of chemicals._____
Ensured containers are labeled._____
Obtained MSDS for each chemical. _____
Prepared written program _____
Made MSDSs available to workers. _____
Conducted training ofworkers. _____
Established proccdures to maintain current program _____
Established procedures to evaluate effectiveness ._____

6. Further Assistance

If you have a question regarding compliance with the HCS, you should contact your local OSHA Area Office for assistance. In addition, each **OSHA** Regional Officc has a Hazard Communication Coordinator who can answer your questions. Free consultation services arc also available to assist employers, and information regarding these services can bc obtained through the Area and Regional offices as well.

The telephone number for the **OSHA** office closest to you should be listed in your local telephone directory. If you are not able to obtain this information, you may contact OSHA's Office of Information and Consumer Affairs at (202) 219-8151 for further assistance in identifying the appropriate contacts.

[59 FR **6170,** Fcb. 9, 1994, as amended at 59 FR 17479, Apr. 13, 1994; 59 FR 65948, Dec. 22, 1994; 61 FR 9245, Mar. 7. 1996]

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